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# PROSTITUTION IN CANADA: INTERNATIONAL FRAMEWORK, FEDERAL LAW, AND PROVINCIAL AND MUNICIPAL JURISDICTION

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# EXECUTIVE SUMMARY

Prostitution has long been the subject of varying moral perspectives and legal approaches. These divisions often reflect different ideas about how vulnerable people can best be protected from exploitation and violence.

International law relating to prostitution is mainly focused on two goals: protecting adults from forced prostitution and protecting children from all forms of sexual abuse and exploitation. There is widespread international agreement on these goals but less agreement on how to regulate sexual services between consenting adults.

Canada's approach to prostitution has changed significantly in recent years. Until 2014, consensual sex between adults for money was legal, although many activities surrounding the act of prostitution were prohibited. In *Canada (Attorney General) v. Bedford*, the Supreme Court of Canada found three such prohibitions to be unconstitutional, as they put the safety of sex workers at unnecessary risk. This forced Parliament to reconsider its approach to prostitution.

In Canada, sex workers do not face criminal penalties for selling, offering or advertising their own services in most circumstances. However, following new legislation in 2014, purchasing sexual services is a criminal offence. In addition, the *Criminal Code* seeks to address exploitative relationships through provisions that prohibit procurement of sex workers and advertising or receiving material benefits from the sale of another person's sexual services. These provisions continue to be the subject of constitutional litigation.

At the provincial/territorial level, prostitution is sometimes indirectly regulated through such measures as community safety and public nuisance orders that target areas where prostitution occurs, highway and traffic legislation that allows police to impound vehicles for prostitution-related offences, and child welfare legislation that seeks to protect children who are at risk of child prostitution.

Similarly, municipalities regulate specific issues relating to prostitution, including through by-laws prohibiting solicitation in certain areas, zoning and business licensing decisions that affect the location and operation of adult entertainment services, and police guidelines that establish enforcement priorities.

In short, prostitution raises legal and policy issues that various levels of government seek to address, often using different tools and sometimes seeking different outcomes.

# PROSTITUTION IN CANADA: INTERNATIONAL FRAMEWORK, FEDERAL LAW, AND PROVINCIAL AND MUNICIPAL JURISDICTION

## 1 INTRODUCTION

Canada's approach to dealing with prostitution (consensual sex between adults for money, also referred to as sex work)[1] is multifaceted, combining criminal laws at the federal level, provincial/territorial laws and municipal measures, highlighting the various jurisdictional responsibilities at play.

At the federal level, Canada's approach to prostitution changed significantly following the 2013 decision of the Supreme Court of Canada in *Canada (Attorney General) v. Bedford* (*Bedford*)[2] in which the Court struck down three prostitution-related *Criminal Code* (Code)[3] provisions as unconstitutional. Parliament responded with new legislation in 2014, basing the legal framework on a conception of prostitution as a form of sexual exploitation, with the goal of reducing and ultimately abolishing prostitution to the greatest extent possible.[4] Under this new paradigm, the purchase of sexual services is prohibited, as is advertising or receiving material benefits from the sale of another person's sexual services. However, with some exceptions, sex workers are not prohibited from selling, offering or advertising their own services.

This HillStudy provides an overview of international law relating to prostitution, the federal approach to prostitution under the Code, and provincial/territorial and municipal measures that aim to deal with specific issues at a practical level.

## 2 INTERNATIONAL LAW

International law relating to prostitution is largely focused on prohibiting trafficking of adults for the purpose of sexual exploitation and all forms of sexual abuse and exploitation involving children.[5]

For example, article 6 of the 1979 United Nations *Convention on the Elimination of All Forms of Discrimination against Women* specifies that states parties must take all appropriate measures to suppress trafficking in women and the "exploitation of prostitution of women."[6] Canada ratified the Convention in 1982.

Similarly, paragraph 113(b) of the 1995 Beijing Declaration and Platform for Action highlighted the fact that "forced prostitution" is a form of violence against women.[7] The declaration recognized the element of choice involved in adult prostitution, focusing its attention instead on "forced prostitution" and "child prostitution." Canada committed itself to the Beijing Declaration and Platform for Action in September 1995.

In addition, article 34 of the 1989 United Nations *Convention on the Rights of the Child* states that signatories must protect all children from sexual abuse and exploitation by taking all appropriate measures to prevent them from being forced into unlawful sexual activity and from being exploited through prostitution.[8] The Convention is complemented by the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*.[9] Under the optional protocol, states are required to criminalize the offering, obtaining, procuring or providing of a child for prostitution.[10] Canada ratified the Convention in December 1991 and the optional protocol in September 2005.

Finally, in 2000, the international community put forward the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.[11] Article 5 called upon states parties to criminalize such trafficking, with the exploitation of the prostitution of others included in the definition of "trafficking in persons."[12] In this way, trafficking in human beings, which is often integrally linked to the exploitation of the prostitution of others, was forcefully condemned in international law. Canada ratified the protocol in May 2002.

## 3 FEDERAL LAW

### 3.1 CONTEXT

In Canada, Parliament has jurisdiction over criminal law, and it uses this power to address prostitution-related concerns.[13] Until 2014, although it was not against the law for consenting adults to exchange sex for money, many activities surrounding the act of prostitution were criminalized, such as keeping or using a common bawdy-house, transporting a person to a bawdy-house, procuring and public solicitation.

For decades, these provisions were examined and debated thoroughly in a variety of contexts,[14] and in 1990, a constitutional challenge on the issue reached the Supreme Court of Canada. In *Reference re ss. 193 and 195.1(1)(c) of the* Criminal Code *(Man.)*, the Lieutenant Governor in Council of Manitoba referred a question with respect to the bawdy-house prohibition and the communication for the purposes of prostitution provision to the Manitoba Court of Appeal.[15] The Court of Appeal held that those provisions violated neither the section 2(b) right to freedom of expression nor the section 7 right to life, liberty and security of the person set out in the *Canadian Charter of Rights and Freedoms* (Charter).[16] The Supreme Court ultimately agreed.

Nevertheless, in 2010, a group of sex workers decided to challenge the provisions again and ask the courts to revisit the Supreme Court's 1990 decision. The applicants in *Bedford v. Canada (Attorney General)* [17] argued before the Ontario Superior Court that sections 210 (keeping a common bawdy-house), 212(1)(j) (living on the avails of

prostitution) and 213(1)(c) (communication for the purposes of prostitution) of the Code violated sections 2(b) and 7 of the Charter. They argued that although prostitution was legal in Canada, the legal framework made it impossible to engage in prostitution in a safe environment as sex workers could not legally operate indoors or hire managers, drivers or security personnel. They also argued that the communication provision meant that sex workers had to make hasty decisions without properly screening clients.

The judge at the Ontario Superior Court level agreed, ruling that the impugned provisions of the Code were unconstitutional.[18] On appeal, the Ontario Court of Appeal upheld the communication provision but struck down the bawdy-house provision (giving Parliament 12 months to draft a Charter-compliant provision), and held that the prohibition on living on the avails of prostitution infringed section 7 of the Charter by criminalizing non-exploitative commercial relationships between sex workers and other people. The Court of Appeal read in words of limitation so that the prohibition applied only to those who live on the avails of prostitution in circumstances of exploitation.[19]

The case was then appealed to the Supreme Court, which issued its decision in *Bedford* in December 2013, ultimately striking down all three provisions of the Code, finding that they violated the constitutional rights of sex workers to security of the person. In a unanimous judgment, Chief Justice McLachlin wrote that "Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes."[20] The Supreme Court acknowledged that the regulation of prostitution is a complex and sensitive problem, and therefore gave Parliament one year to amend its laws.

