Sex Work and City Planning: Winnipeg's Red Light District Committee and the Regulation of Prostitution

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Abstract

In November of 1999, a Manitoba Provincial Court decision called into question the City of Winnipeg's ability to regulate off-street prostitution through its municipal licencing by-law for escort services. The result was a lengthy process that saw the city establish a volunteer committee to investigate the regulation of the sex trade in Winnipeg and make recommendations about what could be done in the future. This paper examines the process by which the volunteer committee arrived at its recommendations, and the resulting response from city bureaucrats and officials within the provincial Department of Justice. In the end, most of the committee's recommendations did not result in any concrete action by the city or province, and perhaps the most significant one – the creation of a new city by-law to regulate the industry – is, nearly two years later, still in the planning phase. In the meantime, the province has put into place a tough new law to deal with the sex and drug trade. At present, the city has yet to address the key concern of the court decision that began the process over three years ago: the development of a clear set of regulations for an industry badly in need of closer monitoring and supervision.

Introduction

> . . . the law does not prohibit the provision of sex in exchange for money, [but] the act of negotiating the transaction in a public place is criminal. Occupying or resorting to a place for prostitution can also render that place a common bawdy-house. The net result seems to be the proliferation of so-called "escort services", which are a mechanism designed to tiptoe around the law by providing prostitution services in a manner which will not fall within the ambit of the Criminal Code. Just as subtle are the efforts of municipalities to regulate these services as stringently as possible without exceeding the limits of their own regulatory authority. (*R*. v. *Hrabchak* [1999] M.J. No. 554)

In late November of 1999, Manitoba Provincial Court Justice Susan Devine delivered a surprising decision in the case of *R. v. Hrabchak*. The case dealt with a charge of carrying on the trade of a dating and escort service without a license under the City of Winnipeg Licensing By-law. Mr. Hrabchak successfully fought this charge by arguing that the wording of the municipal by-law was too vague, and seemed to cover any business that was engaged in the provision of companionship, however widely that might be defined. Even if it could be proven that his business was a front for the prostitution trade, it would still not mean Hrabchak was necessarily providing companionship, in the vague and spiritual sense implied by the By-law definition. Thus, Winnipeg's ability to effectively control and regulate the off-street prostitution trade was called into question.

This peculiar court case underscores a very basic inconsistency in Canadian prostitution law. Devine was clear in pointing out the fact that both municipalities and proprietors of escort services are 'tiptoeing' around the reach of the 'communication' and 'bawdy-house' laws. On the one hand, Canadian cities such as Winnipeg are eager to control the indoor sex trade through a myriad of zoning and licensing requirements aimed at being prohibitive in one sense (i.e. the fee charged for a license is substantially higher than any other similar land use), and restrictive in another (i.e. by confining the location of such businesses to certain inner city districts). Despite the fact that Canadian cities do not attempt to regulate street prostitution in a similar fashion, there does not seem to be any reluctance to regulate those forms of sex work that take place away from the public eye.

For the proprietors of off-street sex businesses, the aim has always been to operate at the margins of the strict wording of the *Canadian Criminal Code*. In particular, the 'communicating law' (section 213 of the Criminal Code) was devised mainly to curb the nuisance effect of street prostitution in the larger Canadian cities,

Vancouver and Toronto in particular. As such, the law did not specifically address the issue of prostitution per se, but rather the phenomenon of prostitutes and clients negotiating a price for sex in the public view. Thus, one might argue that escort service proprietors like Hrabchak are simply running their businesses in such a way as not to create a public nuisance, the apparent intent of Section 213.

This paper will examine in detail the response of Winnipeg's municipal government to the decision in the case of *R. v. Hrabchak*, and the recommendations contained in a report of a city committee charged with examining the issue. Moreover, Winnipeg's response to the issue will be contrasted with that of Edmonton, a similarly situated prairie city that underwent a similar process in 1999. In particular, the recommendations of the two prairie cities' committees diverge in a number of ways that are important for the regulation of the sex trade, both on and off the street. In the next section, we'll turn our attention to the content of the *Hrabchak* decision.

A Detailed Reading of the Decision in *R.* v. *Hrabchak*

Scott Hrabchak, owner of Hrab Transport — the parent company of Corporate Entertainment, the alleged unlicensed escort service — was charged under Winnipeg's Licensing By-law with carrying on the trade of a dating and escort service without a license. In laying out her decision, Provincial Court Judge Susan Devine paid special attention to the definitions contained in Winnipeg's Licensing By-law. Specifically, she drew attention to the following:

> "date" means either of two persons introduced for a period of companionship by a dating and escort service.
>
> "escort" means any person who acts as a date as part of a service provided by a dating and escort service.
>
> "dating and escort service" means any business which offers to provide and does provide an introduction between two persons for a period of companionship for which service a fee is charged, levied, or otherwise imposed.
>
> "trade" includes any business, occupation, calling, amusement, entertainment, act, premises, commodity, or thing. (*R.* v. *Hrabchak* [1999] M.J. No. 554)

Furthermore, the By-law contains a number of provisions that are aimed specifically at ensuring that licensed escort services do not advertise or otherwise promote themselves as offering sexually related services tantamount to prostitution. The reason Devine made careful note of these definitions and the explicit bans of promises of nude or sexually explicit entertainment is because the defendant advanced what she called a "novel argument" on his motion for no evidence. The argument, or "creative excuse", was that "while the evidence might indeed reveal that a prostitution business was being carried on, there is no evidence that these services amounted to supplying a 'date', 'escort', or 'companion'" (*R.* v. *Hrabchak* [1999] M.J. No. 554). Thus, by advancing an argument that would clearly be at odds with Section 210 of the *Criminal Code* (the 'bawdy-house' provisions), the defense was able to strike at a central weakness of Winnipeg's License By-law.

