

**Children and Youth
In the Sex Trade:
Exploitation and Exiting**

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By

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ABSTRACT

The purpose of this thesis is to look at the current treatment of children and youth who are being exploited by the street sex trade. An understanding of the issues faced by these young people needs to be present before successful solutions can be developed and implemented. This thesis argues that children and youth are forced into the street sex trade by social and economic factors that are outside of their control. Young people do not have realistic alternatives to engaging in the street sex trade. Their involvement in the sex trade amounts to survival sex which may be the only way that they are able to provide for themselves. The lack of realistic alternatives to engaging in prostitution related offenses leads to the argument that charging children and youth with these types of offences is a violation of their basic rights under the *Canadian Charter of Rights and Freedoms*. Criminal charges do not address the realities that lead to sexual exploitation through the sex trade. Constructive steps need to be taken to deal with this issue in a way that allows for positive changes to occur. It is argued that programs that aim to address the root issues leading to sexual exploitation through the sex trade should be developed and supported. These programs should attempt to divert children and youth off the streets as a more permanent solution, rather than charging them under the *Criminal Code*. Effective solutions need to be found to protect the children and youth from further exploitation through the sex trade.

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To William

Who inspires me more
than he can ever know.

To My Grandma

Who taught me to always
fight for what I know is right
and who helped me to know
that I can accomplish anything.

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Introduction

The sexual exploitation of children and youth through street level prostitution in Canada is a problem that must be addressed. Children and youth are present in the sex trade in many communities in Canada. Involvement in the sex trade is often the result of systemic issues and discrimination against certain groups within our society. This is a very serious problem which is not being adequately addressed within our society. Mechanisms need to be put into place that end the exploitation rather than hide it or criminalize it.

Exploitation is experienced differently by all the young people who are subjected to it. The unique issues present for each child and youth need to be identified and addressed. The current criminal law system does not serve this purpose. Changes need to occur. A system needs to be put into place that prevents children and youth from falling through the cracks of societal support systems. Children and youth who are at risk for sexual exploitation through the sex trade need to be identified and diverted away from the streets. They need to be given alternatives that allow them to engage in a more positive, age appropriate life style.

It is useful at this point to discuss some of the terminology used throughout the thesis. The terms prostitute and sex worker (also prostitution and sex work) are used interchangeably throughout this thesis. The term prostitute is older and generally associated with females. This ignores the reality that males are also involved in the sex trade. The term sex trade worker is more modern and comes from theories that

prostitution can be legitimate work. It implies a voluntariness that is not present for all sex workers.

Neither of these terms is entirely accurate or reflective of the reality faced by children and youth involved in the street level sex trade. The reality is that children and youth are being victimized no matter which term is used. A more appropriate term for the young people involved is sexually exploited children/youth. However, the term sexual exploitation can refer to many situations outside of the sex trade as well. When the term sexually exploited children and youth is used herein it will refer to exploitation through the sex trade unless otherwise specified.

The terms child and youth are both used throughout the thesis to discuss the young people involved in the sex trade. For the purpose of clarification, children are young people below the age of consent in Canada.¹ The term youth is used to refer young people who are older than the age of consent but are still considered youth under the *Youth Criminal Justice Act*.² In most cases the issues faced by children and youth will be very similar, however there are a few areas where actual age will determine the services that are available to the young person.

The term John is used throughout the thesis to describe an adult who purchases sexual services. This is done for consistency as the term “John” is currently accepted terminology. It is not meant to imply that only men purchase sex. The terminology reflects the reality that the majority of people who purchase sex are men. It is not meant to exclude women. Children and youth are victimized by both men and women.

¹ At the time of this writing the age of consent is 16 years old.

² *Youth Criminal Justice Act*, S.C. 2002, c.1, s. 2 states that the YCJA applies to young people up to age 18.

Finally, it is important to note some issues that are not being discussed within the scope of this thesis. This work is not meant to reflect any opinion regarding adult involvement in the sex trade, nor is it meant to address children and youth who may be involved in aspects of the sex trade other than selling sex. Adults in the sex trade may face some of the same challenges as young people in the sex trade. They may also suffer a similar lack of resources. Likewise, children and youth who are involved in pimping or procurement may share many common characteristics with children and youth who are being exploited by the sex trade. However, both groups have enough differences that they require specific attention in their own right. As such, the theories presented in this thesis remain limited to sexual exploitation of children and youth through the sex trade.

Chapter one looks at some of the academic theories that address the issue of prostitution. There are many theories that are not addressed within the scope of the chapter. Most notably missing are certain feminist theories that sex workers have agency and make the choice to be involved in the sex trade. This argument is often made in the context of adults who participate in the sex trade. These theories have a great deal of merit and often come from groups of experiential women who are or have been involved in the sex trade. However, these theories are not applicable within the context of this thesis. Children are prevented from giving informed consent due to age of consent laws in Canada. Youth have more agency than children but they are still less capable than adults of making an informed decision to participate in street level sex work. Allowing the theory that children or youth can choose to participate in the sex trade makes it easier for society to ignore the systemic issues that lead to children and youth being exploited.

Chapter two highlights some of the social and economic factors that push children and youth into the sex trade. The chapter includes a discussion of the demographics associated with young people on the streets in Canada, specifically in Western Canada. This discussion provides the basis for the argument that children and youth do not participate voluntarily in the street sex trade. There are many factors at play which limit or remove the choices that are available to children and youth who are victimized by street level prostitution.

Chapter three canvasses some of the legal issues that arise out of the fact that children and youth do not possess the resources to have a realistic alternative to participation in the sex trade. Participation in the sex trade often becomes a survival strategy for children and youth. It is argued that if children and youth lack alternatives to involvement in the sex trade there should be no basis for charging them with prostitution related offenses.

Chapter four expands this and argues that if children and youth do not have the capacity to voluntarily participate in the sex trade then it becomes a violation of their human rights to charge them for prostitution related offenses. This provides the foundation for the argument that there needs to be diversionary measures in place to provide children and youth with alternatives to being exploited and victimized by the sex trade.

Chapter five canvasses some programs that are currently available to children and youth in various regions of Canada. There are also some suggestions as to what types of programs should be made available. This chapter provides the basis for discussion of potential solutions to end the exploitation of children and youth through the sex trade.

Ultimately it is argued that children and youth are not solely responsible for their involvement in the sex trade. The children and youth who end up being exploited by the sex trade are there largely because of factors that they cannot control. Society should be looking to address the root issues that make children and youth vulnerable to exploitation rather than blaming and stigmatizing the young people who are being victimized. Our focus needs to be one of healing not perpetuating further harm.

Chapter 1

Theories of Prostitution

Prostitution has long been a tacitly accepted part of most societies. It is something that occurs on the margins of a society, it is rarely talked about and often derided but it continues to flourish in most societies. Prostitutes working the streets are marginalized by society,¹ they are treated with contempt and disrespect. Prostitutes are often seen in a negative light and they face many antagonisms from name calling to extreme violence and death. In light of the harsh treatment they receive why would anyone become a prostitute? What drives children and youth to sell their bodies? Finally, how can society make a difference in the lives of these young people?

This Chapter will look at some of the theories regarding involvement in the street sex trade. Unfortunately much of the current theory deals exclusively with female involvement in the sex trade. This chapter is not meant to exclude male sex workers but is intended as an overview of the available literature. The same forces are at work to push boys and girls into the sex trade. Many of the realities faced by sex workers are similar regardless of gender or age. Gender differences do occur when looking at the type of violence that young people face from clients and larger society. Males have to deal with a

¹ “Sex, Work, Rights: Reforming Canadian criminal laws on prostitution” online: Canadian HIV/AIDS Legal Network <<http://www.aidslaw.ca>>. [*Sex, Work, Rights*] “Sex workers face all the prejudices that other women do in addition to the stigma that they face because of their work.”

dual stigma based on both homosexuality and sex trade work.² The factors that allow young people to exit the sex trade are also different based on gender. Females can have babies and receive government funding and support. This is often a trigger to exit the sex trade. The theoretical observations that follow are generalizations and should not be viewed as definitive of the experiences of all people involved in the sex trade.

The majority of street sex workers come from marginalized groups. They tend to be from lower socioeconomic groups, they tend to be minorities and many have suffered abuse before entering the sex trade.³ In most cases the young people who enter the street sex trade have few alternative options for survival and they may lack the skills and opportunities to engage in traditional employment activities.⁴ Young people who start out in marginalized groups are disadvantaged through their entire lives and they may not have access to educational opportunities or support services. On the prairies the majority of street sex workers are Aboriginal females,⁵ many of whom grew up on reserves which do not have the same services as those that are available in larger urban centres.⁶

² McIntyre, Sue, *Under the Radar: The Sexual Exploitation of Young Men*, (Alberta Government Report, 2005)

³ Maggie O'Neill, "Feminism(s) and Prostitution" in Roger Matthews & Maggie O'Neill eds., *Prostitution*, (Aldershot: Dartmouth Publishing Company, 2003) at 337.

⁴ Federal/Provincial/territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (Ottawa: Department of Justice, 1998) at Part III.

⁵ *Ibid.* The statistics from the report claim that the majority of prostitutes on the prairies are Aboriginal while in British Columbia, Quebec and Ontario the women are predominantly Caucasian.

⁶ Cherry Kingsley and Melanie Mark, 'Sacred Lives: Canadian aboriginal children & youth speak out about sexual exploitation', (Canada: Save the Children, year) at 8. The

Aboriginal people as a whole are marginalized within our society. This makes it easy for Aboriginal children and youth to get lost in the system. Historically, Aboriginal women were engaged in involuntary sex work long before Canada was a country.⁷ The legacy of residential schools has also contributed to the marginalization of Aboriginal people. Residential schools destroyed families, leaving children without family supports or role models.⁸ Serious sexual and physical abuse occurred at these schools.⁹ Both family units and primary schools are important socializing factors for children. If children are deprived of positive experiences in these early venues they become increasingly at risk of not fitting into the larger society. As will be mentioned shortly, marginalization from society is a huge contributing factor for young people who end up involved in the street sex trade.

report says that “In some communities, the visible sex trade is 90 percent Aboriginal.” The report goes on to list many factors, both historical and systemic, that contribute to the problem of Aboriginal women and children ending up in prostitution.

⁷ Sarah Carter “Categories and Terrains of Exclusion: Constructing the “Indian Woman” in the Early Settlement Era in Western Canada” in Catharine A Cavanaugh & Randi R Warne eds., *Telling Tales: Essays in Western Women’s History*, (Vancouver, UBC Press, 2000) 60. Women were traded as part of the fur trade and, more recently Aboriginal women were often required to perform sexual services for Indian agents to receive the rations they needed to feed their families.

⁸ Bill Waiser, *Saskatchewan: A New History*, (Calgary: Fifth House Ltd., 2005) at 179. The residential schools kept children away from their families and forbade them from engaging in cultural activities such as speaking their own language and performing traditional cultural activities. Without role models many children and future generations were left with no positive examples of how a family should function. Children were often left without the positive, healing aspects of their culture.

⁹ *Ibid.* at 180.

Today, there are no longer residential schools but the damage that was done continues to affect future generations of Aboriginal children. Many Aboriginal groups are still trying to recover their familial ties and their cultural connections. In addition, the education received by children on reserves may not be of the same quality as that received by children in larger centres. This combination of theft of culture and lack of opportunities increases the odds that Aboriginal young people will have fewer options in terms of finding ways to support themselves.

Aboriginal females in the sex trade also often face double discrimination based on the intersection of the race and their gender. It is important to recognize the unique issues that are faced by Aboriginal females in the sex trade. As expressed by Audre Lorde:

...differences expose all women to various forms and degrees of patriarchal oppression, some of which we share, and some of which we do not...The oppression of women knows no ethnic or racial boundaries, true, but that does not mean it is identical within those boundaries.¹⁰

The differences in experience must be remembered if the issue of sexual exploitation is to be addressed in a manner that benefits all children and youth.

However, it is important to remember that not all street sex workers are Aboriginal and many of the young people involved in the sex trade share similar disadvantages and a similar lack of choices. Most of the children and youth who engage in prostitution do so as a last resort.¹¹ Women especially are driven to prostitution by a

¹⁰ Rebecca Johnson, "Gender, Race, Class and Sexual Orientation: Theorizing the Intersections" in Gayle MacDonald, Rachel L. Osborne & Charles C. Smith eds. *Feminism, Law, Inclusion: Intersectionality in Action*, (Toronto: Sumach Press, 2005) 26-27.

¹¹ *Sex, Work, Rights*, *supra* note 1. This report points out that some women are involved in prostitution by choice. It claims that not recognizing this profession as a legitimate

patriarchal society which leaves them with few alternatives. Women are undervalued in our society, they are paid less in the workforce¹² and they are governed by a different moral code than men.¹³ Women are often prevented from attaining the highest levels of employment¹⁴ and regardless of where they sit in the employment hierarchy they are discriminated against because of their gender.¹⁵ These issues combine with the above noted socioeconomic issues to effectively prevent marginalized women from obtaining gainful employment.

Young people who are unable to find traditional employment become more susceptible to coercion and victimization. Many of the young people who become involved in street level prostitution are coerced by the men around them or lured by false

choice further discriminates against the women who engage in prostitution. Some other feminist literature supports this assertion as well, but scholars are divided as to whether or not it is a legitimate choice for women given their lack of alternatives. The concept of voluntariness would become an entirely new discussion therefore it will not be addressed within the scope of this paper. Additionally, it is arguable that the voluntariness school of thought would not or should not apply to children. In terms of this paper theories of voluntariness may only be relevant when discussing older youth.

¹² Susannah J. Wilson, “Paid Work, Jobs, and the Illusion of Economic Security” in Nancy Mandell ed., *Feminist Issues: Race, Class and Sexuality*, (Toronto: Prentice Hill, 2001) 219 [*Paid Work*] at 224.

¹³ Leora Tanenbaum, *SLUT! Growing Up Female with a Bad Reputation*, (Toronto: Seven Stories Press, 1999) at 116.[*SLUT!*]

¹⁴ *Paid Work* *supra* note 12 at 226.

¹⁵ *Ibid.* at 219.

promises.¹⁶ They are preyed upon due to the vulnerable position in which society has left them. Once young people have been lured into street prostitution they become subject to debts, real or imagined, owed to the people who brought them into the sex trade in the first place.¹⁷ Pimps keep a percentage (or sometimes all) of the earnings of the prostitutes. They claim that these are fees for various services.¹⁸ Once a prostitute becomes indebted to a pimp or a brothel manager they find it even harder to leave the sex trade.

Young people who have entered the sex trade are often held there by their indebtedness as well as by their lack of options. They often feel that they cannot go to the police for help, as the police and the legal system further stigmatizes and victimizes them.¹⁹ As soon as a young person enters the street sex trade the police become people that should be actively avoided. This avoidance not only keeps them trapped in the sex trade, it increases their vulnerability to violence. A young person's lack of ability to leave the sex trade combined with the levels of control and violence that they are subjected to lead some scholars to claim that prostitutes are actually sexual slaves.

¹⁶ Kathleen Barry, "Female Sexual Slavery" in Raquel Kennedy Bergen, Jeffrey L. Edleson & Claire M. Renzetti eds., *Violence Against Women: Classic Papers* (Toronto: Pearson, 2005) 140 [*Female Sexual Slavery*].

¹⁷ *Ibid.*

¹⁸ *Ibid.* Fees are often charged for any number of services such as protection, room and board and drugs.

¹⁹ Catharine A. MacKinnon. *Women's Lives, Men's Laws*, (Cambridge: Belknap Press of Harvard University Press, 2005). [*Women's Lives*] "Women are socially victimized and then legally victimized through arrest, detention and court." at 155.

Catharine MacKinnon is a prominent scholar who adheres to the view that all prostitutes are sexual slaves. She claims that approximately ninety percent of the sex workers in Toronto would like to leave the sex trade but are unable to do so.²⁰ This claim ultimately leads to her assertion that prostitutes as a group are deprived of many fundamental human rights such as liberty and security of the person. She feels that prostitution is a form of “torture and cruel and inhuman or degrading treatment”.²¹ Kathleen Barry agrees with this assessment of prostitution as slavery, saying that women who are unwilling to enter the sex trade are often beaten, raped or tortured as a means of convincing them to engage in the sex trade.²²

Barry feels that prostitution is indicative of both an unjust social order as well as an economic institution that exploits people. She further claims that society tries to frame the issue as an economic one to avoid addressing the discrimination that is inherent in female prostitution.²³ People that define prostitution as normal and thereby let it continue likely have some ulterior motive for so doing. They may stand to benefit either economically or from the power imbalance in society that continues to allow prostitution to occur.

Barry provides four popular myths about prostitution that allow society to continue to define it as an economic issue to avoid dealing with the ramifications that ensue from recognizing the discrimination that actually allows prostitution to occur.²⁴

²⁰ *Ibid.* at 152.

²¹ *Ibid.* at 151.

²² *Female Sexual Slavery*, *supra* note 16 at 141.

²³ *Ibid.* at 144.

²⁴ *Ibid.*

The first myth is that prostitution is a viable economic alternative for people who are unable to attain employment in the larger inequitable job market. According to Barry, this is a myth because pimps or brothel managers tend to take most or all of the money that people earn as prostitutes. Therefore, prostitution is not a viable economic option for the young people who engage in it. The second myth is that only low class people turn to prostitution. This myth prevails despite the fact that pimps prey on and recruit vulnerable people, regardless of their social class. These myths are dangerous because they allow people to view prostitution as a viable choice or as only affecting certain groups of people.

