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PROSTITUTION

James R. Robertson
Principal
Law and Government Division

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PROSTITUTION*

ISSUE DEFINITION

Prostitution is a controversial subject, involving complex and contradictory interests, values and issues. The most visible evidence of prostitution – street solicitation – is an acute problem in larger Canadian cities, where the activities of prostitutes have transformed certain areas into unpleasant, congested and, some would contend, dangerous places, havens for the attendant ills of drug addiction and violent crime. This situation poses difficult questions to government: which jurisdiction should exercise its powers to deal with prostitution, and what type of power should be used? Moreover, how far should the state go in exercising its powers to limit the practice of prostitution, and is prostitution a problem in itself, or merely part of larger problems?

One body of opinion holds that dealing with merely the most visible and publicly offensive aspects of the "oldest profession" will do little more than move the problem around; that the allegedly harmful effects of prostitution derive less from its inherent qualities than from our ambivalent attitude and conduct towards it. Canadian law has relegated prostitution to a grey area of quasi-legality, and consideration of it is often coloured by mixed attitudes of jocularity, contempt, moral indignation, or indifference.

Prostitution is at once a feminist and civil libertarian issue, and a law and order issue. It raises questions of morality and constitutional rights and freedoms. One of the few areas of consensual sexual activity that is still subject to legal control and the imposition of criminal sanctions, prostitution continues to engender vigorous debate.

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* The original version of this Current Issue Review was published in February 1982; the paper has regularly been updated since that time.

BACKGROUND AND ANALYSIS

A. The Development of the Criminal Law

The term "prostitution" is not defined in the *Criminal Code*, but the caselaw has identified three main elements of the activity – the provision of sexual services, the essentially indiscriminate nature of the act, and the necessity for some form of payment. The actual act of exchanging sexual gratification for a consideration (between adults) has never been criminally illegal in Canada. The criminal law did, and does, however, deal with activities related to prostitution which are deemed a threat to public order or offensive to public decency. Incorporated into Canada's first *Criminal Code* in 1892, and essentially unchanged until 1972, was a provision that treated the activities of a prostitute seeking out customers as a form of vagrancy. Section 175(1)(c) deemed every woman a vagrant who:

> being a common prostitute or nightwalker is found in a public place and does not, when required, give a good account of herself.

This section (known as the "vag c" charge) was used effectively to hinder street solicitation. Under it, however, women, and only women, could be dealt with essentially on the basis of status and not for any overt act, the usual basis of criminal liability. Moreover, the section required the woman to "give a good account of herself," something in possible conflict with the common law privilege against self-incrimination and, since 1960, inconsistent with the principles of the *Canadian Bill of Rights*. Following these criticisms by the judiciary and by the Report of the Royal Commission on the Status of Women, the "vag c" provision was repealed in 1972 and replaced by section 195.1, which read:

> Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

This section sought to punish only an overt act – solicitation – although what constituted solicitation was not defined. Section 195.1 seemed to respond to the objections to the "vag c" section, and to deal with the social nuisance aspect of prostitution. It did not compel a suspect to give an account of his or her actions, and appeared to apply to both men and women.

According to critics at both ends of the spectrum, however, section 195.1 was a failure. The first issue had to do with the definition of "solicits." The case of *Hutt* v. *R.* (1978),

82 D.L.R. (3d) 95, decided by the Supreme Court of Canada, held that for the activities of a prostitute to be criminal her conduct must conform to the dictionary definition of "solicit"; that is to say, it must be importuning, or "pressing or persistent," and constitute more than a mere indication that she was willing to prostitute herself. In this case, a plainclothes police officer had permitted the appellant to enter his car, whereupon the appellant proceeded to identify herself as a prostitute and to discuss terms for her services. Such conduct, according to the Court, was certainly not within the scope of a criminal provision intended by Parliament to prohibit acts "which would contribute to public inconvenience." Four judges of the Court also indicated that, had the issue arisen, they would not have considered the automobile to be a "public place" and thus the conduct would not have been within section 195.1 on a second ground.

According to many critics, the *Hutt* decision left the police powerless to deal with burgeoning street prostitution. So long as the requisite persistence was avoided, prostitutes could congregate and ply their trade without fear of interference.

As well, section 195.1 was interpreted by the courts as applying only to the actions of female prostitutes. This was remedied by a 1983 amendment which stipulated that "prostitute" means a person of either sex who engages in prostitution. Another controversial issue was whether or not a "client" could be charged with solicitation. The B.C. Court of Appeal held that the words "for the purpose of prostitution" referred only to the act of the person prostituting him or herself (*R*. v. *Dudak* (1978), 3 C.R. (3d) 68). On the other hand, the Ontario Court of Appeal held (in *R*. v. *DiPaola* (1978), 4 C.R. (3d) 121) that those words referred to either party to the transaction.

In 1985, the federal government repealed the contentious provision and created the offence of "communicating in a public place for the purposes of prostitution" (now section 213 of the *Criminal Code*). The new provision also proved to be contentious, but its constitutionality was ultimately upheld by the Supreme Court of Canada in 1990.

Less controversial have been other provisions of the *Criminal Code* dealing with prostitution. Even though the act is "legal," criminal sanctions apply to the place where it is carried on: section 210 allows the conviction of a person who "keeps," is an "inmate" of, is "found in," or who as an owner allows a place to be used as, a "common bawdy house." This is defined, in section 197, as a place kept or occupied or resorted to by one or more persons for the purpose of acts of prostitution or indecency. The courts have held that, to come within that definition, a place must be resorted to for prostitution on a habitual and regular basis

(*R*. v. *Patterson* (1968), 67 D.L.R. (2d) 82 (S.C.C.)). Thus, a conviction for keeping a common bawdy house was secured against a woman who used her own apartment, alone but on a regular basis, for purposes of prostitution (*R*. v. *Worthington* (1972), 22 C.R.N.S. 34 (Ont. C.A.)). Mere participation in the illicit activities of a common bawdy house, however, will not support a conviction for "keeping" under section 210 (1), without "some degree of control over the care and management of the premises" (*R*. v. *Corbeil*, [1991] 1 S.C.R. 83).

One element of the bawdy-house provisions has been declared inoperative following a Charter challenge. The statutory presumption in section 198(1)(d) was that a previous conviction of keeping a disorderly house amounts to proof of the nature of the premises in subsequent proceedings against other persons accused of being frequenters and inmates. This presumption was held to offend sections 11(d) and 7 of the Charter (*R.* v. *Janoff* (1991), 68 C.C.C. (3d) 454 (Que. C.A.)). The Quebec Court of Appeal resolved that the presumption conflicted with rules of evidence respecting hearsay, opinion evidence and relevance, and would deprive the accused of a fair trial. Since no evidence was presented to justify the infringement under section 1 of the Charter, the section was declared to be of no force or effect.

It is also illegal to keep a common bawdy-house for the performance of indecent acts; however, what will be considered "indecent" may vary, as it is determined by the community's standard of tolerance. The Supreme Court of Canada's ruling in *R*. v. *Tremblay*, [1993] 2 S.C.R. 932, suggests that the community's level of tolerance can be set quite high. In that case, owners of a nightclub in Montréal hired nude dancers to perform in individual cubicles for clients who were permitted to remove their own clothing and masturbate during the performance. The majority of judges held that the acts were not indecent since they did not fall below the community standard of tolerance for such activities. The Court included as relevant the circumstances surrounding the act, the degree of harm that could result from public exposure, and expert evidence. The Court bolstered its findings on the facts that no complaints had been received about the club's activities, the performance had taken place in a closed room with only consenting adults present, there was no physical contact between patrons and dancers, and expert testimony classified the proceedings as non-pathological acts of voyeurism and exhibitionism that caused no harm to anyone.