The incident that led to the charges being laid against Hrabchak and an un-named twenty-two year old prostitute are as follows. Winnipeg police set up a sting operation, where an officer in a rented hotel room called a telephone number contained in an advertisement in a local newspaper and made arrangements for a

'private dancer' to be sent to his room. After the fee was negotiated and paid, the woman was arrested and information provided by her was used to put together a case against Scott Hrabchak and Corporate Entertainment. Interestingly, the testimony used in Mr. Hrabchak's trial included a statement from the City of Winnipeg's acting Chief License Inspector in which he noted that not only did Mr. Hrabchak not have a proper license, only one such license had been issued from his office over the last ten years (*R.* v. *Hrabchak* [1999] M.J. No. 554).

The argument laid out by the defense is that "on the plain meanings of the words in the charging legislation, the service of providing an introduction for the activities of offering and providing sex, i.e. prostitution, does not equate to providing an introduction for a period of companionship and therefore does not fall within the regulatory provisions relating to the latter" (*R.* v. *Hrabchak* [1999] M.J. No. 554). In other words, since the dating and escort service provision of the Licensing By-law is quite specific in avoiding actual prostitution as the regulatory object — something that the Supreme Court of Canada found to be *ultra vires* in the context of other municipal laws (see for example *R. v. Westendorp*, [1983] 1 S.C.R. 43) — then if Mr. Hrabchak's business is in fact a front for a prostitution-related business, it would not fall within the ambit of the municipal by-law.

To further buttress their case, Hrabchak's defense offered up dictionary definitions of 'companionship' and 'companion.' The definitions contained in both the Oxford and Webster's dictionaries, it was argued, seem to imply something more substantial than a brief sexual encounter in a hotel room. However, neither the city, nor Mr. Hrabchak could find any actual past court cases that have dealt with similar issues, and Devine notes that "perhaps the reason for the dearth of jurisprudence is because in common parlance the words 'escort service' have come to be treated as a euphemistic synonym for the provision of sexual services and therefore at first blush the argument advanced by defense appears to be patently ridiculous" (*R.* v. *Hrabchak* [1999] M.J. No. 554). Nevertheless, the wording of Winnipeg's Licensing By-law does not lead us to assume that we should be regarding 'escort services' in that way. In fact, great pains seem to have been taken to ensure that escort services are not defined in that way.

The reason for this strange gap between the reality of the escort service business and the wording of municipal by-laws stems from what Devine calls "the rather Alice-in-Wonderland state of the laws regarding prostitution" (*R.* v. *Hrabchak* [1999] M.J. No. 554). While the actual act of providing sex in exchange for money is not against the law, it is virtually impossible to do it without being at odds with some section of the *Criminal Code*. In particular, Section 213 prohibits communicating in a public place for the purpose of prostitution, while Section 210 prohibits keeping a common bawdy-house, and Section 212 prohibits living off the avails of prostitution and procuring. The result of the combined effect of these three sections, in the view of Devine, is the proliferation of escort services (*R.* v. *Hrabchak* [1999] M.J. No. 554). By carrying out transactions in private and by paying house calls, escort services are able to work their way around Sections 213 and 210 of the *Criminal Code*.

Devine points out that many of the municipal by-laws that deal with escort services use 'laboured' definitions in an effort to avoid using language that specifically describes prostitution, while being careful not to be so vague as to include other activities that are clearly not meant to fall under the regulatory control of the municipality. For example, the definition used by the City of Vancouver defines a 'social escort' as "any person who, for a fee or other form of payment, escorts or accompanies another person, but does not mean a person providing assistance to another person because of that other person's age or handicap" (*R.* v.

Hrabchak [1999] M.J. No. 554). Clearly, the by-law is meant to apply to prostitutes for hire, and not other kinds of people who may also accompany or escort people for a fee, like babysitters or bodyguards. However, the wording of the definition is sufficiently vague as to ensure that it would not be at odds with the *Criminal Code*.

The language of the escort by-law of the City of Red Deer is much more specific about the class of people to which it applies. According to that by-law, a "date or escort means any person who acts as a date or escort for a period of companionship of short duration and in respect of which a fee is charged and includes a person who, in exchange for money, offers to privately model lingerie or swimwear, perform a striptease or perform exotic dancing for another person" (*Vaugeois (Re)* [1999] A.J. No. 3, at 2). Though Red Deer's law is much more specific in outlining the types of behaviours that it regulates, the law still does not specifically mention prostitution. Thus, the idea of 'companionship' of some type is still central to the by-law and would seem not to apply to businesses that are engaged in the provision of prostitution.

Hrabchak's defense hinged on the idea that the notion of companionship contained in the Winnipeg Licensing By-law is vague and would not apply to a situation where sex is what is being offered. Devine seems to agree. She notes that there was never really any question that Corporate Entertainment was providing prostitution, pure and simple. Nevertheless, Devine explains that "the employer can be shameless in characterizing his business as prostitution and nothing more. This argument is to the effect that sex is an activity which does not necessarily involve companionship, as we understand the word" (*R.* v. *Hrabchak* [1999] M.J. No. 554). While this might be debatable, she is quite correct in pointing out the fact that the by-law is less than specific when it comes to defining the sort of 'companionship' to which it is referring.

While finding in favour of the defendant, Devine also made a point of reprimanding the City of Winnipeg for not being more specific about the intent of its by-law. She states that "if the intent is in fact to protect the citizens of the city by regulating a *de facto* industry which is clearly in need of monitoring and supervision, then I believe that the city must be more explicit in defining with precision the class of persons whom it is intended to imply" (*R.* v. *Hrabchak* [1999] M.J. No. 554). In so doing, Devine was to set off a flurry of activity in the corridors of Winnipeg's City Hall, and help lay the groundwork for a total re-examination of the role of city government and its planning professionals in the realm of sex work.