In 2014, Parliament responded to the *Bedford* decision with Bill C-36, the *Protection of Communities and Exploited Persons Act*.[21] Bill C-36 was explicitly premised on a view of prostitution as a form of sexual exploitation, and it aimed to protect sex workers and communities from the harms caused by prostitution by reducing demand for sexual services through deterrence. This approach was informed by research showing that prostitution is a dangerous activity; that entry and participation in prostitution are influenced by socioeconomic conditions; and that marginalized groups such as Indigenous women and girls are disproportionately represented among sex workers.[22]

Aiming to reduce prostitution to the greatest extent possible, Bill C-36 criminalized the purchase of sexual services for the first time in Canadian history. Bill C-36 also amended the provisions on procuring with the aim of protecting from criminal liability individuals who have legitimate, non-exploitative arrangements with sex workers, such as roommates, dependants and bodyguards. The following discussion explains the current Code provisions relating to prostitution and how they have been interpreted by courts since their enactment.

### 3.2 OBTAINING SEXUAL SERVICES

Section 286.1(1) of the Code, as amended by Bill C-36, now contains the offence of obtaining or communicating to obtain the sexual services of an adult. It provides that a person convicted of this offence may be sentenced to a maximum of five years' imprisonment if prosecuted on indictment,[23] with a minimum punishment of a $1,000 fine for a first offence and $2,000 for each subsequent offence. However, if the offence is committed in a place that is open to public view or that is next to a park, school, religious institution or "any other place where persons under the age of 18 can reasonably be expected to be present," the minimum fine is instead $2,000 for a first offence and $4,000 for each subsequent offence.

If prosecuted by summary conviction, all of the minimum fines described above are halved, and the maximum penalty for the offence is a fine of $5,000 and imprisonment for a term of two years less a day.

Under section 286.1(2), a person convicted of purchasing sexual services from a minor – or communicating for that purpose – is liable to a maximum of 10 years' imprisonment. Mandatory minimum penalties of six months' imprisonment for a first offence and one year for subsequent offences apply.

With the criminalization of the purchase of sexual services, the approach of police to prostitution changed since the legal framework reinforced a view of purchasers of sexual services as predators and of sex workers as victims. For example, in Nova Scotia, the Cape Breton Regional Police Service "began to focus more on helping [sex] workers find an exit strategy," including by enlisting former sex workers to come on patrols with the police to talk to other sex workers.[24] At the same time, the police service increased efforts to charge purchasers of sexual services, including through an undercover sting operation that aimed to deter and abolish the sex trade from downtown Sydney. This operation resulted in 27 men being charged with communicating for the purpose of obtaining sexual services.

In *R. v. Mercer*, one of these 27 men challenged the constitutionality of the mandatory minimum fine under section 286.1(1) of the Code, arguing that communicating with a police officer who he thought was a sex worker was a victimless crime and that the fine amounted to cruel and unusual punishment in violation of section 12 of the Charter. Taking into account the importance of denunciation and deterrence, the Provincial Court of Nova Scotia upheld the constitutionality of the mandatory minimum fine, which in this case was $500.

Nevertheless, the prohibition on the purchase of sexual services remains controversial, with sex worker advocacy groups arguing that it effectively forces prostitution to remain a clandestine activity. They argue that as a result, sex workers continue to avoid police contact and therefore continue to be more vulnerable to violence.[25]

### 3.3 EXPLOITATIVE RELATIONSHIPS (PROCUREMENT AND MATERIAL BENEFIT)

Sections 286.2 and 286.3 of the Code are intended to capture exploitative relationships in which the person who commits the offence either induces another person to sell sexual services (procurement) or receives money from the sale of those services (material benefit).

More specifically, section 286.3 makes it an offence to procure a person to offer sexual services for consideration. This includes anyone who, for the purpose of facilitating the sale of sexual services, "recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person."[26] The offence of procurement carries the toughest penalty for prostitution-related offences under the Code, with potential imprisonment of up to 14 years, and a minimum term of five years if the procured person is under the age of 18.

Section 286.2 makes it an offence to receive a financial or other material benefit, knowing that it is obtained by or derived from the sale of sexual services. The section further provides that

> evidence that a person lives with or is habitually in the company of a person who offers or provides sexual services for consideration is, in the absence of evidence to the contrary, proof that the person received a financial or other material benefit from those services.[27]

This amounts to a reverse onus on the accused person, in that it limits their right under section 11(d) of the Charter to be presumed innocent. In *R. v. Downey* (1992), the Supreme Court upheld a similar provision as a reasonable limit on this right.[28]

Section 286.2 carries a maximum sentence of 10 years' imprisonment. If the offence relates to the sexual services of a minor, it carries a sentence of up to 14 years' imprisonment and a minimum punishment of imprisonment for a term of two years. Exceptions to this offence are provided for under section 286.2(4) for legitimate family and business relationships (such as bodyguards, roommates or family members), so long as these relationships do not include certain exploitative characteristics as set out in section 286.2(5) (such as threats of violence, abuse of power or authority, or as part of a commercial enterprise that offers sexual services for sale).

These exceptions address some of the constitutional issues raised in *Bedford*. In the *Bedford* decision, the Supreme Court struck down former section 212(1)(j) of the Code as a violation of section 7 of the Charter. Former section 212(1)(j) provided that living on the avails of prostitution was a form of procurement. The Court found that, while this provision might be aimed at parasitic or exploitative relationships (such as

a pimp living off the earnings of a sex worker), it effectively prevented sex workers from hiring bodyguards, drivers and receptionists, and thus prevented them from taking steps to reduce risks to their security. The Court found that the provision was overbroad in that it captured non-exploitative relationships that were unconnected to the law's purpose.

### 3.4 ADVERTISING SEXUAL SERVICES OR COMMUNICATING TO PROVIDE SEXUAL SERVICES

Communications relating to prostitution are subject to several restrictions under the Code. As discussed above, it is an offence to communicate for the purposes of obtaining, for consideration, sexual services (section 286.1). It is also an offence under section 286.4 to advertise an offer to provide sexual services for consideration. While section 286.5 of the Code provides an exception for people who advertise their own sexual services, sex worker advocacy groups argue that these provisions effectively prevent sex workers from advertising services in print or online since third parties would generally be involved.[29] Finally, public solicitation is prohibited in certain circumstances under section 213 of the Code.

In *Bedford*, the Supreme Court struck down former section 213(1)(c), which broadly prohibited communicating for the purposes of prostitution. The Court highlighted the negative impact that section 213(1)(c) had on the rights of sex workers to security of the person, holding that

> [b]y prohibiting communicating in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risks they face.[30]

While section 213(1)(c) was designed to deal with the nuisance caused by street prostitution, the Court held that the "[t]he provision's negative impact on the safety and lives of street prostitutes is a grossly disproportionate response"[31] to the nuisance caused. Consequently, the law could not withstand the constitutional challenge and was struck down.

Parliament responded to *Bedford* by prohibiting third-party advertising of sexual services for the first time in Canadian history and by replacing section 213(1)(c) of the Code with a narrower restriction on the ability of sex workers to communicate for the purposes of prostitution.