Citing the *Tremblay* decision, a trial judge in Ontario ruled that lap dancing or table dancing was not an indecent performance. This ruling created quite an uproar and even led

to the enactment of a Toronto by-law prohibiting close-contact dancing in adult entertainment parlours. This decision was subsequently overturned by the Court of Appeal of Ontario, which described lap dancing as a form of prostitution (*R.* v. *Mara*, 27 O.R. (3d) 643). Recognizing that Parliament has chosen to attack prostitution indirectly by criminalizing prostitution-related activities, the Court of Appeal affirmed that Parliament wants to eradicate prostitution because it is harmful, a form of violence against women and related to men's historical dominance over women. It found that lap dancing amounts to an indecent performance, and clearly exceeds what is acceptable for the proper functioning of Canadian society.

On appeal of this decision to the Supreme Court of Canada, it was confirmed in June 1997 that sexual contact between strippers and patrons in public constitutes a form of prostitution that violates community standards. Writing for the Court, Mr. Justice Sopinka said that "this type of activity is harmful to society in many ways. It degrades and dehumanizes women; it desensitizes sexuality and is incompatible with the dignity and equality of each human being" (*R.* v. *Mara*, unreported, 26 June 1997). A number of related issues remain unresolved.

Beyond attempting to regulate solicitation and the place where prostitution takes place, the *Criminal Code* also attempts to throw a net around a broad variety of related activities. Section 211 makes it an offence to knowingly "take, transport or direct" (or offer to do the same) any person to a common bawdy house. Section 212(1) details a number of offences relating to pimping, procuring, and living on the avails of prostitution, while section 212(4) prohibits the purchase of sexual services of a minor. Section 212(3) further provides that evidence that a person "lives with or is habitually in the company of a prostitute or lives in a common bawdy-house or in a house of assignation" is proof of the offence of living on the avails of prostitution, "in the absence of evidence to the contrary." That reverse onus provision was challenged as inconsistent with the presumption of innocence guaranteed by section 11(d) of the Charter. In 1992, the Supreme Court of Canada found that what is now section 212(3) infringed section 11(d) of the Charter, but was justifiable under section 1 (*Downey* v. *R.*, [1992] 2 S.C.R. 10).

The majority in *Downey* accepted the fact that an accused might be convicted despite the existence of a reasonable doubt as to his or her guilt. A person may share accommodation with a prostitute without necessarily living on the avails of her earnings. The Court nevertheless ruled that the impugned section constituted a reasonable limit on the

presumption of innocence. The legislative objective, to curb the exploitive activity of pimps, was of sufficient importance to warrant overriding the protected right. The Court also found that section 195(2) met the proportionality test. The impairment of the Charter right was described as minimal. There was no real danger that innocent persons who engage in "non parasitic legitimate living arrangements" with prostitutes would be found guilty. The accused need only present evidence capable of raising a reasonable doubt. The accused need not testify; the necessary evidence could be led by simply cross-examining Crown witnesses. The focus of what is now section 212(3) was not only to address the serious social problems flowing from prostitution but also to protect the prostitutes from further abuse since they themselves would not be required to testify.

In summary, the treatment of prostitution in Canadian criminal law is ambivalent: while the actual act is not criminal, virtually all the activities necessarily associated with it are.

B. Proposals for Change

After the decision by the Supreme Court of Canada in *Hutt*, there was increasing public pressure to amend section 195.1 to expand the definition of soliciting. This was in response to what some perceived as the "plague" of street prostitution. Police and provincial governments wanted to be able to deal with activity that in their opinion blighted residential and commercial areas, and brought with it other criminal activity, including drug trafficking and the exploitation of children.

The federal government's delay or failure to act prompted several Canadian cities with street solicitation problems to attempt to take action on their own. The cities of Montreal (in 1980) and Calgary (in 1981) enacted by-laws that, essentially, forbade the use of the streets and other public areas by those seeking to prostitute themselves or to obtain the services of a prostitute. These by-laws were purportedly enacted under the municipal powers, derived from the provinces, to regulate the use of the streets and to restrict activity that encourages criminality. Both by-laws were said by police and municipal officials to deal effectively with street prostitution, but both were found to be invalid by the courts. In *R*. v. *Westendorp* (1983), 32 C.R. (3d) 97, the Supreme Court of Canada struck down the Calgary by-law as being an attempt by the municipality to enact criminal sanctions, something within exclusive federal jurisdiction. A similar ruling was made in 1984 with respect to the Montréal by-law (*Goldwax et al*. v. *City of*

Montreal, [1984] 2 S.C.R. 525). These rulings effectively nullified other similar by-laws enacted or proposed in Vancouver, Niagara Falls, Regina and Halifax.

In October 1983, the City of Montréal made yet another attempt to control prostitution by municipal by-law, this time in a more indirect fashion. It enacted a by-law that purported to forbid the selling of any services on city streets without a permit, thereby in effect prohibiting street prostitution by not issuing "soliciting" permits. The validity of the by-law was upheld in Quebec Superior Court.

A new strategy to attempt to deal with street solicitation was undertaken in British Columbia in the summer of 1984. The provincial Attorney General applied to the B.C. Supreme Court for an injunction seeking to restrain, as a common law public nuisance, prostitution-related activity in a specified residential area of the City of Vancouver. The court granted an interim injunction (*A.G. B.C.* v. *Couillard* (1984), 42 C.R. (3d) 273), which forbade male and female prostitutes from publicly offering or appearing to offer themselves, directly or indirectly, for the purposes of prostitution. This "temporary" injunction also restrained a variety of other activities in relation to trespass and disturbance of the peace by prostitutes. The Court based the order upon evidence from residents of Vancouver's West End as to the effect that unrestricted street solicitation had had on their neighbourhood. No trial was held with respect to a permanent injunction because the interim measure was rescinded, on the application of the Attorney General, after the enactment of new legislation in December 1985.

In December 1984, the Attorney General of Nova Scotia applied for an injunction in that province's Supreme Court to restrain the alleged public nuisance occasioned by prostitutes in the City of Halifax. The application was refused, however, on the basis that the province was trying to control by civil procedure a matter that fell within criminal and, hence, federal jurisdiction. The Nova Scotia Court of Appeal subsequently dismissed an appeal by the Attorney General in March 1985 (*A.G. N.S.* v. *Beaver* (1985), 67 N.S.R. (2d) 281, 155 A.P.R. 281).

C. The Fraser Committee

In June 1983, the Minister of Justice established a special committee to enquire into the issues of prostitution and pornography. That body, known as the Fraser Committee after its chairman, issued its report in April 1985.

The report declared that prostitution, in all its forms, was a widespread phenomenon in Canada, particularly in urban centres. It found that, although there was a dearth of empirical information about prostitution, it was likely that economic distress was a significant factor in compelling many women to take up the practice. The Committee also found that the Canadian public was ambivalent about the matter – that although most would oppose further criminalization of prostitution and related activities, there was also significant support for actions that would alleviate the "nuisance" aspects of it.

The Committee reviewed three suggested strategies for dealing with prostitution: criminalization, decriminalization, and regulation. Criminalization would forbid all manner of prostitution and related activities. The Committee rejected this approach, because it would lack public support, would be virtually impossible to enforce, and would apply a narrow moral view by way of criminal sanction.