City Council's Response

As a result of Devine's decision, Winnipeg City Councillors Harry Lazarenko and Harvey Smith, both representing inner city constituencies affected by street and massage parlour prostitution, moved and seconded the following motion:

> "WHEREAS on November 29, 1999, the Provincial Court of Manitoba issued a ruling which called into question the ability of the City of Winnipeg, through the License By-law, to protect its citizens by regulating prostitution;
>
> AND WHEREAS the sex trade in Winnipeg is clearly in need of monitoring and supervision in order to protect the health and safety of its participants and citizens at large and to protect the exploitation of children;
>
> THEREFORE BE IT RESOLVED THAT Council establish a volunteer committee consisting of a retired judge and individuals with social and medical expertise to examine the City's ability to regulate

> the sex trade and to make recommendations to Council on appropriate methods and means, *including consideration of the establishment of a red-light district*. (City of Winnipeg 1999, File GF-1, Vol. 16, italics added)

Council automatically referred this motion to a subcommittee — The Standing Committee on Protection and Community Services — under rule 16.1 of their Procedure By-law No. 5400/90. Although a formal vote of Council had yet to take place, the local media was quick to pick up on the portion of the motion that included contemplation of a 'red-light' district. Headlines like "Legal sex-for-sale zone touted" (*Winnipeg Sun*, Dec. 2 1999) and "Red light zones considered for safer sex trade" (*Winnipeg Free Press*, Dec. 2 1999) leapt from the pages of local newspapers. Local citizens wrote letters to the newspapers expressing opinions for and against the establishment of an Amsterdam-style red-light district in Winnipeg. Even recently retired Chief of Police David Cassels wrote a featured letter in the *Winnipeg Sun* expressing his condemnation of the idea (Dec. 11, 1999). Despite the media's (and thus the public's) fixation on the words 'red-light district' in Lazarenko and Smith's motion, the mandate of the proposed committee was to be much more mundane than that.

On January 10, 2000 the Standing Policy Committee on Protection and Community Services first considered the motion. They heard from a delegation of concerned community leaders and citizens at large supporting the motion. However, it was not until after an extension of the normal thirty-day period for deliberation allotted to the committee that a decision was finally made. The committee concurred with the draft "Terms of Reference" and "Membership" for the proposed committee, and decided to send the motion up to the next sub-committee in the bureaucratic process at Winnipeg City Hall, namely the Executive Policy Committee (EPC).

The EPC considered the matter on February 16, 2000, and recommended City Council accept the recommendations of the Standing Policy Committee on Protection and Community Services, with a slight change to the "Purpose" stated in the draft "Terms of Reference" put forth at the lower committee level. After some further clerical and administrative adjustments, Winnipeg City Council adopted the EPC's recommendations on March 22, 2000. Thus, the City of Winnipeg had approved in principle the creation of a committee to look into the regulation of sex work. The next section will explore in detail the mandate and composition of the committee.

The City of Winnipeg Sex Trade Committee

The terms of reference for the proposed committee that were finally adopted by Winnipeg City Council are worth examining in detail. The purpose of the Sex Trade Committee was set out as follows:

> *To examine the City's regulation pertaining to the sex trade and to make recommendations to Council.*

The mandate of the committee was described as:

1. *To review the City of Winnipeg's current and past involvement in regulation of the sex trade under the City of Winnipeg Act and under By-laws, including consideration of relevant provincial and federal jurisdiction;*

2. *To examine work done and recommendations made by the various task forces and committees already involved in this issue in Manitoba and across Canada in so far as may be applicable to the City of Winnipeg;*

3. *To research and examine programs in other jurisdictions to determine their application to the City of Winnipeg;*

4. *To hold public meetings and to consider submissions;*

5. *Within 6 months of its appointment, to present its recommendations to Council on action which may be taken under the existing City of Winnipeg Act, including consideration of associated costs and implications.*

The composition of the committee was laid out as follows:

- *A retired judge*
- *A member of the academic community with expertise in the social services*
- *A prominent lawyer who is a recognized authority*
- *A professional social worker*
- *A doctor or professional health worker*
- *A citizen at large as a community representative*

Additional members could be appointed if deemed necessary by the committee. Finally, the terms of the reference specified in no uncertain terms that the Standing Policy Committee on Protection and Community Services did not support the request for financial and human resources assistance for the proposed committee. All members were to be volunteers, and there was to be no clerical support from the City of Winnipeg.

While Winnipeg City Council was quick to distance themselves from the idea of formal regulation of the sex trade, it is clear that numerous regulations were already in effect to curb and control the proliferation of prostitution related businesses in the city, and had been so for some time. One of the first tasks of the committee was to examine the way in which existing regulations operate, and the rationale for their existence in the first place. However, in order to understand the present-day regulatory environment, it is helpful to first examine the origins of the massage parlour and escort service trade in Winnipeg. The following sections will explore in detail the history of modern day manifestations of the off-street sex trade in Winnipeg, and the ways in which these businesses are regulated by municipal zoning and licensing by-laws.

The Origins of Massage Parlours and Escort Services in Winnipeg

Massage parlours associated with prostitution, in contrast to clinics or other such establishments offering therapeutic treatments, seem to have their beginnings in Winnipeg around 1973. It was in the 1973 edition of the *Winnipeg Yellow Pages* that the first advertisements for this type of business appeared. Since telephone directory advertisements are the primary way that these types of businesses reach prospective customers, we can be fairly certain that this is a good gauge of their prominence in the city. The first of this type of massage parlour to have an advertisement in the *Winnipeg Yellow Pages* was an operation located in the downtown core called "Playmate Studios." Sources who worked in the early massage parlours of Winnipeg indicate that the operator of this business got the idea from observing similar businesses in the Los Angeles area (Kohm 1997). According to these same sources, these early establishments were more involved in the selling of fantasy than the selling of sex. They claim that although a nude woman may have performed the massage, there was very little sexual contact involved (Kohm 1997).

By 1974, there were six additional massage parlours advertising in the *Winnipeg Yellow Pages*. Massage parlours enjoyed a kind of 'golden age' throughout the mid–seventies in Winnipeg. This popularity is evident in the saturation of the market with many new operations between 1974 and 1977 (for a detailed analysis of the high turnover of massage operations during this period, see Kohm 1997). By 1977, the number of massage parlours advertising in the *Yellow Pages* had grown to twenty-three, a considerable number for a mid-sized city like Winnipeg.

Many of the early parlours were located in Winnipeg's downtown core, with an unusually high number concentrating on a single block of Kennedy Street, just north of Portage Avenue, the city's main commercial strip. However, this miniature 'red light district' ended with the start of the 1980s. According to Selwood and Batzel (1988) the businesses became "victims [of] downtown redevelopment" (p. 10). The entire block was bulldozed in the mid-eighties to make way for Portage Place, a multi-story shopping complex that was the centrepiece of a major government funded urban renewal project. A handful of other massage operations survived into the 1990s scattered throughout the inner city.