Specifically, section 286.4 of the Code makes it an offence to advertise the sexual services of another person. This is intended to apply to advertisers "in print media, on websites or in locations that offer sexual services for sale, such as erotic massage parlours or strip clubs," as well as "to publishers or website administrators, if they know that the advertisement exists and that it is in fact for the sale of sexual

services."[32] This provision does not prohibit sex workers from advertising their own services. However, with the coming into force of this provision, sex workers reported that many third-party advertising sites would no longer allow them to use terms that described the services being offered, nor to post links to websites that contained those terms.[33]

In addition, sex workers continue to be criminally liable for solicitation and their use of public space in some circumstances. Section 213 of the Code makes it illegal to stop or impede traffic in a public place or in public view for the purposes of prostitution, or to communicate for the purposes of prostitution in a public place that is next to a school ground, playground or daycare centre. Section 213(2) defines "public place" as any place to which the public has access as of right or by invitation, whether express or implied. This includes any place that is open to public view, including a car, even one in motion, that is on a public street.[34]

## 3.5 PROSTITUTION ABROAD

Section 7(4.1) of the Code extends the territorial reach of Canadian criminal law for 14 sexual and sex-related offences against minors in order to include sex tourism by Canadians within its scope:

> Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153 or 155, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2, or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a *permanent resident* within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

In short, Canadian citizens or permanent residents who commit any of these offences outside Canada can be prosecuted in Canada with the consent of the Attorney General.[35]

## 3.6 CHALLENGES TO THE FEDERAL LAW

Despite explicitly addressing some of the constitutional issues raised in *Bedford*, the federal procurement, material benefit and advertising provisions of the Code continue to be the subject of debate and litigation, with sex worker advocates arguing that they capture non-exploitative relationships and are therefore unconstitutional for reasons similar to those that were used to strike down the provisions in *Bedford*. In *R. v. Anwar*, the Ontario Court of Justice accepted these arguments, finding that all three provisions violate the Charter.[36]

With respect to the procurement provision, the Court explained that as a result of this provision,

> [m]arginalized or inexperienced sex workers are effectively prevented from approaching established sex workers or individuals involved in managed employment situations in order to obtain advice and support. The result is that those types of sex workers will face greater risks to their physical and emotional health and safety if they engage in sex work.[37]

Similarly, the Court found that because of the material benefit provision,

> [a]ny employees of sex workers who are pooling resources and who lack a high degree of sophistication regarding the law risk potential criminal liability, even in relationships free of coercion in which the employee simply provides the same types of services that a similar employee would provide in a different industry.[38]

Finally, with respect to the prohibition on advertising, the Court found that

> [l]imiting the ability of sex workers to clearly communicate terms and conditions for their services and to effectively screen potential clientele will result in a significantly increased risk of serious injury or death. The disproportionality includes the criminalization of third parties who are in non-exploitative relationships with sex workers.[39]

For these reasons, the judge found that these provisions were unconstitutional violations of the rights to liberty and security of the person guaranteed by section 7 of the Charter. However, as a lower court decision, this outcome did not result in a formal declaration that the law is of no force or effect.

In early 2021, the Ontario Superior Court of Justice in *R. v. N.S.* also found these provisions to be unconstitutional for similar reasons, declaring them to be of no force or effect within Ontario under section 52(1) of the *Constitution Act, 1982*.[40]

However, in February 2022, the Ontario Court of Appeal set aside that decision, finding that the procurement, material benefit and advertising provisions do not violate the Charter. The Court noted that under the current legislative framework, it is clear "that Parliament views prostitution as inherently exploitative, even where the person providing the sexual services for consideration made a conscious decision to do so."[41] Taking into account the purpose of the legislation, which includes reducing the demand for prostitution, the Court found that any harm to sex workers caused by these provisions is not disproportionate to the social harms that the legislation seeks to address. Moreover, the Court interpreted the resulting limitations on sex workers more narrowly than the lower court, finding, for example, that the material benefit provision does not prevent sex workers from setting up a cooperative security service, and that the advertising provision does not affect a sex worker's ability to communicate frankly and in detail prior to an in-person encounter.[42]

The restriction on third-party advertising was also upheld in *R. v. Boodhoo and others*, in which the Ontario Superior Court of Justice found that section 286.4 of the Code is a reasonable limit on the right to freedom of expression under section 2(b) of the Charter.[43]

A separate, broader challenge to prostitution-related provisions by a coalition of sex work advocacy groups is also underway in Ontario and, at the time of writing, is before the Ontario Superior Court of Justice.[44]

### 3.7 REVIEW OF THE FEDERAL LAW

Section 45.1 of the *Protection of Communities and Exploited Persons Act* calls for the Act to be reviewed by a parliamentary committee within five years of its coming into force, with a report and any recommended changes to the legislation to be submitted within a year of the review.[45]

In February 2022, the House of Commons Standing Committee on Justice and Human Rights began a review of the legislation under this provision. The resulting report, tabled in June 2022, contained 17 recommendations, including that the Government of Canada introduce legislation to repeal sections 213 and 286.4 of the Code and strengthen provisions relating to exploitation and human trafficking. The report recommended that the government conduct both a gender-based analysis plus and extensive consultations before making these changes. The report also called for investments in support programs, including to address the root causes of sex work and "make entry into the industry a real choice."[46]

## 4 PROVINCIAL LAW

### 4.1 JURISDICTION

Complementing Parliament's direct jurisdiction over the criminal law on prostitution, section 92 of the *Constitution Act, 1867* provides the provinces with control over the administration of the criminal law.[47] Courts also sometimes recognize a legitimate overlap between federal and provincial criminal jurisdiction, thus validating provincial legislation that deals with criminal issues in particular situations.[48] Essentially, legislation that merely regulates morality and criminal conduct is considered to be under provincial jurisdiction, but legislation that creates an actual prohibition akin to criminal law falls under federal jurisdiction. The harsher the penalty, the more such provincial legislation is considered to trespass on federal jurisdiction.[49]

Provinces have attempted to address prostitution from a number of angles in recent years, most often through legislation on highways and traffic, community safety and child protection. In the mid-1980s, however, before many such measures were implemented, some provinces also tried using injunctions to deal with prostitution.

## 4.2 INJUNCTIONS

Injunctions against public nuisances are one way for a province to try confronting prostitution without conflicting with federal jurisdiction over criminal law. The relevant attorney general, as the guardian of public interest, may bring an injunction against a public nuisance in order to restrict persons selling sexual services importuning pedestrians within a specified area.[50]

In *British Columbia (Attorney General) v. Couillard*, the British Columbia Attorney General applied for an injunction to restrain prostitution-related activity in the West End of Vancouver as a common law public nuisance.[51] The Supreme Court of British Columbia granted an interim injunction that forbade sex workers from publicly offering or appearing to offer themselves, directly or indirectly, for the purposes of prostitution in the West End. The injunction also restrained other activities in relation to trespass and disturbance of the peace by sex workers. However, this injunction was ultimately rescinded by request of the attorney general and, because of an amendment to the Code prostitution law enacted in 1985, a permanent injunction was never granted.[52]

In *Nova Scotia (Attorney-General) v. Beaver*, the Nova Scotia Attorney General applied for a permanent injunction against 47 sex workers in downtown Halifax, arguing that their activities constituted a public nuisance.[53] In this case, the Appeal Division of the Nova Scotia Supreme Court refused the application on the basis that the province was trying to use civil procedure to control a criminal matter, which came under federal jurisdiction. The Court stated that in making such decisions, a trial judge must consider whether the injunction

> is really necessary in the light of other procedures available to accomplish the same end. [The judge] should consider, as well, the damages of eliminating criminal conduct without the usual safeguards of criminal procedure available to an accused. … Only in very exceptional cases where by reason of lack of time or otherwise no other suitable remedy is available should such an injunction be granted to prevent the commission of a crime.[54]

## 4.3 PROVINCIAL LEGISLATION

### 4.3.1 Highway and Traffic

Using the powers set out in section 92(13) of the *Constitution Act, 1867*, several provinces have amended their highway and traffic legislation to allow police to seize, impound and sell vehicles used in picking up persons selling sexual services on the street. In Alberta, Saskatchewan and Manitoba, legislation allows police to seize and impound vehicles used in prostitution-related offences.[55] Vehicles will be returned if the accused is either acquitted of the prostitution-related offence or attends a

designated program of alternative measures such as "john school," which teaches the accused about the ramifications of prostitution and its effects on its victims.[56] However, in Saskatchewan, this alternative is not available to those who have previously been enrolled in such a program, nor to those charged with offences relating to the prostitution of children (offences under sections 286.1(2), 286.2(2) or 286.3(2) of the Code).[57] Further, in Saskatchewan and Manitoba, if an accused does not complete or fully comply with the john school conditions, their driver's licence is suspended.[58] Finally, in all three provinces, if the accused is convicted of the prostitution-related offence, they will forfeit the vehicle or deposit to the police.[59] In addition to providing for the impounding of vehicles, section 270 of Saskatchewan's *Traffic Safety Act* also specifies penalties for those who repeatedly drive or park their car in areas frequented by sex workers.