Although sympathetic to the aims of decriminalization, the Committee did not fully support it. It dismissed as a "romantic notion" the idea that all would be well with the world of prostitution if only the criminal law were removed. In its view, all of the opportunities for damage, abuse and exploitation would remain. Finally, the Committee also rejected an exclusive regulatory approach: that prostitution should be controlled and regulated by the state, as is done in Nevada or West Germany.

The recommendations of the Committee did not derive exclusively from any one of these approaches: rather, elements were borrowed from all three, in varying degrees. Most significantly, the recommendations addressed economic and social reforms that might alleviate the causes of prostitution. For example, the Committee recommended that governments in Canada strengthen their moral and financial commitment to the removal of social inequalities between men and women, ensure that there are adequate social programs to assist women and young people in need, and direct more funding to community groups involved in the care and welfare of both practising and reformed prostitutes.

The Committee, with one member dissenting, decided that it would be wrong to remove all criminal sanctions with respect to prostitution. It did, however, suggest a thorough revision and "fine-tuning" of the criminal law on the matter, in the area of street prostitution recommending a "tougher" criminal sanction. The Committee concluded that the unrestricted nature of such activity was causing harm in the form of disturbance and nuisance, and that there was "no justification for shielding prostitutes or customers from legal responsibility for criminal

acts or for creating definable nuisances". Accordingly, it suggested a new offence of interfering or attempting to interfere, on more than one occasion, with pedestrian or vehicular traffic for the purposes of offering to engage in prostitution or of employing the services of a prostitute. The Committee rejected the approach of criminalizing the mere offer or acceptance – the proposed amendment would require some degree of "disturbing" activity.

The Fraser Committee proposed to balance its recommendation for more severe treatment of street soliciting by easing other restrictions on the actual act of prostitution. It recommended replacing the bawdy house provisions with provisions for criminalizing only the use of premises by more than two prostitutes. The Committee took the view that it is illogical to permit acts of prostitution and yet make it illegal to resort to certain places to carry them out. By restricting the operation of prostitution establishments to a maximum of two persons, nuisance would supposedly be avoided, and a prostitute could use his or her own residence. The other proposed exception – that prostitution establishments be permitted to be licensed and operated in accordance with regulatory schemes established by a provincial or territorial legislature – was more controversial. Such establishments would not have the extensive regulation known in some other jurisdictions, but would merely be licensed and zoned like other businesses.

The Committee also recommended repeal of the procuring offences and the offence of living on the avails of prostitution. They would be replaced by a much more limited section that would deal only with procuring accomplished by the use of force, threats or other coercive or threatening behaviour. Another new offence would cover inducing a person through threats or coercion to support one financially through prostitution. The rationale was that procuring or living on the avails of prostitution should not be criminal unless it involved improper inducement. Also addressed by the Committee was the problem of child prostitution.

The Committee concluded its report with the following observation as to how governments should act:

> Prostitution cannot be dealt with on a piecemeal basis, but only by carefully linking the provisions on each aspect of prostitution-related activity.

D. Bill C-49 (now section 213 of the *Criminal Code*)

Reaction to the report of the Fraser Committee was mixed. Many groups, in particular civic officials, were pleased with the recommendations on street solicitation. In

contrast, the proposals for regulation of prostitution establishments were not well received, and no provincial attorney general indicated any support for such regulation. The police also objected to the suggested repeal of bawdy house laws.

Shortly after the report was made public, the Minister of Justice introduced Bill C-49, which was considered by Parliament in November and December 1985, and came into force on 28 December 1985. The legislation replaced section 195.1 with an offence that makes illegal the acts of a person who, in a public place, or in any place open to public view and for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute,

- stops or attempts to stop any motor vehicle,
- impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or
- stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person...

In addition "public place" is defined to include motor vehicles in or on public places.

Bill C-49 specified that, after it had been in force for three years (i.e., 28 December 1988), its operation would be reviewed by a committee of the House of Commons. This legislation has been controversial. Citizens' groups from areas affected by street prostitution, many civic governments, and law enforcement officials welcomed it enthusiastically. Other groups, however, expressed profound opposition to it, contending that it merely moves the problem of prostitution elsewhere, that it gave too much discretion to the police and prosecutorial authorities, and that it potentially endangers those who are involved in the activity by increasing the powers of pimps. Although the Minister indicated during committee proceedings on the bill that further amendments to the *Criminal Code* to deal with prostitution would be forthcoming, no further measures related to adult prostitution were introduced. However, *Criminal Code* amendments introduced in 1988 (Bill C-15) made it an offence to obtain or attempt to obtain the sexual services of a minor, and increased the maximum penalty to 14 years for anyone convicted of living on the avails of a prostitute under the age of 18 years.

DEVELOPMENTS SINCE BILL C-49

A. The Effects of the Charter

In 1986, two lower courts reached contradictory conclusions about the constitutionality of Bill C-49 (*R*. v. *McLean* (1986), 28 C.C.C. (3d) 176; *R*. v. *Bear* (1986), 54 C.R. (3d) 68). In May 1987, the Appeal Division of the Nova Scotia Supreme Court ruled that the legislation violated the guarantee of freedom of expression in the *Canadian Charter of Rights and Freedoms*, in that it placed unusual constraints on communication in relation to activity that was not illegal (*R*. v. *Skinner* (1987), 35 C.C.C. (3d) 203). On 17 July 1987, the Alberta Court of Appeal (in *R*. v. *Jahelka* (1987), 79 A.R. 44) reached a contrary conclusion: while the law did infringe on freedom of expression, the Alberta court held that it fell under the justifiable limitation clause of the Charter, as no "clear and convincing" alternative was available for dealing with the nuisance of street prostitution. A third appellate court decision was *Reference Re Sections 193 and 195.1(1)(c) of the Criminal Code*, [1987] 6 W.W.R. 289, in the Manitoba Court of Appeal. Like the Alberta Court, this sustained section 195.1(1)(c), but without recourse to section 1 of the Charter. It held that "freedom of expression" was not even prima facie involved, and generally adopted a restrictive approach to the Charter. It remained for the Supreme Court of Canada to resolve the issue, which it did by upholding the provisions [*Reference Re Sections 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123].

With Madam Justice Wilson and Madam Justice L'Heureux-Dubé dissenting, the majority reasons were delivered by Chief Justice Dickson, who reasoned that, while the impugned section (now section 213(1)(c) of the *Criminal Code*) infringes the freedom of expression guaranteed by section 2(b) of the *Charter of Rights and Freedoms*, it does not infringe or deny the freedom of association guaranteed by section 2(d). The Chief Justice held also that the section does not infringe the right to be treated fairly when life, liberty and security are affected by governmental action, as guaranteed by section 7 of the Charter. The section of the Code prohibiting keeping or being associated with a common bawdy house, which formed part of the Manitoba reference case, does not infringe the guarantee of freedom of expression provided for by section 2(b) of the Charter, Chief Justice Dickson said. Finally, and most importantly, he said that the impugned *Criminal Code* provision's infringement of the freedom of expression guaranteed by section 2(b) of the Charter is justified on the basis of section 1 of the

Charter as being a reasonable limit on a protected right and thus demonstrably justified in a free and democratic society.

