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LAWS TO COMBAT SEX TRAFFICKING

An Overview of International, National, Provincial
and Municipal Laws and their Enforcement

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TASK FORCE ON
TRAFFICKING OF WOMEN AND GIRLS
IN CANADA

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1. Introduction

This report examines current legislation, regulations and law enforcement issues relating to human trafficking for sexual exploitation at four levels: the international, national, state/provincial, and municipal. The report is part of on-going research for the *Task Force on the Trafficking of Women and Girls in Canada*, convened by the Canadian Women's Foundation (CWF).¹ A previous research report to the Task Force discusses the incidence of sex trafficking in Canada as well as specific issues of trafficking for sexual exploitation in Canada and the impacts on women and girls in particular.²

The overall purpose of the research is to analyze Canada's legal framework for addressing sex trafficking, place Canada's current legislative responses to sex trafficking at federal, provincial and municipal levels in the context of international obligations and recent developments in other countries, and to examine possible responses and innovative practices for the law and law enforcement. The report is intended to aid the Task Force in formulating its programming and policy responses to the significant problem of sexual exploitation of women and girls in Canada.

The report is divided into six main sections, which look at the context in which legislation should be considered, and examines the four levels of applicable law, including a brief discussion of internet regulation as it relates to sex trafficking. The six sections include:

- An introduction, providing methodology and context
- International protocols and obligations relating to sex trafficking and selected examples of foreign national and state/provincial legislation on human trafficking and prostitution
- Canadian Federal legislation
- Canadian Provincial legislation
- Canadian Municipal regulation
- Regulating the internet

The final section of the report summarises the main issues arising from the research for further consideration by the Task Force. Summary charts on current international, Canadian Provincial and Municipal responses, and an overall matrix of legislative responses to trafficking for sexual exploitation are included as Appendices to the report (Appendices I-VII).

¹ The Canadian Women's Foundation has also commissioned an overall assessment of sex trafficking; a review of legislation and regulation; a review of the specific impact of legislation on Aboriginal women and girls; and a review of current services and best practices for victims of trafficking. Any views expressed in this report are those of the authors and do not reflect the views of the Canadian Women's Foundation, the research assistants, those interviewed, or any other collaborators.

² See Nicole Barrett, "An Assessment of Sex Trafficking in Canada" (2013). [Barrett, Sex Trafficking 2013].

1.1 The Relationship Between Prostitution and Sex Trafficking

The role that prostitution plays in sex trafficking is frequently debated and discussed. As sex trafficking is embedded in commercial prostitution and forced prostitution involving a threat to an individual's safety is considered human trafficking in Canada, prostitution laws are also discussed in this report. Sex trafficking and prostitution do not always overlap, however. Sex trafficking requires exploitation of one person by a third party and is a serious crime under the Criminal Code. Conversely, non-coerced prostitution between adults in Canada is legal, although many of the activities that facilitate prostitution - including public communication for the purposes of prostitution, brothels, procuring and "living off the avails" of prostitution - are illegal. The prostitution laws will be rewritten in 2014, however, as the Supreme Court of Canada recently decided that the current brothel and procuring prohibitions in the Criminal Code are unconstitutional.³

Many attempt to separate discussions of sex trafficking from prostitution altogether to avoid the controversial debate on prostitution. While politically comfortable, this fiction of separateness does little to clarify issues or help to identify comprehensive solutions as the two activities are unavoidably intertwined historically, practically and legally.

As a historical matter, this link between human trafficking and prostitution was formally recognized by the predecessor to the UN Trafficking Protocol, the 1949 *UN Convention for the suppression of traffic in persons and of the exploitation of the prostitution of others*. The connection is again found in international definition of human trafficking itself, which states that "[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation."

As a practical matter, traffickers embed girls and women in prostitution, advertise them in places where prostitution is advertised, and threaten victims with retaliation if they reveal their traffickers. These practices lead to significant challenges in distinguishing between those voluntarily, independently and legally in prostitution with those who are lured, groomed, coerced and forced into selling sex by others. Further, as sex trafficking involves the same activity as prostitution - purchasing sex acts from a person - the consumer demand fuelling the market for the two activities is the same.

As a legal matter, it is clear that certain activities prohibited by Canada's prostitution laws would also be considered human trafficking under the Criminal Code.⁴ As demonstrated by the first judicial interpretation of human trafficking in Canada, one of the means of "procuring" a person for prostitution is identical to one of the means of human trafficking: a legal equation intended by the human trafficking law's architects.⁵ In *R. vs. Urizar*, a Québec court applying Canada's human trafficking definition looked to Canada's procuring laws to give meaning to "exercises control, direction or influence over the movements of a person," the means found in both Canada's human trafficking definition and the procuring definition in

³ See *Canada (Attorney General) v. Bedford*, 2013 SCC 72 [*Bedford*].

⁴ See e.g., *Criminal Code*, RSC 1985, c C-46 s 212(g),(h) and (j). [*Criminal Code*]

⁵ See *R v Urizar*, 2013 QCCA 46 [*Urizar*]; *R v Perreault*, 113 CCC (3d) 573, (affirmed on appeal). Interview of N. Levman.

the Criminal Code.⁶ As noted, however, the procuring prohibition in Canada will change in the coming year, as the legal landscape on prostitution is currently in flux.

Because of the links with prostitution, the language used to discuss sex trafficking can also be politically charged and divisive. This report will attempt to use neutral language and refer to people who purchase sex acts as “johns” or “sex buyers” and people whose are sold for/sell sex as “women and girls in prostitution.”

In all instances, the report looks to the current laws on sex trafficking and prostitution in the Canadian Criminal Code for guidance on the legality and illegality of sex buying and selling. As the December 2013 decision by Canadian Supreme Court has found that the current procuring and brothel provisions in the Criminal Code violate the Canadian Charter of Rights and Freedoms, the legal landscape on prostitution will be changing considerably in the near future. These changes will significantly change the dynamics in the marketplace where sex trafficking victims are bought and sold.

1.2 Methodology and Selection of Cases

The initial research for the project was conducted in April and May 2013. Nicole Barrett (J.D., M.I.A. Columbia) and Margaret Shaw (PhD. Nottingham) directed the research with the support of a legal research team including Corri Longridge (B.C.L/LL.B. McGill), Nelly Marcoux (B.C.L/LL.B. McGill) and Leah Sherriff (J.D. forthcoming, Toronto).

Sources of information for this report include international treaties, recommendations and documents; national legislation; provincial and state legislation; municipal legislation; research reports; reports by international organizations, governments and non-government organizations; academic articles and interviews with key stakeholders. Given the exploratory nature of the project and the very wide range of contexts, the interviews were semi-structured, focused broadly on specific questions relating to human trafficking laws and regulations, but varying in focus depending on the expertise of the stakeholder interviewed. A list of interviewees is included in the Appendices.

Given the short timescale for research on the project (from April to June 2013), the focus was on recent or existing legislation and regulation in a selected range of countries, and provinces and municipalities within Canada. Outside Canada, countries were selected for their similar legal and historical backgrounds to Canada, and/or to illustrate different philosophical and legislative approaches. They include European countries (the UK, Ireland, the Netherlands, France, Germany, Sweden, Norway, Iceland and Finland), the United States, and Australia and New Zealand (see Appendix II - Summary Matrix of International Laws to Combat Sex Trafficking).

Within Canada, information on relevant legislation in six provinces with relevance to sex trafficking and sexual exploitation was reviewed. These provinces include: Nova Scotia, Ontario, Québec, Manitoba, Alberta and British Colombia (see Appendix III - Summary Matrix of Provincial Laws to Combat Sex Trafficking). Within those provinces, information was collected from ten municipalities: Halifax, Toronto, Brampton, Mississauga, Windsor,

⁶ Urizar, *supra* note 5. See also *Criminal Code*, *supra* note 4, s 212(h).

Montreal, Winnipeg, Edmonton, Fort McMurray and Vancouver (see Appendices IV - Summary Matrix of Municipal Laws and Regulations to Combat Sex Trafficking and V - Mississauga Adult Entertainment Establishment Licensing By-Law).

1.3 Context of Human Trafficking and Sexual Exploitation

In reviewing existing legislation on human trafficking for sexual exploitation a number of factors need to be borne in mind since they affect how that information can be understood and interpreted. The following provides details on these factors.

- i) **The issues of sex trafficking and sexual exploitation are very complex.** Sex trafficking is a very complex issue, involving many different factors. They range from the economic and social forces driving victims to seek better lives and incomes, and traffickers seeking to maximize opportunities for profit; the fluid nature of trafficking, and its ability to change and adapt very rapidly; and the ensuing difficulties of detection, prosecution and prevention. Sex trafficking involves a range of victims and may take place internationally across borders or within a country. Both male and female adults and children are trafficked for the purposes of sexual exploitation, although the majority of victims are reported to be women and girls.⁷

While trafficking has always existed, it has been exacerbated by the increasing ease of global travel and cross-border migration and by the exponential changes in internet and communications technology in recent years.

The problem of human trafficking as modern slavery has come to increasing prominence as a global concern with the adoption of the United Nations *Protocol to Combat Trafficking in Human Being, especially Women and Children* which was ratified by Canada in 2002, and came into force in December 2003.⁸

- ii) **Sex trafficking is intricately linked to prostitution.** Sex trafficking has historical, practical and legal links to prostitution. The crime primarily involves women and girls victims, and is one of the most lucrative illegal activities globally. Traffickers are adept at seeking out ways to exploit national policies and practices on prostitution and the sex trade. A recent statistical study of 150 countries concludes that, on average, countries with legalized prostitution have larger reported human trafficking inflows than others, and that legalizing prostitution increases demand for prostitution.⁹

⁷ UNODC "Global Report on Trafficking in Persons" (February 2009) online: UNODC <<http://www.unodc.org>>; Barrett, Sex Trafficking 2013, *supra* note 3; Seo-Young Cho, Axel Dreher & Eric Neumayer, "Does legalized prostitution increase human trafficking?" (2013) 41 World Development 67. [Cho, Dreher & Neumayer]

⁸ While trafficking for the purposes of sexual exploitation is the subject of inquiry here, it is only one type of human trafficking. Other forms of human trafficking, which present real and significant issues, include labour trafficking, trafficking in organs, and trafficking for forced marriage.

⁹ Cho, Dreher & Neumayer, *supra* note 7 at 74 and 76. The data was drawn from UNODC's 2006 report on human trafficking, which is limited by the considerable difficulties of collecting accurate information on trafficking cases, and unwillingness of victims to report.

- iii) **Legislative responses to prostitution are fraught with contested perspectives and are in continual fluctuation.** Over the centuries, and from decade to decade in different countries, attitudes towards prostitution have frequently shifted, with many disputes about moral choices and the right responses. Current legislative responses to prostitution range from making it illegal for both sex sellers and sex buyers, making it legal for sellers but illegal for buyers, creating limited to full legality via regulation and licensing, and decriminalizing the industry in its entirety. In the past decade it is evident that countries and cities continue to struggle with the best way to control prostitution and prevent sexual exploitation, as countries respond to the UN Protocol and rapid international migration patterns, and organized criminal involvement in prostitution. Nevertheless, human trafficking and sexual exploitation may take place in legal or illegal prostitution settings, and while legislation provides the basis for legal action, both enforcement and prevention are equally important components to effectively combat human trafficking.
- iv) **Country (and city) contexts vary enormously.** Patterns of human trafficking are strongly affected by a country's political, economic, social and cultural history, as well as current pressures. Not only are low and middle-income countries often countries of origin for trafficking, and high-income countries destinations for trafficking, the geography of a country or city will affect its vulnerability to trafficking. The expansion of the European Union has resulted in some dramatic increases in migration patterns and facilitated trafficking for sexual exploitation from poorer countries and regions. Tensions between controlling borders to keep out trafficked migrants versus recognizing the need to provide supports to trafficking victims have been one result.
- v) **Direct policy transfer is not necessarily easy.** Given that country contexts vary significantly, a legislative and policy approach used in one context will not necessarily work well or suit another. In particular, the federal structure of Canada should be considered when evaluating promising laws and policies from other countries.¹⁰
- vi) **Trafficking is fluid and adaptable in reaction to legislation and enforcement, and displacement of the crime may occur.** Given the clandestine nature of trafficking operations, traffickers are adept at changing routes or practices in response to legislation. Specific legislative changes and enforcement practices in one country may result in displacement of trafficking to a neighbouring country where laws are less punitive for traffickers. Policy makers should take this into account as they redraft Canada's laws prohibiting bawdy houses and procuring, recently found unconstitutional by the Canadian Supreme Court, particularly as all of the US states except for Nevada criminalize prostitution.
- vii) **The prostitution industry is similarly quick to adapt to changes in law and regulation, and displacement is common, often resulting in the movement of**

¹⁰ Nicole Barrett, *An Exploration of Promising Practices in Response to Human Trafficking in Canada* (2010) International Centre for Criminal Law Reform & Criminal Justice Policy (ICCLR); Nicole Barrett and Margaret Shaw, (2011). *Towards Human Trafficking Prevention: A Discussion Document*. International Centre for Criminal Law Reform & Criminal Justice Policy and International Centre for the Prevention of Crime.

business to other cities, provinces or countries. In most countries, legislative and regulatory changes affecting prostitution and related practices, such as zoning, advertising and communicating, will result in changes in patterns of both legal and illegal practices.

viii) **Both trafficking and sexual exploitation are very difficult to track, and data collection is generally limited.** In all regions and countries, data on trafficking for sexual exploitation provides a very partial picture of the extent of the problem. Since these are underground activities, police statistics are inevitably limited by the willingness of victims to report offences to the police - the likelihood of which is seriously affected by their fear of reprisals from traffickers as well as other people's awareness of trafficking activities and willingness to report them. Other factors, such as resources and priorities within police departments, the practice of charging human trafficking cases as other related crimes, and law enforcement's criminal plea bargain process, where trafficking charges are often the first charges to drop off, affect an accurate picture of the extent of the crime.¹¹

ix) **Evaluation of the impacts of legislative changes on trafficking for sexual exploitation is quite limited.** While a number of countries have reviewed the outcome of legislative changes relating to prostitution and sexual exploitation, these reviews are often conducted by the governments concerned, fairly narrowly defined in terms of their remit, and limited by the paucity of available police or community data on the extent of trafficking and exploitation.

2. International Laws, Norms and Standards

2.1 International Conventions Relating to Sex Trafficking

Canada is party to the UN Trafficking Protocol on trafficking in human beings, as well as a number of internationally adopted norms and standards that are relevant to sexual exploitation and trafficking. These include the:

- ***Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, of the UN Convention against Transnational Organized Crime (2000)***, which is discussed further below
- ***Convention on Elimination of All Forms of Discrimination against Women (CEDAW) (1979)***, which states that States must take appropriate measures to suppress trafficking in women and the exploitation of prostitution of women.¹²

¹¹ Many individuals charged with human trafficking and other related crimes, will seek to have the human trafficking charges dropped first, typically because they seek to avoid being labeled a "human trafficker." Interviews with Nathalie Levman and Steve Horchuk.

¹² *Convention on Elimination of All forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 13, art 6. [CEDAW]

- ***UN Convention on the Rights of the Child (1989)***, which states that States must protect all children from sexual abuse and exploitation by taking measures to prevent them from being forced into unlawful sexual activity and from being exploited through prostitution.¹³
- ***Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)***, which prohibits child prostitution and requires criminal law penalties for offering, obtaining or providing a child for prostitution (ratified 2005).
- ***ILO Convention 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)***, which makes Child prostitution a fundamental violation of international law and directs states to take measures to eliminate the use, procurement and offering of children for prostitution by focusing on procurers and the demand for sex, not children.

2.2 The UN Trafficking Protocol - The “Palermo Protocol”

The Palermo Protocol of 2000 became operational in 2003. It is an additional protocol to the Convention against Transnational Organized Crime, and provides the first internationally agreed upon definition of human trafficking. There are currently 117 countries, including Canada, that agree that the definition of human trafficking is:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs...”

The three basic elements of the crime are routinely separated into the “act,” the “means” and the “purpose.” Here, the act is the recruitment, transportation, transfer, harbouring or receipt of a person. The means is the threat or use of force or other forms of coercion, including abduction, fraud, deception, abuse of power or position of vulnerability, and also includes “giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” Finally, the purpose is exploitation, which is widely considered the “crux” of the crime.

It is important to clarify certain points that are commonly misunderstood. First, force or overt coercion is not necessary under the international definition of human trafficking. Second, the consent of a victim to their exploitation is irrelevant when any of the above means are employed. Third, a third party is required under the definition for trafficking to exist. Anyone self-employed in prostitution is, thus, not a trafficking victim. Another person

¹³ *Convention on the Rights of the Child*, 20 November 1909, 1577 UNTS 3, art 34.

who, at minimum, abuses their power or takes advantage of another's vulnerability, must carry out the exploitation.

Where the victim is a child - defined as a person under 18 years old - no means is required to find human trafficking - only one of the acts carried out for the purpose of exploiting another.¹⁴

A state's obligations under the Protocol go beyond criminal prosecutions of traffickers. For instance, Article 6 details measures states should follow to provide for physical, psychological and social recovery of trafficked persons, although using non-mandatory language¹⁵, including:

- Housing - 6(3)(a)
- Counselling and legal information - 6(3)(b)
- Medical, psychological and material assistance - 6(3)(c)
- Employment, education and training opportunities - 6(3)(d)
- Physical safety of victims within its territory - 6(5)
- Legal system contains measures offering victims possibility of obtaining compensation for damage suffered - 6(6)

In addition, Article 9 requires that signatory countries establish comprehensive policies and programs to prevent and combat trafficking in persons and to protect victims. These include taking or strengthening measures to alleviate vulnerability factors such as "poverty, underdevelopment and lack of equal opportunity." In addition, the article requires adopting or strengthening measures "to discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking."

2.3 Recommended Principles and Guidelines on Human Rights and Human Trafficking

The international community is largely in agreement that anti-trafficking laws and policies must also support international human rights.¹⁶ A human rights based approach identifies rights-holders (including both those trafficked and those accused of trafficking) and their entitlements as well as duty-bearers (typically states) and their responsibilities.¹⁷

¹⁴ See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, GA Res 55/25, 55th Sess., Supp No 49, UN Doc A/RES/55/25 (2000) art. 3(c). [HT Protocol]

¹⁵ Non-mandatory language, such as "shall consider" is frequently used in international treaties. The result of such language is that it is nearly impossible to prove a breach of the provisions in which it resides, and hence the provision "loses its legal teeth."

¹⁶ See e.g., Joy Ngozi Ezeilo, *Report of UN Special Rapporteur on trafficking in persons, especially women and children*, UNGAOR, 10th Sess. Supp No 3, UN Doc A/HRC/10/16 (2009); Human Rights Council, *Trafficking in Persons, Especially Women and Children*, HRC Res 11/3, UNGAOR, 11th Sess, UN Doc. A/HRC/RES/11/3 (2009) paras 1, 3(f), 6, 7, 8; *Trafficking in Women and Girls*, GA Res. 63/156, UNGAOR, 63rd Sess, UN Doc. A/RES/63/156 (2009) paras 5,18.

¹⁷ See e.g., Anne Gallagher & Nicole Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice* (Geneva: United Nations Office of the High Commissioner for Human Rights, 2011) at 5; Office of the UN High Commissioner for

In 2002, the UN High Commissioner for Human Rights developed guidelines for countries when developing anti-human trafficking policy. Several of these principles are worth highlighting, including:

Principle 3: the “do no harm” principle, stating that anti-trafficking policies should not adversely impact human rights and dignity, particularly of the victim.

Principle 4: strategies shall address demand as a root cause of trafficking.

Principle 5: states and IGOs [intergovernmental organizations] shall ensure that interventions address vulnerability factors, including inequality, poverty and all forms of discrimination.

Principle 6: states shall eradicate public-sector involvement or complicity in trafficking.

In addition, several of the Guidelines are worth highlighting, including that states should encourage and support proactive investigatory procedures that avoid over-reliance on victim testimony (Guideline 5). With regards to prevention of human trafficking, states are encouraged to create policies to reduce demand for exploitative commercial sexual services as well as to develop programs that offer livelihood options, especially for women and other traditionally disadvantaged groups (Guideline 7).

i. Regional Developments: Europe

As a whole, European countries have been profoundly affected by human trafficking as source, transit and destination countries, and have taken the crime very seriously. Some innovative preventive and victim support approaches have been developed by partnerships between non-government organizations and governments, and strong efforts made in recent years to improve definitions, data collection, and detection and prosecution across the region. Since the adoption of the 2000 UN Protocol, the European Union and the Council of Europe have each adopted a number of conventions and decisions concerning trafficking and prostitution.

Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva: United Nations Publication, 2010) at 49-50.

Europe's Anti-Human Trafficking Conventions and Initiatives

- 2001 Council of Europe's Convention on Cybercrime (In force since 2004 with 39 ratifications since May 2013)
- 2002 Council Framework Decision 2002/629/HA on combating trafficking in human beings
- 2005 Council of Europe's Convention on Action against Trafficking in Human Beings
- 2010 EU Regional Anti-Trafficking Rapporteur established
- 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims. (2011/36/EU, replaces the 2002 Decision)
- 2012 EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016. (Complements the 2011 Directive with a framework for planned initiatives and support to states)
- 2013 Eurostat's first EU statistical report on human trafficking ("Trafficking in Human Beings")

ii. Foreign Legislation on Human Trafficking and Prostitution

The section below summarizes relevant aspects of legislation relating to trafficking, sexual exploitation and prostitution in the countries examined. Appendix II provides a summary of the information.

Trafficking

For the countries selected, information was sought on any recent legislation or reports on human trafficking or prostitution with specific reference to the problems of sexual exploitation. All the countries examined during this project have ratified the UN Protocol and taken various steps to criminalize trafficking, improve detection and prosecution and provide services to trafficking victims. The latter usually includes three main components: assistance and support services for victims; temporary visas or reflection periods; and residence permits. Countries vary in the extent to which their legislation and its implementation emphasises border security and prosecution over victim assistance and support.¹⁸ In a number of countries, victim assistance or residence visas are often dependent on the victim's willingness to collaborate in prosecutions and act as witnesses.¹⁹ In other cases, such as Italy, victim support is less tied to collaboration with the police.²⁰

¹⁸ John Winterdyk, Benjamin Perrin & Philip Reichel, *Human Trafficking: Exploring the International Nature Concerns, and Complexities* (Boca Raton: CRC Press Taylor & Francis Group, 2012). [Winterdyk 2012]; Vanessa Munro, "Stopping traffic? A comparative study of responses to trafficking in women for prostitution," 46(2) *British Journal of Criminology* 318 [Munro 2006].

¹⁹ Sanja Copic & Biljana Simeunovic-Paric, "Victims of human trafficking: meeting victim's needs" in John Winterdyk, Benjamin Perrin & Philip Reichel, eds, *Human Trafficking: Exploring the International Nature Concerns, and Complexities* (Boca Raton: CRC Press Taylor & Francis Group, 2012) 265 at.284. [Copic]; Yvon Dandurand, "International Cooperation" in John Winterdyk, Benjamin Perrin & Philip

Prostitution

A number of international comparative reports on prostitution and trafficking for sexual purposes have been published in recent years as countries examine their options.²¹ In Canada this includes three background papers published by the Library of Parliament to help inform debate.²² The 2011 background paper provides a useful and detailed review of legislation in six of the countries touched on in the current report (Australia, New Zealand, The Netherlands, Sweden, England and the United States), and some of the following draws on this work.²³

There are many variants of prostitution legislation but they can be broadly classified into a number of different groups representing their overall aims, as outlined by Barnett, Casavant and Nicol (2011)²⁴:

- **Prohibition** - criminalizes supply and demand and all aspects of prostitution trade. Example: California and most US states.
- **Abolitionism**²⁵ (legal but immoral) - a middle ground - prostitution or sex work is seen as a trade but to be controlled to limit and protect public order and safety, for example by criminalizing soliciting and other related activities. Example: United Kingdom.
- **Legalization** - regulation through criminal law and other legislation (e.g., health, welfare, labour, zoning, licensing...). Example: The Netherlands.

Reichel, eds, *Human Trafficking: Exploring the International Nature Concerns, and Complexities* (Boca Raton: CRC Press Taylor & Francis Group, 2012) 207. [Dandurand]

²⁰ Winterdyk 2012, *supra* note 18.

²¹ These include government commissioned reviews e.g., New South Wales 2012, Kavemann 2007, and academic articles e.g. Winterdyk 2012, *supra* note 18; Vanessa Munro and Maria Della Giusti, eds, *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Aldershot: Ashgate Publishing Limited, 2008); Munro 2006, *supra* note 18.

²² Parliamentary Information and Research Services, *Trafficking in Persons* by Laura Barnett (Ottawa: Library of Parliament, 2011-59-E, 2011); Parliamentary Information and Research Services, *Prostitution: A Review of Legislation in Selected Countries* by Laura Barnett, Lyne Casavant, & Julia Nicol (Ottawa: Library of Parliament, 2011-115-E, 2011); Parliamentary Information and Research Services, *Prostitution in Canada: International Obligations, Federal Law, and Provincial and Municipal Jurisdiction* by Laura Barnett & Julia Nicol (Ottawa: Library of Parliament, 2011-119-E, 2011); Other Canadian publications include research reports e.g., Mary Laing, "Regulating adult work in Canada: the role of criminal and municipal code", in Paul Johnson, and Derek Dalton, eds, *Policing Sex* (London: Routledge, 2012) 166. [Laing]

²³ Laura Barnett, Lyne Casavant and Julia Nicol (2011), *Prostitution: A Review of Legislation in Selected Countries*, *ibid*.

²⁴ Adapted from *ibid* at 1-2. The authors cite Ginette Plamondon, for the Conseil du statut de la femme, Québec in relation to the definitions: Conseil du statut de la femme, Is prostitution work or exploitation? Further consideration is needed by Ginette Plamondon (Québec: Conseil du statut de la femme, 2002).