The final two myths deal with race and economics. They claim that only ethnic minorities are trapped in prostitution and that black men from the ghetto have no economic alternative to pimping.²⁵ These myths also perpetuate the “us versus them” dichotomy that can be found in the first two myths. They play on stereotypes about ethnic minorities. Viewing prostitution as an issue isolated within certain groups does not reflect the social reality that discrimination is pervasive and insidious. These myths allow citizens to avoid the obvious conclusion that anyone could be subjected to unwanted sexual behaviour in our society.

It is unpleasant for people to acknowledge that the existing social norms allow certain groups to be treated so horribly. It is easier to blame the victim than to face the disturbing reality.²⁶ Myths such as the ones put forth above contribute to society’s lack of attention to the discrimination and objectification that sex trade workers face on a

²⁵ *Female Sexual Slavery*, *supra*. note 16 at 144.

²⁶ *SLUT!* *supra*. note 13 at 180.

regular basis. As long as people are encouraged to blame the victim, prostitutes can be stigmatized and made responsible for whatever fate befalls them. This thinking prevails despite the fact that women, as a whole, are treated like second class citizens, while prostitutes, specifically, are treated like disposable property.

There is some scholarship that believes that women can and do enter the sex trade as willing participants. If true, this would mean that Barry's first myth is not actually a myth. However, a woman entering the sex trade voluntarily does not take away from the fact that women often end up giving a large portion of their earnings to a third party. Also, the degree of voluntariness attributed to involvement in the street sex trade likely decrease with the age of the participant.

The counter argument to Barry's second myth is that if women had more power to manage their affairs when they engage in sex work it could become a viable economic option. If prostitution laws were enforced differently then pimps or managers who extort money could be charged and punished for so doing. Law enforcement can also be a tool to deal with people who exploit the children and youth who are working on the streets.

Prostitutes are made vulnerable to violence and mistreatment by the laws that govern prostitution related activities (which will be addressed later) and by society's views in regards to females.

The prostitute symbolizes the value of women in society. She is paradigmatic of women's social, sexual, and economic subordination in that her status is the basic unit by which all women's value is measured and to which all women can be reduced.²⁷

²⁷ *Women's Lives, supra.* note 19 at 160. quote attributed to Evelina Giobbe.

Females are often viewed as little more than biological receptacles. They are frequently seen by men as being available to either fulfill sexual needs or to fulfill procreation and child rearing needs. Men sometimes feel entitled to a property right in women. A feeling of entitlement explains why rape and violent pornography are not always sanctioned as harshly as they should be despite the horrific harms they inflict on all females.²⁸ These misogynistic views are why some females resort to selling their bodies. It is the one area where women have relative control over something that men want and do not have.

In a patriarchal society, sex roles and sexuality are defined for women by men.²⁹ Women are defined as either being good girls suitable for the purpose of procreation and child rearing or bad girls suitable for use in the sexual gratification of men.³⁰ Once a girl has been defined as a bad girl, men feel free to treat them accordingly. Prostitution objectifies women. It shows a general disrespect for women and their sexuality.³¹ Prostitution allows men to avoid the various inconveniences for them that are associated with pursuing a “legitimate” sexual relationship.³² They are able to use the prostitute for sexual gratification with no concern for the ultimate outcome or effect on them. “She

²⁸ *SLUT! supra* note 13 at 167.

²⁹ Anita L. Morse, “Pandora’s Box: An Essay Review of American Law and Literature on Prostitution” in Karen J. Maschke ed., *Gender and American Law: The Impact of the Law on the Lives of Women* (New York: Garland Publishing, Inc., 1997) 99.

³⁰ *SLUT! supra*. note 13 at 19.

³¹ Clelia Smyth Anderson & Yolanda Yates, “The Myth of the Happy Hooker: Kantian Moral Reflections on a Phenomenology of Prostitution” in Stanley G French, Wanda Teays & Laura M. Purdy eds., *Violence Against Women: Philosophical Perspectives* (Ithaca: Cornell University Press, 1998) 152. [*Myth of the Happy Hooker*]

³² *Ibid.*

accommodates men's desires for women who cease to exist when they are no longer wanted."³³ When men access the sex trade they are able to be completely selfish with no repercussions. This is the ultimate expression of women being viewed as disposable property.

Catharine MacKinnon argues that prostitution deprives women of many of their rights. She claims that liberty for a man includes liberal access to a women's body. When this happens through prostitution it deprives a woman of her sexual liberty to be with whomever she chooses. According to MacKinnon, prostitution also allows men to express their manhood at the expense of a sex worker's personhood.³⁴ When women perform sexual services as prostitutes they become completely dedicated to the man's pleasure at the expense of their own. Women must treat the men as desirable people while attending to their sexual desires.³⁵ Prostitutes must be whoever the male client wants them to be. Therefore when they engage in a sexual act with a client they must give up their own personal identities.

Anderson and Estes believe that prostitution is the ultimate disregard for the human body. It objectifies people and thereby expresses violence and disrespect, "without mutual consent, concern, and desire for sexual contact with a particular individual, bodily acts become bodily intrusions that obscure the distinction between a human body and a thing".³⁶ When sex workers' bodies are disrespected to the point that they become things, they are liable to be subject to damage or destruction. This casual

³³ *Ibid.* at 154.

³⁴ *Women's Lives*, *supra* note 19.

³⁵ *Myth of the Happy Hooker*, *supra*. note 31.

³⁶ *Ibid.* at 153.

treatment of people's bodies as things leads to the sexualization of violence. Prostitution allows sex to become tied to the expression of violent attitudes.³⁷

It is a sad testament to our society that certain people are seen as expendable commodities, to be bought and sold for the purpose of men's sexual gratification.³⁸ All members of society should be treated with the same dignity and respect, regardless of gender, profession or background. As long as certain people continue to be defined in sexualized terms they will continue to be mistreated by the people who buy into the view that they are sexual commodities. Young people need to be given the respect and support that will allow them to make their own choices about both their futures and their bodies. They should not be forced into prostitution nor should they be stigmatized when they resort to the street sex trade to ensure their survival.

If people do enter the sex trade voluntarily they are exploiting the system set up by men as they are able to use men's objectification to their own advantage. They are able to use sex as a means of obtaining money despite their total lack of desire or attraction to the customer.³⁹ However, all prostitutes, including those who engage in the sex trade voluntarily, are subject to discrimination and violence.⁴⁰ This threat of serious

³⁷ *Ibid.*

³⁸ It is important to note again that not all consumers of the sex trade are men, women are also consumers of the sex trade. However, the majority of the consumers of the sex trade are men and this is reflected in the majority of the academic research that is available.

³⁹ *Myth of the Happy Hooker, supra* note 31 at 520.

⁴⁰ Violence is being defined as all activities that have the potential to harm sex trade workers. This includes physical and emotional abuse as well as health risks (STIs, HIV, AIDS etc) that are associated with sex trade work and any other activities that may cause harm.

harm is why solutions need to be found for the problems that surround prostitution as it currently exists in our society. Prostitutes are treated as inferior beings in our society despite the fact that prostitution itself is not illegal. Something needs to be done to ensure that prostitutes receive the same rights as other members of society, rights that they are entitled to under various forms of human rights legislation.

Chapter 2

Social, Economic and Cultural Influences

The sexual exploitation of children and youth through the sex trade is a pervasive problem within many societies, and Canadian society is definitely not immune. There are thousands of young people being sexually exploited on Canadian streets every day.¹ The sexual exploitation of children and youth is occurring in all communities across our entire country. It is a pervasive problem that needs to be addressed. This chapter will look at some of the reasons why young people have ended up on the streets. It will also identify the factors that prevent children from leaving the sex trade. Systemic issues will be identified and discussed in relation to how they perpetuate current problems rather than helping to address pressing issues within the existing social systems.

It is important to begin by identifying which young people are most likely to be sexually exploited by the sex trade. The majority are female, of Aboriginal ancestry and from a poor family of origin.² Although not all young people who are sexually exploited fit into these categories, most do and that is a reflection of the pervasive discrimination that can be found within our society. In many cases the discrimination faced by children and youth in the sex trade is amplified by the fact that they belong to multiple groups that

¹ The actual number of young people being victimized on Canadian streets varies greatly depending on the source and how they define the terms child, youth and sexual exploitation. The estimated number of children and youth involved in the sex trade range from thousands to tens of thousands.

² Kingsley, Cherry and Melanie Mark, *Sacred Lives: Canadian aboriginal children & youth speak out about sexual exploitation*, (Canada: Save the Children, 2000). [*Sacred Lives*]

are typically discriminated against. These children and youth may have been stigmatized by society before they have begun to be able to understand why. It is important to note that gender, race and age are analogous grounds under the *Charter of Rights and Freedoms*.³ Therefore, the government has taken note of the historic discrimination against these groups when drafting recent human rights legislation.

In addition to belonging to groups that have been traditionally discriminated against there are many other systemic factors which contribute to certain young people being exploited by the sex trade. Many of them have suffered abuse in their family homes.⁴ Often they have had contact with child and family services.⁵ The children and youth are young,⁶ they have low education levels⁷ and few employable skills.⁸ The

³ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. at s.15.

⁴ Tutty, Leslie and Kendra Nixon “*Selling Sex? It’s Really Like Selling Your Soul*”: *Vulnerability to and the Experience of Exploitation through Child Prostitution*” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 30. [*Selling Sex*].

⁵ Beyond ‘at risk’ Children: Systemic Issues Report Regarding Sexually Exploited Children & Oyate Safe House, (Regina, Saskatchewan Children’s Advocate, 2006). [*Beyond at Risk*].

⁶ Legislative Assembly of Saskatchewan, *Special Committee To Prevent the Abuse and Exploitation of Children Through the Sex Trade: Final Report*, June, 2001, 2nd Session of the 24th Legislature. [*Special Committee*] Testimony presented at these hearings indicated that there were children as young as five and six years old being exploited on the streets.

⁷ Harlinton, Leora, *Saskatoon Charging and Disposition Patterns Under Section 213 of the Criminal Code of Canada*, (Saskatoon: CUISR: Community-University Institute for

children are unable to support themselves and they are faced with a lack of social support services.⁹ These factors all combine to make certain children and youth more vulnerable to being sexually exploited.

The first factor that may influence the likelihood of being sexually exploited by the sex trade is having been abused in their family of origin. Studies have shown that a majority of children and youth in the streets were abused sexually, physically or emotionally during their childhood.¹⁰ However, there is some debate about this factor as other studies have determined that the incidence of abuse in sexually exploited children and youth is comparable to that found in the overall population.¹¹ The difference in findings likely has something to do with the samples that were chosen for each study and whether or not they used medical records or self reporting to determine if a young person had suffered abuse. It may also be indicative of varying definitions of abuse.

Social Research, 2004) at 6. [*Saskatoon Charging*]. Under The Radar *infra* note 38 also notes that males tend to have higher levels of formal education than females.

⁸ Bowen, Raven, *Eagle Feather: Final Report*, (Vancouver: P.A.C.E. Society, 2001). [*Eagle Feather*]. 61% of youth surveyed said that they did not have any employable skills that they could put on a resume.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution, vol.2 (Ottawa: Canadian Government Publishing Centre, 1985). [*Pornography and Prostitution*].

Testimonials from children and youth who are being exploited in the sex trade generally speak of prior abuse by known adults.¹² They recount two primary recurring consequences of this abuse; they run away from home to escape the abuse or they decide to take control of the situation.¹³ When young people run away from home they often end up on the streets as there are few other places where they can go. Once on the streets they need to provide for their basic needs. As will be discussed further on they have few legitimate options that enable them to do so. Children are unable to gain employment or housing and they become vulnerable to being sexually exploited by predators. Youth may be able to obtain employment but it is difficult without employable skills. Housing will not be easily obtainable for youth if they do not have a source of income.

The alternative, taking control of one's own life, also tends to lead to victimization. Some young people stated that if they were going to be forced to have unwanted sexual contact with someone they would prefer to control who and when.¹⁴ This attitude does not indicate that they are willing participants, rather, that they have accepted the inevitability of being exploited. The victimization that they have experienced has become normalized to such an extent that the children and youth have resigned themselves to the fact that it will continue to occur.¹⁵ Running away gives them

¹² Testimonials from children can be found throughout *Sacred Lives*, *supra* note 2, *Being Heard*, *supra* note 4, *Voices for Dignity*, *infra* note 15 and *Moving Forward*, *infra* note 34.

¹³ *Selling Sex*, *supra* note 4 at 30.

¹⁴ *Sacred Lives*, *supra* note 2.

¹⁵ Pivot Legal Society Sex Work Sub Committee, *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*, (Vancouver: Pivot Legal Society, 2004) [*Voices for Dignity*]. Abuse becomes normalized, this phenomena continues into their

some degree of control over how they are victimized. It seems likely that the fate of these young people could have been changed by early, effective social support.

In fact, all of the literature reported that the majority of children and youth had been in contact with child and family services at some point during their childhood. This contact should have been able to identify risk factors and provide support to them before they ended up on the streets.¹⁶ Unfortunately, this is not always the case. Children are often apprehended and placed in foster care or group homes which may not be any better than the situation from which they were initially apprehended. Through their testimonials many young people reported being abused again while in care, either by foster parents or by staff at group homes.¹⁷ Rather than providing safety and security, interaction with child and family services frequently meant further victimization for the young people.

Multiple victimizations led to a lack of trust in authority figures in general. Distrust leads to continued running away from various child and family services agencies.¹⁸ Continued running away makes the children and youth increasingly vulnerable to falling through the cracks and being exploited. As they run away they close the door on certain service options and distance themselves from family, friends and workers who would try and help them.

lives on the streets when the violence associated with the sex trade also becomes a normal part of every day life.

¹⁶ *Beyond at Risk*, *supra* note 5.

¹⁷ Investigative Report of the Oyate Ataya WaKanyeja OwicaKiyapi Inc., (Regina: Saskatchewan Children's Advocate, 2006). [*Oyate Report*].

¹⁸ *Sacred Lives*, *supra* note 2.

Every agency in the city had given up on me. That was a big pointer [to], “I might want to get my shit together.” Every agency in the city was saying, “I’m sorry; we can’t deal with you anymore. We’ve tried and tried and tried. Sorry, we’ve heard this too many times.”¹⁹

Lack of trust also makes it difficult for service providers to help the young people once they are being sexually exploited on the streets. The children and youth are wary of the people who are attempting to help them and as a consequence they are unlikely to seek out most services providers.²⁰

The above noted factors are compounded by the age of the children and youth who are being exploited. Young people in general do not have much control in society. Children and youth who are displaced and marginalized have even less control.²¹ They are often dismissed due to their age and lack of life experience. They lack both social and economic capital, therefore they are prevented from negotiating secure spaces for themselves.²² Age will also be determinative of which social supports are available to assist them when they are in need. There are programs available for children and social

¹⁹ *Selling Sex*, *supra* note 4 at 43.

²⁰ Shaw, Ian and Ian Butler, “Understanding Young People and Prostitution: A Foundation for Practice?” in Roger Matthews & Maggie O’Neill eds., *Prostitution*, (Aldershot: Dartmouth Publishing Company, 2003) [*Understanding*].

²¹ Gaetz, Stephen, “Safe Streets for Whom? Homeless Youth, Social Exclusion, and Criminal Victimization” in *Canadian Journal of Criminology and Criminal Justice* 46.4 (July 2004) :423 (33). [*Safe Streets*].

²² *Ibid.*

services provide financial aid to adults, but youth in between these two categories have significantly fewer options.²³

The youth's inability to legally support and provide for themselves is compounded by the lack of social support systems. There are programs in place to assist children, either while they are in their homes of origin or while they are in government care. There is financial assistance and other types of assistance for adults who are in need. There is, however, a lack of assistance for the youth who do not fit into either category.

From sixteen to eighteen there is absolutely nothing. What are you going to do? They [child welfare] are not going to pick you up because you are over the age of sixteen. Your parents don't want to sign you out because they need your welfare cheque. I live in abandoned buildings because I couldn't get any help. The day I turned eighteen, I got everything I needed.²⁴

This lack of support for youth who do not fall specifically under the umbrella of children's services but who are not yet eligible for adult services is a systemic issue that must be addressed. A lack of resources is further compounded by the following three factors; lack of education, work skills and social support systems, which increase the difficulties that children and youth face when attempting to meet their survival needs.

²³ Gorkoff, Kelly and Meghan Waters "Balancing Safety, Respect and Choice in Programs for Young Women Involved in Prostitution" in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnipeg: Fernwood Publishing, 2003) at 131. [Balancing]

²⁴ *Ibid.* at 131.

A child who has left their home of origin at a young age is more likely to discontinue formal education.²⁵ With minimal formal education young people are limited in their ability to obtain gainful employment. If they are of legal age they will be limited to menial labour jobs that do not require high levels of formal education. Lack of education also hinders their ability to negotiate for certain essential services. Low levels of formal education will likely mean low reading and writing skills, making it difficult for young people to navigate the social support systems that are in place to offer help. Without the benefits of formal education children and youth become further disadvantaged within society.