Borrowing from a formula used in previous Supreme Court judgments, the Chief Justice outlined the steps a court should follow in assessing the justification for a Charter violation pursuant to section 1. The court must first characterize the objective of the impugned provision, which, in this case, was to address solicitation in public places and to eradicate the various forms of social nuisance arising from the public display of the sale of sex. The Chief Justice reasoned that the section is aimed only at taking prostitution off the streets and out of public view. In this respect, he disagreed with another of the concurring justices, who said that the legislative objective is to address the broader questions of the exploitation, degradation and subordination of women that are part of the contemporary reality of prostitution.

The second step is for the court to assess the proportionality of the challenged legislation to determine if the means embodied in the provision are tailored to meet the objectives; in other words, the court must consider whether or not the means impair the right (such as freedom of expression) as little as possible. The Chief Justice held that the legislation in this case was not unduly intrusive. It did not concern him that the provision was not perfect; it was sufficient if the legislation was appropriately and carefully tailored in the context of the infringed right.

Third, the court must determine if the effects of the law so severely trench on a protected right that the legislative objective is outweighed by the infringement. Here, the Chief Justice reasoned that it was not so outweighed because the curtailment of street solicitation is in keeping with the interests of many in society for whom its nuisance-related aspects constitute serious problems.

B. Parliamentary Review of Bill C-49

Meanwhile, in support of the mandatory review of Bill C-49 provided for in the legislation itself, the federal Department of Justice in 1987 and 1988 undertook a research project to examine whether there had been "a reduction in the nuisance of street prostitution" as a result of the enactment of the bill. A series of site studies in five Canadian cities – Vancouver, Calgary, Toronto, Montréal and Halifax – was conducted, with "less exhaustive research" being done in Regina, Winnipeg, London, Niagara Falls, Ottawa, Trois-Rivières and Quebec City. The significant groups interviewed were police officers, Crown prosecutors, defence lawyers, some judges, prostitutes, customers, pimps, social agency staff, and business people and residents in areas affected by street prostitution. Researchers also had access to baseline data gathered in 1984 for use by the Fraser Committee.

A report entitled *Street Prostitution: Assessing the Impact of the Law* was published in July 1989 by the Department of Justice. The report provided a synthesis of the site study results and concluded that although the "practice of street prostitution was modified somewhat by the communicating law ... (i)n most of the cities included in the study, street prostitution was as prevalent as it was before the new law." This was a significant finding, given the fact that the "primary objective" of the new legislation, as the report notes, had been to remove "street prostitutes and their customers from downtown neighbourhoods."

On 5 April 1989, the House of Commons passed an order of reference directing that the Standing Committee on Justice and the Solicitor General conduct a comprehensive review of Bill C-49. The Committee heard from a number of witness but voted to defer submitting a report to the House of Commons pending the awaited decisions of the Supreme Court of Canada on the constitutionality of Bill C-49. Following the Supreme Court's ruling, the Justice Committee met to consider its report.

On 4 October 1990, the Committee tabled a 31-page report containing the following three recommendations aimed at providing alternatives for those engaged in the street solicitation trade, while further deterring their customers and assisting law enforcement agencies in their work:

> 1) that the departments responsible for justice, health and welfare, and employment, at all levels of government, develop programs to provide start-up and core funding to community-based agencies providing integrated, holistic programs accessible and responsive

to the needs of male and female prostitutes wishing to leave the street solicitation trade;

2) that the *Identification of Criminals Act* be amended to allow for the fingerprinting and photographing of those charged under section 213 of the *Criminal Code*, whether as prostitutes or as customers; and

3) that section 213 of the *Criminal Code* be amended to provide sentencing judges with the discretion to prohibit persons convicted of street solicitation involving a motor vehicle, in addition to any other penalty imposed, from driving a motor vehicle for a period not to exceed three months.

C. The Response of the Government

On 1 March 1991, the government responded to the report and recommendations of the Standing Committee on Justice and the Solicitor General.

The first recommendation was found to be too narrow in scope since the proposed programs would not address the needs of those prostitutes who do not wish to leave the street solicitation trade, or the special problems presented by juvenile prostitutes. Further consultation with prostitutes, agencies, and other levels of government was identified as a necessary prerequisite to providing services that would effectively meet those needs.

A proposal for increased penalties for those identified as repeat offenders was also rejected. Additional criminalization and economic hardship were seen as inconsistent with the aim of providing prostitutes with the means to leave the street solicitation trade.

The government declined to follow the Committee's last recommendation because it found no "rational connection" between the offence and the punishment, since street solicitation did not require the use of a motor vehicle. It was further suggested that such punishment could be available under the existing law as a condition of probation (where considered appropriate by the court). Arrest and prosecution were seen as sufficient deterrent for the average customer.

However, the government has said that penalty issues raised in the last two recommendations would be taken into account in proposed legislation dealing with sentence reform.

D. City Task Forces and By-Laws

The findings of the Fraser Committee and the Standing Committee on Justice and the Solicitor General did not diminish the call for further action. Prostitution and its related activities continue to be the focus of various studies in communities across Canada. Two large urban municipalities, Ottawa and Edmonton, set up task forces in 1992 to address the problems associated with prostitution in residential areas. In Halifax, Montréal and Toronto, local police set up task forces to assess the extent of juvenile prostitution in their cities and to devise programs that would encourage young prostitutes to abandon the sex trade.

The City of Ottawa Task Force, whose members included delegates of resident associations, women's groups, social workers, police and Crown attorney departments, released its 33 recommendations on 16 October 1992. Many of the recommendations called for the legislation already in place to be better enforced by all components of the criminal justice system, while others focused on crime prevention, education and crisis intervention programs. Many recommendations echoed those already highlighted in previous studies. Most noteworthy was the endorsement for federal legislation to allow fingerprinting and photographing of persons charged with offences under section 213. There was also an explicit plea for the Minister of Justice to revisit the Fraser Committee recommendations. This would entail:

- providing additional research and funding to address the root causes of prostitution;
- amending the *Criminal Code* to address nuisance factors associated with prostitution, such as harassment or obstruction of streets; and
- maintaining the *Criminal Code* prohibitions against sex with children, pimping, and obtaining sex through the use of violence, coercion and threats.

The Ottawa Task Force also urged the Minister of Justice to review with major urban centres the possible benefits of establishing a National Crime Prevention Council. City Council took some administrative action in response to the report: to deter automobile traffic in an area frequented by prostitutes, it implemented a traffic diversion plan, despite the opposition of some local businesses.

The Edmonton Action Group on Prostitution issued an interim report on 29 December 1992 in which it focused primarily on juvenile prostitution and reviewed how the city and local agencies are currently addressing the many problems of young prostitutes. There were also several recommendations directed at provincial and federal governments, including

proposed amendments to child welfare legislation and the *Criminal Code*. The report also proposed that the city introduce by-laws to regulate dating and escort services, exotic entertainers and massage parlours. Thus, all sex trade workers would be required to purchase a licence, which would be granted only to persons at least 18 years old with written authority from the Chief of Police. Edmonton City Council has since enacted three by-laws, which regulate these types of services.

In June 1995, the Toronto Board of Health passed several motions calling on the federal government to decriminalize prostitution, and urging City Council to strike a task force to implement the decriminalization and regulation of prostitution in Toronto. These motions were initiated as a response to the Consultation Paper prepared by the Federal-Provincial-Territorial Working Group on Prostitution in March 1995. Entitled *Dealing with Prostitution in Canada,* the Consultation Paper was a consolidation of various legislative options for helping curtail juvenile and street prostitution. The City Council of Toronto later endorsed, in part, the Board of Health's recommendations but clarified that it sought the decriminalization and regulation of only adult prostitution. The Council supported the options dealing with youth involved in prostitution, as outlined by the Federal-Provincial-Territorial Working Group.