The peak in terms of total number of listings of massage parlours in the *Yellow Pages* was reached in 1984, with forty-nine different names under the heading "massage." However, this is largely a result of overlapping businesses listed at the same address. The true peak, in terms of number of unique street addresses listed in the *Yellow Pages* was reached in 1980, with seventeen different addresses listed. After that time, the number of unique addresses has fallen to a number closely approximating current levels, around seven (Kohm 1997).

The reason for this decline can probably be attributed to two factors. First of all, by the early 1980s, the novelty factor of massage parlours was beginning to wear thin. Certainly by 1977, the year that "out calls" (i.e. the practice of massagists being sent to a customer's home or hotel room) became a fairly standard practice within the massage parlour trade, competition was so fierce that it became virtually impossible to operate a massage parlour without engaging in prostitution (Kohm 1997). In fact, it was in 1977 that "Scientific Massage" became the first massage parlour in Winnipeg to be convicted under the bawdy-house law (*Winnipeg Free Press*, 12 November, 1977). Secondly, this year saw the first Escort Service, "Chrystall Escort Services", begin its operations. By 1978, three of the established massage parlours began advertising "out calls" under the Escort Service heading in the telephone directory. By 1984 there were more escort services listed in the *Winnipeg Yellow Pages* than there were massage parlours. This has been the case ever since. Perhaps the perceived danger of arrest under the bawdy-house section of the *Criminal Code* convinced many massage parlour operators to switch to escort services. Or perhaps customers preferred the privacy of having an escort sent to them at home versus visiting a massage parlour in the downtown core. What is clear, however, is that massage parlours were in decline by the mid-1980s, and escort services were on the rise. By the late 1990s, the number of escort services advertising in the *Yellow Pages* had grown to one hundred and twenty-two (Kohm and Selwood 1997, p. 63).

By the latter 1980s, Winnipeg, like most Canadian cities, began to see a need for some kind of control over the location and proliferation of off-street sex businesses, like massage parlours and escort services. Consequently, these types of businesses were given an official place in the land use categories of Winnipeg's Zoning By-law, and were slotted into the Licensing By-law along with other forms of mainstream business in the city. However, in actual practice, Winnipeg authorities do not treat adult businesses in the same way as more traditional forms of commercial enterprise. The next section will explore the use of municipal law

as a tool to both regulate and discourage this type of activity, while ensuring that it is relegated to marginal neighbourhoods of the city.

Municipal Regulation of Off-Street Prostitution

Municipal governments might be best described as the managers of the people and resources that are enclosed within their boundaries. It is through the careful management of people and things that control can be exercised. Foucault (1991) argues that the 'science of government' is about the "introduction of economy into political practice" (p. 92). Thus, by controlling the economy, governments are able to exert "a form of surveillance and control as attentive as that of the head of a family over his household and his goods" (Foucault 1991, p. 92). While this may be more evident at the level of Federal government, there is strong evidence that, through municipal by-laws, civic governments are indeed engaged in a form of control and surveillance of people's morality and sexuality. There is clear evidence that municipal governments are using by-laws to manage the location, visibility and operation of adult businesses in most major Canadian cities. Through discretionary and selective enforcement of city by-laws, municipal governments are able to control, rather than eradicate, off-street prostitution without resorting to federal law. In this way, municipal governments are "employing tactics rather than laws, and even . . . using laws themselves as tactics — to arrange things in such a way that, through a certain number of means, such and such ends may be achieved" (Foucault 1991, p. 95). Thus, we might acknowledge that municipal law is just one 'governmental' tactic that cities can use to manage some forms of prostitution, as they do with other economic activities and land uses.

Land use planning in most North American cities follows a system of exclusionary zoning, whereby land use categories are differentiated by type of use and allocated space in separate zones or sectors based on some notion of 'highest and best use' for a given area of the city. Land use categories are thus seen to be hierarchical, in that certain uses are classed at the top of the zoning pyramid, and others at the bottom. In most cities, single family, low-density residential districts are found at the top of the hierarchy, while heavy industrial, warehousing, and other related 'dirty' land uses are relegated to the bottom. In this way, cites have attempted to separate land uses by excluding those activities at the bottom of the hierarchy from intruding into zones set aside for higher-order land uses. 'Undesirable' uses are therefore kept out of 'desirable' areas through municipal zoning by-laws. This same principal of exclusionary zoning has been applied in many Canadian cities to make sure that adult businesses are relegated to marginal areas of the city, along with other 'eyesores' or dirty land uses, such as pawn shops, slaughterhouses and junkyards.

Based on a reading of existing zoning by-laws, it would seem that in the minds of city planners, adult businesses should be treated like any other land use problem. Balance and harmony in the urban environment can be achieved through minimizing land use conflicts through the careful application of the principles of exclusionary zoning. Writing about land use conflicts surrounding adult businesses in Montreal, one Canadian planner argued that "provided the planner is able to classify, to define, and to be precise about each local enterprise, and provided the Canadian courts take a hands-on position to shape this basket of problems, zoning may be an effective tool" (Farley 1990, p. 21). Unfortunately for the planners, human initiative will almost inevitably find ways around regulations which seek to constrict their activities.

Winnipeg Zoning By-law 6400/94 permits dating and escort services and massage parlours only in heavy commercial and industrial districts in the downtown core (City of Winnipeg By-law 6400/94). Moreover,

even in these restricted areas, massage parlours and dating and escort services are considered to be 'conditional' uses. This means that they are only permitted after applying to the local Community Committee (a subcommittee of City Council composed of several Councilors for specific areas of the city) for a conditional use permit. Since elected officials tend to be sensitive to public opinion on these matters, very few permits tend to be issued (see for example *Winnipeg Free Press* 24 January, 1992). However, after news of the motion to establish the Municipal sex trade committee and the desire of the city to better regulate the sex trade, a number of applications for escort services and massage parlours have come before the City Centre Community Committee. Four applications were heard in January of 2000 (*Winnipeg Free Press*, January 10, 2000), and a further eight in the next month. According to one city councilor, these were simply previously existing businesses that had decided to 'come out of the shadows' and pay the $3,700 annual licensing fee (*Winnipeg Free Press*, February 16, 2000).