Should a child or youth choose to return to the formal education system it becomes more difficult as they become further entrenched in street life. Most formal education programs are not well suited to the needs of sexually exploited children and youth. They do not operate during hours that are conducive to the lifestyle that the young people are living.²⁶ Programs are not designed to address the issues that are relevant to children and youth outside of the mainstream. Upon returning to formal education young people who have been sexually exploited are stigmatized and mistreated by other students and staff.²⁷ They are quickly discouraged in their attempts to reenter mainstream society via its educational systems.

²⁵ *Special Committee, supra* note 6. 45.5% of adolescents who are sexually exploited by the sex trade in Saskatchewan will drop out of school.

²⁶ *Balancing, supra* note 23 at 126.

²⁷ *Ibid.*

Traditional employment is a strong motivating factor in helping young people exit street life.²⁸ Unfortunately, children and youth who are being sexually exploited through the sex trade tend to have very few employable skills. They are often too young to be legally employed and, if they are old enough, they do not have the skills that would make them attractive to potential employers. When seeking employment children and youth will also have to overcome the stigma that attaches to people who have been exploited through the sex trade. The stigma of prior involvement with the sex trade can manifest itself in a variety of ways.

One way that stigma contributes to the unemployability of sexually exploited children and youth is the likelihood that they have criminal records. Many sexually exploited youth have long criminal records. They are apprehended initially for prostitution related offences and subsequently accumulate multiple, system generated offences.²⁹ System generated offences occur for things like breach of probation or failure to appear at a court date.³⁰ These offences are relatively trivial but they contribute to a lengthy criminal record. As their criminal record becomes longer, youth become more likely to face custodial sentences and less likely to be able to obtain legal, gainful employment.

²⁸ Tanner, Julian, *“Teenage Troubles: Youth and Deviance in Canada”* (Scarborough: Nelson: Thompson Learning, 2001). [*Teenage Troubles*].

²⁹ *Pornography and Prostitution*, *supra* note 11.

³⁰ There are many other system generated offenses but listing them all at this point does not serve a concrete purpose. The nature of these offences is adequately illustrated by the examples given in the text.

A criminal record follows the young people to areas of their life outside of the criminal justice system. Children and youth who have been in trouble with the law are seen as trouble makers. They are labeled by society and often treated poorly because of their pasts. A criminal record reinforces the stigma that the young people face when trying to leave the sex trade. A criminal record perpetuates the view that the children and youth have been involved in the sex trade voluntarily and should be held accountable for this choice.

In addition to the lack of general support, there are few programs targeted specifically at children and youth who are either at risk or currently being sexually exploited in the sex trade. The risk factors are clear but there are no programs in place to prevent the victimization before it happens. There are some outreach programs in some jurisdictions that attempt to help the young people who are already on the streets but that is not enough. Outreach programs often focus on the immediate health and safety needs of the youth.³¹ They do not address the underlying issues that initially led to their sexual exploitation. Outreach programs often do not have the mandate or the resources to deal with more permanent issues faced by the children and youth.³² Programs and supports need to be implemented that reduce the likelihood that children and youth will become vulnerable to being sexually exploited in the first place.

Once a young person is being exploited by the sex trade it becomes increasingly difficult for them to leave. Exiting the streets is a long and arduous process for the children and youth who are being sexually exploited. Exiting often takes many attempts

³¹ *Sacred Lives, supra* note 2.

³² *Ibid.*

over a long period of time. It is characterized by multiple returns to the sex trade before children and youth are successfully able to leave the streets.³³ There are many additional factors that hinder a worker's ability to exit the sex trade. These include: substance abuse, economic needs, socialization, stigmatization and an ever increasing lack of self esteem and self worth.

Many children and youth become further entrenched in sexual exploitation as a means of obtaining illegal drugs. It has been argued both that substance abuse leads to involvement in the sex trade and that it occurs because of the exploitation suffered by the young person. Regardless of how substance abuse initially comes about it is a very prevalent factor in the lives of sexually exploited children and youth.

Addictions keep the drive, the need for money going really strong. Addictions need to be addressed, because having to support your addictions puts you into more dangerous situations.³⁴

Addictions services need to be developed that focus on the specific needs of children and youth who are being sexually exploited. Many children and youth are self-medicating with illegal drugs.³⁵ The underlying factors for this must be addressed so that they have a better chance at successfully exiting the sex trade. Removing the need to make money to fund an addiction will make it easier for the children and youth to leave the streets.

Money is an important factor in many people's lives as it is required to meet basic survival needs. For many children and youth, sexual exploitation is their only means of

³³ *Ibid.*

³⁴ Jackson, Lynette, *Moving Forward Together to Stop the Sexual Exploitation of Children and Youth*, (Vancouver: Save the Children Canada, 1999) [*Moving Forward*] at 9.

³⁵ *Selling Sex*, *supra* note 4 at 39.

acquiring the money needed to meet their needs. They do not make much money and it comes at a great personal cost but they have few, if any, other alternatives.³⁶ Children and youth are often trying to support both themselves and others. Young people who are involved in the sex trade often report needing to support siblings or their own children.³⁷ The longer a young female is sexually exploited, the more likely she is to have her own children who need to be taken care of financially. Sexually exploited girls are able to access additional resources once they have children, which may provide sufficient economic help to allow them to leave the streets, at least temporarily.³⁸ Therefore, having children of their own provides both a motivating factor to leave the streets and an increased need for the finances provided by it.³⁹

The sex trade provides quick “easy” money such that even as children and youth try and leave the streets they are lured back.

³⁶ *Ibid.*

³⁷ *Moving Forward*, *supra* note 34.

³⁸ McIntyre, Sue, *Under the Radar: The Sexual Exploitation of Young Men*, (Alberta Government Report, 2005) [*Under the Radar*]. Having children entitles girls to additional financial aid. It also allows them access to a variety of social services. Often having children is a way that girls can escape the streets. Boys do not have similar means of gaining access to funds and services, therefore boys are more likely to work the streets for a greater length of time.

³⁹ Downe, Pamela and “Ashley-Mika” “*The People we Think we Are*”: *The Social Identities of Girls Involved in Prostitution*” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 67. [*People*]

And if I go out to work, I've actually tried this, going out [because] I need 40\$ worth of groceries....[and] I'm going to go out and make a quick twenty bucks so I can buy groceries.⁴⁰

With so few options, it is understandable that young people will have a difficult time exiting street life. Education and employment programs need to be set up that will help them find and secure gainful employment within society. Traditional employment will offer both economic stability and a more secure place in society.⁴¹

Another factor that contributes to the difficulty felt when trying to leave the streets is that young people develop social support systems within their groups of like situated peers.⁴² The children and youth become extended families for each other. They rely on each other for support, understanding and protection. When children and youth try to end their sexual exploitation they are faced with leaving these supports behind. Services which attempt to help young people exit the sex trade need to be able to provide a similar supportive network to take the place of those that have been developed on the streets.⁴³ Support systems created on the streets are both understanding and non-judgmental.

The ability to interact with people who do not judge them for their past activities is quite important for the children and youth. Often when they attempt to leave the streets they are stigmatized and marginalized by the larger society for their past actions. It is a commonly held misconception that children and youth voluntarily engage in the

⁴⁰ *Ibid.* at 54.

⁴¹ *Teenage Troubles*, *supra* note 28.

⁴² *People*, *supra* note 39 at 49.

⁴³ *Ibid* at 61.

sex trade.⁴⁴ As evidenced above, this is obviously not true. Children and youth are faced with a lack of alternatives which essentially forces them into being sexually exploited. It is easier to ignore the problem if the responsibility for young people in the sex trade is laid at the feet of the young people themselves. However, it is society who should be held responsible for allowing them to become so vulnerable.

Unfortunately, society often does not take responsibility and the children and youth become victimized again by the way they are treated when they attempt to leave the sex trade. People who have left the sex trade report being continually judged for the activities that occurred in their pasts. They report experiencing difficulty accessing every day services such as health care. Many health care providers make negative assumptions based on stereotypical views about people involved in the sex trade. Testimonials revealed that the children and youth who were being sexually exploited were often subjected to unwanted tests and given little information about their medical conditions and treatment.⁴⁵

At hospitals they always ask me if I am an alcoholic or a drug addict because I am Native. They also ask if I am a prostitute. At the clinic too when they see my needle marks or when I say that I drink they right away want me to go to detox or counseling. They put prostitutes, drug addicts and alcoholics all in one character. They assume you do all of this. They want to do blood tests, TB tests, syphilis and gonorrhea tests. I feel really unhealthy and degraded. They didn't even ask if I was having sex without condoms. Sometimes they do these tests without even asking or letting you know. They make a lot of assumptions. When I complained about my stomach they right

⁴⁴ *Sacred Lives*, *supra* note 2.

⁴⁵ Downe, Pamela "I Don't Know What the Hell it is but it Sounds Nasty": *Health Issues for Girls Working the Streets*" in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 100. [*Health Issues*]

away thought it was because of alcohol, they don't know how much I drink. When they smell alcohol they automatically think that you were drinking all night.⁴⁶

These stereotypical views are adhered to by many members of society, making it difficult for children and youth attempting to leave the sex trade to access many services.

Children and youth report having many negative experiences, similar to those encountered when accessing health care.⁴⁷ There are relatively few programs specifically designed to meet the needs of children and youth who have been sexually exploited. There is also a lack of people who are trained to constructively help them. This means that they are not receiving helpful services from people who understand their issues. Existing services often do not address the important issues. They operate at inconvenient times, and they are staffed by people who may have preconceived notions about the children and youth that they are supposed to be helping.

Stereotypes also increase the difficulties faced when trying to obtain gainful employment.

It is a hindrance to have a criminal record when looking for work in certain fields. They judge you and don't consider the fact that you haven't been in trouble in a long time. In Edmonton I got a job with a cleaning company. Something had gone missing from the boss's house. Because of my criminal record they assumed it was me and I lost my job. They found what was missing later and I never got an apology for it and they didn't give me my job back.⁴⁸

Without the ability to access services and obtain gainful employment children and youth remain in the same position that initially made them vulnerable to sexual exploitation. It

⁴⁶ *Voices for Dignity, supra* note 15 at 48.

⁴⁷ *Balancing, supra* note 23 at 127-8.

⁴⁸ *Voices for Dignity, supra* note 15 at 63.

is possible that the children and youth end up in an even worse position if they have lost their hope for something better. If the young people have bought into the labels that society has hung on them they may no longer believe that they deserve to be treated better.

Many young people also report being unable to return to their families of origin. The reasons cited for this tend to be either the abuse that they initially suffered or because they are now stigmatized by their involvement in the sex trade.⁴⁹ While sexual exploitation through the sex trade may be a generational occurrence in some families,⁵⁰ other families may blame the young person who has been exploited.⁵¹ Families that have a generational pattern of involvement would be more likely to draw the young person back into “the life”.

I grew up literally on the streets because my mom was a prostitute and I was brought up in that environment. We used to live in those hotels and I used to watch the hookers from the rooftop. Like my babysitter was, I think, a hooker. It just ran in my family.⁵²

While families who blame the young person for their exploitation often will not accept them back after they have been involved in the street sex trade.

I got fed up with living at home, hearing my mother preach about how I’m a heathen, and if she knew she would have an abomination like this she would have had an abortion.⁵³

Either extreme would make it difficult for the children or youth to return to their homes.

⁴⁹ *Moving Forward*, *supra* note 34.

⁵⁰ *Selling Sex*, *supra* note 4 at 31.

⁵¹ *Sacred Lives*, *supra* note 2.

⁵² *Selling Sex*, *supra* note 4 at 31.

⁵³ *Moving Forward*, *supra* note 34 at 11.

A final factor that prevents many children and youth from attempting to end their sexual exploitation is the loss of self esteem. Children and youth who are being victimized often have a negative self image.⁵⁴ This is enhanced by their negative treatment within society. Eventually, the children and youth get to a point where they feel that they deserve to be victimized. They do not feel worthy of being treated better than they are.

I got to the point that I didn't care what I looked like, I didn't care who I was having sex with, I didn't care what was happening to me and I didn't care if I was going to live to see the next day. It got to the point where nothing mattered.⁵⁵

They have resigned themselves to their position as a victim within society. This allows them to continue to be victimized both by sexual predators and by the people in society who are supposed to be helping them.

All the above noted factors, both those that make children and youth vulnerable to sexual exploitation and those that trap them in the sex trade are indicative of the systemic issues faced by children and youth. They are failed initially by some type of child and family services⁵⁶ and then re-victimized by the criminal justice system. Both are systems which should have the protection of young people as one of their primary goals. There are many points at which children and youth come in contact with these systems. There are many opportunities for constructive action to be taken and typically many incidences of failure on the part of both systems.

⁵⁴ *Sacred Lives*, *supra* note 2.

⁵⁵ *Ibid.* at 31.

⁵⁶ *Beyond at Risk*, *supra* note 5. The report specifically states that early intervention could have prevented many of the children from becoming involved in prostitution.

The majority of the young people who end up on the streets being victimized had prior contact with child and family services.⁵⁷ Sometimes the system was made aware of abuses in the home and the children were allowed to remain in potentially dangerous situations. In other incidences they were apprehended and placed in care. Either situation is potentially dangerous to young people if proper follow up by the service agency does not occur. If the young person does end up being abused they often run away and end up on the streets. Once they have run away they become likely to fall through the cracks of the system. Ultimately they lose access to services because they fall into a hinterland between childhood and adulthood where there is an even greater lack of services.

The services that are accessible to the children and youth are not often specifically targeted to meet their needs. Children and youth at risk of being sexually exploited should be exposed to educational programs that teach them the risks of the sex trade before they are exposed to it first hand. There should be safe guards in place to protect vulnerable young people from pimps and predators. The needs of the children and youth have to be addressed at an earlier stage. There are programs that meet the needs of children and youth once they have begun to be sexually exploited. Many cities have outreach programs that address the immediate health and safety needs of young people who are being sexually exploited. While risk management services are important children and youth would be better served by programs which help to prevent their victimization in the first place. Children and youth would also benefit greatly from services that help them to leave the streets and avoid further victimization.

⁵⁷ *Ibid.*

All people involved in the sex trade are discriminated against and marginalized by the criminal justice system.⁵⁸ This criminalization and stigmatization increases the difficulties that are faced by children and youth when attempting to end their exploitation through the sex trade. Initially, children and youth who are being sexually exploited are victimized by the police. Many of the young people who provided testimonials reported being harassed and abused by the police.

The police officer came up to us and said “Smoking crack on my turf? Don’t you dare smoke crack on my turf.” He pushed my pipe out of my hand. I was wearing a dress. He pushed me down on the ground and made me lie in the puddle of urine. He asked me for my name and ran my name in his computer. He stepped on my pipe and my rock and then let me go. The front of my dress was soaked in urine. I felt really low and like a piece of dirt. It made me feel like I used to feel when my husband would beat on me, gave me really low self esteem. I don’t feel like I can go to the police for help. I am afraid of them.⁵⁹

This type of abuse leads to a fear of the police. Therefore when children and youth are victimized by other people they are less likely to report to the police.

Young people on the streets often take active steps to avoid the police. This avoidance is also sometimes extended to an avoidance of service providers. This is especially true in provinces where there is legislation in place that requires mandatory reporting of children and youth who are believed to be involved in the sex trade.⁶⁰ Acts which contain a mandatory reporting provision require that if young people who are believed to be involved in the sex trade attempt to access services the providers must

⁵⁸ *Sacred Lives*, *supra* note 2.

⁵⁹ *Voices for Dignity*, *supra* note 15 at 60.

⁶⁰ Koshan, Jennifer, “The Alberta (Dis)Advantage: The Protection of Children Involved in Prostitution Act and the Equal Rights of Young Women” in *University of Toronto Journal of Law & Equality* (2003) 2 J.L. & Equality 210.

report them to the police. This creates an even greater gulf between the victims of sexual exploitation and the people who would endeavour to help them.

Being viewed as criminals rather than victims means that the children and youth are frequently arrested for prostitution related offenses. The exploited children and youth are arrested and charged more frequently than the johns who are victimizing them.⁶¹ They also tend to be given harsher sentences.⁶² Additionally, many jurisdictions have alternative measures such as john school available for the perpetrators while a similar alternative measure is not available to the victims.⁶³ Aboriginal children and youth are over represented in both the sex trade itself and in the larger criminal justice system.⁶⁴ Young people of Aboriginal ancestry are also likely to receive longer custodial sentences than their non Aboriginal counterparts.⁶⁵

Arresting the victims at all serves to reinforce existing stereotypes that children and youth are willing participants in the sex trade. An arrest and subsequent criminal record gives legitimacy to the idea that young people should be held responsible for their own exploitation. Arresting the youth may also serve to perpetuate the problem:

⁶¹ Busby, Karen “*The Protective Confinement of Girls Involved in Prostitution: Potential Problems in Current Regimes*” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnipeg: Fernwood Publishing, 2003) at 103.

⁶² *Saskatoon Charging*, *supra* note 7 at 14.

⁶³ *Ibid* at 15.

⁶⁴ Latimer, Jeff and Laura Casey Foss, “The sentencing of aboriginal and non-aboriginal youth under the Young Offender’s Act: a multivariate analysis” in *Canadian Journal of Criminology and Criminal Justice* 47.3 (July 2005):481 (20).

⁶⁵ *Ibid*.