²⁵ The terms abolitionism and neo-abolitionism are derived from the movement to abolish slavery and the civil rights movement, which sought to end oppression and promote human rights by making legal practices illegal. In relation to prostitution neo-abolitionism aims to eradicate the practice itself, rather than just regulating it through the law.

- **Neo-abolitionism** (criminalizing demand) - prostitution is a violation of human rights and free choice is never applicable - decriminalize prostitutes but criminalizes customers and procurers. Example: Sweden.
- **Decriminalization** - repeal of all criminal laws relating to prostitution (e.g., communicating, bawdy houses, living off the avails...) but usually accompanied by regulation. Example: New Zealand.

An earlier Library of Parliament review²⁶ summarizes the main aims of national (and state) prostitution legislation as generally being to:

- Maintain public health
- Protect the health and safety of sex sellers and buyers
- Eliminate sexual exploitation and abuse of children
- Protect communities, children and young people from the negative aspects of prostitution
- Reduce criminal involvement in the running of the sex industry
- Safeguard the human rights of sex sellers, and protect them from exploitation and trafficking

On the basis of the information reviewed for this report, a number of countries have recently amended their legislation or are planning amendments, to increase health safeguards and the protection of women involved in prostitution from violence, as well as services for women and girls wishing to exit prostitution.²⁷

All countries examined prohibit the sexual exploitation of children - usually under the age of 18. The sections below provide a brief account of current developments at the national level in the countries examined.

a) The Netherlands

Trafficking

The Netherlands signed the UN Trafficking Protocol in 2000 and ratified it in 2005. It also granted rights to trafficking victims under Immigration law in 2000. In common with other European countries it has worked hard to increase its detection, prevention and prosecution of trafficking and to provide support to victims. The government appointed an independent *National Rapporteur on Trafficking in Human Beings* (NRHT) in 2000 to report on progress on an annual basis; established a *National Action Plan on Human Trafficking in 2004*, and a *National Task Force on Human Trafficking in 2008*.

In 2009 in response to increasing concerns about child sexual exploitation and the increasing circulation of digital images, the mandate of the National Rapporteur was expanded to include child pornography. Reviewing ten years of the work of her office in 2010, the National Rapporteur Corinne Dettmeijer-Vermeulen noted the overlap between child pornography and

²⁶ Parliamentary Information and Research Services, *A Review of Prostitution Legislation in Selected Countries* by Karen Hindle, Laura Barnett, and Lyne Casavant (Ottawa: Library of Parliament, PRB 03-29E, 2003 and 2008 revised edition).

²⁷ E.g., Germany and the European Union.

human trafficking in terms of sexual exploitation and coercion, and between those people involved in trafficking and child pornography industries.²⁸

Prostitution

In relation to prostitution, the Netherlands provides a good example of the fluctuations and changes over the centuries in attitudes relating to prostitution and its control (see Box below).

The Netherlands: Policy Fluctuations on Prostitution

- Tolerated in the Middle Ages
- First regulated and then suppressed in 16th century
- Laissez-faire approach in 17th century
- Controlled in 18th century due to moral concerns of growing middle class
- Regulated in 19th century to protect soldiers in Napoleonic army (health checks and work permits required of women in prostitution)
- Tolerated and then legalized (2000) in 20th century
- Increased regulations in 21st century: reductions in size of Amsterdam's red light district due to influx of organized crime and human trafficking (from 2009)

Following a long period of toleration in the 20th century, prostitution was legalized in 2000 in an effort to control the industry and associated problems, and prevent trafficking. The Penal Code (250a) distinguishes between voluntary and involuntary prostitution. The expansion of the European Union coupled with tolerance of the sex trade has brought about significant changes in the industry: by the end of the 1990's it was reported that illegal immigrants and trafficked men and women constituted 40% of the sex trade.²⁹

Legalization is accompanied by a system of local licensing and zoning intended to control health and safety. Municipalities are responsible for licensing, and the government has developed a handbook to provide guidance. Sex workers are issued with registration cards, receive legal, social and health benefits, and since 2011 are required to pay taxes. Brothels, including 'windows', are legal and regulated locally, but escort agencies are unlicensed. The City of Amsterdam developed a regulatory 'administrative' approach, appointing a Red Light District Manager and screening and auditing infrastructure projects and building sales to try to curb the involvement of organized crime in both prostitution and drugs.³⁰

Nevertheless, organized crime has increased its involvement, and significant numbers of women have been trafficked into the industry from Central and Eastern European countries since 2000. By 2008 60% of prostitutes were estimated to be illegal and of non-Dutch origin,

²⁸ Corinne Dettmeijer-Vermeulen, National Rapporteur on Trafficking in Human Beings. *Human Trafficking - ten years of independent monitoring*. The Hague: BNRM (2010).

²⁹ Barnett, Casavant and Nicol (2011) *supra* note 22.

³⁰ Barrett & Shaw 2011 *supra* note 10.

and municipalities have begun to increase regulation and control.³¹ A Special Prosecutor concerned with organized crime was appointed by the Ministry of Justice in 2009 and has closed down some of the prostitution windows. The National Rapporteur noted in 2010 that greater enforcement, supervision and control of illegal prostitution was necessary, and that new legislation to regulate the sex industry and reduce sexual exploitation was being considered.³² Nevertheless, the underground industry continues to expand, and it has been estimated that only 4% of people selling sexual services in the Netherlands are registered, and the rest work illegally.³³

Some of the benefits and disadvantages of the legislation are summarized by Barnett, Casavant and Nicol (2011 p. 11) as follows:

- Registered legally resident prostitutes have more protections from violence and exploitation and access to legal social and health services but they represent a small minority of all those working in the trade (see above)
- Many legally resident prostitutes choose not to register for privacy reasons and the stigma still attached to prostitution
- Illegal prostitutes are more vulnerable to violence and sexual exploitation, and their numbers have grown, primarily through trafficking

In the past three years, change is again underway. The Dutch Rapporteur on Human Trafficking reports proposed legislation is working its way through Parliament, following her earlier proposals, which would make prostitution illegal unless a municipality decides to make certain forms of prostitution legal, increase the legal age of sex sellers from 18 to 21 and require municipalities to license escort services.³⁴

b) Australia

Trafficking

Given its geographical location in the Asia-Pacific region and social and economic circumstances, Australia has been a destination country for legal and illegal migration for some years and is vulnerable to trafficking for sexual and labour purposes.³⁵ Australia was one of the first countries to respond to the trafficking issue (Munro, 2006). It created the offences of trafficking, slavery and sexual servitude in 1999, with amendments to the Criminal Code (Divisions 270 and 271), and to its Border Protection legislation.³⁶ The legislation took a broad approach to trafficking that includes activity:

- Across borders and within Australia;
- For a range of (unspecified) exploitative purposes;
- Involving men, women and children as victims; and

³¹ Barnett, Casavant and Nicol 2011, *supra* note 22 at 11.

³² National Rapporteur on Human Trafficking, 2010 *supra* note 28 at 143.

³³ Barnett, Casavant and Nicol 2011, *supra* note 22 at 11.

³⁴ Interview with Corinne Dettmeijer-Vermeulen.

³⁵ Jacqueline Larsen & Lauren Renshaw, *People Trafficking in Australia* (Canberra: Australian Institute of Criminology, 2012).

³⁶ Munro 2006 *supra* note 18. Australia signed the UN Convention against Transnational Organized Crime and the Trafficking Protocol in 2004 and 2005 respectively.

- Taking place with or without the involvement of organized crime groups.

Division 270.4 (1) criminalizes sexual servitude, and causing a person to enter into or remain in sexual servitude or conduct a business involving sexual servitude of another person; and deceptive recruiting (270.7).

In 2005 the *Criminal Code Amendment (Trafficking in Persons) Act* created new offences of people trafficking, domestic trafficking, debt bondage and child trafficking.³⁷ Most recently, in March 2013 the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act* received Royal Assent. This Act covers all forms of exploitative conduct, and expands the offences of sexual servitude and deceptive recruiting for sexual services (regardless of the industry involved).³⁸

The 2004 *People Trafficking Visa Framework* created three categories of visas for human trafficking victims: Bridging; Criminal Justice Stay; and temporary or permanent Witness Protection (Trafficking) visas, although temporary visas were subsequently removed in 2009.³⁹

In support of the legislation, the *Australian Government Action Plan to Eliminate Trafficking in Persons* was established in 2003 using a 'whole of government' approach. The Plan was extended for four more years in 2007, and over \$50 million (AUS) has been provided to support anti-trafficking initiatives.

Most trafficked victims in Australia are reported to be women and girls brought from South East Asia to work in the sex industry, and some come voluntarily but end up in debt bondage and sexual servitude.⁴⁰ A parliamentary report noted in 2010 that all cases of trafficking or sexual servitude which have reached the courts have involved trafficked victims in legal premises.⁴¹

Prostitution - a Territorial and State responsibility

Regulation of prostitution is not a federal responsibility in Australia, and legislative approaches vary widely across the states and territories:

³⁷ US Secretary of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report - Canada*, (Washington, DC: US Government Printing Office, 2012), online: US Department of State <<http://www.state.gov>>. [US Trafficking in Person Reports]

³⁸ Australian Government (Attorney-General), Media Release, "Statement of the Attorney-General, the Hon. Nicola Roxon MP, The Government's Response to People Trafficking" (26 November 2012) online: Australian Government <<http://www.ag.gov.au>>.

³⁹ The University of Queensland, "Visas for Trafficking Victims in Australia" (accessed 1 May 2013) online: The University of Queensland <<http://www.law.uq.edu.au>>. 'These four visa categories were reduced to three following a number of amendments made in July 2009 in response to a significant level of criticism of the framework. Importantly, the temporary visa stage in the Witness Protection (Trafficking) visa process was removed, reducing the pathway to a permanent visa for eligible victims by at least two years. The level of support offered to victims who are unwilling or unable to assist police was also extended, enabling a wider range of victims to access support services.'

⁴⁰ Better Regulation Office, New South Wales, Australian Government, "Issues Paper: Regulation of Brothels in NSW" (September 2012) at 37. [Better Regulation Office]

⁴¹ Parliament of Victoria, *Inquiry into People Trafficking for Sex Work - Final Report*, (No 312 Session 2006-2010) by Drugs and Crime Prevention Committee (Government Printer for State of Victoria, Australia: 2010) at 133.

- Victoria - 1995 *Sex Work Act* regulates the licensing of prostitution and the fees, health and working conditions of escorts agencies and brothels. It has been supplemented by subsequent legislation (2004 *Sex Work (Fees) Regulations*, 2006 *Sex Work Regulations*, 2008 *Public Health and Wellbeing*). There is a ban on advertising. The prevention of child sexual exploitation, health and safety, the protection of communities and minimizing organized criminal involvement were the main aims of the legislation. The licensing system is stringent and seen as costly (c. \$2,400 AUS a year plus fees per room), which is seen to discourage small brothels. Illegal brothels and street prostitution are reported to be a continuing problem and the government has been considering changes to the legislation.
- Queensland - the 1999 *Prostitution Act* legalized brothels and established a licensing system, with subsequent amendments. The legislation requires regular reviews of the impact of the Act, which have been conducted in 2004, 2006 and 2011.⁴² Brothels can have up to 5 rooms and their location is restricted. Private single sex work is also legal. Outcall services such as escort agencies and street prostitution are illegal. The licensing process is extensive and very costly (c. \$30,000 AUS/year for a 5-room brothel).

The most recent government evaluation suggests that the underlying principles of the Act are generally being achieved and previous recommendations being implemented, and that there is no evidence of sex trafficking.⁴³ However, an independent report argues that licensing has not affected illegal prostitution and that the licensed sector only constitutes 10% of all sex work in the State. Illegal brothels, escort agencies and a small amount of street prostitution were estimated to comprise 90% of the sex industry, all of which falls outside of current regulatory and licensing schemes.⁴⁴ The report also suggests that the difficulties of policing prostitution in a very decentralized industry, and the lack of research make it difficult to assess the extent of sex trafficking in the legal or illegal sector.

- Australian Capital Territory (ACT) - the 1992 *Prostitution Act* decriminalized prostitution in private spaces, but regulates it to protect sex worker's health and safety and public health, eliminate the sexual exploitation of children, and restricts location. Street prostitution is illegal. All brothels and escort agencies must register on a yearly basis for a small fee. Health testing for STDs is mandatory, and all owners and managers have a responsibility to ensure that workers are healthy. This approach is seen as less cumbersome than licensing. Zoning restricts the sex industry primarily to industrial areas.⁴⁵
- New South Wales (NSW) - prostitution was decriminalized in 1979 and there is regulation of brothels and other sexual-service premises. Government departments

⁴² See e.g., Queensland Crime and Misconduct Commission, *Regulating Prostitution A follow-up review of the Prostitution Act 1999*, (Report) (Brisbane, Crime and Misconduct Commission, 2011).

⁴³ *Ibid.*

⁴⁴ Andreas Schloenhardt & Lachlan Cameron, "Happy Birthday Brothels. Ten Years of Prostitution Regulation in Queensland" (2009). The University of Queensland, TC Beirne School of Law at 31. [Schloenhardt]

⁴⁵ Barnett, Casavant and Nicol (2011), *supra* note 22 at 2-4.

and local authorities regulate and provide services to the sex industry. Advertisements for adult services are illegal. NSW is seen as the most liberal state in Australia. Around 60% of sex workers work in commercial premises and the remainder privately or on the street. In 2012 NSW released a consultation paper on amending its legislation on brothels to provide better protection of community amenities, sex workers and public health, and suggested three options for consideration: improving regulation, introducing a licensing system for sex workers, or licensing owners and operators of commercial sex premises.⁴⁶ The report suggests that there is no evidence of criminal involvement in the sex industry in NSW, but some licensed brothels have been linked to trafficking cases.⁴⁷ The Committees of Inquiry on Sex Work Regulation; Sex Trafficking & Local Government; and Planning Policy are all due to report in 2013.

One criticism of current Australian attempts to respond to prostitution, sexual exploitation and trafficking is that States only consider their own legislative regime, and there is no attempt to view the situation across the country as a whole, or look for evidence of trafficking between States.⁴⁸ The same report also notes the absence of independent and critical research, with most evaluations of state legislation being conducted by state governments with relatively narrow remits. A 2010 government report from Victoria found that both law enforcement and service providers have limited ability to enter brothels to check for trafficked people and that many brothels have not had a visit from authorities for years.⁴⁹

c) New Zealand

The *Prostitution Reform Act* of 2003 decriminalized brothels, escort agencies and soliciting. The aim of the legislation was to safeguard the human rights and health and safety of sex workers, and prevent the sex industry from being driven underground.⁵⁰ Heavy penalties for child exploitation and denial of work permits for immigrants intending to work in the sex industry were designed to reduce trafficking. Independent sex workers may work without a license, but four or more working together or with a third party require an operating license.

Responsibility for regulating the industry lies with municipalities who use a range of licensing and business and zoning bylaws and apply occupational health and safety codes and inspections. In some cases municipalities have used their regulatory powers to prohibit or restrict prostitution and the spirit of the national legislation.⁵¹

A Ministry of Justice evaluation in 2008 suggested that the impact of the legislation was generally positive, and that there was no increase in the numbers of sex workers or

⁴⁶ Better Regulation Office, *supra* note 35.

⁴⁷ *Ibid.*

⁴⁸ Schloenhardt, *supra* note 44 at 35.

⁴⁹ See Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work: Final Report* (No 312 Session 2006-2010) (Government Printer for State of Victoria, June 2010), online: Parliament of Victoria <<http://www.parliament.vic.gov.au>>. at 138ff.

⁵⁰ Barnett, Casavant and Nicol 2011, *supra* note 22 at 6.

⁵¹ *Ibid.* at 7.

trafficking. Street prostitution only constituted 11% of the industry, and the majority of sex workers felt they were not exploited.⁵²

That said, the government report also mentions that as a result of decriminalization, police report they have less contact with the sex industry and have no systematic intelligence gathering in the sex industry, making it more difficult to discover abuses and exploitation. Further, the government found a “marked reluctance”⁵³ of those in prostitution to report acts of violence to police and found that for “most” people in prostitution, there has been “no great change” in their access to health services and information.⁵⁴

d) Sweden

Trafficking

As a destination country, Sweden has been significantly affected by trafficking for sexual exploitation from Eastern European countries. It passed the *Prohibiting Trafficking for Sexual Purposes Act* in 2002, and in 2004, expanded the legislation to cover all forms of trafficking.

Prostitution

In 1999 Sweden passed the *Prohibiting the Purchase of Sexual Services Act*, amending the Penal Code. The law is framed in terms of gender equality and the view that all prostitution constitutes violence against women.⁵⁵ The result of this approach is asymmetric criminalization of prostitution: it is legal to sell sex, but illegal to purchase it. The legislation has been referred to as neo-abolitionist because of its intent to eradicate prostitution entirely.⁵⁶ It formed part of a broader legislative agenda on violence against women initiated in 1998.⁵⁷

The main goals of the legislation are to promote equality between men and women with a comprehensive gender equality program and to curb the demand for commercial sex that fuels sex trafficking. The legislation was accompanied by significant investment in education, employment and support programs to help women exit the sex industry.

After ten years, the law was evaluated by the Swedish Justice Chancellor Anna Skarhed.⁵⁸ Her report recognizes the difficulties of assessing effectiveness given the difficulties of finding reliable data. Among the conclusions of her report were that street prostitution had been halved since the introduction of the legislation and that no increase in indoor prostitution was

⁵² NZ, Prostitution Law Review Committee, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (Wellington: Ministry of Justice, May 2008).

⁵³ *Ibid*, section 4.3.

⁵⁴ *Ibid*, section 4.1.1

⁵⁵ Anna Skarhed, *Forbud Mot Kop av Sexuall Tjanst. En Utvardering 1999-2008* (Stockholm: Swedish Ministry of Justice, 2010). [Skarhed]; Johan Karlsson Schaffer, “Finland’s prostitution law and the hope of Nordic unity” (2009) online: Nordic Prostitution Policy Reform <<http://nppr.se>>. [Schaffer]

⁵⁶ Barnett, Casavant and Nicol 2011, *supra* note 22; Munro 2006 *supra* note 18; St Denny, Emily (2013). ‘France is pursuing a new ‘abolitionism’ focused on removing prostitution from society without criminalizing victims of the sex trade.’ <http://blogs.lse.ac.uk> Posted April 18th 2013.

⁵⁷ The Violence Against Women Act, Government Bill Kvinnofrid, Prop. 1997/8:55). <http://www.sweden.gov.se/sb/d/108/a/2266>

⁵⁸ Skarhed, *supra* note 55.

reported. The police view is that organized criminal activity and trafficking had not increased. Some 70% of the Swedish population is in favour of the legislation. Sweden had become an undesirable destination for sex traffickers, and surveys reported a drop in the proportion of men saying they had purchased sex, decreasing from 13.6% (1996) to 7.9% (2008). There had been an investment in exit programs and comprehensive social services for victims. The report contrasted the reduction in street prostitution and internet-based prostitution with the increases in Denmark and Norway over the ten-year period. Some of that increase may be the result of displacement from Sweden.

Some critics suggest that although the government's evaluation report is positive, it has not been able to give precise estimates of the extent of, or changes in, indoor prostitution.⁵⁹ Another common, but unsubstantiated, challenge to the Swedes' positive report is that some prostitution in the country may have been forced underground, increasing the risks of violence and exploitation.⁶⁰ In addition, social service and health outreach workers reported difficulty in maintaining contact with sex workers, and the police and prosecution services, while generally in favour of the legislation, found the penalties to be "toothless" as none of the 650 convictions under the law had resulted in jail time.⁶¹

In short, the Swedish legislation and its link to human trafficking has been much debated. The law has influenced similar legislative changes in Norway, Iceland, Finland and South Korea and there are movements to introduce this model in Ireland, France, Denmark and Latvia.

e) Norway

Norway was influenced by the Swedish legislation, passing a new law in 2003 banning the purchase of sex. However, it appears that public attitudes towards the legislation were less supportive, especially among men in Norway.⁶²

f) Finland

Trafficking

Amendments to the Penal Code in 2003 and 2004 prohibit all forms of trafficking. Other offences in the Criminal Code are also used to prosecute sex traffickers, such as offences of pandering. The Finnish National Rapporteur on Trafficking in Human Beings reported in 2011 that only 5 criminal cases had been heard in the courts, three of them for sex trafficking, and in no way reflected the extent of the phenomenon in the country.⁶³ Part of the problem was

⁵⁹Government of Sweden, *UNGASS Sweden Country Progress Report 2010* (Regeringskansliet Government Offices of Sweden, 2010) online: UN Aids < <https://www.unaids.org>>; Barnett, Casavant and Nicol, 2011, *supra* note 22; Gregg Bucken-Knapp, "Evaluating the Swedish Ban on the Purchase of Sexual Services: The Anna Skarhed Report" (2010) online: Nordic Prostitution Policy Reform <<http://nppr.se>>.

⁶⁰ Barnett, Casavant and Nicol 2011, *supra* note 22.

⁶¹ *Ibid.*, at 14.

⁶² Other considerations may also have influenced the adoption of the legislation in Norway rather than Sweden's strong focus on gender equality, including the presence of immigrant prostitutes on the streets in Oslo: Schaffer *supra* note 55.

⁶³ Vahemmistovaltuutettu, *The Finnish National Rapporteur on Trafficking in Human Beings Report 2011*, publication 8 (Helsinki: Vahemmistovaltuutettu, 2011) at 22ff.

ignorance of international law and Finland's obligations, and restricted ideas about what constituted human trafficking.

Prostitution

In 2006 Finland passed a law criminalizing the purchase of sex from minors and trafficked victims, but not in general as in Sweden and Norway. Procuring and all forms of advertising and organized prostitution are also illegal.⁶⁴ There are suggestions that Finland may change its law to criminalize all purchase of sex, as in Sweden.⁶⁵

g) Iceland

Iceland has made a number of legislative changes in recent years and was the third country to outlaw the purchase of sex following the Swedish model. Prostitution was initially decriminalized in 2007, but with limited legality. The buying and selling of sexual services was legalized as long as third parties did not profit from the earnings of prostitutes. This legislation was replaced in April 2009, however, by new legislation prohibiting paying for prostitution. While the selling of sexual services remains legal, brothels, pimping and payment are all illegal.

In 2010, Iceland also banned strip clubs.⁶⁶

h) France

Trafficking

France amended its Penal Code to create the offence of trafficking for sexual exploitation in 2003 and further amended it in 2009 (Art. 225-4) to prohibit all forms of trafficking. It is also bound by the Council of Europe convention and European Union directive on trafficking.

Recent evaluation of France's progress in implementing the Council of Europe Convention on trafficking suggests that victims of trafficking, especially children, are often not given sufficient support, and the granting of a 30-day reflection period is often dependent on cooperation with judicial authorities.⁶⁷ They also note that, as in a number of other countries, cases of trafficking for sexual exploitation are often charged under pimping rather than trafficking articles.⁶⁸

Prostitution

France was a model of the regulatory approach to prostitution in the 19th century with government regulation and health checks of those working in brothels, but brothels were

⁶⁴ Schaffer, *supra* note 55.

⁶⁵ Pia Levin, 'Finnish legislation on the purchase of sexual services: potential revisions?' Nordic Prostitution Policy Reform (11 July 2011), online: <http://nppr.se>

⁶⁶ Centre for Gender Studies, 'A new law makes purchasing sex illegal in Iceland (25 March 2009). www.jafnretti.is; Julie Bindle 2010. 'Iceland: the world's most feminist country,' online: <http://theguardian.com/lifeandstyle/2010/mar/25/iceland-the-most-feminist-country>

⁶⁷ Council of Europe, GRETA, First evaluation, *Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by France*, Documents, GRETA(2012)2 (2012).

⁶⁸ US Trafficking in Persons Report, *supra* note 37 at 159.

made illegal in 1946. Since that time it has maintained an abolitionist position, largely on gender equality grounds.

Following the expansion of the European Union, increasing numbers of non-French born women and girls have been working as prostitutes in France. Under President Sarkozy the 2003 *Domestic Security Law* Penal Code (Art. 225) created the offence of passive soliciting. This directly targeted street prostitution and appears to have resulted in the displacement of prostitutes to remote and unsafe areas of cities.⁶⁹ The overall aim of the legislation was to increase the public's sense of security and curb illegal immigration. Critics have argued that the law was an attempt to combine the abolitionist approach to prostitution with anti-immigration agendas.⁷⁰

In April 2011, a cross-party parliamentary committee report on prostitution recommended the abolition of the passive soliciting law, and its replacement by legislation criminalizing procurers and sex buyers, as in the Nordic countries.⁷¹ The committee estimated that 85% of prostitutes in France were women and 90% of them foreign-born compared to an estimated 80% of French-born prostitutes in the 1990's. They recommended a policy that is based on three pillars: strengthening the fight against procuring and trafficking; focusing on the prevention of prostitution and supports for those trafficked and exploited; and criminalizing sex buyers. The report was adopted unanimously by parliament in December 2011. In March 2013 under the new government of Francois Holland, the 2003 law was overturned, and in December 2013, the government passed legislation criminalizing demand, with a stress on human rights and equality of the sexes. The current government characterizes prostitution as violence against women, hence the importance of reducing demand.

M. Guy Geoffrey: record of testimony to the Delegation on the Rights of Women January 24, 2013.

[www.senate.fr/compte-rendu-commissions/20130121/femmes.htm]

"The various countries we visited told us that France has a major responsibility to make Europe aware that it is no longer possible to condemn trafficking in humans beings at the same time as tolerating prostitution."

i) Ireland

Ireland is currently reviewing its policies on prostitution to respond to technological changes resulting in the decline in street prostitution and increases in indoor activity. In 2012, four legislative options were presented: the 'Swedish model', total criminalization, non-

⁶⁹ In introducing the law President Sarkozy drew a distinction between classic French prostitutes ('les filles de joie') and trafficked foreign-born prostitutes ('poor foreign girls') see Munro 2008, *supra* note 18.