Although the power to impound vehicles for prostitution-related offences has not been contested as a violation of the federal jurisdiction over criminal law, proportionality concerns have been raised, on the argument that such drastic measures should be saved for serious driving offences posing a real danger to the public or involving a clear lack of fitness to drive.[60] There is also some concern that impounding a car only for it to be returned if the accused is acquitted effectively nullifies the presumption of innocence inherent in Canada's criminal justice system.[61] Certainly, Alberta's law was proclaimed in force only after significant Charter compliance scrutiny on the part of the provincial government.[62]

With regard to the issue of overlapping jurisdictions, although a province cannot enact street traffic legislation with the sole purpose of controlling prostitution,[63] vehicle impoundment legislation does not appear to have been subject to the same clash of jurisdictions argument.

#### 4.3.2 Community Safety

Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Yukon have adopted another approach to dealing with prostitution at the provincial/territorial level, with their respective Safer Communities and Neighbourhoods Acts.[64] These laws allow for the closure of buildings and properties in response to safety- and prostitution-related concerns.

A person may make a complaint to the Director of Public Safety/Safer Communities and Neighbourhoods, stating their belief that a property is being habitually used for activities related to prostitution.[65] After investigation, the director can attempt to resolve the matter through informal action (such as a letter) or may ask the court to make a community safety order.[66] In the latter case, if the court is satisfied that circumstances allow one to reasonably infer that the property is being used for prostitution-related activities and that the community is negatively affected by those activities, it may make an order prohibiting anyone from causing or permitting those

prostitution-related activities and requiring the person in charge of the property to do everything reasonably possible to prevent those activities. In addition, the court can make an order to vacate the property, to terminate a lease agreement or to temporarily close the property.[67] Thus the province, through the court, effectively has the power to close down properties relating to prostitution that cause harm to local communities.[68]

While each of the provinces with such laws has recorded numerous evictions, concerns have been raised about this expansion of provincial powers into an area of criminal law.[69] Nevertheless, Nova Scotia's *Safer Communities and Neighbourhoods Act* was upheld as a valid use of the province's powers over property in *Nova Scotia (Public Safety) v. Cochrane*.[70]

#### 4.3.3 Child Protection

Perhaps the most controversial method of regulating street prostitution used by provinces has been through child protection legislation. A number of tactics have been employed across Canada, from simply including prostitution among the criteria for classifying a child as in need of protection, to "secure care" legislation that authorizes the involuntary detention of minors engaged in prostitution.

Child welfare legislation is the most basic example of provinces asserting jurisdiction over the problem of children exploited through prostitution. Child protection legislation in many provinces clearly states that welfare authorities have the power to remove children at risk of prostitution and to place them in the child welfare system. British Columbia, Alberta, Prince Edward Island and Yukon explicitly refer to prostitution,[71] allowing a child to be found in need of protection if the child has been or is likely to be sexually abused or exploited. Such will be the case where a child has been or is likely to be encouraged or coerced into engaging in prostitution,[72] is exposed to prostitution-related activities,[73] or is harmed as a result of prostitution-related activities and the parent has not protected the child.[74] Once such a finding is made, the child will enter the child welfare system, with the possibility of being apprehended and placed in a foster home.

In addition to these basic provisions, courts in British Columbia and Alberta have the power to issue a restraining order if there are reasonable grounds to believe that a person has encouraged or coerced, or is likely to encourage or coerce, a youth involved in the child welfare system to engage in prostitution.[75] The legislation also adds a term of imprisonment or fine for any person who abuses children through prostitution.[76]

Supplementing its child welfare legislation, Saskatchewan has also implemented *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*.[77] Under this law, police or social workers who have reasonable grounds to believe that

a child has been or is likely to be sexually abused (including involvement in prostitution-related activities) may apply to a justice of the peace for an Emergency Intervention Order to keep the alleged offender from contacting or attempting to contact the child victim.[78] The law creates an offence for failure to report sexual abuse or for breach of an Emergency Intervention Order.[79] It also expands police powers to search vehicles and seize evidence of child abuse if an officer has reasonable grounds to believe that there is evidence in the vehicle of child sexual abuse or if a vehicle is found in an area where a high incidence of child sexual abuse could reasonably be expected.[80]

In 2011, Manitoba enacted legislation that is similar in scope to the child protection framework but that goes beyond it to deal with adults exploited through trafficking in persons as well. *The Child Sexual Exploitation and Human Trafficking Act*[81] allows a child or adult to be declared in need of protection if the child has been sexually exploited or if the child or adult has been trafficked (including for the purposes of prostitution or any other form of sexual exploitation). A justice of the peace may grant such a protection order if, on a balance of probabilities, it appears that the trafficking or sexual exploitation has occurred, there are reasonable grounds to believe that it will continue to occur and there is a need for immediate protection.[82] The protection order can contain provisions that prevent the perpetrator of the abuse from communicating or being physically near the victim, and it remains in effect for three years or longer.[83] Finally, the Manitoba law allows a trafficker to be sued by the formerly trafficked person, even where there is no proof of damage, potentially resulting in an award for damages or an injunction.[84]

In 2021, Ontario passed a bill amending its *Child, Youth and Family Services Act, 2017* to combat human trafficking.[85] While sexual abuse and sexual exploitation were already grounds for a child to be considered in need of protection under the Act, the bill clarifies that a child under the age of 16 who has been or is likely to be subjected to sex trafficking is in need of protection, regardless of whether the person having charge of the child knew or should have known about this risk. The bill also allows child protection workers or police who have reasonable grounds to believe that a 16- or 17-year-old is in need of protection to take the child to another location for up to 12 hours in certain specified circumstances, such as if the child is being harmed by a person who is trafficking them. The services and supports that the child may be offered during this 12-hour period include entering into a voluntary agreement with a children's aid society. The bill has been assented to but, at the time of writing, is not yet in force.

Few claims have arisen to challenge child welfare provisions focusing on prostitution and the consequential provincial power to interfere with the commercial sexual exploitation of children. The provinces have clear jurisdiction over child protection issues and, as a result, some degree of control over exploitation of children through prostitution.