In order to restrict intimate erotic lap dancing, in August 1995 Toronto enacted a by-law prohibiting physical contact, including touching, between patrons and attendants providing services in adult entertainment parlours. Any establishment violating the by-law would risk being fined a maximum of $50,000, and could have its licence revoked. A coalition of adult entertainment parlours was unsuccessful in its attempt to have the by-law quashed by a court. In October 1995, a panel of the Divisional Court ruled, in *Ont. Adult Entertainment Bar Assn*. v. *Toronto*, 26 O.R. (3d) 257), that the by-law had been enacted for valid provincial objectives relating to business regulation, including health, safety and the prevention of crime, and did not usurp Parliament's exclusive jurisdiction over criminal law matters, or conflict with existing provisions in the *Criminal Code.* Further, the Court decreed that the by-law did not violate a dancer's freedom of expression, since close-contact dancing does not amount to a constitutionally protected right. Upon hearing the appeal, the Court of Appeal affirmed the original decision of the lower Court.

By-laws, such as those enacted by the cities of Edmonton and Toronto to regulate escort services, exotic entertainers and massage parlours, facilitate policing of the industry and are a mechanism for cities to control the industry without violating federal jurisdiction. This has

prompted other cities across Canada to follow suit. Throughout the 1990s, Victoria, Vancouver, Calgary, Winnipeg, Sault Ste. Marie and Windsor all began to regulate and license escort agencies, massage parlours or both. Civil suits, however, are beginning to arise on the basis that municipalities are over-charging licence fees. In 2002, an Edmonton prostitute launched a civil suit against the City, demanding it lower the license fee for independent escorts from $1,600. The basis of the civil suit purported that the City of Edmonton was "living off the avails of prostitution" by imposing such a high licence fee. No court ruling has yet been made on the issue.

E. Provincial Legislation

The provinces have recently sought to establish various means of controlling prostitution without infringing Parliament's exclusive jurisdiction over criminal law matters, or conflicting with existing provisions in the *Criminal Code*. For instance, the traffic and highway Acts in several provinces have been amended to allow police to seize, impound and sell vehicles used in picking up prostitutes on the street. Manitoba was the first province to enact this type of legislation in early 1999. In 2001 and 2002, three other provinces (Nova Scotia, Alberta and Saskatchewan) followed Manitoba's example and either enacted or are currently initiating similar legislation. Ontario recently enacted (April 2002) a civil law that goes even further, and is the first of its kind in Canada: this legislation allows the province to ask civil courts to freeze, seize and forfeit to the Crown property that is the proceeds of unlawful activity, such as prostitution and drug trafficking, without laying criminal charges.

Furthermore, some provincial traffic and highway Acts are being amended to authorize the suspension of a person's driver's licence on conviction of a prostitution-related criminal offence if the person used a motor vehicle in the commission of the offence.

F. Statistics

The Canadian Centre for Justice Statistics released its report *Street Prostitution in Canada* in August 1993. The report noted that police enforcement is mainly directed at controlling street solicitation. There were over 10,000 prostitution-related incidents reported in 1992; 95% involved communicating offences, while the remaining 5% consisted of bawdy-house and pimping offences.

A February 1997 study of street prostitution by the Canadian Centre for Justice Statistics reported a sharp increase in the number of prostitution-related incidents recorded by police in 1995, following two years of decline. As the numbers are derived from police statistics, it is possible that the increase reflects changes in enforcement rather than in the volume of criminal activity. The report also indicated that street prostitution can be a fatal occupation: between 1991 and 1995, 63 known prostitutes were murdered – 5% of all women slain in Canada during the period.

G. Juvenile Prostitution

In recent years, concern has been renewed about under-age prostitutes, particularly in urban areas. Several provinces and municipalities have appointed task forces to look into the problem. There appears to have been a shift in governmental thinking, away from regarding child prostitutes as criminals and towards regarding them as victims. Various legislative measures have been implemented for dealing with juvenile prostitution; in Alberta, for instance, the province's *Child Welfare Act* was amended in June 1997 to classify the hiring of prostitutes under the age of 18 as child abuse, punishable with fines up to $2,000 and/or six months in jail, in addition to any *Criminal Code* penalties.

Amendments to the *Criminal Code* in 1988 included new provisions governing child sexual abuse, as well as linking juvenile prostitute exploitation offences to the "procuring" section of the Code's prostitution provisions. A 1995 Consultation Paper issued by the Federal-Provincial-Territorial Working Group on Prostitution, however, acknowledged the view of many that these provisions "have been ineffective in bringing customers and pimps of youths involved in prostitution to justice." The paper reported that charges under the new provisions were rare, and that juvenile prostitutes and their clients, like their adult counterparts, continued to be charged under the general summary conviction offence prohibiting street prostitution. Enforcement problems were identified resulting from the reluctance of the youths involved to testify against their pimps, and the difficulty of catching prostitutes' customers "in the act."

In 1996, the government introduced legislation to amend the *Criminal Code*, which included amendments to address concerns raised by the Federal-Provincial-Territorial Working Group on Prostitution in 1995. Bill C-27 created a new indictable offence of "aggravated" procuring; this is applicable to pimps who coerce juveniles into prostitution

through the use of violence or intimidation. If convicted, violent pimps of juvenile prostitutes would face a mandatory minimum sentence of five years in jail, and a maximum sentence of 14 years. As well, Bill C-27 extended certain procedural safeguards to juvenile witnesses appearing in prostitution-related proceedings. In certain circumstances, juvenile witnesses would be entitled to testify outside the courtroom, behind a screen or on videotape. Furthermore, publication bans could be issued in prostitution-related cases in order to protect the identity of the complainant or any witness under 18.

Bill C-27 also addressed concerns raised by members of the Federal-Provincial-Territorial Working Group on Prostitution regarding the limited ability of enforcement officials to enforce juvenile prostitution offences under s. 212(4) of the *Criminal Code*. Bill C-27 attempted to make s. 212(4) easier to enforce by providing that, in addition to being liable to punishment for obtaining or attempting to obtain the sexual services of a person under the age of 18, a person could also be prosecuted for obtaining the sexual services of a person whom the offender *believes to be under the age of 18*. Bill C-27 also added s. 212(5), which specifically stipulated that evidence that the person from whom the sexual services were obtained was represented to the accused as being under the age of 18 is proof of the accused's belief to that effect, in the absence of evidence to the contrary. Both amendments were designed to permit the use of undercover agents rather than the use of underage prostitutes or young persons for the purpose of trying to catch someone in the act of trying to obtain sexual services from a person under the age of 18.

After Royal Assent was given to Bill C-27 in April 1997, several provinces voiced concerns that convictions would still be difficult to obtain under the amendments made in Bill C-27 because of the requirements under s. 212(4) and (5) that the Crown prove the belief of the accused as to the age of the complainant. Additionally, some members of the Federal-Provincial-Territorial Working Group on Prostitution were also of the opinion that s. 212(5) might be found to be contrary to the *Charter*.

In June 1998, the Minister of Justice introduced Bill C-51, an omnibus bill of criminal justice amendments, which included proposals to address these concerns. Bill C-51 removed the words "attempts to obtain" from s. 212(4) and replaced them by the words "communicates with any person for the purpose of obtaining." By clarifying the meaning of the former words, this modification was designed to further simplify the prosecution of the s. 212(4) juvenile prostitution offence. The new amendment continued to permit the use of

undercover police posing as prostitutes or intermediaries between the child and the customer but required only a communication by a potential accused to the undercover officer for the sexual services of a juvenile. This eliminated the need to prove that the accused knew the victim was under the age of 18 as had been required by the original amendment to s. 212(4) and the contentious addition of s. 212(5) under Bill C-27. Bill C-51 even further simplified the prosecution of juvenile prostitution offences by allowing police to use electronic surveillance when investigating prostitution-related cases. Bill C-51 received Royal Assent in March 1999.