⁷⁰ *Ibid.*

⁷¹ Parliamentary Mission on Prostitution, *Prostitution: l'exigence de responsabilité. En finir avec le mythe du 'plus vieux métier du monde'* Danièle Bousquet & Guy Geoffroy. Deposited 13th April 2011. France: Assemblée nationale, online: <http://www.assemblee-nationale.fr/13/rap-info/i3334.asp>; Emily St Dennis (2013) 'France is pursuing a new 'abolitionism' focused on removing prostitution from society without criminalizing victims of the sex trade.' <http://blogs.lse.ac.uk> (18 April 2013).

criminalization, and legislation and regulation.⁷² In June 2013, after reviewing over 800 submissions, receiving written evidence and conducting public and private hearings, the Irish Committee on Justice, Defence and Equality recommended that Ireland follow the Swedish model and outlaw the purchase of sexual services, while clarifying that no offence is committed by the person whose sexual services are sold.⁷³ The Justice Committee also recommended:

- increasing penalties for trafficking for the purposes of sexual exploitation;
- increasing penalties for organizing or living off the earnings of prostitution;
- creating an offence of recklessly permitting a premises to be used for the purposes of prostitution;
- regulating and inspecting premises advertised as massage parlours to eliminate those used for prostitution;
- allowing witnesses in sexual exploitation through prostitution and/or trafficking to give evidence anonymously;
- creating an offence of grooming a child or vulnerable person for the purpose of sexual abuse or exploitation;
- granting power to the police to disable any telephone number reasonably suspected of being used for prostitution;
- changing the law to criminalize accessing web sites advertising prostitution in Ireland in the same way as accessing sites that advertise or distribute child pornography.⁷⁴

In June 2013, the Justice Minister proposed specific amendments to Ireland's Criminal Law to transpose all of the criminal law provisions of a 2011 EU directive on preventing and combating human trafficking, and protecting its victims.⁷⁵

j) Germany

Trafficking

In Germany, trafficking is prohibited under the Criminal Code, immigration law and through special protections offered to victims. However, given the increase in trafficking for sexual exploitation and its close links with the sex trade, the federal government introduced new legislation on prostitution in 2002 aimed at improving efforts to identify and prosecute human trafficking and curb criminal involvement.⁷⁶

⁷² Criminal Law (Sexual Offences) (Amendment Bill) 2013 - Second Stage Speech by Paul Kehoe on behalf of Mr. Alan Shatter T.D., Minister for Justice, Equality and Defence. Merrion Street Irish Government News Service, 3rd May 2013 online <www.merrionstreet.ie>. [Accessed 2nd August 2013].

⁷³ See Ireland, Houses of the Oireachtas, *Report on hearings and submissions on the Review of Legislation on Prostitution, Joint Committee on Justice, Defence and Equality*, 31/JDAE/010 (Houses of the Oireachtas, 2013)(Chair David Stanton).

⁷⁴ *Ibid.*

⁷⁵ See Criminal Law Bill 2013, introduced by Minister for Justice, Equality and Defence, Alan Shatter, (28 June 2013), online: Merrion Street <<http://www.merrionstreet.ie>>.

⁷⁶ Barbara Kavemann, "The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments. Findings of the study on the impact of the German Prostitution Act" (2007) Sozialwissenschaftliches FrauenForschungsInstitut an der Evangelischen FachHochschule Freiburg Berliner Büro at 3.

Germany has developed a number of innovative initiatives to respond to trafficking, including the federal referral system that enables close links between the police and non-government and civil society organizations to identify, track and respond to cases. Like France and other European destination countries it has also worked with source countries to help prevent trafficking.

Prostitution

Prior to the introduction of the *Prostitution Act* in 2002, there was no specific Federal legislation governing sex selling. Prostitution, including brothels, was legal but seen as immoral, and subject to numerous restrictions especially to maintain public health standards, and activity has usually operated in restricted zones. Prostitution was not classified as a business, so there was no licensing or registration, and practices varied from state to state in issuing permits for bars, etc. Prostitutes had few protections or rights, but mandatory health checks were enforced under federal law. Some municipalities own and run brothels, but there has been wide variation in the controls exercised across states and cities.

One goal of the 2002 *Prostitution Act* was to improve the legal and social status and working conditions of prostitutes by issuing regular work permits.⁷⁷ The Act removed the offence of furthering prostitution, and legislated for improved protections for trafficking and sexual exploitation victims and for minors, to make it easier for prostitutes to exit the industry. The *Protection Against Infection Act* (2001) also replaced mandatory health checks for prostitutes with voluntary checks, and emphasised a public education and awareness view of public health.

As a federal country, the 16 states can use additional legislation through their own police laws and responsibilities for public order and safety. At the municipal level, cities control prostitution through zoning and planning laws establishing exclusion and tolerance zones, hours of operation, etc.

A 2007 evaluation of the impact of the Act was commissioned by the government, which found that the Act's aims had not yet been achieved.⁷⁸ The report concluded that there were "no viable indications that the law has reduced crime."⁷⁹ It further concluded that the stigma attached to prostitution had not been reduced, and there were no improvements in the social protection or working conditions of those involved in prostitution.⁸⁰ Overall, state and municipal government agencies and operators of sex businesses were found unprepared or unable to invest the funds required to improve working conditions and fully implement the legislation. This was due, in part, to the fact that the legislation was not submitted to the upper house of state representatives (the Bundesrat) because it would not have passed as states vary in their views on prostitution.

⁷⁷ *Ibid* at 27.

⁷⁸ *Ibid*. The remit for the research did *not* include trafficking, child prostitution or drug-related prostitution.

⁷⁹ *Ibid*.

⁸⁰ German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)*, July 2007, at 79.

Many police officers, women's organizations and politicians familiar with prostitution are reported to find that the law is effectively a "subsidy program for pimps" that makes the market more attractive to human traffickers.⁸¹ In the view of over one-third of prosecutors, the *Prostitution Act* made it more difficult to use pimping, exploitation and trafficking charges to prosecute cases.⁸² In relation to trafficking, the unwillingness of victims to report or act as witnesses, their credibility, and the problems of cross-border jurisdictional issues have all added to the difficulties of achieving successful trafficking prosecutions.⁸³

k) United Kingdom

Trafficking

Since signing the UN Protocol, the United Kingdom has passed a series of laws to curb trafficking for sexual and labour exploitation. They include the 2002 *National Immigration & Asylum Act*, section. 145, which creates the offence of facilitating transport into, out of or within the UK for purposes of controlling victims for prostitution; the 2003 *Sexual Offences Act* Section 57-9 on arranging or facilitating trafficking for all forms of sexual exploitation; the 2004 *Asylum and Immigration Act*, covering all forms of trafficking including for organs and labour, and in Section 4 requiring the use of force, threats or deception in trafficking for sexual exploitation unlike the Sexual Offences Act.⁸⁴ More recently, the 2009 *Coroners and Justice Act* Section 71 creates the offences of slavery, servitude and forced or compulsory labour, without the precondition of smuggling into the UK.⁸⁵

All anti-trafficking activities are centralized under the *Serious Organized Crime Agency* (SOCA), which coordinates the multi-agency UK Human Trafficking Centre. A National Referral System is used to identify and refer trafficking victims. A March 2013 report by the NGO *Centre for Social Justice* on ending modern slavery in the UK makes over 80 recommendations, including the appointment of an Independent Commissioner on human trafficking and new anti-slavery legislation to protect victims.⁸⁶

Prostitution

Since the late 1950's prostitution itself has been legal in the UK, but related activities such as soliciting, kerb crawling, pimping, etc. are illegal. A 2004 government consultation document *Paying the Price* opened up the possibility of widespread reform of the prostitution laws including legalization, abolitionism or decriminalization, but the final 2006 policy resulted in little change, and reinforced the prohibition of activities relating to street prostitution.⁸⁷ It did, however, allow up to three prostitutes to live or work together. The 2003 *Sexual Offences Act* criminalizes paying for sexual services when a prostitute is subject to force,

⁸¹ Spiegel Staff, "Unprotected: How Legalizing Prostitution Has Failed", *Spiegel Online* (30 May 2013), online: Spiegel <<http://www.spiegel.de/>>.

⁸² *Ibid* at 47-48.

⁸³ Annette Herz, "Human trafficking and police investigations" in John Winterdyk, Benjamin Perrin & Philip Reichel, eds, *Human Trafficking: Exploring the International Nature Concerns, and Complexities* (Boca Raton: CRC Press Taylor & Francis Group, 2012)

⁸⁴ Munro 2006, *supra* note 18.

⁸⁵ *Coroners and Justice Act 2009*, online: <http://www.legislation.gov.uk/ukpga/2009/25>.

⁸⁶ The Centre for Social Justice, *It Happens Here. Equipping the United Kingdom to fight modern slavery*, (London: Centre for Social Justice, 2013) online: The Centre for Social Justice <<http://www.centreforsocialjustice.org.uk>>.

⁸⁷ UK, Home Office, *Paying the Price* (London: Home Office, 2004).

threats, coercion or deception.⁸⁸ The 2010 *Police and Crime Act* made all forms of customer solicitation illegal, including frequent soliciting.

I) United States

Trafficking

The US maintains the basic principle that human trafficking is a violation of human rights and that States are obliged to respond as well as the federal government. Currently, all US states have anti-trafficking laws in place, and traffickers are prosecuted under a myriad of state laws.⁸⁹ The Federal government prosecutes federal cases under the *Trafficking Victims Protection Act* 2000, which was reauthorized in 2003, 2005, 2008 and 2013 with increasing focus on prosecution and prevention. Since 2004 the Department of Justice has provided funding of \$64 million (USD) for local human trafficking multi-agency task forces and police training. They currently fund 40 multi-agency teams.

A *Federal Strategic Action Plan for Services to Survivors* is currently receiving public feedback. The National Institute of Justice published two reports in 2012 on the challenges of prosecuting trafficking, and on demand reduction efforts related to prostitution and sex trafficking.⁹⁰ The former lists recommendations on how to increase investigations and prosecutions of trafficking cases - including training of police and other key sectors, specialized investigators, tool kits, awareness raising, etc. - and on long-term victim care and support.⁹¹ The latter is discussed at greater length in the previous report to this Task Force on the incidence of sex trafficking in Canada.⁹²

Prostitution

The legislation of prostitution in the US is a state responsibility with the exception of Federal laws limiting prostitution near military establishments, and making it an offence to transfer people across state or international borders for the purposes of prostitution.

Street prostitution and living off the avails are illegal in all states except Nevada and, until 2009, Rhode Island.⁹³ In most states violations are a misdemeanour and public order crime. Nevada is the only state that legalizes brothels in certain counties. Escort and outcall prostitution appear to be widely practiced across US states, although illegal, and escort agencies, bodywork and massage parlours advertise in classified advertisements and increasingly on the internet.⁹⁴

⁸⁸ Munro 2008, *supra* note 18. See also, Sexual Offences Act 2003, section 53A, as inserted by section 14 of the Policing and Crime Act 2009.

⁸⁹ US Trafficking in Persons Report, *supra* note 37 at 361.

⁹⁰ Michael Shively, Kristina Kliorys, Kristin Wheeler, & Dana Hunt, *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts* (Washington: National Institute of Justice, 2012) online: NHRS <www.ncjrs.gov>.

⁹¹ *Ibid.*

⁹² Nicole Barrett, Sex Trafficking, 2013, *supra* note 3.

⁹³ In 2009 a new bill was signed into law banning both the purchase and selling of sex.

⁹⁴ See e.g., Mark Latonero, "The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking" (Los Angeles: University of Southern California, 2012).

A national sting operation focused on sex buyers was recently conducted by a coalition of federal and local law enforcement agencies on the National Day of Johns Arrests.⁹⁵

New York State

New York State's 2007 sex trafficking law, New York Penal Law 230.34, is receiving significant attention among anti-human trafficking organizations as one of the most comprehensive human trafficking laws in the United States.⁹⁶

The law essentially considers sex trafficking as the most severe form of promoting prostitution and includes a comprehensive definition of trafficking, which lists numerous common tactics of traffickers. The law prohibits, for example, "advancing" or "profiting" from prostitution by providing drugs such as concentrated cannabis, methadone or Rohypnol (the "date rape" drug), making misleading statements to involve a person in prostitution, taking identity papers, keeping a victim in debt bondage or using threats or coercion, such as exposure of secrets that might subject a victim to humiliation or contempt.

There are tough penalties for traffickers as the crime has been made a class B felony, of up to 25 years in prison, which exceeds Canada's maximum penalty for the crime by 11 years. The law also provides for comprehensive victim services. There is a noted focus on reducing the demand to purchase sex as the law clarifies that sex tourism is illegal, even when trips are arranged to places where prostitution is legal, and the penalties for patronizing prostitution have increased in severity, from a 90-day to a 360-day maximum possible prison sentence.

Further, the *Safe Harbor for Exploited Children Act*, passed in 2010, presumes that a juvenile charged with a prostitution offense is a severely trafficked person rather than a criminal, in an attempt to properly focus prosecutions on traffickers rather than exploited youth.⁹⁷

While the New York sex-trafficking laws are still narrower in scope than the Palermo Protocol, which can encompass mail-order and internet brides as well as marriage trafficking generally, they are reported to be a significant improvement on both New York's prior human trafficking laws and the federal law, the *Trafficking Victims Protection Act*.⁹⁸

In addition, the New York State Senate is currently considering a Women's Equality Act, following the FBI arrests of 150 alleged pimps in 76 cities who are accused of trafficking 105 girls between ages 9-17.⁹⁹ The Act includes a provision that would create an affirmative defense to a prostitution charge that the individual was a trafficking victim; increase penalties across the board for human trafficking; create a new offense for johns of

⁹⁵ "National Sex Trafficking Sting Yields 359 Arrests", *The Sacramento Bee*, 30 July 2013, online: The Sacramento Bee <www.sacbee.com>.

⁹⁶ Andra Ackerman and Christa Stewart, "New York State's Human Trafficking Law" in Jill Goodman and Dorchon Leidholdt, eds, *Lawyer's Manual on Human Trafficking* (New York: Supreme Court of the State of New York, 2011) at 51.

⁹⁷ *Ibid* at 57.

⁹⁸ *Ibid* at 51-58

⁹⁹ Tiffany Brooks, "Sex-trafficking bust shows need for Women's Equality Agenda," *Legislativegazette.com* (30 July, 2013) online: <<http://www.legislativegazette.com>>.

aggravated patronizing of a minor; and create a civil action for victims of trafficking against their perpetrators.¹⁰⁰

In addition, the state of New York has created the United States' first state-wide system of specialized criminal courts to handle prostitution and sex trafficking cases.¹⁰¹ There will be 11 "Human Trafficking Intervention Courts" across the state that bring together specially trained prosecutors, judges and defense lawyers, social workers and an array of other services.¹⁰² All prostitution and human trafficking-related cases that continue past arraignment can be referred to these specialized courts upon agreement of the judge, defense lawyer and prosecutor. The Intervention courts will refer defendants to a myriad of services that provide drug treatment, temporary housing, immigration assistance, health care, education and job training, in an effort to help them exit their trafficking situation. The new courts are modeled in many respects on existing specialized courts for domestic violence and low-level drug offenses, view defendants as exploited and abused victims rather than criminals, and attempt to address some of the underlying reasons a person finds themselves in prostitution. Reportedly, minimal new spending is required for the courts - existing resources are managed more creatively - although the funding for the support services remains unclear.¹⁰³

While it is early days, this reorientation of the court system to serve victim's needs is worth watching, as it appears to address many of the root causes and vulnerabilities of trafficking victims rather than penalizing them for difficult life experiences.

2.4 International Summary

Overall, while the countries examined have responded to the UN Protocol against trafficking with similar legislative measures, and treat trafficking for sexual exploitation as a very serious issue, there is wide variation in how they view and legislate in relation to prostitution, which forms the marketplace for sex trafficking. Their approaches cover the full range from decriminalization of all activities, to prohibition of all activities related to prostitution. In several federal countries, unlike Canada, prostitution is largely a state or provincial issue, and states themselves can vary widely in terms of their legislative responses. These states often delegate the discretion to develop local licensing and regulation to municipal governments. In a number of countries and states there are pending or recent changes in prostitution legislation to respond more specifically to the issues of sex trafficking, to reduce the involvement of organized crime and exploitation, and to increase support for victims.

In some countries there has been a move away from a focus on morality and concerns with public nuisance, and a greater emphasis on using a public health approach to prevent violence and exploitation, and promote the health, safety and rights, of those working in the industry. Elsewhere, and particularly in Scandinavia, countries have instituted legislation to focus on

¹⁰⁰ *Ibid.*

¹⁰¹ William Rashbaum, "With Special Court, State Aims to Steer Women Away from Sex Trade", *New York Times* (25 September 2013) online: *New York Times* <<http://www.nytimes.com>>.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

the demand for sexual services and criminalize the purchase of sex in place of the traditional focus on criminalizing the (primarily female) suppliers of sexual services.

A number of governments have undertaken evaluations of their prostitution legislation, but the remit of studies is often quite narrow, or hampered by the lack of reliable data on illegal and legal prostitution activities. Even in countries with well-developed regulatory systems, it appears that a very high proportion of prostitution activity is illegal and extremely difficult to track, taking place in private residences, hotels or temporary locations. Changes in cellphone technology and the internet are increasingly affecting the sex industry, making the local regulation, licensing and monitoring of businesses and their personnel much less effective.

One relevant problem identified in some federations is the failure to consider trafficking across state boundaries, which results in a patchwork of approaches and a failure to coordinate monitoring of human trafficking and exploitation.

Measures taken by individual countries may impact neighbouring countries through the displacement of trafficking activities. There is some evidence to suggest that legalizing prostitution attracts human trafficking operations as law enforcement is no longer focused on the sex industry. In Europe, freedom of movement across borders in conjunction with increased sex trafficking has resulted in major changes in the constitution of women and girls in prostitution, from primarily locally-born women and girls to over 90% foreign-born in certain European countries.

3. Canada - Federal Legislation on Trafficking and Prostitution

Since signing the UN Protocol on Trafficking in Persons in 2002, Canada has passed a number of laws designed to deter trafficking activity and support victims. They include amendments to the Criminal Code and the Immigration and Refugee Protection Act.¹⁰⁴

This section of the report summarizes the current legislative framework relating to human trafficking in Canada at the federal level, highlights specific areas of concern and briefly summarizes several prostitution laws that overlap with human trafficking legislation and presents specific issues that require further discussion.

¹⁰⁴ To support the legal framework, the federal government has also launched a National Plan to Combat Human Trafficking (2012) and is piloting a local safety audit guide to aid municipalities, and provinces, in developing a comprehensive and strategic plan to prevent human trafficking and exploitation. Canada, Public Safety Canada, *Local Safety Audit Guide: To Prevent Trafficking in Persons and Related Exploitation* (Ottawa: National Crime Prevention Centre, 2013). [Local Safety Audit]

3.1 Canadian Criminal Code

Canada outlawed sex trafficking as well as labour trafficking in 2005 in its Criminal Code, following its ratification of the Trafficking Protocol three years earlier.¹⁰⁵ The law reads:

279.01 Trafficking in Persons

- (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purposes of exploiting them or facilitating their exploitation, is guilty of an indictable offence and liable.

In section 279.01(2), consent to the defining act is declared irrelevant in determining whether a violation has occurred, reflecting Art. 3(b) of the Trafficking Protocol.

Exploitation, which is widely considered the crux of the crime of human trafficking, is defined in Section 279.04 as:

- (1) cause[ing] them to provide, or offer to provide, labour or a service by engaging in conduct that [...] could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

In June 2012, the Criminal Code was amended to add factors to assist courts with the determination of whether exploitation exists. These factors include whether the accused:

- (a) used or threatened to use force or another form of coercion;
- (b) used deception; or
- (c) abused a position of trust, power or authority.¹⁰⁶

In addition, receiving a “material” or financial benefit with knowledge that it results from commission of a human trafficking offense is also an indictable offence.¹⁰⁷

Canada’s maximum imprisonment for committing a sex trafficking offense is 14 years, unless there are aggravating circumstances. Where a victim is under 18, there is a 5-year mandatory minimum prison sentence, and where a trafficker kidnaps a victim, commits aggravated assault/sexual assault against a victim, or causes death to the victim, life imprisonment may be imposed.¹⁰⁸

¹⁰⁵ Interview with Matt Taylor, Department of Justice Canada.

¹⁰⁶ These “factors” reflect the “means” from Trafficking Protocol’s definition of human trafficking. It is interesting to note that the Trafficking Protocol does not provide a definition of the central element of “exploitation,” leaving it up to countries to define this term for themselves.

¹⁰⁷ *Criminal Code*, *supra* note 4, s 279.02

¹⁰⁸ *Ibid* s 279.011. The mandatory minimum sentence for underage victims and the additional factors added to the definition of exploitation are the result of two private member bill of MP Joy Smith, who has taken up the human trafficking cause in the Canadian Parliament.

Human trafficking was also added, by amendment in 2012, to the list of crimes that can be prosecuted if committed outside Canada, or “extraterritorially.” This addition means that Canadians can be charged with Canada’s human trafficking offence even if they are operating in other countries where their activities could be legal under local laws.

In 2013, the existing law was challenged on the ground that it violated section 7 of the Canadian Charter of Rights and Freedoms. The specific challenge was that the law is overly broad and impermissibly vague when considering the extended range of conduct prohibited by the provision, the “diminished *mens rea*” [intent requirement] and the imprecise definition of exploitation.¹⁰⁹ This challenge was unsuccessful and the law was upheld.¹¹⁰

While the court did not have problems with the definition, discussions with diverse sectors do reveal a certain level of confusion as to what acts meet the Canadian Criminal Code definition of human trafficking. Specifically, certain acts are commonly thought to be required to show a criminal violation but, in fact, are not, including: movement of the victim, a border crossing, and an actual occurrence of exploitation. The first two acts are required to prove the immigration violation of human trafficking under the Immigration and Refugee Protection Act, as discussed below, however none of them are required by Canada’s central human trafficking law.

The Criminal Code definition may change in the near future. Currently there are two **private member bills** to amend Canada’s primary human trafficking law. Following numerous consultations, Maria Mourani, MP from Ahuntsic, Quebec introduced a Private Members Bill (C-452) in October 2012 to significantly amend the human trafficking provisions in the Criminal Code.¹¹¹ After changes in committee, the Third Reading version of the bill included the following amendments to the current law:¹¹²

- Longer prison terms resulting from consecutive rather than concurrent sentencing for offenses related to trafficking in persons.¹¹³
- Police powers to seize human trafficking profits, called “forfeiture of proceeds of crime,” from those convicted.¹¹⁴
- Creation of a presumption intended to shift the burden of proof away from the victim and to the accused trafficker.¹¹⁵

¹⁰⁹ *R. v. Beckford*, [2013] OJ No 371, 2013 ONSC 653.

¹¹⁰ *Ibid.*

¹¹¹ The bill is supported by MP Joy Smith, who successfully amended the human trafficking law via two prior private member bills (C-310 and C-268): Bill C-310, *An Act to amend the Criminal Code (trafficking in persons)*, 1st Sess, 41st Parl, 2012; Bill C-268, *An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)*, 2rd Sess, 40th Parl, 2009.

¹¹² A proposed new definition of exploitation based on language in the Trafficking Protocol was removed during legislative discussions. Interview with Maria Mourani.

¹¹³ See Bill C-452, *An Act to Amend the Criminal Code (exploitation and trafficking in persons)*, 1st Sess, 41st Parl, 2013.

¹¹⁴ See *ibid*, proposing amendment of 462.37(2.02) to include human trafficking provisions under Criminal Code s 279.01 to 279.03 to the list of offenses for which the forfeiture of the proceeds of crime must be ordered upon conviction.

¹¹⁵ The new provision will be s 279.01(3).

It is interesting to note that Canada's procuring law inspired the last of the proposed amendments. The procuring law creates a presumption that evidence that a person who lives in a "common bawdy-house" (brothel) or lives with or is habitually in the company of a person in prostitution can be proof that a person is living on the avails of prostitution.¹¹⁶ While the presumption of innocence appears to be implicated by such presumptions, the Supreme Court of Canada rejected a constitutional challenge to the procuring presumption in 2001, finding it a reasonable limit of an accused's rights.¹¹⁷ This amendment is an attempt to respond to the reluctance of victims to testify, which results in fewer charges being laid by prosecutors.¹¹⁸

In addition, another private member bill, C-517, was introduced by Kelly Block, Member of Parliament from Saskatoon-Rosetown-Biggan, on 2 June 2013. The bill proposes redrafting 279.01(a) and (b) of the CCC to place new mandatory minimums on the basic crime of human trafficking under the Criminal Code. Specifically, the bill calls for a five-year mandatory minimum where a trafficker kidnaps, commits aggravated assault or aggravated sexual assault, or causes death to, a victim while trafficking them, and a four-year mandatory minimum in all other cases. While most agree that the sentences for human trafficking in Canada are quite low, there is significant debate about whether mandatory minimum sentences are the best way to address this issue.¹¹⁹

3.2 Canada's Immigration and Refugee Protection Act

There is a second human trafficking provision in Canadian law. Section 118(1) of the Immigration and Refugee Protection Act (IRPA) prohibits knowingly organizing "the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion." "Organizing" means the "recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons." In short, this law only prohibits international trafficking across the Canadian border.

In many respects, the IRPA provision is broader than the Trafficking Protocol as prosecutors do not need evidence that the Canadian border was crossed for the purpose of exploitation, but rather only need evidence that an individual was transported into Canada by means of abduction, fraud, or other means of coercion. Very few charges have been laid under this provision since Wai Chi (Michael) Ng was acquitted of human trafficking charges at trial in British Columbia in 2005. That said, recently (2013) Franco Yiu Kwan Orr was convicted of human trafficking under the IRPA provision in British Columbia and sentenced to 18 months in jail. One Canadian nongovernmental organization has recently proposed legislative amendments to the Immigration and Refugee Protection Act to provide increased protection for trafficked persons in Canada.¹²⁰

¹¹⁶ See *Criminal Code*, *supra* note 4 at 212(3).