#### 4.3.4 Secure Care

Thus far, most provinces have approached the issue of commercial sexual exploitation of children through relatively standard child welfare legislation. However, some provinces have also considered other legislative approaches. In 1999, provincial and territorial premiers met to affirm their commitment to providing for the safety of children and to recognizing children involved in prostitution as victims of abuse. At this meeting, leaders agreed to begin a review of their child welfare legislation with a view to harmonizing provincial laws with respect to the apprehension and protection of children engaged in prostitution. Since then, a number of provinces have considered implementing secure care legislation, essentially allowing for the involuntary detention of children involved in prostitution.[86] This trend has led to constitutional challenges and to criticism in news media and from legal experts across the country. Perhaps as a result, legislation passed in British Columbia and Ontario has never been proclaimed in force.[87]

Alberta is currently the only province to have implemented secure care legislation for the protection of sexually exploited children. The *Protection of Sexually Exploited Children Act*[88] allows a police officer or a child welfare director who has reasonable grounds to believe that a child is in need of protection to apply to the court for an order authorizing the police or the director to apprehend the child and either return the child to a parent, or detain the child in a safe house for up to five days for assessment and counselling. However, if the police or director believes that the child's life or safety is in serious and imminent danger because the child is engaging in or attempting to engage in prostitution, the police or director may detain the child without an order from the court.[89]

After the initial five days of detention, the director can apply for a maximum of two additional confinement periods of up to 21 days each if the director believes that the child would benefit from further assessment and counselling.[90] To safeguard the child's rights, however, the director must appear before the court within three days of the initial apprehension to show why confinement is necessary, and the child must be informed of the time and place of the hearing, the reasons for the hearing, and their right to contact a lawyer and to attend the hearing. It is important to note that a child may also obtain these services voluntarily if the director agrees that the child is in need of protection.[91]

Finally, the Alberta legislation enhances provincial powers to penalize those encouraging the exploitation of children through prostitution. The director may apply for a restraining order if the director has reasonable grounds to believe that a person has encouraged or is likely to encourage a child involved with the program to engage in prostitution.[92] Section 9 of the legislation also adds a further penalty for pimps and clients who deal with children involved in prostitution, by stating that any person who willfully causes a child to be in need of protection is guilty of an offence and liable to a fine of not more than $25,000, or to imprisonment for a period of not more than 24 months, or to both. Between February 2001, when statistics began to be collected, and February 2009, 1,749 charges were commenced under section 9.[93]

Between 2000 and the end of 2003, more than 700 children were apprehended in Alberta, although the numbers began to drop as early as 2002.[94] Between 2010 and 2020, the numbers ranged from 115 to 183 children per year.[95]

Numerous concerns have been raised about the rights of children in this context, including whether the legislation violates Charter rights. The most prominent example of this contention was played out in *Alberta (Director of Child Welfare) v. K. B.*, a decision by the Alberta Court of Queen's Bench in December 2000.[96] This case involved two girls detained without an order under section 2(9) of the *Protection of Children Involved in Prostitution Act*[97] and led to a challenge to the legislation as a violation of section 7 (right to life, liberty, and security of the person) and section 9 (protection from arbitrary detention) of the Charter.

The Court of Queen's Bench upheld the legislation, holding that section 7 of the Charter was not violated: although the girls were deprived of their liberty when they were confined to the safe house, this confinement was in accordance with the principles of fundamental justice in the child welfare context. When dealing with child welfare issues, the Court said, the Charter allows for some degree of restraint on the liberty rights of both a parent and a child. Not only does the section 2(9) provision of the *Protection of Children Involved in Prostitution Act* ensure that there is good reason for detention without a warrant, the 72-hour time frame[98] allowed for detention does not violate any constitutional norms. The Court stated that children such as these need help, which the Alberta legislation provides without exceeding section 7 constitutional norms. For essentially the same reasons, the Court found no violation of section 9 of the Charter, holding that section 2(9) of the Act ensures that officers have reasonable and probable grounds for their actions, and that the 72-hour time frame was neither arbitrary nor irrational and in fact provided needed help to children on the streets.

The Court of Queen's Bench also found that section 1 of the Charter was satisfied, holding that the Alberta legislation was based on the pressing and substantial objective of stemming harm to a vulnerable group. Further, the Court asserted that apprehension, confinement and assessment are rationally connected to protecting children from sexual abuse, and the 72-hour time frame for counselling and

assessment made sense within this context. Limiting the time frame to 72 hours was found not to be a major impairment of rights when balanced against the clear need for protection. In the end, the Court concluded that the legislation passed the Charter test of proportionality, as the objective of protecting children from sexual abuse by far outweighs the 72-hour limit, which is subject to judicial scrutiny.

Although the Court of Queen's Bench ultimately upheld the constitutionality of the Alberta law, the Alberta government had already reacted to a lower court ruling in the same case, which had held that the law was unconstitutional. To deal with this challenge, the government amended the legislation to include the safeguards for children's legal rights mentioned above. Among other safeguards, the director must appear before the court within three days of the initial apprehension, and the child must be informed of the time and place of the hearing, the reasons for the hearing, and their right to contact a lawyer and to attend the hearing. However, the amended Act also increased the time that a child may be detained from 72 hours to five days, with the goal of providing children with additional care and support.

## 5 MUNICIPAL BY-LAWS AND PRACTICE

### 5.1 POWERS

Operating within this provincial framework, municipalities have independent power to control prostitution through municipal by-laws and other local measures. Municipalities are bound, however, by the restrictions on the regulation of prostitution that the overlap with federal criminal jurisdiction places on provincial powers. Accordingly, municipalities cannot create outright prohibitions of prostitution that would be akin to criminal legislation.

Local police are in fact more likely to use municipal by-laws to regulate prostitution than to lay charges under the Code, given that it is easier to issue tickets for an infraction of a by-law than to collect evidence for a criminal charge. By-laws can also be more easily moulded to fit a local context.[99]

### 5.2 BY-LAWS

#### 5.2.1 Regulating the Use of Streets

In the early 1980s, several Canadian cities passed by-laws regulating use of the streets in ways that essentially prohibited street solicitation. Montreal and Calgary were prime examples of this trend. In 1980 and 1981, they enacted by-laws that imposed substantial fines for prostitution in public areas. These by-laws were passed under the municipalities' power to regulate the use of streets and to restrict activity that encourages criminality.

In reaction to these new measures, two court challenges reached the Supreme Court of Canada. In *Westendorp v. the Queen*, a sex worker was charged under Calgary's by-law with being on the street for the purpose of prostitution. In 1983, the Supreme Court struck down the by-law as a municipal attempt to enact criminal sanctions and thus as an infringement of federal jurisdiction.[100] Similar reasoning followed in *Goldwax v. Montréal (City of)*, when the Supreme Court struck down the Montreal by-law.[101] The impact of these two rulings effectively nullified similar by-laws enacted or proposed in Vancouver, Regina, Niagara Falls and Halifax.[102]

A number of cities, including Vancouver and Winnipeg, responded to this jurisprudence with narrower by-laws, including ones prohibiting anyone from harassing pedestrians or impeding pedestrian traffic in the course of solicitation. Similarly, in 2003, Surrey, British Columbia, enacted a by-law giving police officers the power to issue tickets to anyone engaging in prostitution, whether as a client or as a sex worker, within 300 metres of a school, 20 metres of a residence or on public roads.[103] Finally, police in many municipalities have been known to commonly use anti-jaywalking and loitering by-laws to issue tickets in areas frequented by sex workers.[104]

### 5.2.2 Regulating Prostitution-Related Services

In 1993, the Supreme Court of Canada handed down a key ruling interpreting the standard used to determine "indecent acts" for the purposes of the Code. *R. v. Tremblay* allowed private dances in adult entertainment parlours where there was no physical contact between the patron and the dancer.[105] In reaction, in 1995, the City of Toronto passed a municipal by-law prohibiting physical contact between patrons and dancers; establishments risked a fine of $50,000 and licence revocation for a violation. In 1997, the Ontario Court of Appeal upheld the by-law in *Ontario Adult Entertainment Bar Association v. Metropolitan Toronto (Municipality)*, stating that it was enacted for valid provincial objectives relating to business regulation, including health, safety and crime prevention.[106] The Court of Appeal held that, accordingly, the by-law did not conflict with the Code or with federal jurisdiction over criminal matters. The ultimate result of this case was to leave municipalities with the power to regulate aspects of prostitution-related activities, such as placing limits on exotic dances, despite the federal prerogative over criminal law.