At a meeting in Quebec City in June 1999, provincial and territorial leaders expressed their commitment to the safety of children and recognized that children engaged in prostitution are victims of child abuse. They agreed to ask officials to review child welfare legislation with a view to harmonizing provincial laws as they relate to apprehension and protection of children engaged in prostitution. Since this meeting, several provinces have begun implementing various legislative measures for dealing with juvenile prostitution. Specifically, several provinces have passed or begun drafting legislation providing for the apprehension and detention of any person under the age of 18 years who is suspected of being involved in prostitution. Alberta, the originator of this type of legislation, passed its *Protection of Children Involved in Prostitution Act* in February 1999. Under the Act, a child who wants to end his or her involvement in prostitution may access community support programs. A child who does not want to end his or her involvement in prostitution can be apprehended by police. Police will then take the child to a protective safe house, where he or she can be confined for up to 72 hours. At this safe, secured facility, the child receives emergency care, treatment and an assessment. The development of a long-term plan to assist the child begins. The legislation also introduced legal penalties for customers and pimps, who can be charged with child sexual abuse and fined up to $25,000, jailed for up to two years, or both.

In July 2000, the Alberta child protection law was ruled unconstitutional in that it offended the provisions of the *Canadian Charter of Rights and Freedoms*. Specifically, the Alberta Provincial Court determined that the child protection law did not respect a child's legal rights under the Charter because it lacked the "procedural safeguards" to allow youth the right to answer allegations or the right to a judicial appeal. In December 2000, the Court of Queen's Bench of Alberta quashed this ruling. In response to the original judgment, however, in November 2000 the Alberta government introduced amendments to the law. These amendments sought to ensure that children's rights are protected under the *Protection of Children Involved in*

Prostitution Act, including ensuring that as soon as a child is confined, the child is informed, in writing, as to why he or she is confined, the duration of the confinement, court dates and the right to legal representation. The child is also given an opportunity to contact Legal Aid. As well, each child is told he or she may request a court review of the confinement.

In addition to the amendments based on protecting a child's legal rights, amendments were also made to enable children to receive additional care and support. These included extending the initial confinement period up to five days from the previous 72 hours. Also, a Protection of Children Involved in Prostitution director can apply for a maximum of two additional confinement periods of up to 21 days each.

Since the enactment of the Alberta *Protection of Children Involved in Prostitution Act*, several other provinces including British Columbia, Saskatchewan, Manitoba, Nova Scotia and, most recently, Ontario have either enacted or introduced similar legislation. The Ontario legislation (June 2002), while similar to the Alberta legislation, goes even further in that it allows the province to sue pimps and others who sexually exploit children for profit to recover the costs of treatment and services required by their victims.

H. Child Sex Tourism

As is the case in other common law countries, Canada's criminal jurisdiction is exercised largely on the basis of territory. The *Criminal Code* establishes a general rule restricting its territorial application to acts committed within the country, but provides as well for the enactment of specific exceptions to that principle (see section 6(2)). In general terms, *Criminal Code* "exceptions" allowing for extraterritorial enforcement are characterized by the international or national security or protection dimensions of the offences in question, and are typically adopted to fulfil Canada's international treaty obligations or to reflect the "universal" nature of a particular offence. For instance, section 7 deals with war crimes and crimes against humanity, hostage taking, hijacking and other international terrorism offences, which, even if they have taken place elsewhere, are "deemed" to have occurred in Canada. Other *Criminal Code* offences defined as giving extraterritorial scope, but without the "deeming" aspect, include treason (section 46) and piracy (section 74).

Prior to the introduction of Bill C-27 in 1996, however, Parliament had been urged to extend its extraterritorial criminal jurisdiction to cover the sexual exploitation of foreign

children by Canadian tourists travelling abroad, a practice of which the extent remains largely undocumented. As signatory to the United Nations *Convention on the Rights of the Child*, Canada is committed to take national and international measures to protect children from sexual exploitation; however, Canada is not required to enact legislation to criminalize the conduct of Canadians purchasing the sexual services of juveniles who reside outside the country. Pre-existing *Criminal Code* provisions having extraterritorial effect over certain aspects of the sex trade did not address this practice directly but, according to Department of Justice officials, might be of use in prosecuting tour operators or travel agents who market or organize sex tours from Canada. A number of Private Members' bills sought to address this perceived gap in the criminal law, but none had progressed beyond first reading in the House of Commons.

Bill C-27, which was introduced by the government in April 1996, included provisions designed to address the issue of child sex tourism. A new provision was added to section 7 of the *Criminal Code* in order to deal with the commercial exploitation of children abroad. While there was broad support for the principle of the proposed provision, concerns were expressed about its practical enforceability, as well as the status of such extraterritorial measures under international law. During committee consideration of the bill in the House of Commons, the government proposed amendments, which were included in the version finally adopted by the House and Senate.

Under the new provisions, section 7(4.1) extended its extraterritorial reach to 11 sexual and sex-related offences against minors. There is no requirement that the offence should have taken place for any consideration: it is required only that the offence be committed outside Canada by a Canadian citizen or permanent resident and that the act or omission would be an offence under the specified sections if committed in Canada. The alleged offence can involve a foreign or Canadian minor; there is no requirement for it to be also a crime in the jurisdiction in which it is committed.

Two additional amendments were introduced to establish a diplomatic mechanism for the initiation of all prosecutions under section 7(4.1) *in Canada*, except those relating to the child prostitution offence. The offence of engaging in the prostitution of children abroad can be prosecuted in Canada without these formalities.

Following the enactment of Bill C-27 in 1997, Canada's Department of Justice became closely involved in the development of the United Nations' *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, which was intended to extend the measures that States Parties should undertake in

order to guarantee the protection of the child and prevent the sale of children, child prostitution and child pornography.

In November 2001, Canada became a signatory to the *Optional Protocol*; and in January 2002, it entered into force. Just prior to this, the Minister of Justice introduced Bill C-15, an omnibus bill of criminal justice amendments, which was further split into two separate bills. Bill C-15A, the first of the two divided bills, included a proposal to amend sections 7(4.2) and (4.3) of the *Criminal Code* in order to eliminate the intergovernmental mechanism, originally created by Bill C-27, to extraterritorially prosecute the 11 "non-commercial" child sexual offences enumerated in s. 7(4.1) of the *Criminal Code*. Originally, this intergovernmental mechanism made prosecutions under section 7(4.1) conditional upon the receipt of a request from the government of the country where the offence occurred and the consent of the Attorney General of Canada *except* in the case of an offence of child prostitution contrary to section 212(4) of the Code. Bill C-15A was adopted by Parliament and received Royal Assent in June 2002. The distinction between the 11 "non-commercial" child sexual offences and the child sex tourism offences was thus eliminated; at present, only the consent of the Attorney General is required for prosecution under section 7(4.1).

PARLIAMENTARY ACTION

A. Bill C-127 (Royal Assent 27 October l982)

Clause 11 of this bill, amending the *Criminal Code* on sexual offences, stipulated that a prostitute is "a person of either sex who engages in prostitution." Also, clause 13 rendered section 195 of the Code (procuring) gender-neutral.