¹¹⁷ *R v Downey* [1992] 2 SCR 10.

¹¹⁸ House of Commons Debates, 41st Parl, 1st Sess (29 January 2013) at 7 (Hon Maria Mourani) online: Open Parliament <<http://openparliament.ca>>.

¹¹⁹ The body of literature critiquing mandatory minimums is too extensive to cite here. See, e.g., *R v Smickle*, 2012 ONSC 602 (three-year mandatory minimum sentence in gun law found grossly disproportionate to the crime).

¹²⁰ Canadian Council for Refugees, "Proposal for Legislative Amendment to Protect Trafficked Persons" (2013) online: Canadian Council for Refugees <<http://ccrweb.ca>>.

Some human trafficking scholars and European policy makers have recommended removing human trafficking provisions from immigration laws altogether to reduce the temptation of immigration and law enforcement officials to curb legal migration flows in the name of fighting human trafficking.¹²¹ Shifting the focus away from a country's borders could also help to properly focus law enforcement and the media's attention on trafficking as a crime of exploitation rather than a crime of border-crossing, the latter of which is required for the often conflated, but significantly different crime of smuggling.¹²²

3.3 Specific issues

This section considers several specific legal and law enforcement issues related to Canada's human trafficking law.

i. Jurisdictional Issues

It is important to consider Canada's federal system when addressing anti-sex trafficking laws and programs. Under this federal system, the "jurisdiction" (authority) to make laws is divided between the Parliament of Canada and the provincial and territorial legislatures.¹²³ In brief, criminal law falls under federal jurisdiction and laws concerning property and the "administration of justice" fall under provincial jurisdiction. Victim needs, however, is an area of shared jurisdiction between the federal and provincial governments, thus permitting either level of government to provide victim services and programs. Citizenship and Immigration Canada's temporary residence permits for internationally trafficked victims, discussed below, is currently the primary federal response to trafficking victims' needs.¹²⁴

At the law enforcement level, there have been jurisdictional debates about which law enforcement agency "owns" a human trafficking case.¹²⁵ Given the frequent tactic of traffickers to move victims between jurisdictions, some agencies have debated whether they should proceed with prosecution within their jurisdiction when many of the acts comprising the crime occurred in other jurisdictions. Some law enforcement agencies mistakenly assume, however, that human trafficking is an RCMP concern as victims can be moved from province to province. It is important to note, however, that the crime can occur solely within one province or municipality. Where a victim is moved between provinces, an increased focus on collecting corroborating evidence of the crime early in the investigative stages, discussed further below, can help convince an agency that they have the required "jurisdictional contacts" to proceed with prosecution.

¹²¹ See e.g., Gallagher, *supra* note 17; Jenny Marra, *Human Trafficking (Scotland) Bill* (Consultation) (Edinburgh: Scottish Parliament, 2013), online: Jenny Marra MSP <<http://www.jennymarra.com>>.

¹²² The legal differences between trafficking and smuggling are discussed in Barrett and Shaw, *Towards Human Trafficking Prevention 2011*, *supra* note 10.

¹²³ See *Constitution Act, 1867*, RSC 1867, 30 & 31 Victoria c.3 (UK), s 91(27), 92(13). Parliament can make laws for all of Canada, but only on matters designated to it by the Constitution. Likewise, the provinces and territories can only make laws on matters designated to them by the Constitution, and these laws apply only within the provincial or territorial border.

¹²⁴ Department of Justice, "Canadian Statement of Basic Principles of Justice for Victims of Crime" (2003) online: Government of Canada, Department of Justice <<http://www.justice.gc.ca>>.

¹²⁵ Interviews with J. Fisher and S. Horchuk.

ii. Canada's "Safety Requirement"

According to law enforcement, the definition of exploitation set out in section 279.04 of the *Criminal Code* has made it difficult to apply Canada's human trafficking provision to certain trafficker-victim relationships. "Exploitation" for the purposes of human trafficking requires victims to demonstrate a threat to safety - specifically, a belief "that their safety, or the safety of a person known to them, would be threatened if they failed to provide the labour or service".¹²⁶ This safety requirement is not found in the Trafficking Protocol and does not obviously account for the many cases where victims are psychologically, rather than physically, controlled and coerced.

Significant work has been done, both internationally and locally, to explain the common psychological tactics used by traffickers to control their victim's behaviour. Frequently - and particularly in the case of domestic trafficking - traffickers prey upon young people with histories of physical and sexual abuse, which leaves them more vulnerable to psychological methods of control both because of their naiveté and past trauma. Service providers have found that traffickers are at times able to exploit their victims while *increasing*, rather than threatening, the victim's sense of safety. This is most evident where traffickers establish false romantic relationships with their victims or foster other forms of emotional dependency through seduction and deception.¹²⁷ Traffickers can also be family members or can create a sense of familial loyalty by impregnating their victims.¹²⁸ In such situations, a "trauma bond" is formed and victims will often report beliefs that their traffickers provide love, respect and protection rather than a threat to safety.¹²⁹

Drafters of the law explain that the Canadian Criminal Code definition of exploitation can include psychological as well as physical harms and threats and point out that there is no requirement that the victim actually experience fear, only that their or another's safety was threatened.¹³⁰ They also point to the objective "reasonable person" standard built into the exploitation definition: "a person exploits another person if they cause them to provide, or offer to provide [...] a service by engaging in conduct that, in all the circumstances, could *reasonably be expected* to cause the other person to believe that their safety or the safety of a person known to them would be threatened. In short, even if a victim believes her (and her loved one's) safety is not threatened, if a reasonable person would think that it was, exploitation can be proven.

There are several challenges with the reasonable person standard, however. First, it is very difficult for most reasonable minds to fathom what it would be like to experience long-term abuse and even harder to guess how they might react to a given situation if they had.¹³¹ Second, the standard focuses scrutiny and inquiry on the inner workings of a victim's mind rather than on a trafficker's actions and, hence, makes the victim's testimony crucially

¹²⁶ *Criminal Code*, *supra* note 4, s 279.04.

¹²⁷ Benjamin Perrin, *Canada's Invisible Chains Underground World of Human Trafficking*, (Toronto: Penguin Group, 2010) at 69, 82, 84. [Perrin] See also *R v Nakpangi*, [2008] OJ No 6022 at para 5.

¹²⁸ *Ibid* at 78.

¹²⁹ *Ibid* at 83 and 123.

¹³⁰ Interview with Matt Taylor and Nathalie Levman. The safety language was borrowed from section 264 of the Criminal Code on criminal harassment.

¹³¹ Expert testimony from trauma specialists can be particularly useful on this point.

important to the case. Given the frequently fragile and complex psychological condition of sex trafficking victims, this type of scrutiny and pressure can be at best uncomfortable and at worst re-traumatizing. Further, because of abuse they have suffered, sex trafficking victims can be difficult witnesses. They may have continuing drug addictions, may not show up for court, may still be under the trafficker's control, may have past criminal records (often by crimes compelled by traffickers), may not want their families to find out, and may contradict themselves or even lie to authorities, or worse yet, on the witness stand. In short, a trafficking victim's testimony and actions can be hard for a prosecutor to explain to a jury.

Given this complexity in proving exploitation, one can understand why prosecutors have shied away from human trafficking charges or allowed the charge to be dropped in the plea bargain process.¹³² This is particularly true where prosecutors are directed, as they are in some provinces, to only approve charges where there is a "substantial likelihood of conviction."¹³³ Add to these factors that there are other related charges that can be pursued to cover some of the criminal acts involved in sex trafficking cases and the low number of human trafficking convictions in Canada to date is unsurprising.

The perverse outcome in the case of Nakpangi highlights the difficulty with the safety provision.¹³⁴ Nakpangi controlled and sold two girls for sex, a 14-year-old and an 18-year-old. The younger girl had several characteristics that made her vulnerable to exploitation. She suffered from Fetal Alcohol Syndrome and experienced an unstable childhood as a result of growing up in various group homes. Convincing her that he was her boyfriend, Nakpangi controlled her through psychological manipulation and earned about \$60,000 through selling her for sex in various Mississauga motel rooms.¹³⁵ Psychological coercion was sufficient to control the younger girl; however, physical violence and threats of violence were necessary to control the older, 18-year old girl. After suffering two and a half years of sexual exploitation under Nakpangi, the older girl escaped, reported the crimes she experienced to police and helped police locate the younger girl. Nakpangi was sentenced to five years in jail - three years for trafficking the 18-year old girl, and two for living off the avails of prostituting the 14-year old. The Peel Regional Police did not lay the more serious human trafficking charge against Nakpangi for his exploitation of the 14-year old girl because she insisted she was in love with him and that "the work was on her own accord."¹³⁶ While this need not have been the case and, additionally, the law explicitly states that consent of the victim is irrelevant, law enforcement's best judgement was that their case was too weak to lay the trafficking charges with regards to the exploitation of the younger girl.

It is important to note, however, that the Nakpani case was decided before the introduction of subsection 279.04(2), which broadens the definition of exploitation. The added "factors" are meant as an interpretive aid to help courts understand methods of exploitation and require a showing of deception, coercion or abuse of trust.¹³⁷ While this has always been the

¹³² Interviews with M-C Arsenault, D. Darby, S. Horchuk.

¹³³ See e.g., Ministry of Justice, "Data Definitions" online: BC Government <<http://www.ag.gov.bc.ca>>.

¹³⁴ *R v Nakpangi*, [2008] OJ No 6022.

¹³⁵ *Ibid* at para 6.

¹³⁶ Tamara Cherry, "Just a slap on wrist MP wants stiffer penalties for trafficking kids", *Toronto Sun* (29 January 2009) online: *Toronto Sun* <www.torontosun.com>.

¹³⁷ *House of Commons Debates* 41st Parliament, 1st Session, Number 36 (October 25, 2011) at 1725 (Hon Joy Smith).

case even with the original definition,¹³⁸ the more explicit articulation may help law enforcement more easily identify cases that lack obvious physical threats. Despite this positive addition to the law, the safety requirement remains a challenge. Further, consideration of the exploitation factors is not mandatory, so judges can ignore them if so inclined. Time will tell if this interpretive aid assists with bringing in the widely reported cases of psychological control. If this provision remains a barrier to prosecutions - conceptual or otherwise - a legislative amendment could be considered to remove the safety requirement from the law, as the Trafficking Protocol does not require it.¹³⁹

iii. No Criminality for Compelled Illegal Acts

Trafficked persons are frequently arrested, detained, charged and at times prosecuted for unlawful activities, particularly prostitution, drug or immigration related violations.¹⁴⁰ Criminalization and detention of trafficking victims is incompatible with a human rights-based approach to combatting trafficking because it both compounds the harms already experienced by trafficked person and denies them rights to which they are entitled. These basic rights include, among others, freedom of movement, and the prohibitions against gender discrimination and arbitrary detention.¹⁴¹ A crucial shift in thinking is required by law enforcement to **consider trafficked people as victims of crime and victims of human rights violations** rather than criminals.

Unfortunately, neither international law nor Canadian law provides substantial guidance on the treatment of victims of crime. There are, however basic principles that have been developed that underline that victims must have access to justice mechanisms and be treated with compassion and respect for their dignity, the latter of which is frequently overlooked when dealing with victims of sex trafficking.¹⁴² The recent European Trafficking Directive requires its member states to “take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of sex trafficking for their involvement in criminal activities which they have been compelled to commit as a direct consequence of [their trafficking situation].”¹⁴³ This principle has the support of international groups such as the Human Rights Council, the UN General Assembly

¹³⁸ Information provided by Matt Taylor.

¹³⁹ A proposal to do just this was recently removed from Hon Maria Mourani’s private member bill C-452 in order to secure widespread party support in the House of Commons. Interview with Hon Maria Mourani.

¹⁴⁰ Gallagher and Karleback *supra* note 17 at 8. Interviews with several law enforcement officers.

¹⁴¹ *Ibid.*

¹⁴² See e.g., Canadian Statement of Basic Principles of Justice for Victims of Crime (2003) *supra* note 124; *Criminal Code*, *supra* note 4, s 722 (victim impact statements); Basic Principles for Victims of Crime and Abuse of Power, para. 2; Optional Protocol to the Child Convention on the Sale of Children, Child Prostitution and Child Pornography, arts. 8 and 9.; *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UNGAOR, 96th plenary meeting, 1985, UN Doc A/RES/40/34.

¹⁴³ EC, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* [2011] OJ, L101/1 at art 8; see also Council of Europe, GRETA, *Council of Europe Convention on Action against Trafficking in Human Beings*, CETS No 197, (2005)(entered into force on 1 February 2008) art 26 (non-punishment for victim’s involvement in compelled unlawful activities.)

and is recently being formally implemented at the state/provincial level in some countries.¹⁴⁴

While certain Canadian police forces say they have an unofficial non-enforcement approach with regards to prostitution-related crimes, a clear statement outlining the non-criminalization of compelled acts by trafficking victims in the human trafficking provision would assist with a uniform application of this principle across the country. This issue becomes particularly important when considering the possible detention of suspected trafficking victims, such as Alberta's Protection of Sexually Exploited Children Act (PESECA), discussed below. Where provinces are to employ similar laws permitting victim detention, these laws should be closely examined on a case by case basis against the crucial principles of necessity, legality and proportionality.¹⁴⁵ Using these standards, it is likely that detention will only be permitted as a last resort in response to specific threats to an individual's safety and, where the detainee is a child, the detaining authority should show that the detention is in the child's best interests.¹⁴⁶

iv. Strengthening Remedies for Victims

Given the current lack of incentives for victims to come forward and assist with the prosecution of traffickers, the international community and several European countries have been focused on strengthening the remedies available to trafficking victims.¹⁴⁷ While monetary compensation does not remove the traumatic effects of the human trafficking process, it can improve a victim's chance of eventual reintegration into society as well as offering economic and psychological empowerment and protection from being re-trafficked, which is a common phenomenon.¹⁴⁸ Further, civil law suits can only be initiated by a victim, which gives survivors greater control over the legal process than in criminal suits, which are initiated and controlled by crown prosecutors.¹⁴⁹

The modes of administering compensation to victims differ by jurisdiction, but are typically either administrative or judicial actions.¹⁵⁰ Administrative actions are typically funded by a collective victim's fund while a judicial action is funded by a seizure of a trafficker's assets. The judicial action can be either an order of compensation to the victim at the end of a

¹⁴⁴ See e.g., New York State's new system of human trafficking courts that was established to ensure victim's services would be provided to trafficked individuals.

¹⁴⁵ Gallagher and Karlebach, *supra* note 17 at 10.

¹⁴⁶ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art. 3.2; UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, ESC Rec E/2002/68/Add.1, 20 May 2002, Principle 10.

¹⁴⁷ The international basis for compensating human trafficking victims is well defined. See *United Nations Convention against Transnational Organized Crime*, GA Res 55/25, 55th Sess., Supp No 49, UN DOC A/RES/55/25 (2000) arts 14, 25(2). [TOC Convention]; Human Trafficking Protocol, *supra* note 14, art 6(6).

¹⁴⁸ See UNODC, *Anti Human Trafficking Manual for Criminal Justice Practitioners*, module 13 (New York, United Nations, 2009).

¹⁴⁹ Civil suits have an end goal of monetary compensation rather than imprisonment.

¹⁵⁰ More important than the form of the compensation system, is the simplicity and accessibility of the compensation process. A cumbersome process will discourage claims, undermine the purpose of compensation, and reduce the likelihood that the victim will cooperate with enforcement actions.

criminal trial or adjudication of a separate civil claim initiated by the individual victim. A damage claim in a civil case could be based on, among other things:¹⁵¹

- Unpaid or underpaid wages
- Various payments or “deductions” from wages for rent, subsistence, transport
- Reimbursement of illegal “fees” paid to a recruiting or employment agency or for smuggling or transportation
- “Fines” imposed by traffickers for bad behaviour
- Medical expenses
- Opportunities lost
- Pain and suffering due to physical or psychological abuse
- Legal fees

While the international community recommends national remedies for victims of human trafficking,¹⁵² such remedies remain relatively rare. In Canada, developing a national victim remedy is not straightforward as the responsibility for victims is an area of shared authority between the federal government and the provinces and territories. Thus, any federal compensation scheme must be designed to stay within the bounds of federal jurisdiction.¹⁵³ While Canada has a Victims Fund, this fund is only accessible to support provincial and territorial governmental programs rather than individual victims of crime.¹⁵⁴ Provinces, however, can and have begun to establish their own judicial actions to compensate victims of human trafficking, as discussed further below, which should be encouraged.

v. Asset Recovery

Asset recovery is an important aspect of the law enforcement response to human trafficking as it decreases a trafficker’s profit, which is the primary motivation for the crime. Strong confiscation regimes also help support criminal convictions for trafficking as identified assets provide strong corroborating evidence for prosecutions. Asset recovery is also important because it can be used to compensate victims for the harms inflicted.

International law requires Canada to take action to recover human trafficking-related assets and create adequate powers to enable asset seizures.¹⁵⁵ It does not, however **require** Canada to use these proceeds to support trafficking victims, although it does advise this course of action.¹⁵⁶ Both the UN Human Rights Trafficking Principles and Guidelines and the Special Rapporteur on Human Trafficking recommend that countries establish laws on confiscation of assets and proceeds of trafficking crimes and use these assets to compensate trafficked

¹⁵¹ For a detailed discussion of the economic costs of sex trafficking see Barrett, *Sex Trafficking*, 2013, *supra* note 3 at 44-57.

¹⁵² See e.g., UNODC module 13, *supra* note 148.

¹⁵³ Governmental services provided to victims of human trafficking are administered by the Provinces/Territories who may receive funding from the federal Government.

¹⁵⁴ Department of Justice Canada, “Victims Fund - Provincial Territorial Program Funding” (2013) online: Department of Justice <<http://www.justice.gc.ca>>.

¹⁵⁵ TOC Convention, *supra* note 147, arts. 12-14.

¹⁵⁶ *Ibid* art. 14(2).

individuals. They also stress the importance of training law enforcement in identifying, tracing, freezing and confiscating trafficking-related assets.¹⁵⁷

Canada has a national law on the proceeds of crime, enacted to help Canada fight transnational crime, particularly money laundering, which should be further explored in future human trafficking cases.¹⁵⁸ This Act allows the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to assist in the detection, prevention and deterrence of money laundering activities that are frequently used by traffickers. FINTRAC can help law enforcement “follow the money” by analyzing transaction reports from financial institutions and other entities in conjunction with information from police and security agencies with which FINTRAC has signed an information-sharing Memorandum of Understanding.¹⁵⁹ In some cases, financial intelligence can provide linkages between individuals, businesses and accounts in ways not possible through other forms of intelligence gathering or analysis.

Although less than 5% of FINTRAC’s criminal case work since 2007 has been on human smuggling/human trafficking, and the information is not disaggregated, this Centre could prove helpful in overcoming provincial jurisdictional challenges related to information sharing and privacy as well as to help law enforcement and judges determine where the human trafficking occurred.¹⁶⁰

vi. The Importance of Corroborating Evidence

Increased attention should be given in sex trafficking prosecutions in developing alternate or “corroborative” evidence, to reduce the importance of the trafficking victim’s testimony.¹⁶¹ Such evidence can include physical evidence, business records, receipts, email and text exchanges, and eyewitness testimony. Expert witnesses can also be particularly useful with respect to a victim’s psychological issues that arise at trial as well as interpreting financial records. As currently drafted, Canadian human trafficking cases are frequently perceived to hinge upon the victim’s testimony. Due to the typical trauma experienced in sex trafficking cases along with current lives of instability, however, victims often do not make ideal witnesses. Law enforcement investigations should focus on collecting as much corroborating evidence as possible, to lessen the burden on the victim to perform well in court.

vii. Temporary Resident Permits for Trafficking Victims

Although there have been few human trafficking charges laid under the Immigration and Refugee Protection Act, there are immigration provisions that provide temporary residence permits (TRPs) for international human trafficking victims. These permits provide trafficked

¹⁵⁷ Joy Ngozi Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children*, Office of the UN High Commissioner for Human Rights Council, UN Doc A/HRC/17/35 (2011), para 70; Trafficking Principles and Guidelines, Principle 16, Guideline 4.4.

¹⁵⁸ See *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c.17, s 3(c).

¹⁵⁹ Information provided by Deirdre Jackson.

¹⁶⁰ Canada, FINTRAC Annual Report (2012) at 6. Interview with Steve Horchuk.

¹⁶¹ Interviews with J. Fisher, D. Darby, S. Horchuk, J. Lalande. See also Lauren Hersh, “Sex Trafficking Investigations and Prosecutions” Jill Goodman and Dorchon Leidholdt, eds, *Lawyer’s Manual on Human Trafficking* (New York: Supreme Court of the State of New York, 2011).

individuals with legal immigration status for 180 days, access to health care and the right to apply for a work permit.¹⁶² The permits are renewable at the discretion of the Citizenship and Immigration Officer on a particular file. From 2006-2011, 178 TRPs were granted by Citizenship and Immigration Canada, but thus far only 14 have been granted to sex trafficking victims.¹⁶³

Various groups are critical of the human trafficking TRP program, however. Service providers and nongovernment organizations have complained that, despite language in the TRP regulations stating that assistance in prosecutions is not required for a TRP to be issued, in practice, those with active cases in the criminal justice system are more successful in gaining both initial TRPs and extensions of their permits.¹⁶⁴ Other critiques include:

- inconsistent application of the TRP guidelines across the country
- narrow interpretation of human trafficking employed by CIC officers, often discounting psychological control and violence
- procedural obstructions, such as difficulty in obtaining a TRP interview and delays in obtaining initial permits and renewals of permits
- significant disincentives to apply for permit, including involvement of law enforcement officers in the TRP interviews and risk of deportation for those without immigration status who are determined not to be trafficked
- unsuccessful refugee claimants not allowed to apply for TRPs for 12 months and designated foreign nationals are barred from applying for TRPs for at least 5 years
- unreasonably high fees required to apply for renewal of permits¹⁶⁵

Citizenship and Immigration Canada could benefit from guidelines and/or protocols to improve administration of this program so that it supports the aim of assisting internationally trafficked persons.

Possible improvements to the federal (or provincial) human trafficking law

Based on interviews with informants and a review of numerous model trafficking laws and the human trafficking legal literature, the following list proposes additions to the existing federal human trafficking provision in the Criminal Code to make it more effective in prosecuting traffickers and protecting victims.

The principles in the suggestions are relevant for provincial laws as well. These include:¹⁶⁶

¹⁶² See Citizenship and Immigration Canada, Operational Manual IP 1, Temporary Resident Permits.

¹⁶³ Information provided by Citizenship and Immigration Canada in February, 2013.

¹⁶⁴ See Canadian Council for Refugees, "Temporary Resident Permits: Limits to protection for trafficked persons" (June 2013) online: Canadian Council for Refugees <<http://ccrweb.ca>>.

¹⁶⁵ *Ibid.*

¹⁶⁶ See National Conference of Commissioners on Uniform State Laws, Uniform Act on Prevention of and Remedies for Human Trafficking (2013) (described as "a game-changer" by those working with U.S. law enforcement and victims), http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013AM_UPRHT_As%20approved.pdf. See also Polaris Project, Model Provisions of Comprehensive State Legislation to Combat Human Trafficking (2010); United Nations Office on Drugs and Crime, Model Law against Trafficking in Persons (2009).

- 1) Specifying in the definition of human trafficking common human trafficking tactics, such as debt bondage, fraud, financial harm, extortion, controlling access to controlled substances, blackmail (such as revealing information to family members) and use of a victim's disability/mental impairment¹⁶⁷
- 2) Adding to the clause that a victim's consent to human trafficking is irrelevant (s. 279.01(2)), that the following are also irrelevant and thus cannot constitute a defense:
 - a. evidence of a victim's sexual history¹⁶⁸
 - b. connection by blood or marriage to the defendant or other trafficker
 - c. age of consent to sex
 - d. legal age of marriage
- 3) Adding a clause that prohibits knowingly patronizing a victim of human trafficking or knowingly engaging in commercial sexual activity with a minor
- 4) Adding a clause that establishes business entity liability where an entity (such as an escort agency or other "employment" agency) knowingly engages in human trafficking or does not effectively stop an employee or agent from doing so
- 5) Adding a clause requiring convicted traffickers to pay restitution to the victim and to forfeit real or personal property used in or gained from human trafficking activities. This provision should specify that the immigration status of the victim or return to country of origin shall not prevent the court from ordering payment of compensation.¹⁶⁹
- 6) Adding a provision that allows victims to bring civil actions against their traffickers¹⁷⁰ This provision should include a statute of limitations clause that "tolls" the required time to commence litigation to set number of years from when the victim is in a psychologically stable condition.¹⁷¹
- 7) Adding a provision providing immunity to minors who commit non-violent offenses as a direct result of being trafficked and reclassifying them as children in need of services
- 8) Adding a provision allowing victims to vacate prior convictions for non-violent offenses that directly resulted from being a human trafficking victim
- 9) Adding an affirmative defense of "victim of human trafficking" to prostitution-related charges
- 10) Place in the existing law references to the Criminal Code provisions on a) criminal attempts b) aiding, abetting and counseling and c) obstructing justice.

¹⁶⁷ This could be achieved by providing a non-exhaustive list of what "exercises control or influence" over a person means in sec. 279.01(1) of the Criminal Code. Note that Manitoba's law already includes the tactics of fraud and provision of a controlled substance.

¹⁶⁸ This could be borrowed from existing sexual assault provisions in the Criminal Code.

¹⁶⁹ Note that a reference to forfeitures under the proceeds of crime act may be forthcoming in 2014 if Private Member Bill 452 passes the Senate.

¹⁷⁰ This suggestion requires further jurisdictional analysis to determine its constitutionality. As civil actions are typically adjourned until criminal cases have concluded, civil actions should follow criminal proceedings.