When I was arrested for prostitution all my friends were there and it hurt so much, it made me feel much lower...they [the judicial system] treat you like such a bad person or that you're a slut, tramp or whore. You're forced to go there [the streets], you were forced into that spot and if you said no, you were beat up or something worse, you could be killed. And they make it out like you're nothing, they don't try to help you, they just charge you and send you on your merry way...they know where you're going off to, you have to pay your fine.⁶⁶

Arrest criminalizes the children and youth who have been victimized, it lays the blame for their exploitation with them rather than with the johns who are victimizing them. This type of behaviour allows society to continue ignoring the problem of child and youth sexual exploitation. It creates an atmosphere where people can turn a blind eye, knowing that "good children" will not end up being victimized on the streets.⁶⁷

Refusing to acknowledge the prevalence of child and youth sexual exploitation will not make it go away. Ignoring its root causes and the subsequent effects will only serve to increase the victimization that is being suffered by children and youth in our society. Marginalizing the young people based on their past activities will make them easier targets for ever increasing victimization. Society cannot continue to judge and condemn children for being sexually exploited, current legal and social support systems need to be re-evaluated in an attempt to prevent future exploitation.

⁶⁶ *Sacred Lives*, *supra* note 2.

⁶⁷ Bittle, Steven, "From Villain to Victim: Secure Care and Young Women in Prostitution" in Gillian Balfour & Elizabeth Comack eds. *Criminalizing Women* (Halifax: Fernwood Publishing, 2006). The idea of good girls and bad girls serves to maintain the status quo, distinguishing between the two categories helps to maintain social order.

Chapter 3

Application of the *Criminal Code* to Children and Youth in the Sex Trade

Children and youth in the sex trade frequently begin their existence on the fringes of society, often due to circumstances beyond their control. Sexual predators take advantage of the marginalized societal position that they are in and draw them into the sex trade. Once involved in the sex trade, their marginalization, and subsequently, their victimization is increased. Young people are being victimized by individual perpetrators but the fault lies with society as a whole for allowing these children and youth to be drawn into, and then forced to remain, in the sex trade.

Young people are not equipped to make the choice to enter the sex trade in the same way that adults are. Children and youth cannot be willing participants in their own victimization. This fact needs to be acknowledged and remembered when dealing with young people who violate the law as set out in Ss.210-213 of the *Criminal Code*.¹ The Canadian *Criminal Code*² does not recognize the ability of children to consent to sexual activity at all and it reduces the ability of youth to consent to sexual activity with certain people. If children and youth cannot legally consent to the sexual activity that they are engaging in, they cannot be subject to the penalties that attach to their violations. To enforce these provisions against young people is to criminalize them for activities that are largely outside of their control. This criminalization can lead to a violation of the rights

¹ *Criminal Code*, R.S. C. 1985, c. C-46, s.210-213.

² *Criminal Code*, R.S. C. 1985, c. C-46. [*Criminal Code*].

that are guaranteed to all citizens by the *Charter of Rights and Freedoms*.³ Our society cannot sit by and allow these human rights violations against children and youth to continue to occur, we need to protect our young people rather than re-victimize them through criminal prosecution.

In Canada, the age at which a person can consent to sexual activity is sixteen years, as set out in s.150.1 of the *Criminal Code*.⁴ Exceptions to this rule are in place for sexual activity with other young people in the same age range as the victim.⁵ The obvious conclusion here is that all children under the age of fourteen years are incapable of consenting to sex trade related activities unless their customer is in the same age range as them. In some situations, s.153 of the *Criminal Code* makes it an offense to engage in, or encourage, sexual activity with youth between the ages of fourteen and eighteen.⁶

153. (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

³ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. [*Charter*]

⁴ *Criminal Code*, *supra* note 2, s.150.1 At the time of this writing the age of consent is 14 years old, however there are proposed changes to the *Criminal Code* which would increase the age of consent to 16 years old.

⁵ *Ibid.* at s.150.1(2) This section says that people can use consent as a defense to s.150.1 if they are between the ages of 12 and 16, are less than 2 years older than the complainant and are not in a position of trust and authority. The relationship in question cannot be one of dependency or exploitation.

⁶ This is the age range used to define a young person within s.153(2) of the *Criminal Code*.

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.⁷

If these conditions are met, consent of the youth becomes irrelevant.

The circumstances surrounding child and youth involvement in the sex trade (as mentioned in the previous chapter) lead to the conclusion that any sex trade related activity, regardless of the age of the perpetrator, cannot properly be consented to by the victim. Customers of the sex trade tend to be middle aged, adult males.⁸ Our society teaches respect for our elders as a societal ideal. Therefore most relationships between adults and young people result in the adult being in a position of trust or authority. Most customers will have the means to contribute to the survival needs of children and youth involved in the sex trade. They may use these means to create a relationship of dependency. Adults are also able to exert additional control over children and some youth due to the size differential between them.

In addition to the default power and authority that most adults are able to exert over children and youth, any sex trade activity engaged in by young people is exploitive. Children and youth in the sex trade tend to engage in survival sex; they are working on

⁷ *Criminal Code*, *supra* note 2, s.153.

⁸ Federal/Provincial/territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (Ottawa: Department of Justice, 1998) [*Report and Recommendations*].

the streets to obtain the bare necessities required for survival.⁹ Young people involved in the sex trade typically do not have realistic alternatives to support themselves. Customers are able to provide food, money and other resources that the young people need to survive. This ability fosters a relationship of dependency. Customers are able to use their social and economic status to exploit children and youth who are in need; the young people have few choices and therefore are in an extremely vulnerable position. This vulnerability leads to dependency and exploitation which meets the criteria set out above, thereby effectively removing a young person's ability to consent to sexual activity in the sex trade.

S.153(1.2)¹⁰ came into effect November 1, 2005. It allows the courts to infer a sexually exploitive relationship, even if the child in question does not feel that they are being exploited.

(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

- (a) the age of the young person;
- (b) the age difference between the person and the young person;
- (c) the evolution of the relationship; and
- (d) the degree of control or influence by the person over the young person.

Using the criteria set out in the above section we can find that all sex trade activity with children is exploitive. Most of these factors, on their own, would be enough to indicate

⁹ Kingsley, Cherry and Melanie Mark, *Sacred Lives: Canadian aboriginal children & youth speak out about sexual exploitation*, (Canada: Save the Children, 2000) at 33. [*Sacred Lives*].

¹⁰ *Criminal Code*, *Supra* note 2, s.153 (1.2)

that the sex trade leads to an exploitive relationship. The cumulative effect is such that there can be no denial of the fact that the sex trade exploits the children who have the misfortune of being trapped in it.

The first factor, age, is one of the primary ways that exploitation can be proven. Young people do not have many options in terms of supporting themselves outside of their family home. Children and youth cannot legally work in mainstream areas until they have reached a certain age;¹¹ when they are able to work, their options are still limited to low paying jobs that require little education or work experience. These jobs typically do not provide enough pay to meet the subsistence needs of the children and youth in question. The sex trade is one area where young people may be able to make enough money to support themselves, however given the context in which it occurs this is not a legitimate career option. The people who prey on children and youth involved in the sex trade are taking advantage of them when they have no realistic alternatives.¹²

A large difference in age is also typically present between customers and the young people involved in sex work. As was mentioned earlier, the average customer of the sex trade is a middle aged male. This indicates that the average age difference between an underage sex worker and their customer can likely be measured in decades. However, it can be argued that, due to circumstances, any customer is exploiting a child

¹¹ *Canada Labour Code*, R.S.C. 1985, c.L-2 This Act places restrictions on hours and types of work available to children under the age of 17. This issue is further regulated by various provincial statutes.

¹² Jackson, Lynette, *Moving Forward Together to Stop the Sexual Exploitation of Children and Youth*, (Canada: Save the Children, 1999) at 10 [*Moving Forward*].

or youth who is involved in the sex trade regardless of how large or small the age difference between them may be. The social and economic gaps between young people involved in the sex trade and their customers are enough to prove that exploitation is occurring. The children and youth need the resources that are being provided by their customers to survive.¹³

The third factor set out in the *Criminal Code*, evolution of the relationship, is not terribly applicable here as there is not likely to be a relationship of significant length such that it could be seen as evolving. The lack of evolution of a relationship may be what is more relevant in this context. Customers pick up the child or youth, use them for their own sexual gratification and then return them to the streets so that they can be victimized by someone else. This is the epitome of objectifying the young person as they are turned into sexual receptacles whose only purpose becomes the sexual gratification of their customers. If this type of relationship cannot be seen as exploitive then it becomes difficult to imagine one that can.

The final factor which is set out in the *Criminal Code* is the degree of control or influence a person has over the child or youth in question. As previously noted, the majority of the young people involved in the sex trade are engaged in survival sex.¹⁴ They are selling themselves to achieve the basic necessities required for life. Therefore,

¹³ Tutty, Leslie and Kendra Nixon “*Selling Sex? It’s Really Like Selling Your Soul*”: *Vulnerability to and the Experience of Exploitation through Child Prostitution*” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 33. [*Selling Sex*].

¹⁴ *Report and Recommendations*, *supra* note 8.

their customers have a great deal of control and influence over them and if they do not perform the activities that are requested they may face worse consequences. A choice between selling your body and not being able to meet your basic survival needs is no real choice. The lack of choice is reinforced by the fact that children and youth are often subject to extreme violence at the hands of customers. If they had a legitimate choice they would not put themselves in such a dangerous position.¹⁵

Based upon the aforementioned factors set out for consideration in the *Criminal Code*, one can infer that the participation of children and youth in the sex trade results in an exploitive relationship. In fact, this section was specifically enacted to address the exploitative relationships that occur when young people are involved in the sex trade. A press release leading up to the amendment to the *Criminal Code* stated its purpose as being:

to protect children and other vulnerable persons from sexual exploitation, violence, abuse and neglect.....to provide a comprehensive framework to support Canadian law enforcement's efforts to combat child sexual exploitationit underscores our commitment to protect the most vulnerable among us. It is exemplary Human Rights protection legislation. It will be good for law enforcement, good for the administration of justice - and most important - it will be good for the children.¹⁶

Using this section to address the exploitation of children and youth in the sex trade removes the ability of all young people under the age of eighteen to consent to sex trade activity. This could ultimately lead to stronger cases against customers of young sex

¹⁵ *Sacred Lives*, *supra* note 9 at 29.

¹⁶ Justice Canada website http://canada.justice.gc.ca/en/news/nr/2004/doc_31246.html A further press release specifically says that s.153(1.2) can and will be used to protect children from exploitation through prostitution.

workers as they will have no defense of consent. Unfortunately, despite its potential ability to protect children and youth who are being exploited by the sex trade, the section is rarely if ever employed in this manner.

Children and youth are not seen as being able to consent to their own sexual exploitation. The inference then becomes that if they cannot legally consent to the activity in question, they cannot be found to have violated prostitution related provisions within the law, to so find would create an absurd result. Further to their legal inability to consent to sex trade activity, it is a widely held principle in the Canadian legal system that young people are less responsible for criminal offences than their adult counterparts.

This was recently articulated in *R v D.B.* as follows:

...young people are entitled to a presumption of diminished moral blameworthiness or culpability flowing from the fact that, because of their age, they have heightened vulnerability, less maturity and a reduced capacity for moral judgment.¹⁷

Therefore, young people cannot, in good conscience, be subject to criminal sanctions for violating Ss.210-213 of the *Criminal Code*.¹⁸ Unfortunately, children and youth are

¹⁷ *R v D. B.* 2008 SCC 25.

¹⁸ *Criminal Code*, *supra* note 2 at s.210-213. These are the laws that target prostitution related activity in Canada. It is important to note that issue is not being taken with the laws themselves but with the consequences that result when they are enforced against children who are working within the sex trade. The exception to enforcement against children would occur when the children in question are acting as pimps. In those cases the law should be equally applicable to youth who violate them.

subject to punishment for violating the above noted laws and continued enforcement has numerous deleterious effects on these young people.¹⁹

When prostitution related laws are enforced against children and youth they become double victims. First they are victimized by the sex trade and then they are victimized by the justice system when it criminalizes and stigmatizes their actions.²⁰ Enforcement of prostitution related laws against children and youth also serves to push the young people in the sex trade further underground, thereby increasing the dangers that they are faced with. A more constructive solution would be to address the underlying issues that lead to involvement in the sex trade in the first place. Society should strive to help children and youth avoid entering the sex trade, rather than to punish them once they are in a situation that is largely outside of their control.

Prostitution itself is not illegal in Canada but many of the related activities are. The relevant prostitution related laws can be found in ss.210-213 of the *Criminal Code*. The most problematic for young people are s.210,²¹ s.212(j),²² s.212(3)²³ and s.213.²⁴ Section 210 deals with bawdy houses, which essentially encompasses all sex work that

¹⁹ The effects of enforcement of the law on children involved in prostitution is a repeated theme in the testimonials provided by the children. Testimonials can be found in *Sacred Lives supra* note 9, *Moving Forward supra* note 12, and *Selling Sex supra* note 13.

²⁰ Victimization due to criminalization and stigmatization is another theme that is repeated throughout the testimonials mentioned in note 19. Many youth also speak about suffering violence and degradation at the hands of the police.

²¹ *Criminal Code, supra* note 2 at s.210.

²² *Ibid.* at s.212(j).

²³ *Ibid.* at s.212(3).

²⁴ *Ibid.* at s.213.

occurs indoors. S.212(j) forbids living off the avails of prostitution, while s.212(3) allows for the presumption that anyone living with a sex worker is living off the avails. Section 213 forbids all communication for the purpose of prostitution. These sections combine to criminalize all sex workers while also creating extremely dangerous working conditions. The exact wording of each section is as follows:

210. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) Every one who

(a) is an inmate of a common bawdy-house,

(b) is found, without lawful excuse, in a common bawdy-house, or

(c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house,

is guilty of an offence punishable on summary conviction.

212. (1) Every one who

(j) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

213. (1) Every person who in a public place or in any place open to public view

(a) stops or attempts to stop any motor vehicle,

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or

(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

(2) In this section, "public place" includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

The summary conviction contemplated in s.213 is punishable by “a fine of not more than two thousand dollars or to imprisonment for six months or to both.”²⁵

Section 210, in practical terms, forbids all sex work that occurs indoors. When sex is exchanged for money in an indoor venue, that venue can be described as a bawdy house which means that anyone in the house can be convicted under s.210. This leads to the majority of lower end sex work occurring outside. Statistics very aptly illustrate that street level sex work, which occurs outside, is extremely dangerous for all sex workers involved in it.²⁶ Children and youth are predominately involved in survival sex, which occurs on the street.²⁷ By refusing to allow sex work to occur inside, the government has set up a situation where the sex trade is very dangerous and it is almost impossible to regulate who is engaging in it. When sex work takes place outside there is no concrete means of monitoring the people who are selling sex. It is impossible to know everyone who is working the streets. This circumstance makes it easier for young people to become involved and easier for sex workers to go missing.

²⁵ *Supra* note 2 at s. 787 (1).

²⁶ *Beyond 'at risk' Children: Systemic Issues Report Regarding Sexually Exploited Children & Oyate Safe House*, (Regina, Saskatchewan Children's Advocate, 2006) at 6.

²⁷ *Sacred Lives*, *supra* note 9 at 8.

Forcing prostitution to occur out of doors increases the vulnerability of those who engage in it as well as those who live near places where the sex trade occurs. Being outside means that sex workers are more vulnerable to both the elements and people passing by. Sex work that occurs outside is very visible to all who choose to see it. Therefore young people become vulnerable to people who would target them for mistreatment. The visibility of street level prostitution also affects children before they are drawn into the sex trade. Activity tends to occur in poorer urban areas, which means that the children who are most vulnerable to being drawn in to the sex trade are exposed to it on a regular basis.²⁸ When children are exposed to the sex trade on a daily basis it becomes normalized, making it easier for recruiters to target and exploit children.²⁹ In addition, children who are not involved in the sex trade may be solicited and victimized by customers by virtue of the fact that sex work is occurring in their neighbourhoods.³⁰

Some neighbourhoods try to protect their children by attempting to move the sex trade to a different area. This type of action tends to worsen the situation. In Saskatoon for example, in the late 1990s, there was a very strong push from business owners and community associations around 20th street to move prostitution off that street. The stroll has successfully been moved to 21st street, unfortunately as there are three elementary schools on that street the detrimental effects on children have been increased. This has

²⁸ Gorkoff, Kelly with Jane Runner, “Introduction: Children and Youth Exploited through Prostitution.” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 21.

²⁹ *Report and Recommendations*, *supra* note 8.

³⁰ *Ibid.*

served the interests of business owners but it has increased the dangers for neighbourhood children. More typically however, when the sex trade is forced to move locations, it gets pushed from residential areas into industrial ones.³¹ This increases the isolation and subsequent dangers that are faced by sex workers. Children and youth in the sex trade become especially vulnerable due to their physical inability to protect themselves from adult customers who are likely to be bigger and stronger than they are.

Many of the issues outlined above could be addressed if s.210 of the *Criminal Code* was not enforced. Allowing bawdy houses would protect both young people who are involved in the sex trade and those who are not. If sex work did not occur outside, children who are not involved would not be exposed to it. The sex trade would not become normalized as it would not be occurring in places that children frequent regularly. As a result, they would be less susceptible to being drawn into it. Also, if sex work were allowed to occur inside, the age of participants could be monitored. Children and youth could be more easily identified and targeted for interventionist measures. There would be more opportunity to interact and remove the young people from the sex trade by addressing their underlying issues.