### 5.2.3 Licensing Prostitution-Related Services

In addition to regulating the limits of prostitution-related activities, municipalities exercise broad power over the licensing of businesses. Cities such as Victoria, Vancouver, Calgary, Edmonton, Saskatoon, Winnipeg and Toronto have enacted by-laws that require dating and escort services, exotic entertainers, massage parlours and others to obtain business licences like other business establishments. Although such services are nominally not prostitution-related, it is widely believed that they are

often a front for or segue into prostitution itself. To obtain a licence, such establishments must comply with various conditions, including requirements pertaining to location, hours of operation, advertising, certification, minimum age and police screening of escorts.[107] Such licensing by-laws are generally held to be within municipal jurisdiction so long as they are of general application and not specifically intended to prohibit prostitution or to regulate public morality.[108]

However, several legal challenges have questioned the validity of such by-laws, with mixed results. In 1988, the Supreme Court of British Columbia struck down a portion of the Vancouver licensing by-law, finding that the requirement for an escort service to provide records of all escort requests, with names and fees included, stretched beyond the city's power to regulate licensed businesses.[109] Similarly, in 2000, the Ontario Court of Appeal struck down a Richmond Hill licensing by-law, finding that the law's interaction with zoning restrictions in the town essentially created a full prohibition of adult entertainment and was thus outside municipal jurisdiction.[110] In 2013, the Ontario Court of Justice struck down a portion of a Vaughan licensing by-law regulating hours of operation and dress, finding that these provisions went beyond municipal jurisdiction in an attempt to legislate with respect to prostitution and nudity.[111] However, in 2017 the Ontario Court of Appeal overturned this decision, finding that the hours of operation provision was a legitimate business licensing decision designed to curtail nuisance and to suppress conditions that are conducive to crime.[112]

In a somewhat different vein, in 2006, the Alberta Court of Queen's Bench acquitted a Calgary man of procurement charges, holding that the licence issued to him to operate an escort agency was vague and could have been interpreted as a licence to sell sex. The city's response was to drastically reduce its licensing fees for escort agencies and to revamp its escort by-laws. The new by-law requires applicants to sign a declaration stating that receiving a licence does not absolve them from criminal charges.

Concern has also been expressed that some licensing fees may be set so high as to make licences unattainable. In 2002, an Edmonton sex worker launched a civil suit to challenge overcharging for licensing fees. She demanded that the city lower the licensing fee for independent escorts on the basis that the City was effectively living on the avails of prostitution. In April 2003, the Alberta Court of Queen's Bench rejected this claim.[113] Finally, in 2007, the Ontario Court of Appeal struck down part of a Windsor by-law setting out licensing fees for those working in adult entertainment parlours. The Court of Appeal held that it was discriminatory to charge a fee in excess of the costs directly related to the administration and enforcement of the by-law.[114]

#### 5.2.4 Zoning

Zoning by-laws can also affect where prostitution occurs. Cities such as Saskatoon, Niagara Falls, Moncton and Saint John have zoning by-laws to control the location of body-rub parlours and adult entertainment facilities, which limit them to certain areas of the city. Like restrictions on licensing, zoning is generally considered to be within municipal jurisdiction provided that it does not create a general prohibition of adult entertainment but merely limits it to certain areas.[115]

Essentially, by-laws facilitate policing of prostitution and are a mechanism for municipalities to have some control over the issue without violating federal jurisdiction. However, municipalities walk a fine line between federal and municipal/provincial jurisdiction and must be careful not to overstep their authority.[116] Part of this balancing act consists in regulating escort services and massage and adult entertainment parlours similarly to other businesses rather than presuming that they are fronts for prostitution-related activities. Provided that municipal by-laws do not actually prohibit prostitution, they are generally upheld by the courts.[117]

### 5.3 "JOHN-SHAMING"

"John-shaming" is another technique that is often used locally to combat prostitution. Without resorting to actual laws that could be open to challenge, john-shaming operates as a form of public pressure aimed at deterring those who engage in prostitution. Examples of john-shaming include the publication in local newspapers of the names of clients charged with street prostitution offences.[118] In Edmonton, Ottawa and Saint John, police have sent letters to the homes of motorists seen to frequent known areas of prostitution.[119] In Winnipeg, for a brief time, police posted on a website surveillance videos of individuals and vehicles seen in areas known for prostitution.[120]

Sex worker advocates have argued that john-shaming puts sex workers at greater risk, as it may lead to prostitution taking place in more isolated locations and dangerous circumstances.[121]

### 5.4 COMMUNITY EFFORTS

A number of community-based methods have also been used to combat prostitution at the local level without resorting to legislation. Citizen patrols are one means of deterrence and neighbourhood protection. In 1987, Toronto residents patrolled the streets, photographing clients, shining flashlights in cars and recording licence numbers for the police. Citizen patrols made up of community volunteers and police, standing watch on street corners to force sex workers and clients out of an area, have also been implemented in parts of British Columbia and Nova Scotia.[122] Similarly, in

2019, police in Montreal, Laval, and Longueuil offered awareness training to taxi drivers and hotel staff to identify and report warning signs of sexual exploitation.[123]

Community mediation is another technique. In Vancouver, crime prevention offices and neighbourhood associations approach outreach agencies to mediate problems in the community to ensure that persons selling sexual services stay out of certain areas, maintain certain areas litter-free and respect certain rules of conduct. A shorter-term solution is for residents to undertake neighbourhood enhancement measures to ensure that streets and parking lots are well lit and open to public view in order to discourage prostitution.[124]

## 5.5 OTHER MUNICIPAL AND LOCAL MEASURES

A number of other measures exist at the municipal level to deal with prostitution. For example, the City of Ottawa implemented a traffic diversion program in the early 1990s to deter automobile traffic in an area frequented by persons selling sexual services. Under this program, community members recorded information such as licence plate numbers and the makes and models of the cars considered to be a nuisance. The police then used this information to target frequent visitors in sting operations.[125] Similar "report-a-john" programs have been established in Edmonton and Moncton. Some cities have established advertising campaigns to combat prostitution. In 2005, Edmonton and Saskatoon unveiled advertising campaigns aimed at dissuading clients of prostitution and educating the public about sexual exploitation.

More recently, and in light of the constitutional challenges to the Code provisions, the City of Vancouver and the Vancouver Police Department have adopted a more holistic approach to dealing with prostitution, focusing on safe neighbourhoods and the protection of sex workers. The city established a task force on sex work and sexual exploitation in 2012 to address service gaps, prevent sexual exploitation of children, address housing issues, raise awareness and change by-laws and regulations to support the health and safety of sex workers and neighbourhoods. The Vancouver Police Department also adopted new sex work enforcement guidelines in early 2013, emphasizing that adult prostitution is not "an enforcement priority."[126] Instead, the department said it would focus on two areas: 1) building relationships with sex workers and community organizations to shift prostitution away from residential areas, parks and schools; and 2) investigating cases of exploitation of youth and violence against sex workers. In 2017, this approach was adapted into new province-wide guidelines that were endorsed by the British Columbia Association of Chiefs of Police. These guidelines emphasize that the priority for police in British Columbia is to ensure the safety and security of sex workers.[127] Similarly, the City of Toronto has emphasized the importance of distinguishing between consensual sex work and human trafficking, and has stated that the Toronto Police Service is largely focused on the latter.[128]

Finally, several Canadian cities – including Toronto and Vancouver – have adopted "access without fear" policies, which seek to ensure that residents are able to receive city services regardless of their immigration status and without fear of detention or deportation.[129] Such services include homeless outreach, fire and rescue services and emergency response shelters. Sex worker advocacy groups have expressed support for such policies and argue that that they should be extended to police services, as this could empower more sex workers to report violence, exploitation and abuse to police.[130]

## 6 CONCLUSION

A wide range of laws, regulations and other measures relating to prostitution exist across the country. While the international community places the emphasis on protecting the human rights of victims of trafficking and those exploited through prostitution, local communities highlight the importance of protecting their cities, homes and children from prostitution's side effects. Each level of government in Canada deals with the issue in different ways, according to its priorities and powers. The end result is a broad network of prostitution-related measures that generally complement one another and work to regulate prostitution at multiple levels.