¹⁷¹ See Uniform Law Commission, Uniform Act on Prevention of and Remedies for Human Trafficking, http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013AM_UPRHT_As%20approved.pdf, sec. 12, p. 9.

3.4 Prostitution laws in Canada

In Canada, there has been significant debate on the best manner in which to handle prostitution. Despite numerous constitutional challenges to Canada's criminal laws, there had been little legal change since the early 19th century.¹⁷² As discussed above, the legislative framework on prostitution is relevant to human trafficking discussion as the prostitution market is the venue where trafficked people are sold for sex.

Before December 2013, the actual buying and selling of sex was legal in Canada, but most surrounding activities are illegal. The Criminal Code of Canada made it unlawful to:

- own, manage, lease, occupy, or be found in a bawdy house (s. 210)
- transport anyone to a bawdy house (s. 211)
- procure someone for prostitution (s. 212(1))
- live off the avails of prostitution (s. 212(1)(j))
- pay for sex with anyone under 18 (s. 212(4))
- communicate in public for purposes of prostitution (s. 213)

The bawdy house and "living off the avails" provisions were challenged in the *Bedford* case. In *Bedford*, the Ontario Court of Appeal found in March 2012 that these provisions violated the Canadian Charter of Rights and Freedoms, except, in the case of the avails provision, "in circumstances of exploitation." Law enforcement officers report that investigations involving bawdy houses and those "living off the avails" have been stayed in several cities awaiting the outcome of the *Bedford* decision from the Supreme Court.¹⁷³ On December 20, 2013, the Supreme Court affirmed the Ontario Court of Appeals decision that the provisions challenged in *Bedford* were unconstitutional. The Court delayed its declaration of invalidity for one year to give Parliament time to redraft the prostitution legislation in lines with their ruling. This delay will likely stall investigations in these areas even further.

One of the pre-December 2013 explanations for the modest number of sex trafficking cases prosecuted was that many cases are prosecuted as related crimes, including prostitution-related crimes.¹⁷⁴ To cite but one example, the procuring laws in section 212 of the Criminal Code have several overlapping provisions with the human trafficking law, including:

- "(g) procures a person to enter or leave Canada, for the purpose of prostitution"
- "(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,"
- "(j) lives wholly or in part on the avails of prostitution of another person,"

While exploitation via procuring was just as illegal as exploitation via human trafficking, prostitution laws tend to carry lower sentences and less stigma to the convicted than human

¹⁷² Barnett, *supra* note 22 at 11.

¹⁷³ Interviews of Jim Fisher, Isabelle Bigue, Steve Horchuk.

¹⁷⁴ Interview of M-C Arsenault. A forthcoming RMCP report entitled "Project Safekeeping" will report on past files that have human trafficking indicators, but were prosecuted as other crimes.

trafficking.¹⁷⁵ However, the procuring laws offered benefits to law enforcement that the human trafficking law does not, including a specific aiding and abetting clause as well as a provision that shifts the burden of proof when a third party lives with or is habitually in the company of a woman or girl in prostitution.¹⁷⁶ Now that the Supreme Court has upheld the Ontario Court of Appeal's ruling in *Bedford*, police and prosecutors will no longer be able to continue their practice of charging possible sex trafficking cases under the more familiar bawdy house provisions of the Criminal Code. Procuring charges will also likely decrease as procuring has been deemed to only be prohibited where "exploitation" can be proven.

3.5 Federal Summary

In sum, Canada's primary law for addressing human trafficking is section 279.01 of the Criminal Code. The human trafficking provision in the Immigration and Refugees Protection Act is focused on border security rather than exploitation, and very few charges have been laid under the provision. The broad Criminal Code definition of human trafficking has been amended several times in recent years in attempts to make its provision more accessible to investigators, police and prosecutors. Two private member bills propose to amend it yet again and several further amendments would help strengthen the law. Some stakeholders lament the 'threat to safety' requirement in the definition of exploitation (Criminal Code 279.04), which was incorporated into Canada's broad human trafficking definition to limit its scope. Provisions should be made to ensure that sex trafficking victims are not treated as criminals and that their human rights are protected. Financial and asset recovery laws could be adapted and tapped to assist human trafficking investigations and undermine the profit windfall that motivates sex traffickers. Developing robust remedies for human trafficking victims would likely increase the number of victims coming forward as well as help to meet victim's basic needs and future plans, as discussed further in the next section. Several Canadian prostitution laws, notably certain procuring provisions, overlap with the human trafficking law, but this could change depending on the Bedford case decision from the Supreme Court, expected in the coming months.

4. Provincial Legislation in Canada

Canada's provinces vary in their efforts to control trafficking, sexual exploitation and prostitution. As a general matter, the provinces can pass and enforce laws as long as they do not conflict with national laws. We looked broadly at provincial laws to see which laws might assist with anti-sex trafficking measures and considered numerous laws that touch upon sexual abuse, exploitation and prostitution. These include child welfare laws, secure care provisions, community safety laws, victim of crime laws, income support laws, highways and traffic laws and gaming and liquor laws. Rather than provide an exhaustive explanation of all laws reviewed, we highlight below some of the more relevant laws, including Manitoba's specific human trafficking law and Alberta's law to protect sexually exploited youth. Appendix III also provides a summary of relevant provincial laws.

¹⁷⁵ There are exceptions, such as procuring a minor for prostitution, which can result in a 14-year sentence, which is equivalent to the current maximum sentence for sex trafficking.

¹⁷⁶ *Criminal Code*, *supra* note 4, s 212(1)(h), 212(3). If Bill C-452, *supra* note 113, becomes law, a similar burden-shifting presumption will apply in the human trafficking provision of the Criminal Code.

4.1 Child Protection Laws

As a general matter, each province has some form of child protection act with the goal of protecting children who are being abused or neglected or are at serious risk of being abused and neglected. The definition of abuse extends to include sexual abuse, including where a child has been, or is likely to be, encouraged, helped or coerced into prostitution.¹⁷⁷ These laws authorize provincial intervention by child services when a child is deemed in need of protection, which includes where parents are unwilling or unable to protect a child.¹⁷⁸ This includes where a child has been, or is likely to be, encouraged, helped or coerced into engaging in prostitution.¹⁷⁹ In some provinces, such as British Columbia and Alberta, a director of child services may remove a child without a court order where they have reasonable grounds to believe a child's health or safety is in immediate danger.¹⁸⁰ In Québec, the director can take immediate protective measures for up to 48 hours even before an assessment of danger to security or development has been made.¹⁸¹

While these laws allow for immediate action, the utility of these child welfare provisions in trafficking situations should not be overstated. First, these laws can fail to protect those over 17 or 18 years old, depending on the province and the individual circumstance.¹⁸² Thus, such laws only protect a fraction of trafficked individuals. Second, there have been serious questions as to the effectiveness of provincial child protection, particularly when it results in children being placed in provincial care, which is known to be a recruiting ground for traffickers in Canada.¹⁸³ Third, these laws do nothing to stop, or even discourage, traffickers from trafficking the child in question (once they are out of provincial detention) or finding other children to traffic. Finally, there are constitutional questions raised by arresting children without a warrant. While child protection laws can provide immediate intervention in certain cases, they should not be the focus of anti-trafficking legal initiatives.

¹⁷⁷ See e.g., For British Columbia see *Child, Family and Community Service Act*, RSBC, 1996, c.46, s 13(1) and (1.1).

¹⁷⁸ See e.g., For British Columbia see *ibid* at 13(1), 13(1)(c), 13(1.1.); For Alberta see *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12, s 1(3)(c), 30(1), 44(2)-(4), 44.1(1)-(3); For Manitoba see *Child and Family Services Act*, CCSM, c C80; For Ontario see *Child and Family Services Act*, RSO, 1990, c.C11; Québec's *Youth Protection Act*, RSQ, c P-34.1; For Nova Scotia see *Children and Family Services Act*, RSNS, 1990, c.5.

¹⁷⁹ For British Columbia see *Child, Family and Community Service Act*, *supra* note 177, s 13(1.1(a)(b)).

¹⁸⁰ *Ibid*, s 30(1).

¹⁸¹ For Québec see *Youth Protection Act*, *supra* note 178, s 46.

¹⁸² The allowable identified age for leaving care varies by province and generally is 18 or 19. See Appendix I (Summary Matrix of International, Federal, Provincial and Municipal Laws and Regulations to Combat Sex Trafficking).

¹⁸³ Interview of D. Matte; Sandrine Ricci, Lyne Kurtzman & Marie-Andrée Roy, *La traite des femmes à des fins d'exploitation sexuelle : entre le déni et l'invisibilité* (Montreal: Institut de recherches et d'études féministes Université du Québec à Montréal, 2012) [Ricci, Kurtzman & Roy]; See also Cheryl Farris-Manning & Marietta Zandstra, *Children in Care in Canada* (Ottawa: Child Welfare League of Canada, 2003) at 2.

4.2 Community Safety Laws

Likewise, a number of provinces have community safety laws that are largely aimed at suppressing nuisances through a civil process and suppressing conditions that favour the development of crime.¹⁸⁴ These acts have the capacity to hold property owners accountable for threatening or disturbing activities that regularly take place on their property, including prostitution and related activities, such as the sexual exploitation of a child.¹⁸⁵ Because they are civil laws, the burden of proof on the province is lower than it is for criminal laws, so cases are easier to prove. These laws are typically employed when neighbourhood residents file a complaint, which can lead to a provincial investigation and possible safety order or closure order, such as the 2012 closures (for 90 days) of three properties in Dartmouth, Nova Scotia, known for rampant drug trafficking and prostitution.¹⁸⁶

Community Safety Laws, however, are not victim-focused, provide no benefits to trafficking victims, and can instead lead nuisance-focused police to arrest victims under existing prostitution laws. This, in turn, leaves potential trafficking victims with criminal records, which further penalizes vulnerable individuals. Furthermore, because community safety laws are civil laws, with the most onerous outcome being a 90-day eviction of the premises, they are disproportionately weak in light of the high level criminality that traffickers demonstrate. Finally, if used by themselves, these laws are unlikely to provide much in the way of deterrence against future criminal behaviour given the relatively insignificant penalties.

4.3 Victims of Crime Laws and Programs

All Canadian provinces, except for Newfoundland and the Territories, have crime victim compensation/financial assistance programs to compensate victims of violent or personal crimes.¹⁸⁷ These programs, however, are “payers of last resort,” have short time frames for filing a claim and have modest maximum awards. In addition, they require that victimization occur in the province of application, which may not be straightforward where trafficking victims travelled on “circuits” to different provinces.¹⁸⁸ Despite these limitations, provinces

¹⁸⁴ See e.g., For Nova Scotia see *Safer Communities and Neighborhoods Act*, SNS 2006, c.6; For Manitoba see *Safe Communities and Neighbourhoods Act*, CCSM, c.S5.

¹⁸⁵ For Nova Scotia see *Safer Communities and Neighborhoods Act*, *ibid*, s 2(1)(i)(iii), 2(2); For Manitoba see *Safe Communities and Neighbourhoods Act*, *ibid*, s 1; But see British Columbia, which decided against such an act due to due process concerns in the proposed law, which allowed for initiation of an eviction process without allowing a tenant to be represented or heard. See. BC Civil Liberties Association, “Letter to the Standing Committee on Social Programs” (18 April 2007) online: BCCLA <<http://bccla.org>>.

¹⁸⁶ Department of Justice, News Release, “Safer Communities Act Closes Notorious Dartmouth Properties” (30 May 2012) online: Nova Scotia Canada < <http://novascotia.ca/> >. The Halifax Regional Police had responded to these properties more than 700 times since 2008, raising the question of whether criminal charges would have been more effective. See also Manitoba’s *Safe Communities and Neighbourhoods Act*, s 3(1), (6), (7).

¹⁸⁷ Canadian Resource Centre for Victims of Crime, Financial Assistance, online: [crcvc/for-victims/financial-assistance/](http://crcvc.org/victims/financial-assistance/)

¹⁸⁸ Filing time limits are typically one year (BC, SK, MB, PQ, NB, NS, PE), and a maximum of two years (AB, ON). Maximum awards range from \$2,000 (NS) to \$186,000 (MB) and all programs, except for

should be encouraged to include human trafficking victims as eligible claimants for these programs. Some provinces, such as Alberta, do offer financial compensation or social assistance to human trafficking victims. Québec's Crime Victims Compensation Act provides compensation to victims of numerous other sexual and related offenses, but not specifically to sex trafficking victims.¹⁸⁹ Other provinces, such as B.C., give sex trafficking victims a right to health care,¹⁹⁰ and the ability to apply for regular victim benefits, but do not provide social assistance specific to human trafficking.¹⁹¹

Manitoba is thus far the only province to have established a separate civil law provision that allows a victim of human trafficking to sue a trafficker in tort for money damages, including the illegally gained profits from the period of exploitation, discussed further below. Once a victim's claims have been proven on a balance of probabilities, the court can award the victim money damages, order the defendant to account for any profits from the human trafficking of the victim, or issue an injunction.

Laws and programs providing financial awards are promising in the trafficking context as they address one of the fundamental difficulties in prosecuting cases and assisting victims of sex trafficking: providing real incentives for victims to come forward. As discussed elsewhere, victim identification has been a chronic problem in sex trafficking cases, and provisions that provide financial assistance may significantly change a victim's calculation as to whether to alert authorities to their exploitation.¹⁹²

4.4 Other Laws Reviewed

In addition to the above types of legislation, many provinces have enacted health and alcohol legislation which also have implications for the regulation of prostitution and sexual exploitation. **Health Professions Acts** require health professionals, which includes massage therapists, to act in the public interest.¹⁹³ Some professional organizations, such as the BC College of Massage Therapists, both prohibit sexual conduct with a patient, and require registrants to report unethical or illegal activity related to the practice of massage therapy.¹⁹⁴

In terms of Liquor Licensing Laws, many provinces require all entertainers in licensed premises to be over 17 or 18 years old (depending on the province). These laws also frequently prohibit physical contact between entertainers and non-entertainers.

Ontario's require police reports and/or cooperation. Further, pain and suffering awards are not eligible in Manitoba, British Columbia and Saskatchewan. *Ibid.*

¹⁸⁹ See e.g., Québec's Crime Victims Compensation Act, s 153 (sexual intercourse with a female under 16), 271 (sexual assault) and 272 (aggravated sexual assault) and 423 (forcible confinement).

¹⁹⁰ *Crime Victim Assistance Act*, [SBC 2001] c.38.

¹⁹¹ See *Victims of Crime Act*, RSBC 1996, c.478; *Crime Victim Assistance Act*, [SBC 2001] c.38.; *Criminal Injury Compensation Act*, [RSBC 1996] c.85 (Act Current to May 1, 2012); *Employment and Assistance Regulations*, of the *Employment and Assistance Act* (March 2013, Reg. 3.3.1).

¹⁹² *Ibid.*, s 18-19.

¹⁹³ See e.g., *Health Professions Act*, RSBC 1996, c 183, s 16.

¹⁹⁴ College of Massage Therapists, Bylaws of the College of Massage Therapists of British Columbia (August 18, 1995 with amendments to August 27, 2011) online: College of Massage Therapists of BC <<http://www.cmtbc.bc.ca/documents/regulations.pdf> >, Schedule C, s 1, 2, and 6.

4.5 Laws from Manitoba and Alberta on Human Trafficking and Sexual Exploitation

Two specific provincial laws are highlighted below. First, the only provincial human trafficking law in Canada is outlined. Following that, Alberta's law designed to protect youth in or at risk of being prostituted is discussed given its unique and controversial provision allowing authorities to arrest children without a warrant for their protection.

i. Manitoba's Child Sexual Exploitation and Human Trafficking Act

Manitoba has been focused on child sexual exploitation since 2002 with its Strategy Responding to Children and Youth at Risk of, or Survivors of, Sexual Exploitation. Tracia's Trust, phase two of the Manitoba Strategy, began in 2008 and focused on all forms of sexual exploitation, including prostitution, pornography, sex trafficking, sex tourism and internet luring.

Manitoba is currently the only province that has passed a specific human trafficking law, the 2012 Child Sexual Exploitation and Human Trafficking Act.¹⁹⁵ The law states:

[A] person commits human trafficking of another person when:

- a. he or she
 - i. abducts, recruits, transports or harbours a person, or
 - ii. controls, directs or influences the movements of that person; and
- b. he or she uses force, the threat of force, fraud, deception, intimidation, the abuse of power or a position of trust, or the repeated provision of a controlled substance (e.g., drugs/inhalants/alcohol), to cause, compel or induce that person to:
 - i. become involved in prostitution or any other form of sexual exploitation,
 - ii. provide forced labour or services, or
 - iii. have an organ or tissue removed.

This definition does not include the means of "transferring, receiving or holding" a person, all of which are found in the national Criminal Code definition. While at first glance the means of "transferring" and "receiving" appear useful to reach accomplices and indirect perpetrators, these means may be sufficiently covered by the prohibition in a.ii. against "influencing the movements" of a person, which also appears in the national definition. Like New York State's human trafficking law, Manitoba's definition of human trafficking responds to front-line experience that cases of child sexual exploitation and human trafficking often involve exchanges of drugs for sex and thus includes supplying drugs as a specific means of committing the crime.¹⁹⁶ This specificity should be helpful to police and prosecutors, who have said that the wide-ranging nature of the human trafficking definition in the Criminal Code in fact makes it more difficult rather than less to determine whether or not an act is human trafficking.¹⁹⁷

¹⁹⁵ *The Child Sexual Exploitation and Human Trafficking Act*, CCSM c C94, 2012. [CSEHTA]

¹⁹⁶ Compare CSEHTA, *ibid*, s 1(3) to New York Penal Law 230.34, s 1.

¹⁹⁷ Interview with M-C Arsenault.

Manitoba's Act also wisely includes several victim-focused provisions, including access to renewable protection orders as well as the ability to sue the trafficker for damages. These provisions are helpful because they address the perplexing difficulty of victims not wanting to come forward and/or testify in prosecutions against their traffickers.

The protection order offers the incentive of enhanced safety by requiring the respondent to stay away from the victim or other "specified person." A protection order may be issued by a justice of the peace without notice to the respondent if they find that the respondent has engaged in child sexual exploitation or human trafficking, there are reasonable grounds to believe that they will continue to do so and the victim or other specified person is in need of immediate or imminent protection.¹⁹⁸ An adult victim can make an application for a protection order.¹⁹⁹ If under 18 however, only a parent or guardian or the appropriate child and family services authority (if the child is in care) may apply for an order.²⁰⁰

On the civil law front, Manitoba has created a human trafficking tort action, which allows individuals to sue for money damages. This cause of action offers victims the incentive of financial compensation and the burden of proof in the case is lower than in criminal cases, requiring only a "preponderance" of the evidence rather than "proof beyond a reasonable doubt."²⁰¹ Once a victim's claims have been proven, courts can award the victim money damages, order the defendant to account for any profits from the human trafficking of the victim, or issue an injunction.²⁰²

While it is too early to tell whether these laws will be effectively enforced, as a legal matter, Manitoba's new laws provide welcome and necessary tools to the fight against human trafficking and child sexual exploitation and offer solid examples for other provinces to emulate.²⁰³

ii. Alberta's Protection of Sexually Exploited Children Act

Alberta has enacted a specific law focused on sexually exploited children, the *Protection of Sexually Exploited Children Act* ("PSECA" or "PSEC Act").²⁰⁴ While the act overlaps with general child welfare legislation with regards to protection against sexual abuse and only covers a portion of trafficked individuals, i.e., those under 18, it is worth closer examination as it is more specifically tailored to children in prostitution. Where there is third party

¹⁹⁸ CSEHTA, *supra* note 195, s 6.

¹⁹⁹ *Ibid*, s 3(1)(a).

²⁰⁰ *Ibid*, s 3(1)(b)(ii).

²⁰¹ *Ibid*, s 18-19.

²⁰² *Ibid*, s 20(1).

²⁰³ *Ibid*, Parts Two and Three [2012].

²⁰⁴ *Protection of Sexually Exploited Children Act*, RSA 2000 c.P-30. While Ontario passed labour trafficking legislation in 2010, the Province currently has no legislation aimed directly at the issue of sex trafficking or child sexual exploitation. In December 2012, the Rescuing Children from Sexual Exploitation Act was repealed after failing to come into force for ten years. A release from the Premier's office suggested that the Act was out of date and no longer necessary given existing government programs. See Office of the Premier, "Ontario Statutes to be Repealed or Proclaimed by January 1," online: Province of Ontario <<http://news.ontario.ca/opo/en/2012/12/ontario-statutes-to-be-repealed-or-proclaimed-by-january-1-2013.html>>.

involvement in their sexual exploitation, the children targeted by this Act are likely to be considered trafficked under Canadian criminal law.

The PSEC Act creates a regime to protect children who experience sexual exploitation as a result of engaging in prostitution.²⁰⁵ Essentially, the Act authorizes an officer of the Director of Protection of Children Involved in Prostitution, to apply to the Provincial Court for a protective order if there are reasonable grounds to believe that a child is in need of protection. An order authorizes 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. Where a child's life or safety is in serious and imminent danger because the child is engaged in prostitution, the police or Director may detain the child without a court order.²⁰⁶

After the initial five days of detention, the Director can apply for a maximum of confinement period of up to 21 days if the Director is "of the opinion that the child would benefit from a further period of confinement."²⁰⁷ The second confinement period can be up to 21 days where: (a) release of the child from a protective safe house presents a risk to the life or safety of the child because the child is unable or unwilling to stop engaging in or attempting to engage in prostitution, (b) less intrusive measures are not adequate to reduce the risk, and (c) it is in the best interests of the child to order a period of further confinement for the purposes of making programs or other services available to the child in a safe and secure environment.²⁰⁸ The child may also be detained voluntarily to receive services if the Director agrees that the child is in need of protection.²⁰⁹ The duration of the agreement cannot exceed six months, but may be renewed.²¹⁰

Where a child is confined to a protective safe house with an order, the Director must give the child a request for review form and inform the child in writing of his or her rights. Where a child is apprehended without an order, the Director must appear before the Provincial Court within three days of an initial apprehension to show why confinement is necessary (a "show cause hearing") and inform the child, in writing, of his or her rights.²¹¹ The rights of the child in this circumstance include the right to know the director's reasons for, and the time period of, the confinement, the time and place of the show cause hearing (if applicable), the reasons for the hearing, the right to ask the Provincial Court to review the director's decision to confine or to attend the show cause hearing (as applicable), the right to contact a lawyer and the telephone number of the office of the Child and Youth Advocate.

The Act also authorizes the Director to apply for a restraining order against any person where

²⁰⁵ *Ibid*, s 1(2): "For the purposes of this Act, a child is in need of protection if the child is sexually exploited because the child is engaging in prostitution or attempting to engage in prostitution".

²⁰⁶ *Ibid*, s 2(9) and (10).

²⁰⁷ *Ibid*, s 3(2).

²⁰⁸ *Ibid*, s 3(4).

²⁰⁹ *Ibid*, s 7.1.

²¹⁰ *Ibid*, s 7.1(3).

²¹¹ *Ibid*, s 2(12).

there are reasonable and probable grounds to believe that person has physically or emotionally injured or sexually abused or is likely to physically or emotionally injure or sexually abuse” a child in confinement, “or “has encouraged or is likely to encourage a child confined under the Act to engage in prostitution”.²¹²

Finally, the Act specifies that anyone who wilfully causes a child to be in need of protection, or attempts to obstruct or interfere with the Director or a police officer exercising a power set out in the Act is guilty of an offence and can be fined up to \$25,000 or imprisoned for up to two years or both.²¹³

Some applaud the Act as it allows for immediate intervention. Another advantage to the PSECA program is that the children receiving a PSECA order are viewed as victims rather than delinquents or criminals who “chose” their lives and the Alberta government, thus, allocates funds under PSECA that allow for programs and “wrap around” support for the children. Others, however, are concerned that the ability to arrest children without a warrant and subsequently confine them tramples on children’s rights protected by the Canadian Charter of Rights and Freedoms.²¹⁴ In addition, the overrepresentation of Aboriginal girls apprehended under the Act raises the specter of residential schools and concerns of discriminatory treatment.²¹⁵ The Albertan provincial courts have considered these concerns and have thus far found that the Act passes constitutional muster.²¹⁶

Those that administer the program report that while historically they frequently saw possible trafficking situations, typically with girls in prostitution controlled by boyfriend pimps, increasingly they are finding girls selling themselves independently through internet ads posted on backpage.com and dating sites, such as plentyoffish.com.²¹⁷ They also note that the vast majority of the children apprehended under PSECA have addictions and mental health issues, which require specialized treatment.²¹⁸

4.6 Provincial Summary

While the Criminal Code remains the primary means of stopping sex traffickers, other provincial laws can provide assistance, such as Child Welfare Laws, Community Safety Laws and Victims of Crime Laws. That said, the Child Welfare system is reported to be a recruiting ground for traffickers as it is inhabited by vulnerable children. Community Safety laws do little to deter traffickers as the penalties are so low. Victims of Crime Laws are most helpful where the province provides social assistance to trafficking victims.

²¹² *Ibid*, s 6(1).

²¹³ *Ibid*, s 9.

²¹⁴ In 2000, Sections 7, 8 and 9 of the Canadian Charter were found to have been violated by the prior version of this law the *Protection of Children Involved in Prostitution Act* (PCHIP) Alta Reg 5/1999.

²¹⁵ See Jennifer Koshan, “Alberta (Dis)Advantage: The Protection of Children Involved in Prostitution Act and the Equality Rights of Young Women,” 2(2) *Journal of Law and Equality* 210 (2003).

²¹⁶ See e.g., *BM v Alberta (Director of Child Welfare)*, 2012 ABCA 342 (employing “best interests of the child” analysis to uphold prolonged detention order).

²¹⁷ Information provided by Leanne Davis.

²¹⁸ Information provided by Brandi Thompson.