Section 212 addresses procuring related offenses. Generally this provision is in the best interests of children and youth involved in the sex trade. It attempts to protect them from being victimized by pimps and others who would exploit them. However, a problem arises based on the combination of s.212(j), which prohibits living off the avails of prostitution, and s.212(3) which presumes that all relationships are exploitive. The

³¹ Pivot Legal Society Sex Work Sub Committee, *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*, (Vancouver: Pivot Legal Society, 2004) at 26 .

practical effect of this provision is to further isolate young people as they are unable to have roommates or partners because of their involvement in the sex trade. Children and youth who are engaging in the sex trade are doing so in an attempt to support themselves. Prohibiting them from engaging in any sort of potentially supportive relationship will actually increase their need to be involved in survival sex.³²

In the case of younger children involved in the sex trade, an argument could be made that they do not have the capacity to engage in any sort of relationship that would not be exploitive. However, older youth should be seen as having the ability to make that decision for themselves. If a teenager voluntarily chooses to live with someone to reduce the amount of sex work they need to perform in order to support themselves they should be allowed to do so. The presumption of guilt that is found in s.212(3) makes this difficult as any one who lives with a sex worker makes themselves vulnerable to criminal prosecution. While this provision offers protection from intimate, exploitive relationships, it can also increase the amount that young people are victimized on the streets as they need to work more to support themselves due to their forced isolation.³³

The final *Criminal Code* provision that operates to increase the victimization of children and youth on the streets is s.213. This provision forbids all communication for the purposes of prostitution that occurs in a public place. “Public place” is quite widely defined and includes all public spaces, motor vehicles and anywhere that the general public could see the communication taking place. The practical effect of this provision is such that young people have limited time to decide with whom they want to engage in

³² This idea is supported by the testimonials provided by the youth as cited in *Sacred Lives supra* note 9, *Moving Forward supra* note 12, and *Selling Sex supra* note 13.

³³ *Moving Forward, supra* note 12 at 17.

sex work. They must make snap decisions about the customers who approach them. The lack of ability to screen customers increases the odds that they will end up with a violent or abusive customer.³⁴ Communicating with a customer gives the young person a window of time in which they can assess the potential customer. Forbidding all forms of communication decreases the young person's ability to assess the customer. Less communication enhances the likelihood that children and youth will be beaten, raped or murdered by a bad date.

Children and youth in the sex trade are subjected to a continual cycle of exploitation and abuse. They are victimized repeatedly by both customers and larger society. Unless alternative measures are employed, enforcement of the *Criminal Code* contributes to this vicious cycle. Traditional penalties for violations include fines and jail sentences, both of which increase the young person's victimization by the sex trade. If a child or youth is already engaging in survival sex, they do not have the financial means to pay any fines that are levied against them. Ultimately, they may have to engage in more sex work to pay off their fines.³⁵

Children and youth who are sentenced to jail time will likely return to the sex trade when they are released as there are few, if any, programs within correctional

³⁴ Children have repeatedly stated in the testimonials, cited in *Sacred Lives supra* note 9, *Moving Forward supra* note 12, and *Selling Sex supra* note 13, that they are more apprehensive about being caught by the police than they are about entering a car with an unknown person. The children have also stated that if they had more time to engage with a customer they would be better able to avoid violent customers.

³⁵ *Moving Forward, supra* note 12 at 7.

services that are directly targeted at helping them exit the sex trade.³⁶ If young people do not receive any help or intervention while they are incarcerated they will have no choice but to return to the sex trade once they are released. When children and youth return to the streets they may be subject to increased levels of violence from pimps due to the fact that they have not been making money while incarcerated.³⁷ The use of traditional methods of punishment further victimizes children and youth and contributes to their continued entrenchment in the sex trade.

Section 3 of the *Youth Criminal Justice Act*³⁸ recognizes that young people should be treated differently from adults within the criminal justice system. This section lists the sentencing principles that must be kept in mind when dealing with young people. The principles focus on addressing root issues of youth criminal behaviour and rehabilitation of the youthful offender. Section 4 of the *Youth Criminal Justice Act*³⁹ specifically states the extra-judicial measures should be used whenever they are appropriate. These sections combine to allow a judge to divert children and youth involved in the sex trade. Unfortunately, most communities do not have programs that address the root causes of children and youth involvement in the sex trade. In Canada, there are very few programs designed to address the unique needs of children and youth in the sex trade. If there are

³⁶ *Sacred Lives*, *supra* note 9 at 64. Youth identify a lack of appropriate programs that target their unique needs as one of the major roadblocks for them to exit the street sex trade. The programs that are in place are often not appropriate and there simply are not enough of them to meet the needs of all youth.

³⁷ *Report and Recommendations*, *supra* note 8.

³⁸ *Youth Criminal Justice Act*, S.C. 2002, c.1, s.3

³⁹ *Youth Criminal Justice Act*, S.C. 2002, c.1, s.4

no programs available for the children and youth judges may have difficulty exercising their discretion to employ extra-judicial measures.

There have been some legislative attempts to deal with the issue of sexual exploitation of children and youth through the sex trade. Examples of these attempts include the *Protection of Children Involved in Prostitution Act*⁴⁰(PCHIP) in Alberta and *The Emergency Protection for Victims of Sexual Abuse and Exploitation Act*⁴¹ in Saskatchewan. These Acts allow for the apprehension of children and youth who are believed to be involved or at risk for involvement in the sex trade. The stated purpose of these Acts is to reduce and eliminate sexual exploitation through the sex trade. Unfortunately the Acts tend to create more problems than solutions. As stated by Jennifer Koshan:

The PCHIP has several problematic effects: the criminalization of youth prostitution and poverty; the perpetuation of harms that result from driving prostitution underground, including isolation and vulnerability to violence, abuse, addictions, and other illnesses; the reliance on stereotype in defining who is in need of protection and for what behaviours; and the disproportionate effect of these harms on girls, poor youth, and racialized youth. Forced confinement legislation may also have adverse or

⁴⁰ *Protection of Children Involved in Prostitution* 1998, c.P19 (as amended by 2000 c. P-28).

⁴¹ *The Emergency Protection for Victims of Sexual Abuse and Exploitation Act*, S.S. 2002, c.E-8.2 (as amended by *Statutes of Saskatchewan*, 2006, c.19.) There is only one reported decision that deals with this legislation, *Re: J.J.M.* 2003 SKQB 104, 231 Sask.R. 225.

This case was decided on a factual basis and did not include a discussion of the legislation itself.

differential effects on gay or transgendered youth and on youth with disabilities.⁴²

The negative effects of the legislation have been recognized by the courts. In an unreported decision out of Calgary Jordan P.C.J. declared the Alberta legislation to be unconstitutional.⁴³ This decision was followed by Flatters P.C.J. in *Alberta (Director of Child Welfare) v S.P.*⁴⁴ Judge Flatters agreed that the Alberta legislation was unconstitutional and declined to grant an apprehension order under the legislation. The legislation in question has since been amended in an attempt to address the concerns brought forth in the foregoing court decisions.

Additionally legislation that advocates forced confinement alone will not likely be successful. Detention of young people who are at risk will not address the underlying issues that led to them being involved in the sex trade. At best it will provide a temporary reprieve from sexual exploitation through the sex trade. At worst it will perpetuate negative stereotypes and further criminalize the young people who are being victimized. Programs that address the underlying issues need to be developed and implemented if

⁴² Koshan, Jennifer, “*The Alberta (Dis)Advantage: The Protection of Children Involved in Prostitution Act and the Equal Rights of Young Women*” in *University of Toronto Journal of Law & Equality* (2003) 2 J.L. & Equality 210 at 44.

⁴³ *Alberta v KB* [2000] A.J. No. 876, 268 A.R. 248. Judge Jordan found that the PCHIP legislation violated s.7, s.8 and s.9 of the *Charter* and that the violations could not be saved under s.1 as there was a lack of procedural safeguards within the legislation. This decision was eventually overturned by the Alberta Court of Queen’s Bench in *Alberta v B. (K.)* 2000 ABQB 976, 279 A.R. 328. The legislation has subsequently been amended.

⁴⁴ *Alberta (Director of Child Welfare) v S.P.* 2000 ABPC 133.

there is to be any success in preventing further sexual exploitation of young people through the sex trade.

Given the current legislation there are not many solutions that can be found within the criminal justice system. The laws governing prostitution in Canada either need to be rewritten to specifically address the unique situation presented when dealing with young people or they need to be selectively enforced such that sexually exploited young people are not re-victimized by the criminal justice system. In addition, programs need to be developed and implemented that target the root causes of child and youth involvement in the sex trade. Until constructive changes occur children and youth who are being exploited through the sex trade will continue to suffer additional hardships due to their involvement with the criminal justice system.

Chapter 4

Charter Ramifications

As outlined above, children and youth are unable to consent to sex work. In addition, the enforcement of certain prostitution related laws can have horrific effects on young people.¹ Therefore, it is arguably that a human rights violation may occur if these laws continue to be enforced against the children and youth involved in the sex trade. In Canada, the basic human rights of all citizens are outlined and protected by the *Charter of Rights and Freedoms*. The criminal prosecution of young people in the sex trade may violate s. 2(b),² s.7³ and s.15.⁴ Section 2(b) protects the right to freedom of expression, s.7 protects life, liberty and security of the person, while s.15 protects the equality rights of all citizens.

The above noted rights may be violated by the *Criminal Code* provisions themselves and sometimes they may be violated based on the actual effects that enforcement has on children and youth involved in the sex trade. Each section of the Charter has a different test set out to determine whether or not a given piece of legislation

¹The effects of enforcement of the law on children involved in prostitution is a repeated theme in the testimonials provided by the children. Testimonials can be found in *Sacred Lives infra* note 22, *Moving Forward infra* note 30, and *My Prayer infra* note 31. The matter of fact way in which some of the children present their experiences is perhaps the most horrifying part.

² Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. at s.2(b). [*Charter*]

³ *Ibid.* at s.7.

⁴ *Ibid.* at s.15.

will violate the rights assigned within. If legislation is found to be in violation of the *Charter of Rights and Freedoms* then it must be subject to the *Oakes*⁵ test to determine whether or not it can be saved by s.1⁶. This chapter will identify and address the tests that are applicable to each section, it will then do a s.1 analysis to determine whether or not infringements of the stated sections are justified.

Section 2 of the *Charter* states:

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

Section 213 of the *Criminal Code* is a prima facie violation of the right to freedom of expression as it outright forbids certain forms of communication. Communication for the purpose of prostitution should be protected as long as it occurs in a non violent manner. Reference *Re: Criminal Code, Sections 193 & 195.1(1)(c)*,⁷ *R v. Stagnitta*,⁸ and *R v. Skinner*⁹ agreed that s.2(b) was infringed by the provisions in question.¹⁰ *Skinner*¹¹, *Stagnitta*¹² and *Re: Prostitution*¹³ all found s.195 which is

⁵ *R v. Oakes*, [1986] S.C.R. 103, 24 C.C.C. (3d) 321 [*Oakes*].

⁶ *Charter*, *supra* note 2 at s.1.

⁷ Reference *Re: Criminal Code, Sections 193 & 195.1(1)(c)*, 56 C.C.C (3d) 65, [1990] 1 S.C.R. 1123 [*Re: Prostitution*].

⁸ *R v. Stagnitta*, 56 C.C.C. (3d) 17, [1990] 1 S.C.R. 1226 [*Stagnitta*].

⁹ *R v Skinner*, 56 C.C.C.(3d) 1, [1990] 1 S.C.R. 1235[*Skinner*].

¹⁰ The cases actually found that s.195.1 infringed the right to freedom of expression. The numbering in the *Criminal Code* has since changed so that s.195.1 corresponds with the current s.213.

¹¹ *Skinner*, *supra* note 9 at pp 10.

currently s.213 of the *Criminal Code*, to be in violation of s.2 rights to freedom of expression. The majority in these cases felt that the provision was saved under s.1.¹⁴ They felt that the reduction of nuisances associated with street prostitution was a pressing and substantial objective and that it was able to justify the infringements created by enforcement of the provisions in question. Dickson, C.J.C. addressed the issue in economic terms, looking at it as a deprivation of expression for an occupational purpose.¹⁵

In the case of s.2, the test for violation was set out in *Irwin Toy Ltd. v. Quebec (Attorney General)*,¹⁶ and it involves a two step analysis. The first step looks at whether the communication in question is protected. If it is then the courts will look at whether the purpose or effect of the government action restricts freedom of expression. The courts have tended to favour a broad definition of which forms of communication should be protected. In *Irwin Toy* it was stated that “expression has both a content and a form, and the two can be inextricably connected. Activity is expressive if it attempts to convey meaning. That meaning is its content.”¹⁷ Therefore, the intended purpose of s.2(b) (freedom of thought, belief, opinion and expression...) was to “ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind,

¹² *Stagnitta*, *supra* note 8 at pp 11.

¹³ *Re: Prostitution*, *supra* note 7 at pp 1.

¹⁴ The reasons in all three cases were given concurrently.

¹⁵ *Re: Prostitution*, *supra* note 7 at 13.

¹⁶ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 S.C.R. 927, [1989] S.C.J. No.36 [*Irwin Toy*].

¹⁷ *Ibid.*

however unpopular, distasteful or contrary to the mainstream.”¹⁸ In light of this definition and purpose, it was found that all content of expression that attempts to convey a meaning in a non violent manner will tend to be protected.

Therefore, on the basis of legal precedent it can be found that s.213 of the *Criminal Code* meets the first step in the test set out in *Irwin Toy*.¹⁹ The distinction between the cases listed above and the issue at hand is that the cases dealt with adults involved in the sex trade as opposed to children. However, the basic human rights set out in the *Charter* are guaranteed to all citizens regardless of age.

The second step to this test is to look at whether the purpose or effect of the section operates to actually restrict freedom of expression. The practical effect of enforcement of s.213 of the *Criminal Code* is to drastically limit the types of communication that can occur in certain public places. Sex workers report getting picked up by the police for almost any activity because police had a suspicion that they were communicating for the purpose.²⁰ Body language can be seen as a form of communication, therefore certain actions, such as winking or waving, in certain areas, can get you arrested if the police are aware of your involvement in the sex trade. Specifically, *R v Vanoirschot*²¹ found that “signals and actions” could be construed as communication for the purpose of prostitution. This provision of the *Criminal Code*

¹⁸ *Ibid.* at p 42.

¹⁹ *Ibid.*

²⁰ Pivot Legal Society Sex Work Sub Committee, *Voices for Dignity: A Call to End the Harms Caused by Canada’s Sex Trade Laws*, (Vancouver: Pivot Legal Society, 2004).
[*Voices for Dignity*]

²¹ *R v Vanoirschot* 2006 SKCA 130, 289 Sask. R. 63 at pp 8.

essentially gives the police license to pick up any children they believe are involved in the sex trade if they engage in communication regardless of whether it's verbal or non verbal.

Another unfortunate effect of this provision is that it reduces the ability of the children to provide for their own safety.²² Section 213 reduces the amount of time that children can interact with a potential customer before making a decision in regards to whether or not they want to provide services to the m. This reduces their ability to screen customers and it also reduces their ability to negotiate terms for the ensuing sexual activity; therefore, the words of s.213 are a violation of s.2(b) of the *Charter*. In addition, the effects of the legislation can impact heavily on the health and safety of the children involved in the sex trade.

Lack of communication surrounding protective measures will lead to increased risk of sexually transmitted diseases and HIV as the children and youth have less opportunity to negotiate safety precautions. As these laws increase the difficulty of engaging in sex work, there is a corresponding decrease in the potential clients for the young people. As clients decrease, they have fewer options and are therefore forced to accept riskier “dates” and thereby put themselves in more danger.²³ This is an extremely serious concern, as most violence leading to death that is inflicted on prostitutes is done at the hands of their clients.²⁴ The enforcement of these laws also means that sex

²² Kingsley, Cherry and Melanie Mark, *“Sacred Lives: Canadian aboriginal children & youth speak out about sexual exploitation”*, (Canada: Save the Children, 2000) at 37. [Sacred Lives]

²³ *Ibid.*

²⁴ *Ibid.*

workers are forced to change their times and place of operation to avoid police detection. Unfortunately, avoiding police detection also means that they avoid the detection of the people who would endeavour to help. As sex workers become more hidden the violence that they are subjected to also becomes less noticeable. This all combines to violate many basic human rights to which sex trade workers should be entitled.

These effects lead into a discussion of how the prostitution related provisions in the *Criminal Code* are a further violation of a child's s.7 right to life, liberty and security of the person. The text of s.7 reads "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." *Blencoe v B.C. (Human Rights Commission)*²⁵ set out a three part test to determine whether or not s.7 is being infringed. The first part requires a court to determine whether there is a real or imminent deprivation of the right to life, liberty, and security of the person. The second stage of the test seeks to identify and define the relevant principle or principles of fundamental justice. Finally, the court must assess whether the deprivation has occurred in accordance with these principles.

The definition of "liberty" was expounded by La Forest J. in *Godbout v Longueuil (City)*²⁶ as follows:

The foregoing discussion serves simply to reiterate my general view that the right to liberty enshrined in s. 7 of the *Charter* protects within its ambit the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference.²⁷

²⁵ *Blencoe v B.C. (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44 [Blencoe].

²⁶ *Godbout v Longueuil (City)*, [1997] 3 S.C.R. 844, 1997 CanLII 335.