However, although provinces and municipalities have significant powers for dealing with various aspects of prostitution, they are not immune to challenge. A number of the measures in place have been criticized as unconstitutional, and some have been brought before the courts, where issues of jurisdiction and human rights have been questioned.

The *Bedford* decision was a major turning point in Canada's approach to prostitution. The decision made clear that the safety of sex workers is not a side issue in the prostitution debate. Parliament responded with Bill C-36, which represented a new legislative approach that treats sex workers as victims in need of support and assistance, and that focuses on deterring the purchase of sexual services. This legislative approach continues to be the subject of constitutional litigation and lively debate across Canada, suggesting that measures related to prostitution taken by various levels of government will continue to evolve.

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NOTES

1. Terminology related to prostitution can be contentious. This HillStudy will use the term "prostitution" to refer to consensual sex between adults for money, and the term "sex worker" to refer to a person who consensually sells sexual services.
2. *Canada (Attorney General) v. Bedford*, 2013 SCC 72.
3. *Criminal Code*, R.S.C. 1985, c. C-46.

4. Department of Justice, *Prostitution Criminal Law Reform: Bill C-36, the* Protection of Communities and Exploited Persons Act.

5. This HillStudy does not discuss the 1949 United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, which strongly condemns all forms of prostitution and states that signatories must criminalize anyone who brings another person into prostitution, even if this is done with that person's consent. The Government of Canada did not condemn all forms of prostitution in such an absolute manner and thus never signed the 1949 convention. See United Nations, Office of the High Commissioner for Human Rights (OHCHR), *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949.

6. OHCHR, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979.

7. United Nations, *Report of the Fourth World Conference on Women: Beijing, 4–15 September 1995*, 1996.

8. OHCHR, *Convention on the Rights of the Child*, 20 November 1989, art. 34.

9. OHCHR, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000.

10. Ibid., art. 3.

11. OHCHR, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

12. Ibid., art. 5.

13. Federal jurisdiction over the criminal law is derived from section 91(27) of the *Constitution Act, 1867*, which states that the powers of Parliament include "[t]he Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters." *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 91(27).

14. For examples of such studies at the federal level, see the report of the Special Committee on Pornography and Prostitution, *Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution*, 1985; and House of Commons, Standing Committee on Justice and Human Rights, Subcommittee on Solicitation Laws, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, Sixth report, December 2006.

15. *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123.

16. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

17. *Bedford v. Canada (Attorney General)*, 2010 ONSC 4264 (CanLII).

18. Ibid.

19. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186.

20. *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para. 136.

21. *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25.

22. Department of Justice, *Technical Paper: Bill C-36,* Protection of Communities and Exploited Persons Act.

23. Indictable offences are more serious than summary conviction offences, resulting in different procedures and maximum sentences. For more information, see Government of Canada, *Criminal offences*.

24. *R. v. Mercer*, 2017 NSPC 20, paras. 15–17.

25. Kevin Hollett, "Evaluating Canada's Sex Work Laws: The Case for Repeal," *The Pivot Blog*, 6 December 2016; and Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, March 2017.

26. *Criminal Code*, R.S.C. 1985, c. C-46, s. 286.3(1).

27. Ibid., s. 286.2(3).

28. *R. v. Downey*, [1992] 2 S.C.R. 10.

29. Canadian Alliance for Sex Work Law Reform, *Criminalizing Advertising of Sexual Services: Impacts and Consequences*, June 2015.

30. *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para. 71.

31. Ibid., para. 159.

32. Department of Justice, *Prostitution Criminal Law Reform: Bill C-36, the* Protection of Communities and Exploited Persons Act.

33. *R. v. Anwar*, 2020 ONCJ 103 (CanLII), para. 45.

34. *R. v. Smith*, 1989 CanLII 2854 (BC CA). However, a plainclothes police officer's car is not considered a public place. See *Hutt v. The Queen*, [1978] 2 S.C.R. 476.

35. For a discussion of Canadian legislation dealing with trafficking in persons for the purposes of sexual exploitation, see Lara Coleman, *Trafficking in Persons*, Publication no. 2011-59-E, Library of Parliament, 21 July 2021.

36. *R. v. Anwar*, 2020 ONCJ 103 (CanLII).

37. Ibid., para. 168.

38. Ibid., para. 204.

39. Ibid., para. 131.

40. *R. v. N.S.*, 2021 ONSC 1628 (CanLII); *R. v. N.S.*, 2021 ONSC 2920 (CanLII); and *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

41. *R. v. N.S.*, 2022 ONCA 160, para. 131.

42. Ibid., paras. 80 and 148.

43. *R. v. Boodhoo and others*, 2018 ONSC 7205 (CanLII).

44. John Schofield, "Sex workers forge ahead with Charter challenge despite Ontario court decision," *Law360*, 19 May 2021 [SUBSCRIPTION REQUIRED].

45. *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25, s. 45.1. According to the timeline set out in section 45.1, a review should have commenced by 6 December 2019. However, parliamentary reviews of legislation are often delayed for various reasons.

46. House of Commons, Standing Committee on Justice and Human Rights, *Preventing Harm in the Canadian Sex Industry: A Review of the* Protection of Communities and Exploited Persons Act, Fourth report, June 2022, Recommendation 15, p. 58.

47. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 92.

48. *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; and *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59.

49. *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59; and *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213.

50. Jeffrey Berryman, "Injunctions to Enforce Public Rights," *The Law of Equitable Remedies*, Irwin Law, 2000.

51. *B.C. (A.G.) v. Couillard*, 1984 CanLII 374 (BC SC).

52. James R. Robertson, *Prostitution*, Publication no. 82-2E, Library of Parliament, 19 September 2003.

53. *Nova Scotia (Attorney-General) v. Beaver*, 1985 CanLII 3084 (NS SC).

54. Ibid., para. 35.

55. Alberta, *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 173.1; Saskatchewan, *The Traffic Safety Act*, S.S. 2004, c. T-18.1, ss. 173(1)(h) and 174(1); and Manitoba, *The Highway Traffic Act*, C.C.S.M., c. H60, s. 242.2(3).

56. Alberta, *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 173.1; Saskatchewan, *The Traffic Safety Act*, S.S. 2004, c. T-18.1, ss. 183(1) and 185(1); and Manitoba, *The Highway Traffic Act*, C.C.S.M., c. H60, s. 242.2(8).

57. Saskatchewan, *The Traffic Safety Act*, S.S. 2004, c. T-18.1, s. 183(2).

58. See Saskatchewan, *The Traffic Safety Act*, S.S. 2004, c. T-18.1, s. 183(3). For a first offence, the licence will be suspended for one year from the date of conviction plus any period to which the person is sentenced to imprisonment or custody. See also Manitoba, *The Highway Traffic Act*, C.C.S.M., c. H60, ss. 273.3(1), 273.3(2) and 273.3(5). The licence will be suspended until the accused is acquitted or convicted of the charge.