Thus far, Manitoba is the only province to have passed a specific human trafficking law. This law has several victim-centered provisions, and reaches those who supply drugs in exchange for sex, which is frequent in the province and elsewhere. The law also has the interesting addition of a tort of human trafficking, which allows victims to sue the accused for money damages. This is a welcome measure as it provides victims with a tangible incentive to bring cases forward. In Alberta, the focused Protection of Sexually Exploited Children Act has laudable aims and ensures that victims are treated as victims rather than “prostitutes” or criminals. The arrest-without-warrant provision, however, gives pause to those concerned with civil liberties, as this provision raises constitutional issues, particularly those related to section 7 of the Canadian Charter of Rights and Freedoms. Thus far, however, the Act has not been successfully challenged in court.

5. Municipal Regulation in Canada

Municipalities vary significantly with regards to their policies and responses to prostitution, sexual exploitation, and human trafficking. As with the provincial legal review, this report does not provide an exhaustive discussion of the numerous municipal bylaws and regulations reviewed, but highlights specific examples and some of the legal issues raised. A more detailed summary table of municipal bylaws relevant to sex trafficking in ten Canadian cities is attached as Appendix IV (Summary Matrix of Municipal Laws and Regulations to Combat Sex Trafficking). The table covers the cities of Vancouver, Edmonton, Fort McMurray, Winnipeg, Toronto, Mississauga, Brampton, Windsor, Montreal and Halifax.

5.1 Bylaws Regulating Sexual Services and Human Trafficking

Municipalities hold legal authority to pass bylaws with respect to business licenses, zoning and land use as granted by their Province. Using this authority, municipalities across Canada have variously developed licensing and zoning schemes for the sex industry, regulating prostitution-related services, and using zoning, jaywalking and loitering bylaws to regulate the use of public and street space.²¹⁹ This includes a range of liquor licensing, business licensing, and licensing and regulation of health, massage and adult entertainment services. Licenses are accompanied by a wide range of license fees and specific regulations governing areas such as the recruitment and conduct of personnel, operation of premises, hours of operation and signage. As with the provinces, municipalities must avoid a jurisdictional clash with federal (or provincial) legislation, and maintain the illusion that these activities are not fronts for prostitution.²²⁰ A typical bylaw for Adult Entertainment Licensing (from Mississauga) is attached as Appendix V (Mississauga Adult Entertainment Establishment Licensing By-law).

In most municipalities, the city licensing department issues permits and licenses. In Windsor, for example, two bylaws are used to regulate the sex industry: the Business Licensing Bylaw, and a new Bylaw respecting the licensing, regulation and inspecting of body-rub parlours and those engaged in the business of providing body-rubs in body-rub parlours, which was passed in 2011. They are also subject to zoning approval from the Planning Department, and the

²¹⁹ Barnett and Nicol 2011, *supra* note 22.

²²⁰ *Ibid.*

number of establishments in the business improvement district is limited. The table below indicates the number and types of licenses issued over the past five years in Windsor.

Number of licenses issued to sex-selling businesses in past 5 years in Windsor

Type of license	2008-2011	2012
Adult entertainment parlours	Between 27 and 39 per year	27
▪ Personal service agents & owners of escort agencies	Between 4 and 10 per year	6
▪ Escorts	Between 54 and 74 per year	40
Body-rub parlours	Not applicable	7

By contrast, Winnipeg licenses escort agencies, escorts and massage parlours and massagists,²²¹ but does not use bylaws to regulate adult entertainment.²²² It does apply zoning restrictions to adult entertainment businesses, but effectively, the city has no method for tracking who is working in the adult entertainment industry and what their working conditions are.

In Montreal, a Bylaw concerning establishments dealing in eroticism relates to the entire city, as does another concerning the display of erotic printed matter, both dating from 1994. The former is concerned with adult entertainment shops, cinemas, strip clubs or other venues, but does not specify massage parlours or escort services. Some 250 massage parlours have been identified across the Montreal urban community.²²³ Each of the 19 *arrondissements* (boroughs) is responsible for zoning and public order bylaws, as well as enforcement. The borough of Ville-Marie in the centre of Montreal, for example, has a high concentration of sex service businesses as well as street prostitution. It uses land use regulations to control the location of businesses and public order regulations to restrict public/street prostitution. Massage parlours require certificates of occupation, a one-time payment required by all industries, businesses or organizations, and in compliance with zoning laws. The one-time fee is typically around \$200. Elsewhere, the borough of Hochelaga-Maisonneuve proposed the creation of a tolerance zone for prostitution in 2012 to respond to residents' complaints about prostitution in their neighbourhoods. The project was abandoned for lack of support, and the City of Montreal argued against it on the grounds that it would place the city in conflict with the Criminal Code's prohibition of soliciting.²²⁴

²²¹ The Massage Therapy Association of Manitoba (MTAM), has fought for this term in order to distinguish its own registered massage therapists from those who are unlicensed and operating in body-rub parlours.

²²² Interview with Marcia Fifer, Administrative Coordinator of Licensing, Winnipeg. Sergeant Gene Bowers, Winnipeg Police Service (MNCP Survey response May 2013).

²²³ Carte de l'exploitation sexuelle à Montréal. La Presse October 2nd 2013. www.lapresse.ca/multimedias/201310/02/01-4695651-carte-de-l'exploitation-sexuel. Map of sex industry in the Greater Montreal area developed by La Concertation des luttes contre l'exploitation sexuelle (CLES <http://www.lacles.org>).

²²⁴ Interview with Marcel Cajelait, Conseiller en développement communautaire, Montreal. See *Criminal Code*, *supra* note 4, s 212(j).

Like Montreal, Halifax Regional Municipality is administered through 16 plan areas each with their own land use bylaws. There appears to be no licensing system or formal regulation for sex services. In the Halifax Peninsula, for example, while adult entertainment uses are permitted, they are restricted to a specific land-use category, but one that does not actually exist.²²⁵ Likewise, the municipality of Surrey in British Columbia has a similar zoning solution for certain sex-selling businesses, including “body-rub parlours.” While the licensing category for body-rub parlours exists, it is impossible to obtain premises in area zoned for this use, as it is entirely owned by the municipality, which has no intention of renting to sex-selling businesses.²²⁶

In a number of cities, such as Vancouver, an explicit distinction is made between professional and qualified massage or health practitioners and others. Likewise, in Edmonton a new licensing system was introduced in January 2012 separating therapeutic from erotic massage services, and distinguishing between accredited and non-accredited therapists. This distinction has not been particularly effective in Vancouver, however. Much of the sexual activity appears to take place in “health enhancement centres,” which while they require workers to have certificates for massage techniques, are not closely monitored. Body-rub parlours are allowed under Vancouver’s bylaws, but there are no such establishments currently licensed, likely because of the high annual license fees for body-rub parlours (\$9,888) compared with the lower fees for health enhancement centres (\$242).²²⁷

In some cities, such as Toronto, there is a cap on the number of licenses allowed. For example, only 25 body-rub parlours can be licensed.²²⁸ Toronto does not license escort agencies or dating services. Edmonton, on the other hand licenses escort agencies and independent escorts, massage and body-rub parlours, adult theatres and exotic entertainment businesses and health enhancement centres.²²⁹

Zoning bylaws are used by many municipalities to restrict the location of sex-selling businesses to industrial or downtown sectors of cities, and prohibit their location near schools or residential areas. Mississauga, for example, restricts adult entertainment and body-rub businesses to industrial or employment areas.

Many municipal licensing bylaws use antiquated or euphemistic language that does not explicitly permit the selling of sexual acts, although it is common knowledge to all involved that sexual services are offered in establishments in certain licensing categories. The language is crafted this way to ensure that existing federal criminal laws surrounding prostitution are not explicitly violated on paper.²³⁰ This municipal “willful blindness” to Canadian criminal law appears to have proceeded without protest from federal or provincial authorities.

²²⁵ Interview with Stephanie Norman, Land Use and Development Planning, Halifax Regional Municipality.

²²⁶ Interview with Tom Hammel, Assistant Director and Departmental Chief License Inspector, City of Vancouver, August 2013.

²²⁷ Interview with Tom Hammel.

²²⁸ Interview with Joe D’Abramo, City of Toronto.

²²⁹ See City of Edmonton, “Bylaw 13138 Business License Bylaw” (Consolidated on 15 June 2013), Appendix IV for a summary.

²³⁰ Barnett & Nicol 2011, *supra* note 22.

Some of the municipal bylaw definitions are explicit, while others are less clear. For example, Vancouver's body-rub definition is relatively straightforward and includes (see box):²³¹

Vancouver By-Law No. 4450

"Body-rub parlour" (license fee \$9,888 a year)

Body rub includes the manipulating, touching or stimulating by any means, of a person's body or part thereof, that does not include medical, therapeutic or cosmetic massage treatment given by a person duly licensed or registered under any statute of the province of British Columbia.

Others, as in the case of body-painting studios and encounter sessions are less explicit (see box).

Fort McMurray: By-Law No. 983

s. 2(a) "Body painting studio" (license fee \$3,000 a year)

Includes any premises or part thereof where, directly or indirectly, a fee is paid or levied for any activity involving the application by any means of dyes, paint, or similar material to the body of another person

s. 2(f) "Encounter session" (license fee \$3,000 a year)

Means a meeting or encounter between an encounter counsellor and a member of the general public who enters the encounter studio for the purpose of having a discussion with, or being in the presence of, an encounter counsellor, in order to relax or to be comforted or soothed by the encounter counsellor.

i. Bylaw License Fees

The amount charged for licenses for sex-related services also varies considerably across the country (see Appendix IV, Summary Matrix of Municipal Laws and Regulations to Combat Sex Trafficking), with some cities such as Vancouver and Toronto charging very high initial and annual fees well above those for other businesses. The annual license fee for a Toronto body-rub parlour in 2013, for example, is \$11,794.62 (see table below) which is many times higher than a regular business license. The licensing fee to run a Holistic Centre is \$243.19 by comparison. Toronto says that its fees are issued on a "cost-recovery" model, reflecting the

²³¹ Toronto's body-rub definition is very similar: "the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person's body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered to do so..."

cost of issuing and enforcing the licenses.²³² It has been suggested that Toronto collects almost \$1 million a year from body-rub licenses alone.²³³

City	License Category	Fee	Renewal Fee	Number Issued	Total annual profit
Toronto	Adult Entertainment Club	Own & operate \$11,871	\$11,474	17 (of 63)	\$195,058
		Own or operate \$5,884	\$5,699		
	Body-Rub Parlour	\$11,795	\$11,397	25 (of 25)	\$284,925
	Entertainer	\$355	\$250	1,409	\$352,250
	Body rubber	\$355	\$250	498	\$124,500
Total					\$956,733

Among the lowest fees for sex-selling businesses are those in Windsor where the cost of a license for an adult entertainment business is \$286, similar to other business licenses. This reduced rate follows a 2005 lawsuit initiated by the adult entertainment industry, which took the municipality to court on the grounds of discrimination.²³⁴

The issue of high fees has led legal commentators to suggest that municipalities are “living off the avails” of prostitution or “knowingly permitting a common bawdy-house.”²³⁵ This issue has arisen in Calgary, Edmonton, Montreal (see above) and Vancouver in recent years.²³⁶ Women and girls in prostitution in Edmonton frequently tell vice detectives, “the city is the largest pimp,” as they have to either pay the city for a license or be charged a significant fine (currently \$1,000) for operating without a business license.²³⁷ In such instances, owners of sex establishments often pay the fees, leaving the woman or girl in prostitution in debt to the owner, which increases the owner’s power over that individual.

²³² Interview with Olga Kustelska, City Licensing Department, Toronto.

²³³ “Toronto collects nearly \$1m per year from body rub licenses” CBC News (22 August 2012) online: CBC News <www.cbc.ca>.

²³⁴ The 2005 Superior Court of Appeal judgment struck down the proposed higher city fees for adult entertainers, aff’d on appeal by Ontario Court of Appeal, 2006.

²³⁵ See e.g., John Lowman, J., *Identifying Research Gaps in the Prostitution Literature*. Ottawa: Department of Justice Canada (2002).

²³⁶ For example, in 2002 Edmonton was sued in attempt to lower licensing fees for prostitutes on the basis that the licensing scheme amounted to the city “living off the avails of prostitution.” *Strachan (c.o.b. Kats) v. Edmonton (City)*, [2003] AJ No 437 (QB). See also Lowman, *supra* note 234 at 6 (noting the conflict between municipal licensing practices the Canadian Criminal Code prohibitions related to prostitution.)

²³⁷ Interview with Steve Horchuk.

Municipalities respond to this argument that they are institutionalized pimps in various ways. Some, such as Toronto, say that their high license fees are required to recover the costs of policing and monitoring these venues, and also act to deter expansion of the sex industry.²³⁸ Another common municipal response is that because the municipality is a third-party licensor and not a direct operator, *they* are not carrying out illegal activity, although this appears to ignore the well-established legal doctrines of complicity and aiding and abetting. Last, municipalities cite the specific language in the bylaws, which although it implicitly allows sex, does not explicitly permit it, to argue that it is not in conflict with Canada's criminal laws. One Chief Licensing Inspector clarified that the reason the city bylaws didn't explicitly mention sex, although everyone knew that certain categories of businesses sold sex is that "you can't regulate something contrary to the Criminal Code," and suggested that the municipality was, thus, "dancing a fine line" with the Criminal Code rather than directly contravening it. That said, depending on how the Parliament redrafts the prostitution laws in Canada in 2014, those municipalities licensing commercial front brothels, may not be contravening the law in the near future.

ii. Bylaw Enforcement

The enforcement of the various bylaws and regulations is similarly variable across the country, and depends on numerous factors, including the political climate, community concerns, and business owners' relationship with bylaw officers and the police. Inspections may be undertaken by bylaw inspection officers, and/or by police vice squads, sometimes accompanied by liquor board, fire, and health personnel. A common theme across the country is that inspections of lower-fee business categories are generally complaint driven. In Vancouver, local community complaints largely determine license department investigations. If there is evidence of sexual activity, the police are then asked to investigate.²³⁹

In certain municipalities there are only a few bylaw officers who are required to enforce all of the city's business licenses, raising serious questions about the effectiveness of any licensing scheme. Windsor, for example, has only 12 officers to oversee the enforcement of all the city's regulatory bylaws and business licenses. Enforcement is also undertaken by the Windsor Police Morality Unit, and joint inspections and undercover operations are sometimes undertaken.

In Toronto, routine inspections of body-rub and adult entertainment centres are conducted once a month, but officers are able to inspect only 20% of licensed "holistic centres" each year because of the high numbers (437 in March 2013).²⁴⁰ The maintenance of the licensing system for individuals and premises is seen as protecting against trafficking and sexual exploitation. In Winnipeg, inspection and enforcement of bylaws in massage parlours and escort agencies is undertaken by the Winnipeg Police Service and not bylaw enforcement officers, on the grounds that the police are trained to look for trafficking and exploitation.²⁴¹ In Edmonton, there is one bylaw officer for the adult entertainment and body-rub industry

²³⁸ Interview with Olga Kustelska.

²³⁹ Interview with Tom Hammel.

²⁴⁰ This means that Toronto's holistic centres are visited approximately once every five years.

²⁴¹ The Winnipeg Police Service instituted a new policy and procedures on human trafficking in March 2013. They are also members of the multi-partner Manitoba Human Trafficking Response Team established in 2008.

who can help police get “eyes inside” suspicious massage parlours under the pretense of a business license check.²⁴²

Despite the varied enforcement efforts by municipalities of certain licensed businesses, many sex-selling businesses or individuals are either unlicensed or unregulated. In many municipalities, there are minimal regulations for escort agencies, escorts need not be licensed, and most individual activity takes place online and can involve multiple jurisdictions, making it difficult for the police to assess exploitation.

The Peel Regional Police are currently the most effective municipal law enforcement operation in Canada in apprehending human traffickers. Canada’s third largest municipal police force, the Peel Regional Police collaborate closely with crown prosecutors and nongovernmental organizations, such as the trafficking service provider *Walk With Me*.²⁴³ The Peel Vice Squad is specifically concerned with preventing trafficking and sexual exploitation, and enforces bylaws in Mississauga and Brampton, as well as conducting proactive undercover investigations on internet sex and escort services.

A number of police departments have developed specific initiatives to prevent trafficking and sexual exploitation, often in collaboration with municipal departments. They include the Peel Regional Police, and the Montreal Police Service (SPVM). The latter have a police division focusing on street gangs, illegal substances and morality,²⁴⁴ and run the project *Les Survivantes* with six human trafficking survivors in collaboration with NGOs. The project provides training and education on trafficking to the police and community leaders, helps to increase public awareness, and works with victims.

iii. Future changes

Some of the municipalities reviewed are also in the process of updating their existing bylaws, including Edmonton, Vancouver, Fort McMurray and Toronto. A city task force appointed in 2011 in Vancouver, for example, expects to update the language of existing bylaws to focus on health and safety issues, and remove moralistic language and references to Criminal Code contraventions in the sex-selling business categories.²⁴⁵ The new Vancouver regulations will only require licenses for business owners of prostitution venues, not of individuals who work in those businesses.²⁴⁶ Conversely, Edmonton is requiring licensing of individuals working in prostitution related businesses, which requires workers to attend informational sessions informing them about their rights and available services.

In 2012, Toronto undertook an in-depth inquiry into the adult entertainment industry in response to the 2010 RCMP report on human trafficking.²⁴⁷ It has reviewed its services for trafficking victims, and plans to report in 2014 on a review of its body rub and zoning bylaws, and on its recommendations to strengthen anti-trafficking initiatives and support vulnerable

²⁴² Interview with Steve Horchuk.

²⁴³ See “Walk With Me Canada Victim Services” online: Walk With Me <www.walk-with-me.org>.

²⁴⁴ Section des enquetes multidisciplinaires et coordination jeunesse (SEMCJ), volet moralite. SPVM.

²⁴⁵ Interview with Tom Hammel, Assistant Director and Departmental Chief License Inspector, City of Vancouver, August 2013.

²⁴⁶ *Ibid.*

²⁴⁷ Royal Canadian Mounted Police, *Human Trafficking in Canada* (Ottawa: RCMP, 2010).

populations. It should be noted, nevertheless, that as in other countries, there is an increasing variety of ways in which the sex industry is organized in Canada, facilitated especially by mobile phones and the internet.²⁴⁸

One of the main challenges with the law, at all levels, is its enforcement. Even where the legal wording is perfect on the books, if not enforced, the law remains aspirational at best. The trivialization of sexual exploitation is one of the main difficulties in implementing the human trafficking and sexual exploitation laws.²⁴⁹ Further, some youth centres have a culture of tolerance of prostitution, resulting in the absence of intervention by social workers and police.²⁵⁰

5.2 Municipal Summary

It is clear that there is considerable variation in the regulation of sex-related activities across Canadian municipalities. Adult entertainment, body-rub, massage parlours or escort agencies are unregulated in some places, and carefully regulated in others. In many cities, public order appears to be the main rationale for licensing, followed by health and safety concerns. Some municipalities have attempted to shut down sex businesses, attempting to eliminate prostitution to the best of their abilities. Other municipalities make no effort to close down sex businesses as long as licensing fees are paid. In almost all municipalities, many sex businesses are regulated and, typically, discouraged by the imposition of high license fees, by a cap on the number of establishments allowed, or by zoning restrictions that limit their location to specific areas, including industrial areas away from city and residential centres. Municipalities vary in terms of which types of establishments are licensed, leaving some businesses, frequently “escort services,” entirely without regulation and the possibility of tracking exploitation. The enforcement of bylaws is variable, often driven by community complaints, and ranging from regular joint inspections by municipal and police personnel to infrequent visits from bylaws officers.

The extent to which municipalities appear to be concerned about sexual exploitation and trafficking in relation to the regulation of sexual services is not easy to judge, but some police forces have developed multi-sector partnerships with municipal departments and concerned NGOs to raise awareness of the issues, identify cases, and help prevent such exploitation.

There is an evident contradiction between the pre-December 20, 2013 prostitution-related crimes in the Criminal Code and many municipal licensing and zoning schemes for “adult businesses.” Under Canada’s existing criminal laws (which remain in place until a new law is drafted), bawdy houses are prohibited throughout the country, as is knowingly permitting a bawdy-house and “living off the avails of prostitution.”²⁵¹ Despite this criminal prohibition, municipalities throughout Canada variously license these businesses, knowing that many of

²⁴⁸ Chris Bruckert & Tuulia Law, *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry* (Ottawa: Social Science and Humanities Research Council of Canada, 2013).

²⁴⁹ Interview with Diane Matte.

²⁵⁰ Interviews with Dianne Matte, Louise Dionne, Martin Renaud (finding that desire to preserve trust with youth in care can lead to lack of reporting of sexual exploitation). See also Ricci, Kurtzman & Roy, *supra* note 183.

²⁵¹ See *Criminal Code*, *supra* note 4, s 210; 210(2)(c); 212.

these establishments engage in prostitution. Now that the *Bedford* case has been decided, both municipalities and police departments will need to closely follow the new legal framework for the Canadian sex industry that will be developed in 2014.

A number of other countries with legalized prostitution have estimated that 90% of the sex industry occurs outside licensed establishments - whether on the street, or more often, indoors in private homes, apartments or hotels. If the same is true in Canada, as has been suggested,²⁵² the idea of effectively licensing the sex industry to improve health and safety appears highly optimistic.²⁵³

6. The Internet and Human Trafficking: Legal Considerations

Most human trafficking stakeholders agree that the internet and mobile phones are enablers of sex trafficking, as they allow for easy recruitment of victims by traffickers, widespread advertisement of sexual services, and increased connectivity between sex buyers, traffickers and individuals in prostitution.²⁵⁴ Younger victims are particularly impacted by sex traffickers' increased use of the internet and mobile phones to facilitate their criminal activities. This reality leads to ongoing debate in law enforcement circles about the best way to combat technology-facilitated sex trafficking.

One particularly intractable debate is whether online sex-selling sites should be shut down. There are two prevailing views, and it is not unusual for both views to be found within an individual law enforcement unit.²⁵⁵ The first view is that the ads should be prohibited as the presence of online sex ads helps fuel the demand for sexual services and, thus, promotes sex trafficking. This view is held by 49 of 50 state attorneys general of the United States, as well as some Canadian law enforcement officers and Members of Parliament.²⁵⁶

The second view, typically starting from the premise that prostitution is inevitable, suggests the sex ads can assist law enforcement with gathering evidence and tracking the conduct of both the supply (those in prostitution) and the demand (sex buyers and traffickers).²⁵⁷ This view cites the value of the ads, pictures, metadata and other information to corroborate a sex victim's testimony in court.²⁵⁸

²⁵² See e.g., Lowman, *supra* note 234 at 15.

²⁵³ See Schloenhardt, *supra*, note 44 at 31.

²⁵⁴ See, e.g., Latonero, *supra* note 94. This project forms part of a US Federal initiative commenced in 2010 that includes the development of information technology to counter human trafficking.

²⁵⁵ Interviews with Jim Fisher and Steve Horschuk.

²⁵⁶ See July 23, 2013 letter from 49 Attorneys General of the United States to U.S. House of Representatives and Senate regarding online classified ads for sex services and human trafficking, online: National Association of Attorneys General <<http://www.naag.org>>. [United States to U.S. House of Representatives and Senate]; Interviews of Joy Smith, Jim Fisher and Steve Horschuk.

²⁵⁷ See eg Liz MacDougal, "Liz MacDougal on Defending Classified Ads for Erotic Services", *Businessweek* (17 May 2012)(written by backpage.com's current lawyer who previously worked for craigslist.com).

²⁵⁸ A final occasional perspective is that law enforcement would prefer to keep suspect activity "in jurisdiction," rather than displacing it to another country, where it would be more difficult to investigate.

This debate is enabled, in large part, because there is no specific legislation in Canada regulating the internet.²⁵⁹ In 2007, a Clean Internet Act was introduced (Bill C-30), but it did not survive the first reading in the House of Commons. Law enforcement thus utilizes the general Criminal Code, Copyright Law and Child Pornography regulations to police the internet.

Despite the lack of specific internet legislation, legal protection for Internet Service Providers is not as strong in Canada as it is in the United States. In the US, courts have interpreted provisions of the 1996 U.S. Communications Decency Act to provide immunity from state prosecution to online classified ad sites, such as backpage.com, that promote and profit from the sex industry.²⁶⁰ In Canada, however, Internet Service Providers (ISPs) could be held liable for aiding prostitution and trafficking crimes in certain situations.

For example, if the internet is considered a “public space,” individuals posting sex ads on internet websites could be prosecuted for “communicating for purposes of prostitution,” in violation of the Criminal Code. Website owners could also be found responsible for aiding and abetting violations where it can be shown that they either intended their site to be used for communicating for prostitution or provided editorial control over the advertisements posted on their website.²⁶¹ No such cases have been brought to date, however, and it is quite unlikely that any such action would be taken before the outcome of the Supreme Court’s decision in the Bedford case. Bedford aside, without political support from Attorneys General, mayors and other leaders in society, such prosecutions are unlikely to become a priority for law enforcement in Canada.

While not specifically a human trafficking measure, there is a voluntary filtering initiative for Canadian ISPs that blocks child pornography originating from foreign web sites, called Cleanfeed Canada.²⁶² The Criminal Code currently mandates a system for judicial review of alleged child pornography, but does not require the Internet Service Provider to judge the legality of images or take down images prior to the judicial decision on their legality. Thus, illegal images can remain available online for extended periods as the wheels of justice slowly turn.

In a similar vein, Member of Parliament Joy Smith is currently suggesting that Canada follow British Prime Minister David Cameron’s plan to require all UK Internet Service Providers to block access to online pornography unless customers click a box to opt out of the filter.²⁶³ The goal of the plan is to prevent children from easily accessing pornography, which is thought by some to fuel the demand for sexual services. While this type of filter could

²⁵⁹ Canada is a signatory to the Convention on Cybercrime of the Council of Europe, but this specifically covers child pornography rather than human trafficking, although the two crimes at times come hand in hand.

²⁶⁰ See United States to U.S. House of Representatives and Senate, *supra* note 238 - asking that the Communications Decency Act be amended to ensure ability of state to prosecute online classified ad services selling sex for human trafficking, where companies “have constructed their business models around income gained from participants in the sex trade.”