²⁷ *Ibid.* at 66.

Further, the deprivation of the right to “security of the person” is not limited to physical security. In *R v Morgentaler*²⁸ Chief Justice Dickson articulated a broader definition which extended “security of the person” to include psychological security.

The case law leads me to the conclusion that state interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal law context, constitute a breach of security of the person. It is not necessary in this case to determine whether the right extends further, to protect either interests central to personal autonomy, such as a right to privacy, or interests unrelated to criminal justice.²⁹

A definition of “security of the person” which includes psychological security was also used in *Rodriguez v B.C. (Attorney General of)*.³⁰ This definition must be kept in mind while applying the tests for violation of s.7 to the effects of the current legislation on young people who are involved in the sex trade.

All of the *Criminal Code* sections discussed above contribute to the violation of these rights, with their cumulative effect being an undeniable deprivation of the rights of any young person unfortunate enough to be involved in the sex trade. Conviction for any infraction of the sections in question may lead to jail time which is an obvious deprivation of liberty. The rights to life and security of the person may be violated by the practical effects that the enforcement of these laws has on the children and youth involved in the sex trade. The lengths children and youth have to go to avoid detection and subsequent criminal sanctions have an exponentially increasing effect on the dangers that they face.

²⁸ *R v Morgentaler*, [1988] 1 S.C.R. 30, (1988), 37 C.C.C. (3d) 449.

²⁹ *Ibid.*

³⁰ *Rodriguez v B.C. (Attorney General of)*, [1993] 3 S.C.R. 519, 1993 CanLII 75.

S.210 may violate s.7 right to life and security of the person as the government is forcing prostitution to occur out of doors through the provisions of the *Criminal Code*. This is the most dangerous possible venue for sex workers.³¹ As the sex trade is identified it gets pushed into more and more remote areas to avoid detection. The more isolated the sex trade becomes, the more danger is faced by the children and youth involved in it.³² Young people in the sex trade are pushed to the margins of society both literally and figuratively. They have no supports and no one to help them when they run into trouble that they cannot handle. A very real consequence of this marginalization is physical violence and potential death, both of which can lead to violations of the rights to life and security of the person.³³

The isolation of the children and youth is furthered by s.212(j) and s.212(3) of the *Criminal Code* which prohibits living off the avails of prostitution and creates a presumption that anyone living with a sex trade worker is living off the avails. This prevents young people from living with almost everyone, unless there is some sort of obvious connection which implies a lack of exploitation. This deprives children and youth of the liberty to choose with whom to live. It also serves to make it more difficult

³¹ *Beyond 'at risk' Children: Systemic Issues Report Regarding Sexually Exploited Children & Oyate Safe House*, (Regina, Saskatchewan Children's Advocate, 2006) at 6.

³² Jackson, Lynette, *Moving Forward Together to Stop the Sexual Exploitation of Children and Youth*, (Canada: Save the Children, 1999) at 4. [*Moving Forward*]

³³ Nixon, Kendra and Leslie M. Tutty "That was my Prayer Every Night—Just to get Home Safe": *Violence in the Lives of Girls Exploited Through Prostitution*" in Gorkoff, Kelly and Jane Runner, eds., *Being Heard: The Experiences of Young Women in Prostitution*, (Winnepeg: Fernwood Publishing Company, 2003) at 72. [*My Prayer*].

for these young people to support and provide for themselves. As the need to support one's self increases, the corresponding ability to choose between options decreases.

Children and youth are forced into increasingly dangerous and uncomfortable situations. Activities that they previously would not have engaged in, soon become their only options.³⁴ Once a young person has been involved in the sex trade, however minimally, any of their intimate associates can become liable to criminal prosecution. A young person who performs minimal sex work will soon be forced to increase their work load to continue to support themselves. As children and youth become more involved in the sex trade their isolation increases and their discretion to choose which activities they will engage in decreases.

Finally, s.213 deprives children and youth of the liberty to speak to whomever they choose. It also has the effect of increasing the dangers that they face and thereby decreases their rights to life and security of the person. As mentioned in the discussion regarding s.2(b), reducing a sex worker's ability to communicate increases the danger that they will engage in a transaction with a dangerous customer. S.213 greatly reduces the amount of time during which a young person can speak to a customer before agreeing to perform sex work. Less time means less discussion of terms which means that children and youth are unable to set out the parameters within which they are willing to engage in sexual activity. There is also less time to discuss prices and locations of sexual activity. Lack of discussion leads to misunderstandings and miscommunications and it allows the young person less time to gauge whether or not the customer is safe. These

³⁴ *Sacred Lives*, *supra* note 22 at 34.

factors all combine to leave the children and youth at the mercy of their customers who may inflict violence or death upon them.³⁵

What is interesting to note is that all the cases cited thus far have noted the dangers associated with street prostitution. All the cases discussed the evils that are perpetrated by pimps and clients. However, the majority of the court has used these dangers to justify the rights infringements imposed by the laws that govern prostitution related activities. If the court is aware of the dangers faced by sex workers every day, how can they not recognize that enforcement of these laws puts young people at risk? The state cannot claim that they are unaware of the dangers that sex trade workers face. Therefore, allowing these laws to continue to be enforced has become a state sanctioned denial of a young person's rights to life and security of the person.

Based on the foregoing, it is evident that s.213 has a real and imminent effect of depriving children and youth in the sex trade of the right to life, liberty and security of the person. The next step in the test is to identify the relevant principles of justice. In this case the applicable principle is that laws must not be overbroad, arbitrary or manifestly unfair. Is the deprivation noted above in accordance with this principle of fundamental justice? It can be successfully argued that the deprivation of a young person's rights are not in accordance with this principle of fundamental justice.

In *R v Heywood*³⁶ it was confirmed that any law that is over broad is contrary to the principles of fundamental justice.

Overbreadth analysis looks at the means chosen by the state in relation to its purpose. In considering whether a legislative provision is overbroad, a

³⁵ *My Prayer, supra* note 33 at 72.

³⁶ *R v Heywood*, [1994] 3 S.C.R. 761, 94 C.C.C (3d) 481.

court must ask the question: are those means necessary to achieve the State objective? If the State, in pursuing a legitimate objective, uses means that are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason. The effect of overbreadth is that in some applications the law is arbitrary or disproportionate.³⁷

In the case at hand, it seems that s. 210, s. 212 and s.213 of the *Criminal Code*³⁸ are overbroad as they can deprive children of their rights with little or no corresponding benefit to society. These laws are in place to address the nuisance that is caused by the sex trade in general:

I would characterize the legislative objective of s.195(1) (now s.213) in the following manner: the provision is meant to address solicitation in public places and, to that end, seeks to eradicate the various forms of social nuisance arising from the public display of the sale of sex...The legislation is aimed at taking solicitation for the purposes of prostitution off the streets and out of the public view.³⁹

Unfortunately they also have extremely negative effects on the children and youth who have been drawn into the sex trade. Legislatures should look at formulating laws that criminalize the customers who are exploiting the children and youth in the sex trade rather than using these laws to criminalize the young people.

The laws at issue also violate the principles of fundamental justice because they are arbitrary. They were not designed to address the issue of underage sex work and therefore they are being used as a catch all. Laws that target the customers of children and youth, rather than the actions of the young people themselves should be devised and implemented. Children and youth do not have the same degree of choice as adults and

³⁷ *Ibid.* at 49.

³⁸ *Criminal Code*, R.S. C. 1985, c. C-46 at s.210, s.212 and s.213.

³⁹ *Re: Prostitution*, *supra* note 7 at pp 2.

they lack the ability to consent therefore they should not be subject to criminal consequences. Children and youth have fewer employment options and less access to traditional social supports therefore the sex trade often becomes their only option for survival.⁴⁰

The definition for arbitrariness is set out by Chief Justice McLachlin in *Chaoulli v Quebec (Attorney General)*⁴¹ at para 131:

In order not to be arbitrary, the limit on life, liberty and security requires not only a theoretical connection between the limit and the legislative goal, but a real connection on the facts. The onus of showing lack of connection in this sense rests with the claimant. The question in every case is whether the measure is arbitrary in the sense of bearing no real relation to the goal and hence being manifestly unfair. The more serious the impingement on the person's liberty and security, the more clear must be the connection. Where the individual's very life may be at stake, the reasonable person would expect a clear connection, in theory and in fact, between the measure that puts life at risk and the legislative goals.

In the case of sexual exploitation of children and youth in the sex trade there is no connection, theoretical or real between the objective of the legislation and the practical outcome for the young people involved.

Based on the above reasoning, these laws are manifestly unfair because there is not a clear connection while there is the potential for a very serious impingement of life, liberty and security of the young person. The target behaviour is largely out of the control of the young people in question. Children and youth engaged in survival sex should be given alternatives and exit strategies. Stigmatizing and criminalizing them accomplishes the exact opposite goal. Also, these laws are unfair because they can have a disproportionately negative effect on the children and youth compared to the customers.

⁴⁰ *Sacred Lives*, *supra* note 22 at 14.

⁴¹ *Chaoulli v Quebec (Attorney General)* 2005 SCC 35 at pp 131.

Young people are more likely to be caught by these provisions and the penalties they face will be more onerous for them than they are for their customers.

Children and youth in the sex trade suffer disproportionately from the enforcement of these laws due to their age, sex and race. Therefore, their s.15 right to equality is violated. The text of s.15 reads as follows,

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The test for infringement of s.15 can be found in *Law v. Canada (Minister of Employment and Immigration)*.⁴² The first question that must be answered is whether the law in question draws a formal distinction between the claimant and others based on personal characteristics. Does the law fail to take into account the claimant's already disadvantaged position in Canadian society resulting in substantially different treatment on the basis of one or more personal characteristics? The second part of the test involves determining whether or not the claimant is subjected to differential treatment based on enumerated or analogous grounds. Finally, does the differential treatment discriminate in such way that a burden is imposed or a benefit withheld in a manner which reflects a stereotypical application of a presumed group of personal characteristics. Does the law

⁴² *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, [1999] S.C.J. No.12 [Law].

have the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition as a human being or as a member of Canadian society?

The test set out in *Law* was recently clarified in *R v Kapp*⁴³ as follows:

The analysis in a particular case, as *Law* itself recognizes, more usefully focuses on the factors that identify impact amounting to discrimination. The four factors cited in *Law* are based on and relate to the identification in *Andrews* of perpetuation of disadvantage and stereotyping as the primary indicators of discrimination. Pre-existing disadvantage and the nature of the interest affected (factors one and four in *Law*) go to perpetuation of disadvantage and prejudice, while the second factor deals with stereotyping. The ameliorative purpose or effect of a law or program (the third factor in *Law*) goes to whether the purpose is remedial within the meaning of s. 15(2). (We would suggest, without deciding here, that the third *Law* factor might also be relevant to the question under s. 15(1) as to whether the effect of the law or program is to perpetuate disadvantage.)

Viewed in this way, *Law* does not impose a new and distinctive test for discrimination, but rather affirms the approach to substantive equality under s. 15 set out in *Andrews* and developed in numerous subsequent decisions. The factors cited in *Law* should not be read literally as if they were legislative dispositions, but as a way of focussing on the central concern of s. 15 identified in *Andrews* — combatting discrimination, defined in terms of perpetuating disadvantage and stereotyping.⁴⁴

This clarification of the *Law* test allows for an analysis that focuses on discrimination and stereotypes that are being experienced by young people involved in the sex trade.

The first step in the *Law* test requires the finding of a formal distinction based on personal characteristics or a failure to take into account the claimant's already disadvantaged position within society. The majority of children and youth in the sex trade are poor, Aboriginal girls. They represent the intersection of three groups, age, race and sex, which have typically been disadvantaged within our society. It is because of this

⁴³ *R v. Kapp*, 2008 SCC 41.

⁴⁴ *Ibid.* at pp 24-25.

initial disadvantage that many of them have been forced into the sex trade in the first place.⁴⁵ To criminalize children and youth for these factors which are largely outside of their control is definitely indicative of a failure to take account of their already disadvantaged position in society. The next step is to determine whether the discriminatory treatment occurs based on enumerated or analogous grounds. Sex, age and race are all enumerated grounds. Since these factors influence a young person's involvement in the sex trade, the discriminatory treatment can be seen as being based on enumerated grounds.

The differential treatment that results from enforcing the *Criminal Code* provisions against children and youth, both denies benefits and inflicts burdens on the young people who are charged. With every charge they are stigmatized and criminalized. With this comes increased marginalization making it harder to leave the sex trade and enter "mainstream" society.⁴⁶ The children and youth in question are burdened with criminal records and societal condemnation and they are subsequently denied the benefits that are accorded to other members of society. If a young person does want to leave the sex trade they will need to find alternate means of survival. The longer they are in the sex trade the more difficult this task will become. They will have difficulty finding employment due to their age, their lack of experience and their criminal records.⁴⁷

⁴⁵ Gorkoff, Kelly with Jane Runner, "Introduction: Children and Youth Exploited through Prostitution." in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 24.

⁴⁶ *Moving Forward*, *supra* note 32 at 5.

⁴⁷ *Sacred Lives*, *supra* note 22 at 64.

Anyone with a criminal record is automatically at a disadvantage when seeking employment. However working in the sex trade creates an added stigma that makes it even more difficult to endure.⁴⁸ The stigma that attaches to young workers obviously goes away with time but a criminal record can be permanent. Even if children and youth are able to exit the sex trade, they will carry it with them for the rest of their lives. People will judge them based on society's perception that participation in the sex trade is voluntary.⁴⁹ The fact that they have been charged for their involvement gives this judgment a sense of legitimacy. If young people are held responsible for the sex work that they engage in, then society can justify its condemnation of them. Children and youth are victims of the sex trade and they need to be seen as such and society must strive to work with them rather than continue to work against them.

Finally, criminalizing young people for being part of the sex trade helps to perpetuate the stereotype that all sex workers are less worthy members of society.⁵⁰ All sex workers are treated poorly to begin with and charging the children and youth implies that they are making the choice to be involved in the sex trade. This implication puts the onus on the young person rather than on the society which has failed them in the first place. It indicates that these children and youth are less capable or worthy of recognition

⁴⁸ *Voices for Dignity*, *supra* note 20.

⁴⁹ *Moving Forward*, *supra* note 32 at 5.

⁵⁰ Downe, Pamela and "Ashley-Mika" "*The People we Think we Are*": *The Social Identities of Girls Involved in Prostitution*" in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnepeg: Fernwood Publishing, 2003) at 48.

as human beings. They are not seen as having the potential to be equal members of Canadian society. They are being written off at a very young age.

Section 15⁵¹ guarantees equal treatment under the law. Unfortunately, due to the nature of prostitution, any laws that attempt to regulate it are predominantly going to affect females. These laws will largely affect females who are already disadvantaged in society. Due to this disadvantage they are more likely to have prior criminal records and therefore they become subject to longer sentences.⁵² Prostitutes are less likely than their clients to be able to make bail, therefore they will spend more time in jail. Many sex trade workers will plead guilty in an attempt to avoid a long prison term or to avoid being denied bail pending trial. This further contributes to their lengthy criminal records.⁵³ Research also shows that sex trade workers tend to receive harsher sentence for communication offenses than do their clients despite the fact that both genders seem to be charged with relatively equal frequency.⁵⁴ This all adds up to very unequal treatment under the law.

⁵¹ *Charter, supra* note 2 at s.15.

⁵² Harlinton, Leora, *Saskatoon Charging and Disposition Patterns Under Section 213 of the Criminal Code of Canada*, (Saskatoon: CUISR: Community-University Institute for Social Research, 2004) at 14.

⁵³ *Ibid.*

⁵⁴ Federal/Provincial/territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (Ottawa: Department of Justice, 1998) [*Report and Recommendations*].

As illustrated above, s.210, s.212 and s.213 of the *Criminal Code*⁵⁵ as they are may violate the *Charter* rights of children and youth. It must now be determined whether the violations can be saved under s.1, which reads:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The court in *Oakes*⁵⁶ established a two part test to determine whether or not a piece of legislation that violated *Charter* rights could be sustained. First, the purpose of the legislation in question must be pressing and substantial. Second, the means chosen must be reasonable and demonstratively justifiable in a free and democratic society. The second stage of this test was broken down into three more steps in *Egan v Canada*.⁵⁷ The rights violation must be rationally connected with the legislation. The provision in question must minimally impair the *Charter* right which it violates. Finally, there must be proportionality between the effects of the measure and its objective so that the attainment of the goal is not outweighed by the infringement of the right.

The first step is to determine whether or not the legislative objective is pressing and substantial. In this case it is not. If the stated objective of the laws at issue was to end the involvement of children and youth in the sex trade, it would obviously meet this step of the test. However, the stated objective of these sections of the *Criminal Code* is the reduction and elimination of the nuisance associated with the sex trade.⁵⁸ It cannot be

⁵⁵ *Criminal Code*, *supra* note 38.

⁵⁶ *Oakes*, *supra* note 5.

⁵⁷ [1995] 2 S.C.R. 513, 124 D.L.R. (4th) 609.

⁵⁸ *Re: Prostitution*, *supra* note 7 at pp 2.

held that nuisance is a more important objective than the health and safety of children and youth. The young people who are being victimized by the sex trade are definitely more pressing and substantial than any nuisance that may ensue from sex work. The analysis of the constitutionality of the laws in question could end here. However, in the interest of thoroughness and academic debate, the analysis will continue through the next stages of the test.