59. Saskatchewan, *The Traffic Safety Act*, S.S. 2004, c. T-18.1, ss. 186 and 190; and Manitoba, *The Highway Traffic Act*, C.C.S.M., c. H60, ss. 242.2(26) and 242.2(28).

60. Federal–Provincial–Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998.

61. "Cruising for a Better Law," *Calgary Herald*, 26 November 2003, p. A12.

62. Federal–Provincial–Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998.

63. *Westendorp v. the Queen*, [1983] 1 S.C.R. 43.

64. Alberta, *Safer Communities and Neighbourhoods Act*, S.A. 2007, c. S-0.5; Saskatchewan, *The Safer Communities and Neighbourhoods Act*, S.S. 2004, c. S-0.1; Manitoba, *The Safer Communities and Neighbourhoods Act*, C.C.S.M., c. S5; New Brunswick, *Safer Communities and Neighbourhoods Act*, S.N.B. 2009, c. S-0.5; Nova Scotia, *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6; and Yukon, *Safer Communities and Neighbourhoods Act*, S.Y. 2006, c. 7.

65. Alberta, *Safer Communities and Neighbourhoods Act*, S.A. 2007, c. S-0.5, s. 4; Saskatchewan, *The Safer Communities and Neighbourhoods Act*, S.S. 2004, c. S-0.1, s. 5; Manitoba, *The Safer Communities and Neighbourhoods Act*, C.C.S.M., c. S5, s. 2(1); New Brunswick, *Safer Communities and Neighbourhoods Act*, S.N.B. 2009, c. S-0.5, s. 7; Nova Scotia, *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6, s. 3; and Yukon, *Safer Communities and Neighbourhoods Act*, S.Y. 2006, c. 7, s. 2.

66. Alberta, *Safer Communities and Neighbourhoods Act*, S.A. 2007, c. S-0.5, s. 5; Saskatchewan, *The Safer Communities and Neighbourhoods Act*, S.S. 2004, c. S-0.1, s. 6; Manitoba, *The Safer Communities and Neighbourhoods Act*, C.C.S.M., c. S5, ss. 3 and 4; New Brunswick, *Safer Communities and Neighbourhoods Act*, S.N.B. 2009, c. S-0.5, s. 8; Nova Scotia, *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6, ss. 4 and 5; and Yukon, *Safer Communities and Neighbourhoods Act*, S.Y. 2006, c. 7, ss. 3 and 4.

67. Alberta, *Safer Communities and Neighbourhoods Act*, S.A. 2007, c. S-0.5, s. 7; Saskatchewan, *The Safer Communities and Neighbourhoods Act*, S.S. 2004, c. S-0.1, s. 8; Manitoba, *The Safer Communities and Neighbourhoods Act*, C.C.S.M., c. S5, s. 6; New Brunswick, *Safer Communities and Neighbourhoods Act*, S.N.B. 2009, c. S-0.5, s. 15; Nova Scotia, *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6, s. 7; and Yukon, *Safer Communities and Neighbourhoods Act*, S.Y. 2006, c. 7, s. 6.

68. British Columbia and Newfoundland and Labrador have similar laws that have been assented to, but have not yet come into force at the time of writing.

69. Jen Gerson, "New provincial laws have had great success shutting down drug dens, but critics question why they circumvent the criminal code," *National Post*, 25 January 2015.

70. *Nova Scotia (Public Safety) v. Cochrane*, 2008 NSSC 60.

71. British Columbia, *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46; Alberta, *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12; Prince Edward Island, *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1; and Yukon, *Child and Family Services Act*, S.Y. 2008, c. 1.

72. British Columbia, *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 13(1.1); and Yukon, *Child and Family Services Act*, S.Y. 2008, c. 1, s. 21(2)(b).

73. Alberta, *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, s. 1(3)(c); Saskatchewan, *The Child and Family Services Act*, S.S. 1989–90, c. C-7.2, s. 11(a)(iii); and Yukon, *Child and Family Services Act*, S.Y. 2008, c. 1, s. 21(2)(a).

74. Prince Edward Island, *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1, s. 9(g).

75. British Columbia, *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 98; and Alberta, *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, s. 30.

76. Alberta, *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, s. 130; Saskatchewan, *The Child and Family Services Act*, S.S. 1989–90, c. C-7.2, s. 81; and Prince Edward Island, *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1, s. 59.

77. Saskatchewan, *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, S.S. 2002, c. E-8.2.

78. Ibid., ss. 3, 5, 7 and 10.

79. Ibid., s. 24.

80. Ibid., s. 16.

81. Manitoba, *The Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M., c. C94.

82. Ibid., ss. 1(2), 1(3) and 6.

83. Ibid., s. 7.

84. Ibid., ss. 18–20.

85. *Combating Human Trafficking Act, 2021*, S.O. 2021, c. 21 – Bill 251, Schedule 3.

86. James R. Robertson, *Prostitution*, Publication no. 82-2E, Library of Parliament, 19 September 2003.

87. The British Columbia *Secure Care Act* received Royal Assent in 2000 but was never proclaimed into force. See British Columbia, *Secure Care Act*, S.B.C. 2000, c. 28. Ontario's *Rescuing Children from Sexual Exploitation Act, 2002* never came into force and was repealed in December 2012. See Ontario, *Rescuing Children from Sexual Exploitation Act, 2002*, S.O. 2002, c. 5.

88. Alberta, *Protection of Sexually Exploited Children Act*, R.S.A. 2000, c. P-30.3.

89. Ibid., s. 2.

90. Ibid., s. 3(2).

91. Ibid., ss. 2 and 7.1.

92. Ibid., s. 6.

93. Alberta, Ministry of Justice and Attorney General, *Response to Written Question WQ 9*, Sessional Paper 289/2009, Legislative Assembly of Alberta, 27th Legislature, 2nd Session.

94. Mario Toneguzzi, "Anti–Child Prostitute Regulation 'Saved Me': Teens, Police, Officials Praise Protection Act," *Calgary Herald*, 22 December 2003, p. B1; and Alberta, Ministry of Children's Services, *Protection of Children Involved in Prostitution: Protective Safe House Review*, October 2004.

95. Alberta, *Child intervention information and statistics summary*, accessed 25 October 2022.

96. *Alberta (Director of Child Welfare) v. K.B.*, 2000 ABQB 976 (CanLII).

97. Alberta, *Protection of Children Involved in Prostitution Act*, S.A., 1998, c. P-19.3 (CanLII).

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100. *Westendorp v. the Queen*, [1983] 1 S.C.R. 43.

101. *Goldwax v. Montréal (City of)*, [1984] 2 S.C.R. 525.

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103. City of Surrey, British Columbia, *Surrey Prostitution Services Regulatory By-Law, 2003, No. 15059*.

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105. *R. v. Tremblay*, [1993] 2 S.C.R. 932.

106. *Ontario Adult Entertainment Bar Association v. Metropolitan Toronto (Municipality)*, 1997 CanLII 14486 (ON CA).

107. Jacqueline Lewis and Eleanor Maticka-Tyndale, "Licensing Sex Work: Public Policy and Women's Lives," *Canadian Public Policy*, Vol. 26, No. 4, 2000, p. 440; and Mike D'Amour, "Bylaw to be Massaged: Big Bust Prods City to Review Licensing Structure for Rubdown Artists," *Calgary Sun*, 7 November 2003, p. 3.

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114. *679619 Ontario Limited (Silvers Lounge) v. Windsor (City)*, 2007 ONCA 7.

115. *Moncton (City) v. Steldon Enterprises Ltd.*, 2000 CanLII 17210 (NB QB).

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