Presuming that a prospective massage parlour or escort service proprietor can secure the consent of the local community committee and obtain a conditional use permit, he or she must still comply with the varied, and sometimes bizarre, conditions set out in the Licensing By-law. In addition to a hefty annual licensing fee, there are a number of conditions that must be met prior to the granting of a license. When licensing massage parlours and escort services, the city requires that the proprietor as well as the individual massagists and escorts provide a recent photograph (City of Winnipeg License By-Law No. 6551/95). As well, when there is an application for a new license for an establishment, the applicant is required to provide evidence that he or she has not been convicted of any criminal offense (City of Winnipeg License By-Law No. 6551/95). This is the only category of business license in Winnipeg that carries this requirement. Moreover, in order to carry on the trade of a massage parlour, the city requires a certificate of the Medical Health Officer stating that the premises have been "examined and found in a fit, clean and suitable condition" (City of Winnipeg License By-Law No. 6551/95).

Massage parlour proprietors are required to keep an up-to-date list of all 'massagists' employed, complete with photographs, full descriptions, aliases, addresses and social insurance numbers. This list must be made available, on demand, to any police officer or license inspector. As well, they are required to submit an updated list "on or before the first day of each month" (City of Winnipeg License By-Law No. 6551/95) to the Chief License Inspector. Furthermore, the proprietor is required to keep a list containing the names and addresses of each individual "seeking the service of the massage parlour" (City of Winnipeg License By-Law No. 6551/95).

The licensing by-law is extremely specific about how a massage parlour can operate. For example, the by-law prohibits massages from taking place in "any area within the massage parlour which is fitted with a door capable of being locked" (City of Winnipeg License By-Law No. 6551/95). Whether or not this regulation is in place to prevent sexual contact or violence is unclear. As well, ' massagists' are required to wear "clean, washable, non-transparent garments covering his or her body between the neck and no more than 10 centimetres above the top of the knee, the sleeves of which fully cover the upper arm" (City of Winnipeg License By-Law No. 6551/95). It seems highly doubtful that this particular regulation is followed to the letter. This is quite obviously aimed at preventing sexual contact. Other cities are less coy about this. For example, in Edmonton's Massage Practitioners By-law, a license can be revoked if "there are reasonable grounds to believe that the licensee has performed massage on a client's genitalia" (City of Edmonton By-law 10396). Conversely, the municipal by-law for the City of Toronto requires that establishments where services "involve or may involve the undressing of or changing of clothes by the customer, [the business] shall provide a service by which any customer may deposit his valuables" (City of Toronto By-law 574-

2000). Thus, there seems to be a tacit acknowledgment on the part of city officials in Canada's largest city that clients come to these businesses seeking services that require nudity.

The relatively high licensing fees charged for adult businesses under the Winnipeg Licensing By-law seem aimed at discouraging this type of activity. In fact, the licensing fees for adult businesses are significantly higher than for any other type of land use. In Winnipeg, the annual license fee for a 'dating and escort service' and for a 'massage parlour proprietor' in 2000/2001 is set at $3,760 (City of Winnipeg By-law 6551/95). This is exponentially higher than any other category in the By-law, even such noxious industrial categories as a 'Poultry Slaughter House' ($120) or a 'Used Material Yard' ($300), which most people would find objectionable if located in their neighbourhoods.

The situation is much the same in other Canadian municipalities. For example, in the City of Burnaby, Escort Services are charged an annual license fee of $3,000 (District of Burnaby By-law 3089). This is matched only by the categories 'Arcade', 'Incinerator', 'Oil Refinery', and 'Oil Storage and Distribution' (District of Burnaby By-law 3089). Again, adult businesses are lumped in with the dirtiest of industrial land uses. It is interesting, however, to note the inclusion of 'Arcades' as an undesirable activity in this jurisdiction. Adult businesses in the District of Coquitlam are also charged a heavy licensing fee. 'Massage/ Body Rub Parlours' are charged $2,000 annually, while 'Social Escort Services" are charged $3,000 per year (District of Coquitlam By-law 49). The only other comparable categories are 'Manufacturer (51 or more employees)' and 'Lumberyard (51 or more employees)', both at $2,130 annually. The City of Vancouver licenses dating services, massage parlours, health enhancement centres, body rub parlours and escort services (City of Vancouver License By-law 4450). However, according to John Lowman (1997), the city is "attempting to limit prostitution to two venues: body-rub parlours and escort services" (p. 3). Moreover, the body-rub parlour category is the only one that does not "expressly prohibit acts of prostitution on the premises" (Lowman 1997, p. 3). Accordingly, the licensing fee for body-rub parlours ($6527) is the third highest in the city, surpassed only by the annual licensing fee charged for the horse racing track ($7473) and the Pacific National Exhibition ($10,463) (City of Vancouver License By-law 4450). From these examples it is clear that substantial licensing fees prevail. What is not clear, however, is whether these fees are meant to discourage adult businesses from operating altogether, or if they are simply a form of 'sin tax'.

Thus, through zoning restrictions, strict operating regulations and hefty licensing fees, Winnipeg and other Canadian cities have historically had the means to exercise great control over the off-street sex trade, and to exact a form of 'tax'. However, it is also apparent from the situation in Winnipeg that many adult businesses operate without a proper license and outside the stringent zoning regulations of the city planning department. Nevertheless, all the evidence seems to point back to the idea of the law – in this case municipal law – being used as a tool to ensure compliance. In other words, the City of Winnipeg could use its Licensing By-law to prosecute massage parlours and escort services if they were to conduct themselves in a way that generated high visibility or public complaints. City officials in Winnipeg and other cities have acknowledged that the enforcement of licensing by-laws is almost never proactive, but rather 'complaint driven' in most instances.