²⁶¹ *Criminal Code*, *supra* note 4, s 21(1).

²⁶² The program was established in 2006 in conjunction with Cybertip.ca.

²⁶³ Interview with Joy Smith.

potentially raise legal issues under section 36 of the Canadian Telecommunications Act, which prevents ISPs from “overblocking content,” a distinction may be able to be drawn between sex ads as illegal “conduct,” such as sex trafficking or “communicating for the purposes of prostitution,” and protected “content.”²⁶⁴

In sum, without a specific law outlining the liability of Internet Service Providers, prosecutors and law enforcement are left relying on general criminal provisions that provide little guidance on how to handle situations of technology-facilitated sex trafficking. Creative lawyering could result in some cases being brought under existing provisions, but this would likely require a reshuffling of priorities from senior law enforcement officials who set prosecution agendas.

7. Summary of Issues for consideration by the Task Force

In the ten years since the UN *Protocol on Trafficking in Human Beings* came into force there has been considerable legislative activity internationally and within Canada to try to combat and prevent the crime. There is generally greater awareness of the issue, but the trafficking of women and girls especially continues to occur, and in some countries, at an increasing pace. Trafficking for sexual exploitation also occurs within countries, and a wide range of legislation is now being used to try to curb such activity. Countries are struggling to find legislative and enforcement frameworks that respond to the increasing ease with which traffickers use the internet and technology to evade detection.

On a positive note internationally, data collection is improving in Europe and there are several promising country practices. In Canada, the prosecution of cases for human trafficking is finally beginning to increase; temporary residence permits (TRPs) are available for international victims and Canada now has a National Action Plan to Combat Human Trafficking. At the provincial level, Manitoba has passed a victim-focused human trafficking law; police are working more closely with local service providers and other stakeholders, for example, in British Columbia, Alberta, Manitoba, Ontario and Québec, and British Columbia has recently launched a provincial action plan to combat human trafficking. At the municipal level, proactive police investigations are uncovering more cases, in particular, through the work of the Peel Regional Police.

Nevertheless, a number of challenges and gaps remain at the international level and in Canada.

²⁶⁴ *Criminal Code*, *supra* note 4, s 213. Preventing illegal conduct would not raise “overblocking” concerns as would preventing content.

7.1 Legal and Law Enforcement Gaps

International

- Internationally, there is increasing policy support for trafficking legislation, but much of the legal language is non-mandatory (“may”/“should” rather than “shall”)
- Legislation in many countries tends to be offender-oriented, with protection of human trafficking victims conditional on their willingness to cooperate in the prosecution of cases.²⁶⁵
- Given that human trafficking cases are often very complex and cross-jurisdictional, there is a tendency in many countries to use lower charges, especially those related to prostitution, in order to obtain a conviction.

Federal

- There is no national investigative unit for human trafficking, despite the crime’s frequent multi-jurisdictional nature.
- There is often a lack of coordination of monitoring and enforcement. Dealing with human trafficking in the sex industry requires a comprehensive approach, with a clear allocation of tasks between the police and municipalities on the monitoring and investigation of legal and illegal activities.²⁶⁶
- In Canada, the “safety” requirement in the Criminal Code provision appears to cause law enforcement to overlook cases where traffickers do not threaten safety.
- The lack of victim incentives in the current legal framework discourages collaboration with prosecutors. Only 14 TRPs were issued for sex trafficking victims from 2006-2011.
- The increasing use of internet and mobile phones in the sex industry means that there is likely to be a growing “outcall” business, but there is currently no specific law outlining the duties/liabilities of Internet Service Providers.

Provincial

- Law enforcement lacks good intelligence on human trafficking and sexual exploitation, particularly among minority communities.
- Police investigations are often reactive and complaint-based rather than proactive.
- There is a lack of resources for victims and frontline providers.
- Some provinces consider human trafficking an RCMP concern.
- The concept of protection is not fully understood, e.g., detention of victims is not protection.

Municipal

- There is often lax enforcement of bylaws, due to the limited staffing of bylaw enforcement offices.
- Licensing is thought to cover only a small percentage of sex-selling businesses.
- The police tend to be seen as the responsible body on human trafficking, and municipalities lack a comprehensive partnership approach to monitoring and enforcement.

²⁶⁵ Copic & Simeunovic-Paric *supra* note 19 at 284; Global Alliance Against Trafficking in Women (2007), online: Global Alliance Against Trafficking in Women <<http://gaatw.net>>.

²⁶⁶ Dutch Rapporteur on Human Trafficking, *Human Trafficking - ten years of monitoring* (The Hague: Bureau of the Dutch National Rapporteur, 2010) at 60-61.

In light of the above, the following issues for future focus may be useful for the Task Force to consider.

i. Legal Issues

Federal

1. Encourage laws and policies to enhance prevention and protection of sex trafficking victims.
2. Encourage legislation to define the obligations on Internet Service Providers with respect to advertising sexual services.
3. Encourage Citizenship and Immigration Canada (CIC) to create a checklist/protocol for dealing with human trafficking victims to help guide the discretion of the individual officers who determine Temporary Resident Permits issuance and renewal. As per CIC Guidelines, cooperation with law enforcement should not be a consideration in either issuance or renewal.
4. Propose amendments to the Criminal Code provision on human trafficking, as follows:
 - a. Specify in the definition of human trafficking common human trafficking tactics, such as debt bondage, fraud, financial harm, extortion, controlling access to controlled substances, blackmail (such as revealing information to family members) and use of a victim's disability/mental impairment;²⁶⁷
 - b. Remove the safety requirement from the definition of exploitation (section 279.04) required to prove human trafficking;
 - c. Add to s. 279.01(2) and s. 279.011(2) which state that a victim's consent to human trafficking is irrelevant, that the following are also irrelevant:
 - i. evidence of a victim's sexual history,²⁶⁸
 - ii. connection by blood or marriage to the defendant or other trafficker,
 - iii. age of consent to sex,
 - iv. legal age of marriage;
 - d. Add a clause that prohibits knowingly patronizing a victim of human trafficking;
 - e. Add a clause requiring convicted traffickers to pay restitution to the victim and to forfeit real or personal property used in or gained from human trafficking activities.²⁶⁹ This provision should specify that the

²⁶⁷ This could be achieved by providing a non-exhaustive list of what "exercises control or influence" over a person means in sec. 279.01(1) of the Criminal Code or by expanding the concept of "coercion" in the definition of exploitation in 279.04(2)(a)b. Note that Manitoba's law already includes the tactics of fraud and provision of a controlled substance.

²⁶⁸ This could be borrowed from existing sexual assault provisions in the Criminal Code.

²⁶⁹ A reference to forfeiture of the proceeds of crime act may be forthcoming if Bill 452 passes the Senate. See also existing relevant provisions in the Canadian Criminal Code, s 738(1)(a), (b) and (c); 732.1(3.1); 742.3(2)(f).

- immigration status of the victim or return to country of origin shall not prevent the court from ordering payment of compensation.
- f. Add a provision providing immunity to minors who commit non-violent offenses as a direct result of being trafficked and reclassifying them as children in need of services.
 - g. Add a provision allowing victims to vacate prior convictions for non-violent offenses that directly resulted from being a human trafficking victim.
 - h. Add an affirmative defense of “victim of human trafficking” to prostitution-related charges. (This is relevant only if the new prostitution legislation continues to criminalize aspects of prostitution.)
 - i. Place in the existing law references to the Criminal Code provisions on 1) criminal attempts 2) aiding, abetting and counseling 3) obstructing justice and 4) business entity liability.²⁷⁰

Provincial

1. Encourage provinces to establish civil tort actions for human trafficking to allow victims to sue traffickers for damages.²⁷¹ Such provisions should include a specific and generous statute of limitations, such as 25 years.²⁷²
2. Allocate resources to investigate sex industry-related vice crimes at the same level as other vice crimes, such as drugs, tobacco and alcohol.
3. Call on provinces to put in place the social services required to help women exit prostitution and trafficking situations.
4. Call on provinces to clarify to what extent municipalities can license and regulate illegal activity, such as bawdy houses, which are thinly disguised as “massage parlours” and “body-rub parlours.” (This is relevant only if the new prostitution legislation continues to criminalize aspects of prostitution.)

Municipal

1. Establish laws and policies that faithfully follow the Canadian Criminal Code’s human trafficking and prostitution provisions.
2. Recognize that licensing and regulating the sex industry is only meaningful if licenses and regulations actually cover at least a majority of the marketplace.
3. Recognize that bylaws are only meaningful if they are actually enforced. Bylaw inspections should be unannounced and randomly spaced by inspectors trained on human trafficking indicators.

²⁷⁰ Some aspects of aiding, abetting and counseling are already covered in s 279.02, when a “material benefit” is received. An example of business entity liability would be where an escort agency or other “employment” agency knowingly engaged in human trafficking or does not effectively stop an employee or agent from doing so.

²⁷¹ Manitoba currently is the only province with a specific tort of human trafficking.

²⁷² Civil law statutes of limitation for related torts such as assault, battery and false imprisonment are typically two years, which is insufficient given the frequent long-lasting trauma of those who are trafficked for sexual purposes.

4. Develop collaborative local strategies to *prevent* human trafficking and sexual exploitation and raise awareness of its characteristics, based on a careful assessment of local vulnerabilities and strengths, and monitoring high-risk areas and populations.²⁷³

ii. Law Enforcement Issues:

1. Encourage proactive (rather than reactive) investigations by law enforcement of potential sex trafficking cases.
2. Train investigators on collecting corroborating evidence in trafficking cases, so the case does not depend solely on victim testimony. For example, collect financial information on traffickers to demonstrate trafficker's profits.²⁷⁴
3. Recognize that human trafficking is as likely or more likely to occur in unlicensed establishments.
4. Ensure continued training of investigators, police and prosecutors on human trafficking as the Criminal Code definition of human trafficking has recently changed ("Factors" added to exploitation provision) and will likely be amended again in 2014.
5. Internet: Ensure that law enforcement distinguishes "conduct" occurring on/facilitated by websites advertising sex for sale separately from "content" on these sites. Promoting illegal conduct should be investigated and prosecuted and not considered immune because of the internet medium.
6. Investigate and prosecute enablers of sex trafficking as well as the direct perpetrators to disrupt trafficking networks.
7. Monitor specialized Human Trafficking Courts, such as those established in New York State, to determine if specialized courts are more effective than traditional courts at handling sex trafficking cases, particularly with regards to victim assistance. Lessons from Canadian provincial domestic violence courts, such as those in Ontario, should also be considered.

²⁷³ A tool to aid the development of local anti-trafficking and exploitation strategies in Canada has recently been developed: Local Safety Audit Guide, *supra* note 104.

²⁷⁴ *Ibid*, 62.

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Appendix I

PROVINCIAL	FEDERAL	PROVINCIAL	MUNICIPAL
<p>PROVINCIAL</p> <p>CRIMINAL CODE (2003)</p> <p>Human trafficking</p> <p>...tion, transfer, ...sons, by means ...or other forms ...of fraud, of ...power or of a ...of the giving or ...enefits to ...erson having ...n, for the ...xploitation shall ...xploitation of ...other forms of ...labour or ...es similar to ...moval of</p> <p>...nt, ...nsfer, harbouring</p> <p>...t or use of force, ...on, fraud, ...of power or ...ability, ...payments/benefits ...nt of a person ...er another</p> <p>...loitation</p> <p>...e prostitution of ...ms of sexual ...ed labour or</p>	<p>CRIMINAL CODE</p> <p>Human Trafficking law (279.01)</p> <ul style="list-style-type: none"> Recruitment, transporting, holding, or controlling the movement of women or girls for the purposes of (or facilitating) exploitation <p>Factors (added 2011) (279.04 (2))</p> <p>To find exploitation, Court may consider whether accused:</p> <p>(a) used or threatened force or another form of coercion;</p> <p>(b) used deception; or</p> <p>(c) abused position of trust, power or authority.</p> <ul style="list-style-type: none"> No receipt of financial or material benefit from exploitation (279.02) No withholding or destruction of identity documents (279.03) Sentences: 14-year max; 5-year mandatory minimum for trafficking minors; up to life if includes kidnapping, aggravated assault, or aggravated sexual assault <p>Prostitution legislation</p> <ul style="list-style-type: none"> Sex trafficking cases are also prosecuted under the CCC. Common charges include sexual exploitation (s. 153), operating a common bawdy house (s. 213), various procuring offenses (including "living off the avails")(s. 212). Heightened penalties if victims is under 18. Sentence ranges from months to 14 years. <p>Child luring</p> <ul style="list-style-type: none"> Criminal offense for anyone over 18 to attempt to contact minors through the internet to incite them to have sexual contact (CCC s. 172.1) <p>Immigration provision (IRPA s. 118)</p> <ul style="list-style-type: none"> Human trafficking requires crossing Canada's border Temporary Resident Permits grant short-term immigration status to trafficking victims (180 days, renewable). 	<p>Varies by province</p> <ul style="list-style-type: none"> Minors are under 18 (Alberta, Manitoba, Saskatchewan, Ontario, Quebec, New Brunswick, P.E.I.) or under 19 (all others). All provinces have relevant Child Welfare legislation with immediate protection possible Family Violence Acts in 6 provinces (AB, MB, NS, PE, NL and SK) and 3 territories (NT, YT and NU): cover sexual abuse, forced confinement. <p>British Columbia:</p> <ul style="list-style-type: none"> <i>Child, Family and Community Services Act</i> (1996) Removal of child to place of safety if sexual exploitation or prostitution <i>Victims of Crime Act</i> (1996) <i>Crime Victim Assistance Act</i> (2001) General compensation/income assistance, not specific to human trafficking <p>Alberta:</p> <ul style="list-style-type: none"> <i>Protection of Sexually Exploited Children Act</i> Police/director of child welfare may confine/protect child in prostitution for 5 days; restraining orders or imprisonment of persons furthering sexual exploitation <p>Manitoba:</p> <ul style="list-style-type: none"> <i>Child Sexual Exploitation & HT Act</i> (2012) protective orders for victims possible (usual= three years); victim can sue trafficker in tort (no proof of damage required; disgorge profits). <i>Child and Family Services Act</i>: can apprehend child under 18 without warrant to protect; duty to report child porn <i>Justice for Victims of Child Pornography Act</i> <i>Victims' Bill of Rights (2001)</i>: Victims' Assistance Fund for services <i>Safer Communities and Neighborhoods Act (2001)</i>: holds property owners liable for nuisances, including prostitution <i>Highway Traffic Act</i>: can seize vehicle in course of prostitution-related offence 	<p>Varies by municipality</p> <p>Vancouver</p> <ul style="list-style-type: none"> City licenses sex selling under Business Licence Regime By-Laws. Very detailed regulations. Fees range from \$157 (social escort) to \$9,888 (body-rub parlours, body-painting studios, model studios.) <p>Edmonton</p> <ul style="list-style-type: none"> City licenses sex selling under Business Licence By-Law (2013). Zoning bylaw creates "separation rule" Fees range from \$721 (body rub centre) to \$5,651 (escort agency) <p>Winnipeg</p> <ul style="list-style-type: none"> City licenses escort agencies, massage parlours and massagists under Business License By-Law 91/2008 Zones sex selling in downtown core/surrounding area Fees range from \$190 (massagist) to \$4,260 (escort agency and massage parlour) <p>Toronto</p> <ul style="list-style-type: none"> City licenses some sex selling under City of Toronto By-Law 545 (does not regulate escort agencies/dating/services). Fees range from \$355 (body rubber/entertainer) to \$11,795 (body rub parlour) No new body rub licenses will be issued. Inspections once a month for explicit sex sellers <p>Windsor</p> <ul style="list-style-type: none"> City licenses adult entertainment and body rub parlours, escorts agencies and escorts Fee range: \$148 (escort) to \$366 (body rub parlour). Superior Court of Appeal (2005) struck down proposed higher city fees for sex industry participants. Inspections complaint driven <p>Montreal</p> <ul style="list-style-type: none"> Highly complex due to 19 borough structure Each borough responsible for zoning, public order regulation and licensing of sex industry. Seen as tolerant of sex industry

INTERNATIONAL

FEDERAL

PROVINCIAL

	services, slavery or practices similar to slavery, servitude...			
LAW (Continued)			<p>Ontario:</p> <ul style="list-style-type: none"> <i>Rescuing Children from Sexual Exploitation</i> (2012) repealed after failed enter into force. (Would have given powers to confiscate vehicle used for prostitution and victim ability to sue). <i>Child and Family Services Act</i> (1990) Where risk of sexual exploitation, can bring child to safe place without warrant <p>Quebec:</p> <ul style="list-style-type: none"> <i>Youth Protection Act</i> Immediate removal of child for 48 hours where risk of sexual abuse (extendible; no warrant required) <p>Nova Scotia: <i>Family Services Act</i> Social worker can remove child at risk of sexual exploitation for up to 5 days without warrant</p>	<ul style="list-style-type: none"> Nuisance and criminal rec By-laws on c subsidies, etc <p>Halifax</p> <ul style="list-style-type: none"> no licensing p <i>Halifax Penin</i> cabarets and designated f By-law respe <p>Dartmouth</p> <ul style="list-style-type: none"> Strip clubs ba To open adult ent Development Agr
UNIQUE TRAITS	<ul style="list-style-type: none"> Nuanced understanding of means Any child under 18 in sex industry is <i>per se</i> victim (proof of means not required) Eliminates consent as a defense Details measures for physical, psychological and social recovery (Art. 6) Requires comprehensive policies to prevent HT and protect from re-victimization (Art. 9) Requires states to adopt/strengthen measures to discourage demand (9(5)) 	<p>Criminal law provisions</p> <ul style="list-style-type: none"> HT law: Broad conception of means but narrow requirement for exploitation, requiring that victim objectively believe that their safety or the safety of a person known to them would be threatened. Not required for HT under CCC: movement, a border crossing, actual exploitation. Eliminates consent as a defense Prohibited behaviour also illegal under certain prostitution crimes (procuring, bawdy house laws) 	<ul style="list-style-type: none"> Manitoba only province with specific provincial human trafficking law. Manitoba tort of human trafficking does not require victim to prove damage to bring case. 	<ul style="list-style-type: none"> Some licens (the more e: less expens fronts for se Licenses fo create bawd prostitution

Appendix I

ONAL	FEDERAL	PROVINCIAL	MUNICIPAL
<p>Practices:</p> <p>ity; legal ion); NL ur); Germany nisms).</p>	<ul style="list-style-type: none"> • Criminal code definition improving with recent amendments that expand conception of "exploitation." • Prosecutions are picking up • Temporary resident permits available (although few given thus far for sex trafficking) 	<ul style="list-style-type: none"> • Police work closely with local organizations who have contact with victims and/or trafficking expertise (BC, AB, MB, ON, QC) • Proactive police investigations (Peel Region police). • Provincial action plan to combat human trafficking (BC) 	<ul style="list-style-type: none"> • Les Survivantes (Montreal) draws on the expertise of experiential women to train police, counselors, health care providers and other agency staff on the realities of sex trafficking • City of Toronto's strategy to train municipal employees, including bylaw inspectors, fire department staff, shelter and social housing staff
<p>andatory. As compliance of menting non- state laws often ately protected s underfunded.</p>	<ul style="list-style-type: none"> • Safety requirement in Criminal Code provision at odds with common trafficker tactic of psychological coercion • Criminal law imperfect: few benefits for victims; time bars; heavy burden of proof • Immigration provision: ineffective in practice and focuses on border security rather than victims • Concerns that TRPs tied to cooperation in prosecutions 	<ul style="list-style-type: none"> • Reactive police investigations ineffective approach (victim reluctance to come forward or even identify as victim). • Law enforcement lacks good intelligence, particularly in ethnic segments of community • Lack of resources for victims and frontline providers. • Some provincial law enforcement consider trafficking as RCMP matter 	<ul style="list-style-type: none"> • Lax enforcement: few bylaw officers per city, most responsible for enforcing all of cities bylaws. (e.g., Toronto inspects body rub parlours once a month, but "holistic centres" once every 3 years) • Study found many Independent sex sellers view licenses as "poor value" • Human trafficking likely to fall outside of various regulatory schemes
<p>s good addressing wide techniques and</p> <p>sions for ion measures</p>	<ul style="list-style-type: none"> • Focus on improving Criminal Code provision • Criminal provision only one tool for fighting sex trafficking that doesn't meet many victims' needs • Prevention programs likely a good investment 	<ul style="list-style-type: none"> • Immediate intervention possible under child welfare and family violence laws if victim is child <p>Encourage:</p> <ul style="list-style-type: none"> • prioritization of human trafficking for prosecutors and law enforcement • comprehensive victim protection and empowerment • police partnerships with NGOs/service providers 	<ul style="list-style-type: none"> • Licensing schemes vary by municipality: some do not license at all, some license only certain sectors of sex industry, others license widely and charge significant fees • Adult Entertainment Association tries to eliminate or reduce scope of licensing

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Appendix II

Foreign Laws to Combat Sex Trafficking

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
Australia	<p>1999 Criminal Code Amendment (Slavery and Sexual Servitude) Act – created new offences.</p> <p>2005 Criminal Code amendment created new offences of people trafficking, domestic trafficking, debt bondage and child trafficking.</p> <p>2013 <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill, 2013</i> (Royal Assent 7th March 2013). Act covers all forms of exploitative conduct e.g., expands offences of sexual servitude and deceptive recruiting for sexual services (regardless of industry).</p>	Criminal legislation of prostitution primarily a State and Territory responsibility.	2004 (amended in 2009) legislation created 3 categories of visas for HT victims: Bridging; Criminal Justice Stay; and temporary or permanent Witness Protection (Trafficking) visas.	<p>Most States and Territories have own legislation on trafficking or prostitution.</p> <p>Number of states currently reviewing their laws on prostitution.</p>
Victoria		<p>1994 Prostitution licenced under the <i>Sex Work Act</i></p> <p>2004 <i>Sex Work (Fees) Regulations</i></p> <p>2006 <i>Sex Work Regulations</i></p> <p>2008 <i>Public Health & Wellbeing Act</i></p>		Recommendations to criminalize clients discussed in 2010 and opposed by sex worker advocates.

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
NSW		<p>1979 Prostitution decriminalized but certain actions illegal. Licensing of brothels. The most 'liberal' state.</p> <p>2013 NSW <i>Committees of Inquiry</i> on Sex Work Regulation; Sex Trafficking & Local Government; and Planning Policy all due to report in 2013.</p>		<p>2012 <i>Issues Paper Regulation of Brothels in NSW</i> proposes</p> <ul style="list-style-type: none"> i) improved regulation ii) introduction of licensing system iii) licensing system for owners and operators of commercial sex premises. <p><i>Aims:</i> to protect residential amenity, sex workers and public health.</p>
Queensland		<p>1999 Prostitution Act Brothels legal and licensed (up to 5 rooms only). Location restrictions. Private single sex work legal. All other forms illegal (outcall and street prostitution). Minor amendments since then.</p> <p>Costs: Application \$5,500 AUS License \$7,165 + Per room \$2,867 + Management certificate \$750 (application) and \$40 So overall cost to run approx. \$30,000/year</p>		<p>Government reviews in 2004, 2006, 2011 found purpose of act met (health, safety, corruption, organized crime) and no increase in prostitution, but 2011 review finds increasing number of migrant women in prostitution.</p> <p>2009 Univ. of Queensland 10-year evaluation found good health/safety outcomes & no evidence of organized crime or corruption, but suggest that 90% of prostitution activity is unlicensed (including escorts, escort agencies, outcalls.)</p>

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
Denmark		1999 Prostitution decriminalized but brothels and pimping illegal. Self-employed prostitution legal. Majority of sex workers now from Thailand, Central and Eastern Europe and Nigeria.	(First country to legalize pornography in 1967 and 1969). Currently suggested that prostitutes should have more rights, be recognized profession, able to claim benefits	
France	2009 Penal Code Art. 225-4 prohibits all forms of trafficking. Anti-trafficking statute outlined in Ministry of Justice Circular November 1 st 2009. Cases often charged under pimping rather than trafficking articles. (TIP 2012)	Traditionally abolitionist; brothels became illegal in 1946. 2003 <i>Domestic Security Law</i> Penal Code Art. 225 created offence of 'passive soliciting', targeting street prostitution. (Distinctions drawn by Sarkozy between classic French prostitutes ('filles de joie') and trafficked foreign-born prostitutes ('poor foreign girls') (Munro & Della Giusto, 2008)). 2013 soliciting law overturned March 28 th .	2011 Parliamentary Committee report on prostitution recommended criminalizing clients and greater rights and protections for prostitutes and trafficking victims, etc. Report noted that 90% of prostitutes in France are now trafficked. (Bousquet & Geoffroy, 2013).	Critique of 2002 law as attempt to combine abolitionist approach to prostitution with anti-trafficking, anti-immigration agendas.
Finland	2003 Penal Code 1889-39 prohibits all forms of trafficking. Non-trafficking criminal statutes e.g., for pandering, also used to prosecute sex traffickers. (TIP 2012)	2006 legislation banning purchase of sex from trafficked or procured victims or minors (i.e., <i>not</i> in general) (NPPF, 2009). Pimping and prostitution involving minors are offences under the penal code.	Finnish <i>National Rapporteur on Trafficking in Human Beings</i> established in 2009.	