B. Bill C-49 (Royal Assent and in force 28 December 1985)

The bill repealed section 195.1 and replaced it with a new provision, applicable to both clients and prostitutes, prohibiting solicitation that impedes or otherwise interferes with the use of streets and public places.

C. Bill C-15 (Royal Assent 30 June 1987; in force 1 January 1988)

This legislation amended the *Criminal Code* to prohibit patronizing a prostitute under 18 years of age and increased the punishment for living on the avails of prostitution where the prostitute is under 18.

D. Bill C-61 (Royal Assent 13 September 1988; in force 1 January 1989)

This legislation, dealing with the proceeds of crime, applied to the *Criminal Code* offences of keeping a common bawdy house and procuring.

E. Bill C-27, An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation) (Royal Assent 25 April 1997)

This bill amended certain *Criminal Code* provisions relating to juvenile prostitution in Canada and provides for the extraterritorial application of Canada's criminal law to Canadian citizens and residents who engage in child prostitution activities while abroad.

F. Bill C-51 (Royal Assent 11 March 1999)

This omnibus bill contained provisions designed to facilitate the investigation and prosecution of offences involving underage prostitutes.

G. Bill C-15A (Royal Assent 19 March 2002)

Bill C-15A contained provisions to amend sections 7(4.2) and (4.3) of the *Criminal Code* in order to eliminate the intergovernmental mechanism created by Bill C-27 as a precondition to the extraterritorial prosecution of child sexual offences under s. 7(4.1) of the *Criminal Code*. The amendment simply requires the consent of the Attorney General as a precondition to the prosecution of any of the sexual offences enumerated under s. 7(4.1) of the *Criminal Code*.

CHRONOLOGY

1892 - Inclusion of vagrancy, bawdy house and procuring provisions in the first *Criminal Code*. These provisions were to remain essentially unchanged for 80 years.

1970 - The Report of the Royal Commission on the Status of Women recommended repeal of the vagrancy provision dealing with prostitution and a study of how best to deal with the activity.

15 July 1972 - *Criminal Code* amendment bill which introduced section 195.1 – soliciting – was proclaimed.

8 February 1978 - The decision of the Supreme Court in *R*. v. *Hutt* was handed down, giving a narrow interpretation of "solicit."

November 1978 - The Law Reform Commission Report on Sexual Offences recommended making it clear that the word "prostitute" applied to both men and women. It also recommended further study of the law dealing with prostitution.

26 May 1980 - The City of Montréal passed an anti-prostitution by-law restricting soliciting on city streets.

25 June 1981 - The City of Calgary passed two by-laws intended to deal with street prostitution, one in respect of solicitation, the other in respect of loitering.

1 December 1981 - The Supreme Court handed down its decision in *Galjot* and *Whitter*, 129 DLR (3d) 577, retaining the restrictive definition of "solicit."

6 May 1982 - The House of Commons passed an order of reference directing that the Standing Committee on Justice and Legal Affairs give consideration to "all legal methods" of dealing with street solicitation.

25 January 1983 - The Supreme Court of Canada allowed an appeal in *Westendorp*, and struck down the Calgary by-law.

24 March 1983 - The House Justice Committee issued its report on street solicitation.

23 June 1983 - The Minister of Justice tabled a proposed draft bill in the House that rejected most of the recommendations of the Justice Committee. He also announced the formation of a special committee to study the problem further, to report by the end of 1984.

18 October 1983 - The City of Montréal enacted a new by-law indirectly aimed at suppressing solicitation.

7 February 1984 - Bill C-19, which would have made minor amendments to section 195.1, was given first reading.

4 July 1984 - The B.C. Supreme Court issued an interim injunction restraining the practice of prostitution in parts of the City of Vancouver as a public nuisance.

22 August 1984 - The Badgley Committee issued its report, recommending changes to the criminal law in reaction to child prostitution.

12 December 1984 - The Supreme Court of Canada struck down the 1980 Montréal by-law in *Goldwax* v. *City of Montreal*.

19 December 1984 - The Nova Scotia Supreme Court refused to issue an injunction sought to restrain prostitution in the City of Halifax.

13 March 1985 - The Nova Scotia Court of Appeal rejected an appeal by the provincial Attorney General with respect to the injunction.

23 April 1985 - The Fraser Committee issued its report on prostitution and pornography.

28 December 1985 - Bill C-49 was given Royal Assent, and came into force.

May 1986 - The B.C. Supreme Court upheld the constitutional validity of the amendments made by Bill C-49. (*R*. v. *McLean*)

29 October 1986 - Amendments to the Code concerning child prostitution were introduced in Bill C-15.

22 May 1987 - The Appeal Division of the Nova Scotia Supreme Court ruled against the constitutional validity of the C-49 amendments. (*R*. v. *Skinner*)

17 July 1987 - The Alberta Court of Appeal upheld the constitutionality of the provisions of Bill C-49. (*R*. v. *Jahelka*)

23 September 1987 - The Manitoba Court of Appeal upheld the constitutional validity of Bill C-49. (*Reference Re Sections 193 and 195.1(1)(c) of the Criminal Code*)

1 January 1988 - Bill C-15 regarding child prostitution proclaimed in force.

1-2 December 1988 - Supreme Court of Canada heard arguments regarding the constitutionality of Bill C-49, reserving decision.

1 January 1989 - Bill C-61 (proceeds of crime) proclaimed in force.

5 April 1989 - The House of Commons passed an order of reference directing that the Standing Committee on Justice and the Solicitor General conduct a comprehensive review of Bill C-49. This resulted from the provision in the legislation itself that, after Bill C-49 had been in force for three years, a committee of the House of Commons would be directed to conduct a review of its effectiveness.

July 1989 - The federal Department of Justice published its synthesis report, entitled *Street Prostitution: Assessing the Impact of the Law*. The report concluded that in most of the cities studied, street prostitution was as prevalent as it had been before the enactment of Bill C-49 in 1985.

October,

December 1989 - The House of Commons Standing Committee on Justice and the Solicitor General held public hearings as part of the three-year review of the impact of Bill C-49 on street solicitation. The Committee deferred submitting a report to the House of Commons until the Supreme Court of Canada had delivered judgment on the constitutionality of Bill C-49.

31 May 1990 - The Supreme Court of Canada upheld the constitutionality of the challenged legislation. (*Reference Re Sections 193 and 195.1(1)(c) of the Criminal Code (Man.*)

4 October 1990 - The Committee on Justice and the Solicitor General tabled a 31-page report to Parliament in which it made three recommendations for improvements to the current legislative regime.

1 March 1991 - The government responded to the Report of the Standing Committee.

9 September 1991 - The Quebec Court of Appeal declared the statutory presumption found in section 198(1)(d) to be inoperative. (*R.* v. *Janoff*)

22 May 1992 - The Supreme Court of Canada upheld the statutory presumption that living with a prostitute is proof of living on the avails of prostitution. (*Downey* v. *R.*)

2 June 1992 - P.O.W.E.R. appeared before the Legislative Committee on Bill C-49 (Sexual Assault).

16 October 1992 - The City of Ottawa Task Force on Prostitution tabled its report, which had 33 recommendations.

29 December 1992 - The Edmonton Action Group on Prostitution released its interim report, which was divided into Actions and Recommendations. The report also contained proposed by-laws to regulate sex trade workers in the city.

13 April 1993 - Edmonton Municipal Council enacted three prostitution-related by-laws. Several other cities across Canada begin to follow suit and enact by-laws of their own.