It is clear that municipal by-laws have been traditionally been used as a tool to secure compliance. However, in the wake of the *Hrabchak* decision and the formation of a committee to study the issue, one has to wonder if significant changes will be made to the way municipal licensing and planning officials deal with prostitution. We are then left with two main questions. Will the findings of the committee be any

different from any other study of the sex trade in this country? And more importantly, will Winnipeg City Council have the political nerve to adopt recommendations that would change the status quo? The report of Winnipeg's sex trade committee is discussed in detail in the following section.

Winnipeg's Sex Trade Committee Report

After a hiatus when, during much of the year 2000, there was no further progress on the initiative, City Council finally in December appointed a volunteer committee for the "Monitoring, Supervision, and Regulation of the Sex Trade/Prostitution in Winnipeg." Its mandate was as previously established, however, at this point it was provided with a budget and given until mid-June 2001 to submit its report. It was also given the supplementary task of reviewing a proposed amendment to By-law No. 6551/95 that would confine the issuance of new licenses "…to carry on the trade of a dating and escort or massage parlour proprietor only within that part of the City regulated by the Downtown Zoning By-law."

The Committee issued its report as directed, noting in its recommendations a number of provisos that would be necessary to acknowledge and adjust for if Winnipeg's sex trade were to be dealt with effectively. First, the Committee recognized that "…its recommendations will not eradicate prostitution." It also acknowledged that not only is prostitution "multi-faceted," it is also complicated by being subject to the jurisdictions of all three levels of government. As a result, the City would need support from other government levels if certain of the Committee's recommendations were to be effective (Volunteer Committee 2001, 7-8).

The report contained seventeen recommendations in all, eight of which, or almost half, focused on the problems of child and youth prostitution and exploitation. Under age prostitution is probably more prevalent in Winnipeg than in many other Canadian cities because of the higher levels of poverty amongst both the sex trade workers and their clients. Winnipeg has the worst record of inner city decline and a higher concentration of poor people than most other Canadian urban centers. It is not surprising then that the Committee focused its concerns on this aspect of the sex trade. A further five of the recommendations addressed aspects of adult on-street prostitution. These also acknowledged the economic imperatives of poverty, exploitation and victimization of the street-prostitutes and, by inference, urged a policy of strict enforcement, while nevertheless arguing in favour of education through "Jane School" and "John School" rather than prosecution of offenders. The last recommendation was that there be a continued monitoring of the situation and reports on progress. These left recommendations fourteen to sixteen inclusive, which addressed issues stemming from the off-street, adult oriented trades, namely massage, escort, dating, and other sex related activities (Volunteer Committee 2001, 3-5).

Responsibility for implementation of these would lie with the City and they are quoted in full as follows:

Recommendation 14

That the City of Winnipeg Licensing Branch, in cooperation with the Winnipeg Police Service, amend its License By-law 6651/95 regarding the licensing of escorts and dating services and massage parlours in a manner that improves the City's ability to license and, therefore, regulate these businesses. The proposed changes to the existing by-law are as follows:

- To remove provisions of the current by-law dealing with massage parlour proprietors, massagists, escorts, dating and escort services and create a separate by-law and to require the purchase of a license for each business operation.
- To amend and expand the definitions of businesses such as escort agencies, massage parlours, etc. and terms such as "date" and "encounter" in order to ensure relevance to existing practices.
- To identify within the by-law the offenses to the by-law, as well as, (sic) the associated penalties.
- To require licensees who advertise to include in those advertisements their license number in order to better regulate those trades.

Recommendation 15

That the City of Winnipeg provide stricter enforcement of the Licensing By-law to ensure that:

- Businesses operating without proper licenses are dealt with in a timely fashion.
- Compliance with licensing provisions is monitored regularly and that non-compliance issues are addressed.

Recommendation 16

That the City of Winnipeg eliminate Section 4 (14) (b) of Licensing By-law No 6551/95 that restricts escort and dating services and massage parlours to the Downtown area, provided that safeguards are in place to protect the interests of residents and property owners (Volunteer Committee 2001, 5-6).

Clearly, the recommendations pertaining to the off-street sex trade, if implemented, would do little to change the existing situation. Prostitution would be driven further underground if the proposed system of licensing were to be aggressively pursued. Prostitutes would continue to be prevented by police harassment from exercising their trade from the streets and most street-prostitutes would likely be denied opportunities to work as properly licensed escorts, massagists, or sex workers by any other name. The proposed system, given its very slight modification from the *de jure* and *de facto* conditions that currently prevail, would potentially see an increase in the number and variety of off-street outlets for the trade, but even if allowed to disperse into more suburban locations, would likely be confined to industrial zones. As such, they would not contribute to the safety of the workers, nor would they be easier to police. It is also evident that the proposals do not take into appropriate account communications technologies that now make the sex trade an essentially foot-loose industry.

However, at this point, an assessment of the situation in Winnipeg has to remain purely speculative. The Volunteer Committee's report has been received by council and referred back to relevant departments and to respective governments for comment and further action. The one immediate priority proposed by the Committee to establish a safe house for sex trade workers has been widely endorsed, except by the Mayor who initially dismissed the proposal as "populist crap" (*Winnipeg Free Press* 18 October 2001, A1). However, it does seem that a multi-level government facility might be created that will address this issue. The Winnipeg Police force continues with its policy of enforcement, using the Committee's recommendations in support of its leveling 78 by-law violation charges against escort agencies in August and September of 2001 (*Winnipeg Free Press* 3 Oct. 2001, A5).

Meanwhile, the City's Licensing Department has compiled a revised by-law that is currently under review by members of Council. But, as yet, there is nothing to report on their deliberations other than to note there is some discussion as to which committee of council the revisions should be put for comment. However, it

may be possible to speculate on the content of Winnipeg's new by-law by looking at a newly minted escort service by-law in another Canadian Prairie city. Thus, in the next section, we'll look at the work of Edmonton's Dating and Escort Service Task Force.