Are the means chosen to combat the issue reasonable and demonstratively justified? Again they are not. Even if the objective of the laws in question was to end the exploitation of children and youth through the sex trade the means chosen would be neither reasonable nor justifiable. The means chosen in this instance lack reasonableness due to the fact that they have the effect of “catching” the children and youth, rather than the customers and who are exploiting them. The laws serve to criminalize children and youth for activities over which they have little control, while having minimal corresponding ability to target and criminalize customers. It is not reasonable to allow a law which has such a disproportionate effect on the victims rather than the perpetrators. It is not justifiable that young people who are being victimized by society are also being treated so poorly by the justice system.

The violation of rights which occurs in this instance is not rationally connected to the legislation. The legislation is not designed to end the exploitation of children and youth through the sex trade so the effects on young people become an irrational side effect. The rights violations that are occurring are very wide-spread. Too many rights are being affected for the legislation to be able to be seen as being rationally connected to the legislative objective. Even if the objective of the laws was to end the exploitation of

children and youth through the sex trade, it seems plausible that this could be achieved without violating so many of the rights of the young victims.

The argument could be made that regulation of communication in s.213 is a minimal impairment of s.2(b). While freedom of expression is an important right in our society, it is not so important that it can take precedence over the safety and well being of our young people. This infringement could be justified at this point if the legislative objective was to end the sexual exploitation of children and youth. However, the same cannot be said of the impairments to s.7 and s.15 rights. The laws in question can actually operate to place children and youth in danger. Not only are they depriving young people of their rights, they are subjecting them to the very things from which they should be protecting them. The practical, combined effects on the children and youth, may ultimately put them in dangerous situations where they may suffer violence and even death. This cannot be considered a minimal impairment.

As was noted above, the potential consequences for children and youth are drastic and severe as their lives are being endangered. There is no proportionality between the effects that these laws can have on young people and the supposed objective of preventing nuisance in public places. Again, even if the stated objective was to end the exploitation of children and youth through the sex trade, the actual outcomes of enforcing the laws are too drastic to be justified. Alternatives need to be found that address the needs of the young people without re victimizing them.⁵⁹ Either the existing laws need to be rewritten to address the horrific effects that enforcement can have on children and

⁵⁹ *Sacred Lives*, *supra* note 22 at 76.

youth or new laws need to be written that are better able to address the needs of the young people while still punishing their customers.

Historically, when courts have addressed the issue of the constitutionality of the prostitution related sections of the *Criminal Code* they have done so in the context of adult prostitution. While the courts have found that certain prostitution related laws do violate *Charter* rights, the majority has always found that the violations can be saved by s.1. More proof of the grave ramifications that all sex workers suffer due to enforcement has since surfaced, therefore the case may be made that these provisions can no longer be justified.⁶⁰

In 1985, the Fraser Report recommended that the government clarify when and where prostitution could legally occur.⁶¹ This would have served to eliminate both the confusion that surrounds prostitution as well as alleviate much of the violence that is associated with the sex trade. Instead of adopting this recommendation, the government chose to enact s.213 of the *Criminal Code*⁶² in 1990. Since the communication provision was enacted in 1990 there has been little deterrent effect in the rates of street prostitution in most cities.⁶³ However, there has been an increase in the levels of violence against street prostitutes. From 1991-1995 sixty three known prostitutes were murdered, of

⁶⁰ *Voices for Dignity*, *supra* note 20 at 79-80.

⁶¹ *Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution*, vol.2 (Ottawa: Canadian Government Publishing Centre, 1985). [*Fraser Report*]

⁶² *Criminal Code*, *supra* note 38 at s.213.

⁶³ *Report and Recommendations*, *supra*. note 54.

which fifty four percent have remained unsolved.⁶⁴ These statistics only reflect women who were known to be prostitutes. There are likely many other people who were engaging in the sex trade who have been murdered as well. These statistics also only reflect the ultimate violence that can be committed against a sex worker. We are not told about the countless incidents of physical violence that they may be subjected to by their pimps and their clients.

Regardless of which types of violence statistics are compiled for, it is clear to anyone who chooses to pay attention that the current laws put all sex trade workers at risk. The enforcement of current laws or the laws themselves need to be changed before anyone will be able to safely engage in prostitution. If the goal of the current laws is to end prostitution then the legislature should simply pass a law to that effect. However, if prostitution is to remain legal in Canada then the recommendations of the Fraser Report⁶⁵ need to be implemented. It is imperative that as long as prostitution remains legal, it needs to be allowed to occur in a way that is safe for all parties involved.

In any event, children and youth are distinct from adults. The consequences of the sex trade will be more severe for young people, and as such, it becomes a greater rights violation to enforce these provisions against children and youth. Young people do not have the same degree of choice in regards to entering the sex trade that adults do. They do not have as many, if any, viable alternatives available to them.⁶⁶ Young people are unable to access many welfare benefits unless they become wards of the state. They do not have the skills or education to allow them to obtain gainful employment. This lack of

⁶⁴ *Ibid.*

⁶⁵ *Fraser Report, supra.* note 61.

⁶⁶ *Sacred Lives, supra* note 22 at 29.

options also makes it more difficult for young people to leave the sex trade. Children and youth are less capable of making informed decisions as to whether they want to enter, stay in or exit the sex trade. They will have less knowledge of the potential consequences, both to their health as well as to their future. Often young people are coerced into the sex trade by someone they know or trust.⁶⁷ This increases the difficulty that they have in terms of making an accurately informed decision. In general, children and youth are more vulnerable than their adult counterparts therefore society has a greater duty to protect them.

The findings in *Skinner*⁶⁸, *Stignatt*⁶⁹ and *Re: Prostitution*⁷⁰ can be distinguished from the issue at hand due to the fact that they deal with adults who can theoretically consent to their involvement in the sex trade. This chapter is discussing the rights of children and youth who are being exploited by the sex trade. The young people are not exercising a right to freedom of expression for economic terms but rather for the assurance of their personal safety. Disallowing communication by children and youth in the sex trade has the practical effect of constricting their ability to negotiate their own safety. This is an entirely different issue than the economic one discussed in the relevant cases. When the issue is framed in terms of health and safety of young people, it is no longer salvageable under s.1

⁶⁷ Tutty, Leslie and Kendra Nixon “*Selling Sex? It’s Really Like Selling Your Soul*”: *Vulnerability to and the Experience of Exploitation through Child Prostitution*” in Gorkoff, Kelly and Jane Runner eds., *Being Heard: The Experiences of Young Women in Prostitution*. (Winnipeg: Fernwood Publishing, 2003) at 30.

⁶⁸ *Skinner, supra* at 9.

⁶⁹ *Stagnitta, supra* at 8.

⁷⁰ *Re: Prostitution, supra* at 7.

S. 213 was also found to be a violation of s.7 of the *Charter* by the majority in *Re: Prostitution*⁷¹, and by the dissent in *Stagnitta*⁷² however, both times the majority felt that the laws could be saved under s.1. The section was found to infringe the right to liberty based on the potential for incarceration that ensues upon conviction. The discussion by the majority in regards to saving the impugned provisions under s.1 dealt primarily with whether or not the law in question was too vague.⁷³ It was argued that the laws may be so vague as to prevent sex workers from being able to know under what circumstances they are able to engage in the sex trade. This discussion is irrelevant to the issue at hand as children and youth cannot consent to engaging in sex work therefore the potential vagueness of the laws is not at issue.

It is the actual effects of the enforcement of these laws that may violate the rights of young people in the sex trade. The dissent of Wilson J. in *Re: Prostitution*⁷⁴ chose to look at the violation of the right to “physical” liberty.⁷⁵ This argument is more in keeping with those that are presented in this chapter. Wilson J. discusses the fact that prostitutes are the ones most victimized by the sex trade.⁷⁶ Wilson J. also points out that enforcement of these provisions leads to stigmatization and criminalization of the sex workers.⁷⁷ Ultimately, Wilson J. decided that the sections in question violate s.7 because

⁷¹ *Ibid.* at pp 15.

⁷² *Stagnitta*, *supra* note 8 at 27.

⁷³ *Re: Prostitution*, *supra* note 7 at 17.

⁷⁴ *Re: Prostitution*, *supra* note 7.

⁷⁵ *Ibid.* at pp 140.

⁷⁶ *Ibid.* at pp 142.

⁷⁷ *Ibid.* at pp 145.

they violate s.2(b) and cannot be saved under s.1.⁷⁸ If a given provision violates multiple *Charter* sections then it cannot be seen as being in accord with principles of fundamental justice.

This chapter shows some of the negative effects of enforcement of prostitution related laws against children and youth, which leads to violations of their fundamental human rights. Based on these rights it is unconscionable to continue enforcing certain laws against children and youth. Society must strive to address the underlying issues that lead to a young person's initial involvement in the sex trade. Children and youth cannot continue to be criminalized for activities that are realistically beyond their control. The eradication of child and youth exploitation through the sex trade needs to be a fundamental goal in Canadian society.

The preceding Chapter is designed to illustrate the problems that are present within the current social system. It is not necessarily designed to form the basis of an actual *Charter* challenge.⁷⁹ The Chapter should serve as a reminder that children and youth do not necessarily have a realistic alternative to engaging in the sex trade.

Women who engage in survival sex or selling sex in order to ease their poverty cannot be said to have any meaningful choice in their decision to enter prostitution. When selling sex is the price paid for continued subsistence, criminalizing women in the sex trade becomes a revolving door that re-victimizes them and contributes to a cycle of structural abuse.

⁷⁸ *Ibid.* at pp 152.

⁷⁹ The writer recognizes that the argument presented in this Chapter may be problematic for certain scholars in that it may lead to a perpetuation of the idea that adults are engaging in the street sex trade voluntarily. This is not the writer's intent. It is suggested that if a *Charter* challenge were to be launched it might be advisable to focus it on children under the age of sixteen, who are legally unable to consent to sexual activity, to avoid the risk of implying that adults are voluntary participants in the sex trade.

Both globally and in Saskatoon, socio-economic factors put women at risk when social supports are inadequate for meeting basic needs.⁸⁰

The observations presented above could ideally be used to form the basis for an argument regarding policy changes. Knowing that there are potential rights violations occurring could spur governments and other related agencies to provide the necessary support and funding to implement social measures designed to specifically address the needs of children and youth being exploited through the sex trade.

⁸⁰ *Saskatoon Charging*, *supra* note 52 at 4.

Chapter 5

Current Initiatives

The potential and actual rights violations outlined in the previous Chapter are generally indicative of the larger problems that are faced due to the current treatment of the issue of prostitution. The biggest problem is that people often enter the sex trade involuntarily. Once in the trade they are subjected to horrendous treatment and extreme levels of violence. The health and lives of sex workers are put at risk every time they engage in sexual activity with a client. Other safety concerns are identified within the communities where prostitution occurs. Children outside the sex trade should not have to be exposed or subjected to its realities. Another problem that needs to be addressed is the revictimization of sex workers by the legal system. Female prostitutes are subject to higher arrest rates, longer detention times and more severe legal sanctions than their clients who are typically male¹. Sex trade workers are treated unfairly in many aspects of their lives.

Due to the wide spread effects of prostitution on society it is important to understand that criminal law reform alone will not resolve the issue. The provisions of the *Criminal Code* as it stands do not effectively address the issue of children and youth being sexually exploited through the sex trade. The laws could be rewritten to address the issue more specifically or law enforcement agencies could choose not to enforce the current laws against children and youth who are being exploited through the sex trade.

¹ “Saskatoon Charging and Disposition Patterns Under Section 213 of the Criminal Code of Canada” by Leora Harlinton CUISR: Community-University Institute for Social Research 2004, Printed by Printing Services U of S at 14 [*Saskatoon Charging*].

However, any solution that effectively addresses the issue of children and youth involved in the sex trade will also need to address the social issues that allow the exploitation to occur. A successful solution will involve changes in criminal law and support for the children and youth through social services that address their unique needs.

When looking for a solution that most benefits children and youth being sexually exploited through the sex trade street prostitution will be the first area that needs to be addressed. Although it only accounts for twenty percent of prostitution in Canada, it has more violence associated with it than any other form of prostitution.² Prostitutes are pushed to the margins of society and are forced to engage in increasingly riskier activities to facilitate their work. As prostitutes are further marginalized they become more vulnerable to threats, violence and exploitation.³

The violence that prostitutes are subjected to also affects their friends and families as well as the larger community. Any time that society allows this level of violence against a certain group of people to continue unchecked there will be repercussions for the rest of society as well. The safety concern for the young people and their communities is a main motivating reason why this issue needs to be addressed as soon as possible. The systemic abuse of sex trade workers in our society should not be allowed to continue for any longer than it already has. Effective solutions need to be found and implemented before this violent problem becomes even more ingrained in our society.

Street prostitution is the first point of contact with both police and agencies that seek to provide services to sex trade workers. Police treatment of sex trade workers is an

² “Sex, Work, Rights: Reforming Canadian criminal laws on prostitution” online: Canadian HIV/AIDS Legal Network <<http://www.aidslaw.ca>>.

³ *Ibid.*

obvious area where changes can be made that reduce the victimization faced by children and youth. Historically, sex trade workers are charged more frequently than their customers.⁴ Once charged, sex trade workers tend to face harsher sanctions than do their customers.⁵ These patterns are indicative of both societal attitudes towards sex trade workers and practicalities of the criminal justice system.

Societal attitudes often blame sex trade workers while excusing the actions of their customers. Females involved in the sex trade are often viewed in a negative way by society. They are labeled “sluts” and “whores” who are “infecting” society with their loose morals. This stereotype is reflected in how sex trade workers are treated within society. It is also illustrated by a historical tendency to enact laws that focus on criminalizing the activities of sex trade workers while not criminalizing the activities of their largely male customers.⁶ If stereotypes that increase the responsibility of the children and youth working in the sex trade are allowed to continue the young people who are being exploited will continue to face more severe criminal sanctions than their customers.

There are also certain realities which increase the charges and sanctions faced by young people involved in the sex trade. Young people involved in the sex trade are likely

⁴ Comack, Elizabeth, “Introduction, Part II” in Gillian Balfour & Elizabeth Comack eds. “Criminalizing Women: Gender and (In)Justice in Neo-Liberal Times” (Halifax: Fernwood Publishing, 2006) 64-5.

⁵ *Saskatoon Charging*, *supra* note 1 at 14

⁶ Bittle, Steven, “From Villain to Victim: Secure Care and Young Women in Prostitution” in Gillian Balfour & Elizabeth Comack eds. “Criminalizing Women: Gender and (In)Justice in Neo-Liberal Times” (Halifax: Fernwood Publishing, 2006) 197. *[From Villain]*

to participate in it more frequently than is an individual customer. This means that there are more opportunities for the young people to run into conflict with the law. Additionally, children and youth working the streets will become known to the police who work the stroll area. Being known to the police makes it harder to avoid police detection when engaging in the sex trade.

Each time that a young person is arrested and charged their criminal record gets longer. The length of a criminal record will affect the sentence that is handed down to the young person who is being charged. Therefore, a young person who gets charged for a prostitution related offense is more likely to receive a longer sentence than their customer who is less likely to have a lengthy prior criminal record. A final reason that sex trade workers in Saskatoon are more likely to receive a harsher sentence than their customers involves alternative measures. The alternative measure of John school is available to customers of the sex trade. There are no formal alternative measures available to sex trade workers to divert them off the streets.

In 2000, fifty six women were charged under s.213 of the *Criminal Code* in Saskatoon while only seventeen men were charged under the same section.⁷ Of the people charged, some sex trade workers were incarcerated while none of the customers were.⁸ This illustrates the disproportionate experiences of sex trade workers and customers when they are confronted with the law.

Efforts have been made in Saskatoon recently to change this. Operation Help began in 2001. Operation Help is an interagency program that works to provide services

⁷ *Saskatoon Charging, supra* note 1 at 11. This is an arrest rate three times higher for women than for men.

⁸ *Ibid.*

and referrals to sex trade workers who come in contact with the law. If children or youth are picked up for being involved in the sex trade they are referred to Operation Help rather than being charged. As such, Operation Help works as an informal alternative measure that diverts sex trade workers away from the criminal justice system. Operation Help attempts to surround the sex trade worker with a “circle of support”. This circle includes a lawyer, a family service worker, an Aboriginal Court Worker, an Elder, two outreach workers from Egadz⁹ and a representative from the Vice Unit with the Saskatoon Police Service. The support team works with the children and youth to show them that there are other ways to survive without resorting to involvement with the sex trade.¹⁰ The concrete effect of Operation Help at the policing level is that less sex trade workers are being charged for prostitution related offences. The Saskatoon police try to avoid charging youth entirely. Other police forces in Canada have also reduced the amount of charges that are being laid against young people involved in the sex trade.¹¹

The effects of Operation Help are borne out by the police statistics. In 2006, sixty one sex trade workers were arrested, thirty were given warnings and thirty one were charged. Thirty three Johns were arrested and charged for prostitution related offenses.

⁹ Saskatoon Downtown Youth Centre Inc.- EGADZ, *2005-06 Annual Report [Egadz Annual Report]* Egadz is a community based inter-agency organization that provides resources and actively supports services that empower “hard to serve” youth to help themselves to reach their full potential. Their mission is to encourage “hard to serve” youth to make choices that improve their quality of life through the provision of direct services and an inter-agency approach.