August 1993 - The Canadian Centre for Justice Statistics released its report *Street Prostitution in Canada*.

2 September 1993 - The Supreme Court of Canada ruled in *R.* v. *Tremblay* that allowing sexually suggestive dances to be performed by nude dancers on a club premises does not amount to keeping a bawdy-house, since the acts fall within the community standard of tolerance.

3 November 1993 - The City of Ottawa adopted its prostitution traffic diversion plan.

March 1995 - The Federal-Provincial-Territorial Working Group on Prostitution released its Consultation Paper outlining various options for dealing with youth and street prostitution.

14 June 1995 - The Toronto Board of Health called on the federal government to decriminalize prostitution.

27 June 1995 - The City of Toronto adopted a motion in support of the decriminalization of adult prostitution (18 years and over) and its regulation by local government. It further agreed that the decriminalization of adult prostitution by the federal government should become effective only once Council had approved and implemented a licensing and regulatory control plan. The Toronto Board of Health undertook to consult local stakeholders to assess the best means of implementing such a plan.

August 1995 - Toronto enacted a by-law prohibiting close-contact dancing in adult entertainment parlours in order to curb the proliferation of erotic lap dancing.

30 October 1995 - The Divisional Court of Ontario upheld the Toronto by-law prohibiting erotic lap dancing (*Ont. Adult Entertainment Bar Assn.* v. *Toronto*). Leave to appeal was later granted.

December 1995 - The Minister of Justice introduced Bill C-119, an Act to amend several provisions of the *Criminal Code* dealing with juvenile prostitution. The bill died on the *Order Paper* when Parliament was prorogued in February 1996.

9 February 1996 - The Ontario Court of Appeal ruled that lap dancing is a form of prostitution, and clearly an indecent performance prohibited under the *Criminal Code*. (*R*. v. *Mara*)

4 March 1996 - In *R*. v. *Ludacka*, the Ontario Court of Appeal rejected the argument that lap dancing is a form of expression protected by section 2(b) of the Charter.

18 April 1996 - The Minister of Justice introduced Bill C-27 (successor to Bill C-119), to amend several *Criminal Code* provisions in order to deal with child prostitution and child sex tourism.

25 April 1997 - Bill C-27 received Royal Assent.

26 June 1997 - The Supreme Court of Canada, in the *Mara* case, upheld the ruling that lap dancing is an indecent act.

December 1998 - The Federal-Provincial-Territorial Working group on Prostitution released its report.

February 1999 - Alberta passed its *Protection of Children Involved in Prostitution Act*.

March 1999 - Manitoba legislature enacted a law to seize and impound vehicles used in prostitution-related offences. Several other provinces began to follow this example.

11 March 1999 - Bill C-51, an omnibus bill of criminal justice amendments, received Royal Assent.

June 1999 - Meeting of provincial and territorial leaders in Quebec City. Leaders expressed their commitment to the safety of children and recognized that children engaged in prostitution are victims of child abuse. Several provinces began introducing legislation similar to the Alberta *Protection of Children Involved in Prostitution Act*.

July 2000 - Alberta *Protection of Children Involved in Prostitution Act* struck down as unconstitutional by Alberta Provincial Court.

December 2000 - Court of Queen's Bench of Alberta quashed the Alberta provincial court ruling.

December 2000 - Alberta government enacts amendments to the *Protection of Children* Involved *in Prostitution Act* in order to create better procedural safeguards that had been the cause of the Provincial Court Judge's ruling.

November 2001 - Canada becomes a signatory to the *Optional Protocol to the Convention* on *the Rights of the Child on the sale of children, child prostitution and child pornography*.

January 2002 - *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* comes into force.

June 2002 - Royal Assent is given to Bill C-15A, which amends sections 7(4.2) and (4.3) of the *Criminal Code* in order to eliminate the intergovernmental mechanism originally created by Bill C-27 to extraterritorially prosecute the 11 "non-commercial" child sexual offences enumerated in s. 7(4.1) of the *Criminal Code*.

June 2002 - Edmonton prostitute sues the city for over-charging individual escort licence fees and "living off the avails of prostitution."

June 2002 - Ontario enacts legislation similar to the Alberta *Protection of Children Involved in Prostitution Act*, but goes even further by allowing the province to sue pimps and others who sexually exploit children for profit in order to recover the costs of treatment and services required by their victims.

6 May 2003 - Pursuant to an Order of the House of Commons, the Standing Committee on Justice and Human Rights establishes a Sub-committee on solicitation laws in Canada.

SELECTED REFERENCES

Canadian Centre for Justice Statistics. *Street Prostitution in Canada*. *Juristat*, Vol. 13, No. 4.

Committee on Sexual Offences Against Children and Youths. *Sexual Offences Against Children*. Supply and Services Canada, Ottawa, 1984.

Convention on the Rights of the Child. Office of the High Commissioner for Human Rights. www.unhchr.ch/html/menu3/b/k2crc.htm.

Department of Justice. *Street Prostitution: Assessing the Impact of the Law*. Supply and Services Canada, Ottawa, 1989.

Federal-Provincial-Territorial Working Group on Prostitution. *Dealing with Prostitution in Canada: A Consultation Paper*. Department of Justice, Ottawa, 1995.

Federal-Provincial-Territorial Working Group on Prostitution. *Report and Recommendations in Respect of Legislation, Policies and Practices Concerning Prostitution-Related Activities*. Department of Justice, Ottawa, 1998.

Gardner, Dan. "Courting Death: (Part II): The law has hounded hookers out of safe areas and into dark alleys, making them easy prey for murderers." *Ottawa Citizen*, 15 June 2002.

———. "Do Some Women Really Choose to be Prostitutes: Some say it's a matter of choice, but to many feminists it's akin to slavery." *Ottawa Citizen,* 9 June 2002.

———. "How Cities 'License' Off-street Hookers." *Ottawa Citizen,* 16 June 2002.

———. "Johns are the Victims, not the Prostitutes." *Ottawa Citizen,* 2 July 2002.

———. "New Laws Hurt Everyone: Legislation that cracks down on both prostitutes and johns endangers desperate women." *Ottawa Citizen,* 2 July 2002.

———. "The Hidden World of Hookers: (Part I): Crackheads. Pimps' pawns. Streetwalkers. That's how most people see prostitutes. But for most hookers in Canada, nothing could be further from the truth." *Ottawa Citizen,* 8 June 2002.

Lewis, Jacqueline, and Eleanor Maticka-Tyndale. "Licensing Sex Work: Public Policy and Women's Lives." *Canadian Public Policy,* 26:437-49, December 2000.

Library of Parliament. *Juvenile Prostitution*. Bibliography No. 291.

Library of Parliament. *Pornography and Prostitution in Canada*. Bibliography No. 241, and No. 241 (Supp.).

Optional Protocol to the Convention on the Rights of the Children on the sale of children, child prostitution and child pornography. Office of the High Commissioner for Human Rights. www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm.

Seabrook, Jeremy. *No Hiding Place: Child Sex Tourism and the Role of Extra-territorial legislation*. New York, Zed Books Ltd., 2000.

Special Committee on Pornography and Prostitution. *Pornography and Prostitution in Canada*. 2 Vols. Supply and Services Canada, Ottawa, 1985.

Standing Committee on Justice and Legal Affairs. Fourth Report (respecting soliciting for the purpose of prostitution). *Minutes of Proceedings*, Issue No. 42, 4 October 1990.