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
Germany	<p>Criminal code Immigration law Special protections</p> <p>Federal prostitution law aimed at improving efforts to identify and prosecute human trafficking and criminal activities. (Kavemann, 2007 p. 3)</p>	<p>Prostitution and brothels legal. Some municipalities own and run brothels, but big variation in controls across states and cities. Usually operate in restricted zone.</p> <p>2002 Prostitution Act <i>Federal</i> legislation to improve legal status and working conditions of prostitutes with regular work permits (and removing offence of furthering prostitution); improve victim and minor protections and exit from industry. <i>States</i> have additional legislation and are responsible for public order and safety and own police laws. <i>Municipalities</i> control through zoning by-laws</p>		<p>Concern about increases in HT in sex industry e.g., from Eastern Europe.</p>
Iceland		<p>2007 prostitution legalized. Made buying and selling legal if no profit by 3rd parties.</p> <p>2009 passed legislation banning purchase of sex.</p>	<p>Strip shows banned since 2010.</p>	
Netherlands	<p>2000 Immigration law granted rights to HT victims.</p>	<p>2000 Prostitution and brothels including 'windows' legalized and regulated locally. Sex workers issued with registration cards. From 2011 required to pay taxes. Escort services not licensed.</p>	<p>2000 National Rapporteur on Trafficking in Human Beings established. Annual reports to 2010.</p>	<p>In past few years increasing concerns about HT and organized crime control of prostitution (esp. in Amsterdam) and trafficking of women esp. from Central and Eastern Europe.</p>

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
Netherlands (Continued)		From 2000 Amsterdam used regulatory 'administrative' approach with appointment of a Red Light District Manager, screening/auditing of infrastructure projects and building sales in attempt to curb organized crime involvement in drugs and prostitution.	2004 <i>National Action Plan on HT.</i> 2008 <i>National Task Force on HT.</i> 2009 Mandate of National Rapporteur expanded to include child pornography (to respond to rapid increase in digital images).	Minister of Justice Special Prosecutor closed down some sex selling 'windows' from 2009.
Norway		2003 Prostitution Reform Act banned purchase of sex.		
Sweden	2002 <i>Prohibiting Trafficking for Sexual Purposes Act</i> 2004 act expanded to cover all forms of trafficking	1999 Act Prohibiting the Purchase of Sexual Services. Amendment to Penal Code.		2010 Ministry of Justice reviewed impact of legislation 1999 Act by Chancellor of Justice Anna Skarhed. Found 50% decline in street prostitution in Sweden and no known increase in indoor prostitution (but increases in Norway and Denmark over same time period). Law supported by 70% of population.

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
New Zealand		<p>2003 Prostitution Reform Act Decriminalized brothels, escort agencies and soliciting. Minimal regulation. Child prostitution illegal. Regulation of brothels, zoning, licensing and advertising a local government responsibility.</p>		<p>2008 evaluation reported no increase in numbers of sex sellers, no change in level of information/health services to sex sellers and decreased police capacity to uncover exploitation.</p>
United Kingdom	<p>2002 National Immigration & Asylum Act s.145 created offence of facilitating transport into, out of or within the UK for purposes of controlling them for prostitution.</p> <p>2003 Sexual Offences Act (arranging or facilitating)</p> <p>2004 Asylum and Immigration Act (use of force, threat)</p> <p>2009 Coroners and Justice Act (slavery, servitude...without precondition of smuggling in the UK) [Source: SOCA; TIP]</p>	<p>Since 1950's prostitution legal but not kerb crawling, pimping, etc.</p> <p>2003 Sexual Offences Act criminalizes paying when prostitute subject to force.</p> <p>2010 Police and Crime Act made all forms of customer solicitation and frequent soliciting illegal.</p>	<p>National Referral System for trafficking</p> <p>2011 Human Trafficking Strategy established. Increased funds allocated to central contractor for care of victim.</p> <p>2012 First Report of Inter-Ministerial Group on Human Trafficking.</p>	<p>Current discussion on changes - decriminalization (Swedish model) banning purchase of sex - or full legalization of prostitution...</p> <p>March 2013 <i>Centre for Social Justice</i> (NGO) report <i>It Happens Here</i> on ending modern slavery in the UK.</p>
United States	<p>2000 Federal <i>Trafficking Victims Protection Act</i>. Reauthorized 2003, 2005, 2008. (Anti-slavery basis, no cross-border requirements) 2008 Act has a greater focus on prosecution and prevention.</p>		<p>Since 2004 Dept. of Justice funding of \$64m for local HT multi-agency task forces and police training. Currently funding 40 multi-agency teams.</p>	<p>Traffickers prosecuted under 'a myriad of state laws.' (TIP p.361)</p>

Appendix II

Country	National/Federal legislation Human Trafficking	Nation/Federal legislation Prostitution	Other initiatives	Recent reports or developments
United States (Continued)			2012 NIJ reports on HT prosecution and on prostitution/sex trafficking challenges	2013 <i>Federal Strategic Action Plan on Human Trafficking</i> to improve victim services currently being reviewed.
<i>Individual U.S. States</i>	<p>47 US states now have HT legislation (as of March 2012).</p> <p>New York state's sex trafficking law is one of most comprehensive in the U.S. (New York Penal Law 230.34). Specifies common means used by traffickers, such as the use of certain drugs.</p>	<p>Regulation of prostitution a state responsibility with exception of Federal laws limiting prostitution near military establishments, and making it an offence to transfer people across state of international borders for prostitution. Street prostitution, brothels and living off the avails are illegal in all states except Nevada. In most states is a misdemeanour, and public order crime.</p>		
Europe	<p>2002 EU Council Framework Decision 2002/629/HA on combating trafficking in human beings.</p> <p>2005 Council of Europe <i>Convention on Action against Trafficking in Human Beings</i>.</p> <p>2010 EU Regional Anti-Trafficking Rapporteur established.</p> <p>2011 EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. (Replaces 2002 Decision).</p>		<p>2012 EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. (Compliments 2011 EU Directive with framework for planned initiatives and support to states).</p> <p>2013 <i>Trafficking in Human Beings</i>. Eurostat (first EU statistical report on trafficking)</p>	

Appendix III

Canadian Provincial Laws to Combat Sex Trafficking

Province	Human Trafficking	Prostitution & sexual exploitation	Related laws/initiatives
Alberta	No specific legislation on human trafficking	<p>2000 Protection of Sexually Exploited Children Act Empowers removal of child involved in sexual exploitation/prostitution to safe place without court order for 5 days and subsequent court detention; restraining order or imprisonment/fine for any person furthering sexual exploitation.</p> <p>2000 Child Youth and Family Enhancement Act Includes child sexual abuse and prostitution. Provides for restraining orders and secure services orders.</p>	<p>2000 Traffic Safety Act. Provides for seizure of vehicle from person charged with prostitution-related offence (esp. repeat offenders).</p> <p>2000 Gaming and Liquor Act. Unlawful behaviour includes</p> <p>2004 Victims of Crime Act & Regulations. Includes sexual abuse, forcible confinement.</p> <p>2007 Safe Communities and Neighbourhoods Act. Establishes a complaints system re property used for child sexual purposes or prostitution.</p> <p>2011 Income, Employment Supports Act & Income, Training and Health Benefits Regulation. HT victims eligible under Section 10(1) prostitution or living off the avails of prostitution.</p> <p>Alberta Gang Reduction Strategy</p> <p>Action Coalition on Human Trafficking (ACT) funded by government</p>

Appendix III

Province	Human Trafficking	Prostitution & sexual exploitation	Related laws/initiatives
British Colombia	No specific legislation on human trafficking	1996 Child, Family and Community Services Act Includes sexual exploitation & prostitution and removal of child to place of safety.	<p>1996 Liquor Control and Licensing Act. Prohibits stripping, nudity, physical contact, etc. and limits hours.</p> <p>1996 Victims of Crime Act</p> <p>1996 Heath Professions Act.</p> <p>2001 Crime Victim Assistance Act Provides criminal injury compensation to HT victims if offence occurred in BC.</p> <p>2002 Employment & Assistance Act and Regulations (Section 7(1)(d) provides income assistance for HT victims.</p> <p>2008 The Massage Therapists Regulation. Establishes massage as a registered practice.</p> <p><i>College of Massage Therapists of BC</i> code of ethics prohibits sexual conduct.</p> <p>2011 OCTIP Online education & training curriculum on human trafficking.</p> <p>2013 BC Action Plan to Combat Human Trafficking 2013-2016. Ten guiding principles; five priority actions.</p>
Manitoba	April 2012 The Child Sexual Exploitation and and Human Trafficking Act i) Legislates protection orders for victims; ii) Allows victims to sue their trafficker for financial compensation for damages.	2011 Justice for Victims of Child Pornography Act	<p>2001 Victims Bill of Rights and victim assistance fund.</p> <p>2001 Safer Communities and Neighbourhoods Act. Enables residents to file complaints about properties and use.</p>

Appendix III

Province	Human Trafficking	Prostitution & sexual exploitation	Related laws/initiatives
Manitoba (Continued)	2012 <i>The Manitoba Human Trafficking Awareness Day Act.</i>	<p>April 2012 <i>The Child Sexual Exploitation and 2012 Child Sexual Exploitation and Human Trafficking Act</i></p> <p>i) Legislates protection orders for victims; ii) Allows victims to sue their trafficker for financial compensation for damages.</p> <p>2012 amended <i>Child and Family Services Act</i></p>	<p>2002 <i>Tracia's Trust: Manitoba Sexual Exploitation Strategy Phase I</i> Lead Dept. of Family Services and Labour. Target group children. Coordinated care, and services, outreach, education. Min. of Justice prosecution policy.</p> <p>2008 <i>Tracia's Trust: Phase II</i> Service coordination for all ages and forms of sexual exploitation; focus on prevention.</p> <p>2008 <i>Worker Recruitment and Protection Act.</i> (includes protection of foreign children from exploitation e.g., by model & talent agencies).</p> <p>2011 <i>Tracia's Trust: Phase III</i> Development and implementation of the new human trafficking legislation. Child = under 18 years.</p> <p>2013 amended. <i>Highway Traffic Act</i> Provides for suspension or removal of driving license for a prostitution-related offence, & confiscation of vehicle by police officer.</p> <p>2013 amended. <i>Freedom of Information & Protection of Privacy Act</i></p>
Ontario	No specific legislation on human trafficking	<p>1990 <i>Child and Family Services Act</i></p> <p>2012 <i>Rescuing Children from Sexual Exploitation repealed – failed to come into force in 10 years.</i> (Would have given powers to confiscate vehicle used for prostitution and for victims to sue).</p>	<p>2012 OPP <i>Provincial Strategy to Protect Children from Sexual Abuse and Exploitation on the Internet.</i> Coordinates police force action across province. OPP Provincial Organized Crime Enforcement teams (POCET) target serious crimes including trafficking.</p> <p>2001 amended. <i>Victim's Bill of Rights and Office for Victims of Crime</i></p>

Appendix III

Province	Human Trafficking	Prostitution & sexual exploitation	Related laws/initiatives
Ontario (Continued)			<p>2009 amended. <i>Compensation for Victims of Crime</i></p> <p>2010 <i>Employment for Foreign Nationals Act (Live-in Caregivers and Others)</i></p> <p>2011 amended. <i>Freedom of Information and Protection of Privacy.</i></p> <p>2011 <i>Backgrounder: Fighting Human Trafficking in Ontario.</i> 'Multi-pronged approach to fight trafficking and sexual exploitation. Launched initiatives with one-time funding to prevent victimization, enforce trafficking laws, prosecute offenders and enhance victim support.</p>
Quebec	No specific legislation on human trafficking	Youth Protection Act (Loi sur la protection de la jeunesse)	<p>2005 Justice Minister creates inter-ministerial sub-committee on HT – developed victim services and established provincial coalition on HT CATHII.</p> <p><u>No provincial police (SQ) strategy</u> – see human trafficking as RCMP issue – results in almost total impunity across the province</p> <p>May 2012 <i>Conseil du statut de la femme Prostitution: Time to Take Action.</i> Recommends Quebec Justice Minister push for a) Criminal Code amendment to introduce Swedish approach of criminalizing sex purchase and decriminalizing sex sales and b) criminalizing <i>all</i> forms of sex advertisement.</p>
Nova Scotia	No specific laws on human trafficking	1990 <i>Child and Family Service Act</i>	<p>2006 <i>Safer Communities and Neighbourhoods Act (SCAN)</i></p> <p>NS Advisory Council on Status of Women - Services for Victims of Human Trafficking <i>listed on Nova Scotia Domestic Violence Resource Centre</i></p>

Appendix IV

Canadian Municipal Laws and Regulations to Combat Sex Trafficking

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Halifax Regional Municipality (1996 amalgamation now divided into 18 community planning areas)		(i) Halifax Peninsula Land Use By-law regulates adult bookstores, cabaret and massage parlours. Zone C-6 is the 'Adult Entertainment' but NO area/land is designated. So in effect all are prohibited and there is no licensing process for selling sex.				*Six community standards officers monitor land use only *Police apply boundaries to women sex workers once arrested – must not frequent stroll areas. *Current application 2013 to open a strip club in Halifax on hold *North Preston gang involved in prostitution rings and trafficking
Dartmouth		To open an adult entertainment business in Dartmouth must request a Development Agreement from the community council. (Strip clubs banned since 2006 because of public outcry).				

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Montreal (19 boroughs)		<p>1994 By-law concerning establishments dealing with eroticism (E-4). Defines eroticism and types of business (store, cinema, place, hall), regulates exterior display, and prohibits any involvement of minors, set out penalties.</p> <p>1994 By-law concerning display of erotic printed matter. Regulates display, prohibits minors, sets fines. Series of By-laws on commercial redevelopment, building subsidies, etc. exclude places dealing in eroticism.</p> <p>Each Borough responsible for zoning, public order regulation and licensing of sex industry.</p>				<p>*Seen as tolerant of sex industry.</p> <p>*Some 335 sex industry establishments mapped in metropolitan Montreal in 2011.</p> <p>*Several attempts by boroughs to create red light zones over past 15 years, including Hochelaga-Maisonneuve in 2012. Rejected by public (and City in 2012).</p> <p>* Social mediation and Tandem use mediation to resolve disputes/complaints about public nuisance including prostitution issues; offer exit services, supports.</p> <p>*Police SEMJ division deals with street gangs, illegal substances and morality. Runs Les Survivantes project with six HT survivors to train, educate police, community leaders and the public</p>
Toronto	2012 City study of adult entertainment industry and HT.	<p>2006 City of Toronto Act Defines 'adult entertainment', distinguishes it from therapeutic or medical treatment. Governs hours of operations, designates zones, numbers of permits, prohibits employment under 18 years of age.</p>			High fees required to cover the higher cost of enforcement	<p>*Bylaw enforcement officers routine inspections (some with public health, fire department) once a month of body-rub parlours & AECs; holistic centres once every 3 years. Partner with Toronto Police (TPS) re: illegal operations.</p>

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Toronto (Continued)	2013 City report to staff on HT – no strategy but improved services and to combat HT	<p>Licensing definitions municipal bylaw 545</p> <p>(i) Adult entertainment club (ii) Body-rub parlour (iii) Holistic Centre</p> <p>All practitioners require an individual license.</p> <p>2013 Zoning Bylaw 569-2013. Defines body-rub parlour for first time. Restricts them to 'employment industrial zones'; specifies distance from residential areas, schools, etc.</p>	<p>\$11,871 \$11,794 \$243</p>	<p>17 25 427</p>	<p>*27 Professional Holistic Associations recognized by the City.</p> <p>New Bylaws to enable those operating illegally as holistic centres to be shut down</p>	<p>*City does not regulate escort agencies/dating/services.</p> <p>* No new body-rub licenses will be issued.</p> <p>*TPS against registration and elimination of licensing because of difficulties monitoring HT and minors under 18 years of age in sex industry.</p> <p>*City Council currently investigating publication restrictions on advertising; reviewing bylaws and zoning to help reduce trafficking and strengthen services for victims.</p>
Brampton		<p>Powers to pass bylaws under Municipal Act 2001.</p> <p>2002 Licensing By-Laws 1-2002 Regulate adult entertainment parlours, body-rub establishments and adult video stores.</p> <p>(i) Adult entert. parlour (ii) Body-rub parlour (iii) Body-rub attendant</p>	<p>\$4,006 \$4,006 \$279</p>	<p>1 8 208</p>		<p>*Does not mention massage or holistic centres.</p> <p>*Escort services not regulated.</p> <p>*City planning a licensing scheme to regulate child entertainers, protect against sexual exploitation.</p> <p>*Policed by Peel Regional Police (PRP)</p>

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Mississauga		<p>Powers to pass bylaws under Municipal Act 2001</p> <p>2005 The Corporation of the City of Mississauga Adult Entertainment Licensing Bylaw 507-05</p> <p>(i) Adult entert. establishment (ii) Body-rub business</p> <p>2007 Zoning bylaw Designates permitted zones for body-rub parlours; restricts location near residential areas</p>	<p>\$4,837 \$6,202</p>		<p>Health, safety and nuisance control.</p>	<p>*Policed by Peel Regional Police (PRP).</p> <p>*City enforcement officers work with PRP, health, liquor board, etc.; routine inspections – every 2-3 months unannounced; respond to complaints.</p> <p>*City has no specific training on HT – see this as police area.</p>
Windsor		<p>i) 2004 Business Licencing By-law e.g., *Adult Entertainment Parlour</p> <p>*Escort Agency, personal service agents</p> <p>*Holistic Centre & practitioner</p>	<p>\$286²⁷⁵ (Owner)</p> <p>\$148 (renewal)</p> <p>\$188 (new)</p> <p>\$148 (pract'er)</p>	<p>395 (2004)</p> <p>131</p>	<p>Protect health and safety of workers, minimize nuisance, and protect customers.</p> <p>Protect health/safety of public: background checks; ensure no workers under 18.</p> <p>Ensure qualified, trained professionals</p>	<p>*By-law Unit of 12 enforcement officers responsible for enforcing <i>all</i> by-laws.</p> <p>*Windsor Police (morality unit). Inspections mostly <u>complaint</u> driven.</p>

²⁷⁵ 2005 Superior Court of Appeal judgment struck down proposed higher city fees for adult entertainers.

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Windsor (Continued)		<p>(ii) 2011 By-law respecting the licensing, regulation and inspecting of body-rub parlours</p> <p>(iii) Zoning By-law</p>	\$366 (new)	(2011)	No new adult entertainment licenses in business improvement area, but body-rub parlours subject to zoning approval.	
Winnipeg		<p>2008 Bylaw No 91/2008. Business license required for Escort Agency and private escorts agencies, massage parlours.</p> <p>(i) Escort agency (ii) independent escort agency (iii) massage parlour (iv) massagist</p> <p>2006 Zoning by law 200/2006 Restricts adult entertainment, dating and escort services to downtown core and surrounding areas; and to distances from dwelling units, parks, schools, churches, etc.</p>	<p>\$4,260 \$2,110 \$4,260 \$190</p>		Fees reflect extra cost of policing and enforcing bylaw for these services.	<p><u>No licensing bylaws to regulate other sections of adult/sexual service industry so cannot track or monitor.</u></p> <p>*Current request by <i>Massage Therapy Association</i> to reclassify massage therapy centres without professional rules or membership as body-rub centres.</p>
Edmonton		<p>2013 (revised) Business Licence Bylaw</p> <p>(i) Adult theatre (ii) Body-rub centre (iii) Escort agency (iv) Independent escort (v) Exotic enter. agency (vi) Health enhancement centre</p> <p>2012 (revised) Zoning Bylaw Limits placement of body-rub centres and adult mini-theatres near housing, schools, bars, parks, etc. (Separation rule).</p>	<p>\$2,120 \$721 \$5,651 \$1,000 \$5,334 \$214</p>	<p>2 47 4 34 2</p>		<p>*Enforcement by peace officer (police, city or government employee).</p> <p>*Enforcement team inspects body-rub centres and looks for trafficking information. One bylaw enforcement officer allocated for adult entertainment.</p>

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Fort McMurray		<p>Two relevant business licencing Bylaws: Bylaw No. 983 regulates "Body-Painting Studios", "Encounter Studios", "Dating and Escort Services" and "Model Studios".</p> <p>By-Law No. 982 to License, Regulate & Control Massagists and Massage Parlours</p> <p>Land Use Bylaw, which defines "Adult Entertainment Facility" (to include massage services; establishes separation rule</p>	<p>\$3,000/yr \$100/yr for worker.</p> <p>\$3,000 for business \$100 for massagist.</p>			<p>*Limits licenses to people who have lived in Fort McMurray for at least 6 months.</p> <p>*Enforcement by Enforcement By-law Officer and RCMP but no details on regularity, etc.</p> <p>*Bylaws to be reviewed in fall 2013.</p>
Vancouver		<p>2013 (revised) Business Licence Regime By-Law</p> <p>Very detailed regulations on age, sex, building and room sizes, clothing, professional qualifications, etc.</p> <p>Defines separately:</p> <p>(i) body-rub parlours, body-painting, model studios.</p> <p>(ii) Health enhancement centres (professional qualifications)</p> <p>(iii) Massage parlours, steam baths</p> <p>(iv) Adult entertainment store</p> <p>(v) Social escort</p> <p>(vi) Social escort service</p> <p>(vii) Dating service</p>	<p>\$9,888</p> <p>\$242</p> <p>\$261</p> <p>\$323</p> <p>\$157</p> <p>\$1,168</p> <p>\$157</p>		<p>New bylaws to be based on health and safety rationale</p>	<p>*Bylaws currently under review.</p> <p>*New language will focus on health and safety</p> <p>*Bylaw enforcement to be complaint driven</p> <p>*New regulations will not require individuals sex sellers to be licensed</p> <p>*VPD issued Sex Work Enforcement Guidelines for police and public (states violence against sex sellers will be treated as serious criminal matter)</p>

Appendix IV

City	Human Trafficking	Prostitution Sex industry regulation	License Fees	No.	Rationale	Enforcement/ Other initiatives
Vancouver (Continued)		2013 Zoning and Development By-Law <i>Business-Specific Policies and Guidelines</i> include for adult retail stores, cabarets and restaurants (exotic dancers and strippers)				*City plans to hire 2 "sex worker liaison" positions

Appendix V

Mississauga Adult Entertainment Establishment Licensing By-law Number 507-05

License Classification	Definition	Fee/Renewal Fee	Max No./ No. Issued ²⁷⁶
ADULT ENTERTAINMENT ESTABLISHMENT	includes an Adult Entertainment Business, Body-rub Business, Adult Book Store or an Adult Videotape Store		
ADULT ENTERTAINMENT BUSINESS	means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, services appealing to or designed to appeal to erotic or sexual appetites or inclinations	\$4,837.00/ \$4,817.00	9/ 8
ENTERTAINER	means a person who, in pursuance of a trade, business or occupation, provides services designed to appeal to erotic or sexual appetites or inclinations at an Adult Entertainment Business. Services designed to appeal to erotic or sexual appetites or inclinations" includes services of which a principal feature or characteristic is the nudity or partial nudity of any person, and services in respect of which the word "nude," "naked," "topless," "bottomless," "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.	No License Required. Every owner is responsible for Registering all Entertainers.	
BODY-RUB BUSINESS	Any premises or part thereof where a Body-rub is performed, offered or in pursuance of a trade, calling, business or occupation, but does not include any premises or part thereof where Body-rubs are performed for medical or therapeutic reasons by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario. "Body-rub" is an activity where the primary function is the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, a person's body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario	\$6,202.00/\$6,063.00	14/11
ATTENDANT	means any person who performs, offers, solicits or receives a Body-rub for gain or reward	\$381.00/\$358.00	108 (as of May 2013.

²⁷⁶ The number of licensed issued for 2013 was confirmed by Vali Maledi, City of Mississauga Office of Compliance and Licensing, Enforcement (8 May 2013).

Appendix V

LICENSING REQUIREMENTS AND REGULATIONS, BYLAW 507- 05

Business Type	Application Requirements	Additional Regulations
<p>Adult Entertainment Business</p> <p>Hours: "No services can be provided on any day, other than a Sunday, before noon of one day and after two in the forenoon of the following day; and on a Sunday, before four in the afternoon and after two in the forenoon of the following day."</p>	<ul style="list-style-type: none"> • Generic Licensing requirements are set out for all Adult Entertainment Establishments. • Additional for an Adult Entertainment business a criminal record check of owner and all partners is required. 	<p>Every Owner shall require an Entertainer to complete a registration form as set out in the By-law.</p> <ul style="list-style-type: none"> • The completed registration form shall include the following information pertaining to the Entertainer: (a) legal name; (b) current address; (c) former address if changed within the previous two years; and (d) proof of age of majority as evidenced by at least two official photographic identification documents of the Entertainer. • Every Owner shall retain with the completed registration form a photocopy of the identification provided by the Entertainer. • Upon request of an Inspector or the Licence Manager, owner must provide the completed registration form for any and all Entertainers, together with photocopies of the identification retained with the registration form. • Owners must retain all completed registration forms and photocopies of identification for three years, however registration forms are only valid for one year. • Persons under 18 years are not permitted to enter or remain in the Adult Entertainment Business, or be employed or otherwise use the services, or act as an Entertainer. • No entertainer is permitted to touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any other person; nor can any employee or patron touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any Entertainer. • No Entertainer shall, or permit any person to touch or make any physical contact with their breasts, buttocks, genital or pubic areas.
<p>Body-Rub Business</p>	<ul style="list-style-type: none"> • For owners generic licensing requirements must be met along with a criminal background check. • Each executed application for an Attendant's Licence shall be submitted to the Licensing Unit by the Attendant and be accompanied by: the fee, a Police Criminal Record Data Request form, proof of the Attendant's age by way of their birth certificate or provincial driver's licence; and a certificate signed by a duly qualified medical practitioner within one month immediately prior to the date of the executed application certifying that the Attendant is free from communicable diseases and is medically fit to perform Body-rubs. • No corporation may hold an Attendant's Licence. 	<ul style="list-style-type: none"> • No owner may permit any individual under the age of 18 to enter or remain in the Body-rub Business, or employ or otherwise use the services of individuals under the age of 18 years; • Owners must ensure that no body rubs are provided at the Body-rub Business other than in accordance with the requirements of this By-law; and that he only use the services of licensed Attendants; • Permit an attendant or patron to touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any other person; • Every Body-rub performed in a Body-rub Business shall be given in an individual room or cubicle, but no Owner shall cause or permit the door or other means of access to be equipped with a locking device of any kind, or any other device which could delay anyone from obtaining access to the room.

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