Edmonton's Dating and Escort Service Task Force

On July 7, 1998, Edmonton's city council established the Dating and Escort Service Task Force (hereafter known as the Task Force) with a mandate to "review the existing Dating and Escort Services Bylaw no. 10397, with a view towards addressing how well the Bylaw is working and the advantages and disadvantages of having this Bylaw" (The Task Force 1999, p. 2). The task force began its investigation by reviewing and comparing similar by-laws in other Canadian municipalities. According to their investigation, Calgary's very similar escort by-law "has not received complaints or suggestions for amendments from either industry workers or citizens… they are therefore content to enforce the bylaw as it stands" (ibid.). Moreover, they point to by-laws in Windsor, Sault Ste. Marie, Victoria and Winnipeg as allowing for the operation of independent escorts. However, while there may be individual escorts operating in Winnipeg, no part of the city's by-law deals specifically with that type of activity.

Significantly, while there was considerable police input during the process, the Task Force also consulted with escort agency owners and individual escorts, identifying them as 'stakeholders' earlier in the process (ibid. 3). The eight escort agency owners interviewed supported the existence of a by-law, but four of them rejected the idea of independent escorts being allowed to operate. An anonymous questionnaire was made available to escorts working in these eight escort agencies and yielded 34 out of a possible 156 responses. The report did not outline the specifics of these results (ibid. 4).

A public consultation phase was carried out by way of a questionnaire mailed out to a random sample of 1500 households in Edmonton and two public forums. Only a total of 70 responses to the mail out survey had been received by the time the Task Force's report had been written. Moreover, the first public forum was attended by a mere "13 citizens, three or four industry workers, the media and Task Force members" (ibid. 4). The second forum was somewhat better attended with some twenty citizens and eight to ten industry workers. So while public consultation was a greater part of the process in Edmonton, interest on the part of the general public in that city was minimal at best.

Notably, while the Dating and Escort Service Task Force was willing to share ideas and met once with the Edmonton Police Commission's Task Force on Prostitution, both task forces agreed that they should remain separate entities, as their mandates were different. Unlike Winnipeg's sex trade committee, the Edmonton Dating and Escort Service Task Force confined its inquiry to the escort service by-law. Consequently, their recommendations shied away from other prostitution-related issues like child prostitution, exploitation and the street trade.

There were seven recommendations contained within the report of the Dating and Escort service Task Force. The recommendations take a pragmatic position toward Escort services, acknowledging that "there is no doubt that following the introduction, escorts will perform sexual acts for sale" (ibid. 6). In fact, the report recommends all licensees receive an 'orientation' from the Edmonton Police Service on the health, legal and tax issues relating to their work in the off-street sex trade. Furthermore, in addition to recommending

provisions allowing for independent escorts, they also urge that independents be allowed to maintain minor home offices, but not 'entertain' clients in their homes. Finally, they also recommend strict penalties for "any individual, agency or entity that involves children under the age of 18" (ibid. 8). In order to catch offenders, the report also recommends 'adequate' resources be allocated to enforcement.

The result of the Task Force's work was the new City of Edmonton By-law 12452, which took important cues from many of the report's recommendations. Firstly, provisions were included for independent escort agency licenses. However, despite the Task Force's recommendation that all restrictions on the location of escort services be maintained in the new by-law, no such restrictions are laid out anywhere in the new law. Moreover, provisions for the screening of new licensees – 'referrals' in the language of the by-law – do not seem to mandate police background checks. Instead section 21 of the by-law states that the Chief of Police "*may*, upon receipt of an application for the issue or renewal of a License, make or cause to be made (emphasis added)" investigations that include a criminal record check. However, if no written response is received from the Chief of Police within 15 days of the referral "then the City Manager may proceed on the basis that the Chief of Police does not believe, on reasonable grounds, that the issue or renewal of the License would endanger the safety, health or welfare of people or the protection of people or property" (City of Edmonton By-law 12452). Moreover, By-law 12452 sets out a schedule of offences and the corresponding fines associated with such infractions. The fines range from $500 to $7500. Interestingly enough, the fine for an underage escort is $5000, considerably less than the $7500 dollar fine for an unlicensed agency.

It is hard to imagine that Winnipeg's revamped escort agency by-law will resemble Edmonton's By-law number 12452. Although the Winnipeg Sex Trade Committee has studied the Edmonton By-law and has recommended provisions for independent escorts as well as a schedule of specific offences and associated fines, conservative attitudes towards prostitution in Winnipeg suggest that Edmonton's by-law will not be used as a template for Winnipeg's new by-law. However, at present this conclusion is purely speculative, since the new by-law proposal has not been released and public reactions to it are unknown.

Given the absence of any wider public opinion, it is difficult to anticipate what will be the outcome of Council's reactions to the proposed new by-law, or even what the new proposals might be. As yet, these proposals are still being formulated by the city's Community Services Department in conjunction with the Police Service. To this point, they have not even been introduced, as they eventually will be, to standing committees of Council dealing with property and development, and protection and community services. Only after these committees have had their input will the by-law go to Council. The delays have been caused by the passage of a provincial act, *The Safer Communities and Neighbourhoods Act*, proclaimed on 19 February 2002.

According to Attorney General Gord Mackintosh, this legislation is designed to rid communities of properties that "…continually and habitually cause problems" operating as "drug dens, booze cans, sniff houses and prostitution dens." The legislation, reputed to be "the first of its kind in Canada, was drafted in partnership with the community and residents to ensure it is as effective, safe and streamlined as possible" (Manitoba 2002). The Act gives the Director of Public Safety at the Department of Justice powers to investigate complaints against properties identified as being nuisances or contrary to public safety. The Director can then, at their discretion, do nothing, issue a warning, or apply for court action for a Community Safety Order to close or otherwise deal with the property. This legislation has clear implications for the

kinds of activities presently operated under the City's escort and massage parlour by-laws, giving the Director more far-reaching powers than available under those by-laws. As yet, those implications are not clear and it will inevitably take court decisions to bring clarity to the situation. Nevertheless, it appears likely that Winnipeg's approach to dealing with off-street prostitution will be somewhat different to the course chosen by Edmonton.