¹⁰ SEYSO Youth, *Exit Routes: The 2006 Reprint* (Canada: Save the Children, 2006) at 25-7.

¹¹ *From Villain*, *supra* note 6 at 198-9.

The majority of the men were able to attend the Prostitution Offender Alternative Measures program (a.k.a. John school). The statistics were close to equal again in 2007 with forty five sex trade workers being charged (four ultimately had their charges stayed) and forty two Johns being arrested and charged.¹²

The statistics illustrate that Operation Help has changed the arrest patterns in Saskatoon. Charges are being laid on a more equal basis and efforts are being taken to reduce the number of charges against sex trade workers. Unfortunately, there is still an important distinction after charges have been laid. Customers have the option of pursuing alternative measures through the John school. Sex trade workers do not have a similar program to divert them away from the criminal justice system if they are charged with a prostitution related offense. This leaves sex trade workers who have been charged with an ever increasing criminal record. There is also a lack of resources available to sex trade workers who want to make positive changes and leave the street sex trade.

Effectively addressing this issue will require a targeting of the root issues rather than focusing on the manifestation of them through the sex trade. Changing arrest patterns and police attitudes is a good start towards helping the children and youth involved in the street level sex trade. However, children and youth involved in the sex trade also need to be given options that allow them to leave the streets and be successful. Comprehensive programs need to be developed to address all the issues that are being faced by each young person. Programs would start by meeting basic human needs such as food, shelter and sleep. After basic needs have been met programs could progress to dealing with some of the root issues through counseling and addictions services. This

¹² Statistics provided by the Saskatoon Police Service.

second step would be determined by the individual needs of the young person in question. Once the healing has begun young people can progress to education and skills training which gives them options for joining mainstream society.

The purpose of a comprehensive program targeting the needs of young people will be to give them options that they did not previously have. Children and youth need to be given the tools that allow them to make constructive choices for themselves. Being put through the criminal justice system will not produce any material changes in their lives which would allow them to make positive choices. The criminal justice system will give young people criminal records which makes it increasingly difficult for them to engage with mainstream society. Children and youth need to be diverted off the streets if there is to be any chance of ending the sexual exploitation of young people through the sex trade.

Many different strategies have been employed throughout Canada to try and minimize the negative effects of the sex trade. Some of the initiatives focus on the communities in which prostitution occurs. Some focus on changing the behaviour of the Johns and some attempt to address the issue with the workers themselves. A brief summary of some initiatives will create a platform from which to discuss the implementation of alternative programming for young people involved in the sex trade.

The success of a particular initiative will not be determined by its focus but rather by the way in which it is implemented and the people who support it. If a particular initiative is supported by both sex workers and the larger community it has more chance of being successful. If either the sex workers, the community or law enforcement agencies do not support a particular initiative then it is not likely to be successful at dealing with the issue of prostitution and the dangers that it presents.

Community Initiatives

The most grass roots level of dealing with prostitution is with community initiatives. These types of initiatives can be implemented in any community so long as there is a group of dedicated people willing to work towards change. Community initiatives should be based on the needs of the individual communities. Ideally, they should also include experiential people in the planning and development stages as well as during the implementation of the programs if possible.¹³

Community initiatives tend to focus on dealing with the issue of prostitution and its after effects within community. One way of dealing with the situation is through community mediation. Community representatives and sex trade worker representatives will meet and attempt to mediate solutions that accommodate everyone's needs. These can include limiting prostitution activities to certain areas within the community (ie: away from schools) and to certain times of the day or night.¹⁴ Community mediation could also address the ages of people involved in the sex trade. The mediated conditions could be said to apply only to adults with community members and adult sex trade workers working together to prevent children and youth from engaging in sex work. This approach recognizes that the sex trade will continue but it attempts to make the situation safer for both the sex workers and the community. As long as both groups are treated

¹³ Lynette Jackson, *Moving Forward Together to Stop the Sexual Exploitation of Children and Youth*, (Canada: Save the Children, 1999) at 13. [*Moving Forward*]

¹⁴ *Federal/Provincial/territorial Working Group on Prostitution, Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (Ottawa: Department of Justice, 1998) at Part III.

equally, this is a good approach because it does not marginalize the sex workers or push them further into dangerous areas. It also recognizes that certain members of a community (ie: children) should be protected from exposure to the sex trade.

Community initiatives can also target the aftereffects of the sex trade. These could include garbage collection and playground clean ups in the morning. This reduces the exposure that children who are not involved have to the sex trade and enhances their safety by ensuring that they will not stumble across used needles and condoms. Other initiatives can include citizen patrols and neighbourhood enhancements that reduce the attractiveness of an area for sex trade activities.¹⁵ Clean up crews are a positive initiative as they help to protect vulnerable members of society. Initiatives that attempt to push prostitutes out of the neighbourhood are not as positive, as they serve to further marginalize the people working in the sex trade.

Initiatives Targeting johns

Programs that target the behaviour of johns have been made available in some communities. Some initial programs in this area were attempts at john shaming. These would include publishing names of men who were arrested for prostitution related activities and publishing the license plate numbers of vehicles which were frequently found in prostitution related areas without good reason.¹⁶ Many of the programs have fallen by the way side for two reasons. The families of johns may be influenced

¹⁵ *Ibid.*

¹⁶ *Ibid.*

negatively by these initiatives and sometimes these initiatives can lead to violence between community members and the johns who are being targeted.¹⁷

More recently, programs for johns typically take the form of john schools. These are one or two day courses that johns may be required to attend as part of their sentence for prostitution related offenses.¹⁸ In Saskatoon, the john school is run by the Salvation Army. It includes several educational components as well as testimonials from women who have been victimized by prostitution. The men learn about issues such as sexual health and the socioeconomic or addictions issues that may drive women into prostitution. Johns must also face a woman who has been a sex worker in the past. The woman speaks to the men about how prostitution has negatively affected her life and how it made her feel as a person. Often these schools are part of a court ordered sentence and the fees paid for attendance go towards funding initiatives to help women who are still working the streets in the community.¹⁹

In some communities the fees go back to the organization that is running the John school. This can be a source of controversy as many advocate groups feel that the fees should go towards programming for sex trade workers. Charging a fee that does not go towards addressing the issues faced by sex trade workers can be seen as a further exploitation of the people who are already being victimized by the sex trade.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Initiatives Targeted at Sex Trade Workers

The final type of initiative strives to address the issues that are being faced by the young people involved in the sex trade. These initiatives can be subdivided into harm reduction strategies and programs that address the root issues that contribute to involvement in the sex trade.

Harm Reduction Strategies

Harm reduction services are the more common initiative undertaken to benefit sex trade workers. These types of initiatives may include free condoms, needle exchanges, and the provision of food.²⁰ They are all designed to assist with the immediate needs of sex workers and they are typically offered as part of an outreach service. In Saskatoon, outreach services are offered by both EGADZ and Saskatoon District Health. They provide all of the above services as well as teddy bears, diapers for children and numerous other services that are needed by the young people involved in the sex trade. Outreach services provide a link between sex workers and the support services that they need. Sex workers are less likely to access support services if they are unable to do so through outreach services.²¹ Traditional support services may not cater to the needs of sex trade workers. They may have restrictive hours and the sex workers may feel that they are being judged by the professionals with whom they deal. There may also be

²⁰ *Ibid.*

²¹ *Ibid.*

language barriers.²² Outreach services are able to avoid these problems by going directly to the sex workers to identify and address their needs.

More intensive forms of harm reduction include safe houses, crisis intervention services and homicide registries.²³ Safe houses provide a temporary shelter for sex workers who want to leave the street. Some safe houses operate on a come and go basis, merely providing a safe shelter. Other safe houses provide counseling and exiting services when young people decide that they are ready to attempt to leave the street permanently. Either alternative gives children and youth an option that allows them to avoid street life for a period of time.

In Saskatoon we have several safe houses for children and youth. One is run by the Saskatoon Tribal Counsel and the remainder of the homes are run by EGADZ. The Tribal Council house allows sex workers to stay for a limited period of time but they can then refer the sex workers to a more permanent facility such as My Homes. My Homes are safe houses operated by EGADZ that attempt to facilitate a permanent exit from street life. Residents are allowed to stay at My Homes for an extended period of time.²⁴

Crisis intervention services are another type of harm reduction which helps sex workers deal with the immediate issues they may be facing.²⁵ These issues can include any number of things from suicidal ideations to violence inflicted on the sex worker. The purpose of crisis intervention is to deal with immediate situations. These services often do not extend beyond the crisis into the everyday life of the sex worker. Crisis

²² *Ibid.*

²³ *Ibid.*

²⁴ *EgadZ Annual Report, supra* note 9.

²⁵ *Moving Forward, supra* note 13..

intervention can happen through informal venues such as peer support or it can take a much more formalistic approach through counseling services.

Another frequently employed harm reduction initiative is the homicide registry. Homicide registries are the most unfortunate support service that can be offered to sex workers by the community. They are unfortunate due to their necessity as opposed to the actual service itself. Homicide registries were started in Alberta and have moved to Saskatchewan.²⁶ The registry records identifying details about a sex worker so that if an unidentified body turns up they can be identified. They may also have the added benefit of scaring children and youth into leaving the streets before they become too ingrained in sex work. Homicide registries recognize the inherent danger of street prostitution. The fact that this is an essential service is a testament to the horrible way that sex trade workers are treated in our society.

Harm reduction initiatives are a good start. Sex trade workers will not be able to work towards exiting the street and dealing with their underlying issues unless their basic needs are being met. However, more needs to be done for the children and youth who are being victimized by the sex trade. Specifically, more options are needed in the areas of addictions and exiting. Addiction and prostitution tend to go hand in hand. Either the young people enter prostitution to fund a drug habit or, more often, they begin using drugs to numb themselves from the activities they engage in.²⁷ Often the drug trade is a way that prostitutes become indebted to pimps, which forces them to continue working in the sex trade. Services are also lacking when it comes to helping young people exit the

²⁶ *Ibid.*

²⁷ *Moving Forward, supra.* at note 12 at 8.

street life. Many children and youth want to leave the sex trade but find that they are unable to do so.²⁸ They are often held in the sex trade by lack of options. Therefore programs that provide options need to be developed and made available to the young people in the sex trade.

Initiatives Targeting Root Issues

Preliminary addictions services and counseling may be part of harm reduction but they also need to be provided after the basic needs of the young people have been met and before they begin further training or education. If the underlying issues are not addressed young people will have a much more difficult time being successful in the future. Education and skills training may be difficult for the young people. The stress of issues that have not been dealt with will only increase their stress making it easier for them to give up. Obviously not all underlying issues can be addressed and eliminated before moving on but young people need to be aware of them and have some alternate means of coping before they are likely to be successful in future endeavours.

After the initial stages of harm reduction certain initiatives look towards providing better alternatives for the young people engaged in the sex trade. These may include skills training, work projects or education. These initiatives offer an alternative to life on the streets. They focus on providing the skills and resources that are needed to gain traditional employment opportunities. Community members may volunteer to teach the youth a trade or business owners may give them employment so that they can gain

²⁸ Catharine A. MacKinnon. *Women's Lives, Men's Laws*, (Cambridge: Belknap Press of Harvard University Press, 2005).

valuable, practical skills. Children and youth may be tutored and reintegrated into an educational program. These types of programs are obviously an ideal as they provide alternatives. More of these types of projects need to be implemented. Communities however are limited in what they can accomplish alone.

Two examples of comprehensive programming that targets root issues can be found in Saskatoon and Vancouver. In Vancouver, Picasso Café provides street youth with employment training and opportunities in the food service sector. The program is run by Option Youth Society. Youth become involved with the program through word of mouth or through referrals. The youth are trained in all aspects of restaurant operation through both coursework and practical experience. After five months of employment at Picasso Café the youth begin a practicum with one of the local restaurants that has a partnership with the project. The ultimate goal of the program is for the youth to obtain an apprenticeship in the food service sector. Youth can receive educational credit for their involvement with the program, with the potential to earn a diploma from the Vancouver Community College. The program also provides life skills training and an employment counselor.²⁹

This program is positive because it gives youth an alternative option to working on the streets. It gives youth work related skills that will enable them to seek employment in the food service industry should they choose to do so. Often the practicum stage leads

²⁹ Currie, Sheila, Kelly Foley, Saul Schwartz & Musu Taylor-Lewis, *“Blade Runners and Picasso Café: A Case Study Evaluation of Two Work-Based Training Programs for Disadvantaged Youth”*, (Vancouver: Social Research and Demonstration Corporation, 2001).

to permanent employment for the youth.³⁰ The youth involved with the program also receive valuable life skills training that will help them in all areas of their lives. Unfortunately, the program is limited in that it can accommodate a maximum of thirty youth at any given time. It is also limited in that it can only be available to older youth.

In Saskatoon, EGADZ works to provide a comprehensive program to at risk youth. Their program starts with outreach services and progresses to referrals to agencies that are able to provide counseling and addictions services to the youth. EGADZ also operates My Home and My home Too which provide a safe shelter for young people aged twelve to seventeen. EGADZ works to facilitate educational opportunities by providing school support and helping to facilitate school placements for the youth. Employment opportunities are available in the summer through a partnership with Saskatoon Curbside Recycling. Job opportunities are posted at the drop in centre and youth are given the chance to work on employment related skills. Computers are available for youth to develop a resume.³¹

EGADZ does a wonderful job of providing comprehensive programs to at risk youth in Saskatoon. However, there is always a need for more spaces and more funding. In 2005 My Homes provided shelter to twenty nine youth.³² There is more demand for the service than there are available spaces. A comprehensive list of programs and services available to children and youth who want to exit the sex trade can be found in Exit Routes.³³ Exit Routes is a booklet compiled by SEYSO- Sexually Exploited Youth

³⁰ *Ibid.*

³¹ *EGADZ Annual Report, supra note 9.*

³² *Ibid.*

³³ *Ibid.*

Speak Out. The booklet contains a list of resources available in Saskatoon. It also provides educational information regarding health and safety, condom do's and don'ts, and ways to avoid sexually transmitted infections. There are strategies for exiting the street as well as testimonials from people who have successfully left the trade. The booklet is pocket sized and provides a wide range of information in an easily accessible manner.

Despite the extensive efforts by some community groups there are still areas where services are needed but unavailable. One issue is age limits. Most services are not open to children under the age of twelve who are involved in the sex trade. While there are definitely more youth than children involved in the sex trade, children in the sex trade also need access to support and resources. Another area where services are lacking involves male youth and children in the sex trade. Some services are exclusively targeted at the females in the sex trade. Males are often left out of the service provision equation. This is likely a function of funding practicalities. Funding goes to the group with the most obvious need and female youth are the predominant group involved in the sex trade.

It is obvious that change needs to occur within our society. Sexually exploited children and youth need to be seen and heard. Funding and resources need to be devoted to the prevention of further involvement of young people in the sex trade. Existing programs need to be built on, resources need to be increased and children and youth currently involved in the sex trade need to be provided with the support and services that they need to end their exploitation. No one solution will be applicable and relevant in all situations but more work needs to be done to provide options that can work for the young people.

Conclusion

Where do we go from here?

There are many factors presented herein that illustrate the need for change. As a society we cannot sit by idly and continue to let children and youth be victimized through the sex trade. Children and youth are falling through the cracks of social support systems and ending up on the streets where they must sell themselves to survive. These same young people are then being victimized by a legal system which punishes them for engaging in survival sex. Young people are being criminalized and stigmatized for being involved in the sex trade. These children and youth are being treated differently based on race, class and often gender. This is a violation of their basic human rights. Young people need to be given options and skills that allow them to leave the streets instead of punishment for actions that are beyond their control.

As a society we need to commit to targeted initiatives that help the children and youth rather than contributing to their further harm. This will require addressing three important aspects of the sex trade. One aspect of this is to target the behaviour of Johns. Customers of the sex trade need to be made aware of the harm that they are causing. Johns who exploit children and youth in the sex trade should be subject to penalties and sanctions which reflect the harm that they are causing to the young people involved in the sex trade.

Additionally, society needs to look at the young people who are currently involved in the sex trade. This starts with providing outreach services to address the immediate survival needs of the children and youth. Once basic needs are being met in a

safe environment, children and youth can begin their healing journey. This will require access to a wide variety of services such as addictions treatment and counseling. Young people will need a lot of support to progress through this stage of the process. Once young people are ready they should be given access to education and skills training that will give them the tools they need to make positive choices.

Finally, preventative measures need to be taken to prevent children and youth from becoming involved in the sex trade. Social supports need to be in place to identify high risk children and youth and provide them with ample resources before they fall prey to sexual exploitation. If children and youth are allowed to end up on the street then prostitution becomes one of their few viable options. The social, economic and cultural conditions that underlie child and youth involvement in the sex trade need to be effectively addressed before there can be any hope of ending the sexual exploitation of children through the sex trade.

Addressing the above noted aspects of sexual exploitation through the sex trade can be accomplished within our society. Many communities already have services that address one or more of the aspects outlined above. However, more comprehensive, far reaching services are needed to adequately protect all children and youth from being exploited by the sex trade. This will require many additional resources and cooperation between service provision agencies and communities where sexual exploitation occurs. Resources need to be made available to all children and youth in all parts of our society. The resources need to be available to all children and youth who are at risk regardless of financial concerns and jurisdictional issues. The larger society needs to move beyond bureaucratic concerns to focus on preventing sexual exploitation of children and youth.

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