Epilogue

Although nearly two years have passed since the release of the Final Report of the Volunteer Committee for the Monitoring, Supervision and Regulation of the Sex Trade/Prostitution in Winnipeg there is little indication that any of the substantial changes proposed in the document are going to be implemented in Winnipeg. At the time of writing, the new dating and escort service by-law promised by city officials in response to the Hrabchak decision has not been unveiled. There is even less evidence to indicate that the City of Winnipeg or the Winnipeg Police Services have acted in response to the recommendations to address at-risk youth or sexually exploited youth and children. The only recommendation being put into place is the seventh recommendation – the establishment of a community-based safe house for child prostitutes (*Winnipeg Free Press* January 10, 2003). What is most surprising is that there has been no movement to better regulate the adult oriented off-street sex trade, the apparent catalyst for the Volunteer Committee's establishment in 1999. What seems to have happened instead, is that the city has turned over the problem of cracking down on the off-street sex trade to provincial officials who have continued to do so without the assistance of a city-by-law.

The Manitoba Provincial government, through *The Safer Communities and Neighbourhoods Act* (SCNA) and the *Fortified Buildings Act* (FBA), has taken the lead on cracking down on the activities of organized crime, the drug trade and the sex trade. These two provincial acts, both proclaimed in early 2002, have provided a way to continue to put pressure on the sex trade while ignoring the recommendations of the *Hrabchak* decision and the Volunteer Committee's Report. To date, the Public Safety Branch Investigation Unit (PSBIU), responsible for investigations and inspections under the two new laws, has permanently closed fifteen operations, and has seventy-five investigations underway. According to a status report prepared six months after the enactment of the SCNA, the overwhelming majority of complaints received under The Act were drug related (103), while considerably less involved prostitution (45). However, a single complaint may involve more than one targeted activity, such as a complaint of drug and prostitution related activity at one residence (PSBIU, Status Report 2002, p. 6). Of the twelve closures profiled in the PSBIU Status Report, six involved prostitution. However, five of the six cases were related to drugs and prostitution, while the remaining one involved "solvent trafficking" and prostitution (ibid. p. 12). For a property to become a public safety concern, it appears that prostitution in and of itself may not be enough to generate an investigation by the PSBIU.

The PSBIU has to receive a complaint before it can launch an investigation and it has to be able to demonstrate that:

> (a) activities have been occurring on or near the property that give rise to a reasonable inference that it is being habitually used for a specific use; and

(b) the community or neighbourhood is adversely affected by the activities. (Safer Communities and Neighbourhood Act, S.M. 2001, c. 6 – Cap. S5, s. 6(1))

In other words, the activity must not be of an occasional nature, and it must somehow be shown to have adverse effects on a neighbourhood. One can presume that this would include increased traffic volumes, discarded needles or condoms, and loud customers who create a disturbance at all hours of the day and night. What this also might imply is that prostitution-related activities taking place in non-residential areas may not be investigated by the PSBIU because there would be no residents to complain or be adversely affected by the activities. Unfortunately, the Act does not define what a community or neighbourhood consists of, but it does define the term 'adversely affected' as follows:

… a community or neighbourhood is adversely affected by activities if the activities

(a) negatively affect the safety or security of one or more persons in the community or neighbourhood; or

(b) interfere with the peaceful enjoyment of one or more properties in the community or neighbourhood, whether the property is privately or publicly owned. (Safer Communities and Neighbourhood Act, S.M. 2001, c. 6 – Cap. S5, s. 1(2))

One has to wonder how close to an alleged brothel a person would have to live in order to claim that they were being adversely affected.

Despite the grey areas contained in the SCNA, it is clear that the Act is the preferred tool to close out nuisance properties in the City of Winnipeg. It is probably a more effective way of eliminating the worst aspects of the sex trade than the older dating and escort service by-law. However, the adult-oriented off-street sex trade remains unregulated and in apparent legal limbo. While it may be a worthwhile endeavor to shut down properties used to sustain the drug trade and by extension drug addicted street prostitutes, it may be less useful in controlling the activities of massage parlours and escort services, many of which operate quietly and unobtrusively in Winnipeg neighbourhoods. Until a new city by-law is put in place, traditional off-street sex businesses remain "a *de facto* industry which is clearly in need of monitoring and supervision" (*R*. v. *Hrabchak* [1999] M.J. No. 554).

Discussion and Conclusions

The City of Winnipeg, like other Canadian cities, has traditionally taken two very different approaches to prostitution. Street prostitution is generally not tolerated, and is subjected from time to time to proactive police crackdowns. In recent years, the focus of these crackdowns has shifted from the prostitutes themselves to the customers. New programs, such as 'john school', have also been implemented in an effort to apparently educate — if not shame — the men picked up in sweeps of prostitution strolls. If the client refuses to attend 'john school', Manitoba's Provincial Highway Traffic Act can now be used to seize their vehicle (*Winnipeg Free Press*, January 29, 1998). While the tactics might change, and the notion of education might seem more progressive, or humane, the reality is really just more of the same, or perhaps even more coercive. The consequence of this is not surprising. Street prostitutes and their customers are harassed and displaced from one neighbourhood to another, and nothing really seems to change.

On the other hand, off-street venues for prostitution such as massage parlours and escort services, have become popular ways of circumventing the communicating law by keeping customers and prostitutes off the street and away from the public eye. While there are a few instances on record of massage parlours being charged under the bawdy-house section of the *Criminal Code*, most often they are left to quietly carry out their business provided they do not cause a public disturbance. If conflicts with neighbourhood residents do arise, however, municipalities such as Winnipeg have traditionally resorted to the enforcement of licensing or zoning by-laws to shut such establishments down. However, with the decision in the case of *R. v. Hrabchak*, the ability of Winnipeg to use the municipal law in its present form to control the sex trade is uncertain.

The main reasoning behind the decision in *R. v. Hrabchak* is the ambiguity of the language used in the by-law, in particular, its vagueness around the idea of just what exactly an 'escort' is. Defining an escort as a person who provides companionship for a fee is absurd when the real aim of the law is to regulate prostitutes who provide sex for a fee. However, in the past, municipalities that have tried to pass municipal by-laws to deal specifically with prostitution have had such laws struck down by the Supreme Court of Canada as *ultra vires*, meaning they encroach upon the domain of the federal law (Lowman 1993, p. 62). It will be interesting to see what effect, if any, the new Manitoba legislation will have on the treatment of prostitution in Winnipeg, although, it seems, prosecution will remain very much at the discretion of those responsible for public safety.

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