Part IV

Children

Chapter 41

Introduction

The mandate of this Committee includes a consideration of pornography and prostitution as they relate to children and young persons. In this part of our Report, we focus particularly on children and young people. A number of considerations have led us to this decision to gather our observations on children and young people into a single part of the Report, rather than dispersing them throughout the other chapters.

At the outset of the Report, we enunciated a number of principles which have guided us in formulating our recommendations, and which we believe should provide the foundation of legal action in these two areas. These principles are equality, responsibility, individual liberty, human dignity, and appreciation of sexuality. From the discussion in that chapter, it is apparent that many of these principles have applications to children and young people which differ from their applications to adults.

We do not, for example, consider that the principles of individual liberty and responsibility can be applied to children to the same extent as they can to adults. Children may well have valid claims to autonomy in wide ranges of conduct. However, the liberty to engage in behaviour which is regarded as harmful will be withheld from children with more frequency than it is withheld from adults. Various justifications may be offered for this. The child may be too young or inexperienced to appreciate the harmfulness of the behaviour, or its nature or extent. In addition, quite apart from the characteristics and maturity of the individual child, adult society may be protective of the state of childhood, which is seen as a time, firstly, for the enjoyment of innocence and, then, gradually, for development out of innocence. The exposure to certain kinds of influence or behaviour may be seen as a disruption of the valuable process of gradual maturation.

Of course, not all the reasons offered in support of restraining youthful autonomy or liberty are good ones. Nor are all the restraints imposed, even in the name of sound reasons, reasonable restraints. In the case of pornography and prostitution, however, we think that there is strong justification for treating children as vulnerable, and effecting some decrease in their liberty.

While viewing children and young people as vulnerable, we do not propose that it always be the state which serves as their protector. There is, to be sure, a clear role for the criminal law in deterring the most seriously offensive types of behaviour exploitative of young people, and for other legislation in regulating the impact of other kinds of behaviour. Social resources should, where appropriate, be deployed to assist young persons to cope with difficult situations. However, in our efforts to ensure that the state assumes its proper share of responsibility for the vulnerable, we do not intend to ignore the primary role which the family will play in guiding and assisting the young person. The family is, in fact, the child's first source of comfort, education and guidance.

Many of the recommendations which we make recognize the valuable role of the family and are intended to assist the family in performing that role. So, although we do see some diminution of the child's liberty of action as a necessary part of a proper regime to deal with pornography and prostitution, we do not contemplate that such diminution will always be a compulsory one, at the hands of the state. Nor do we wish to include in our plans any substantial diminution of parental responsibility toward their children and parental liberty to raise and educate them according to their own moral criteria. Our concern about state censorship of the media, for example, stems directly from our desire that families, rather than the state, be the principal influence on the child's developing tastes.

Although the principles of personal liberty and equality may have more restricted application to young people than to adults, we take the view that young people may often be as subject to the principle of responsibility as are the adults. In particular, youths who exploit other young people should be called to account for such conduct. There is little justification for allowing a theoretical concern with youthful vulnerability to assist in the creation of a new youthful type of predator. In this connection, we are very interested in the approach embodied in the *Young Offenders Act* [1].

The "Declaration of Principle" in that *Act* recognizes that although *society has the responsibility to take reasonable measures to prevent criminal* conduct by young persons, it must nevertheless be afforded the necessary protection from illegal behaviour. The Declaration also states that while young persons should not, in all instances, be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions. Also recognized with respect to the disposition of youthful offenders is the principle that young persons who commit offences require supervision, discipline and control, but because of their state of dependency and level of development and maturity, they have special needs and require guidance and assistance.[2]

The procedures provided in the *Young Offenders Act* to govern the trial and sentencing of youthful offenders, reflect this idea of responsibility tempered with accommodation to the special circumstances of the child.

Because of the availability of the *Young Offenders Act* to govern proceedings against young persons charged with offences, we are content that young people should take responsibility for their actions. However, we think that this responsibility should be the modified responsibility expressed in the *Young Offenders Act* principles.

We also believe that it is important for this Committee, and legislators, to focus more precisely not only on the differences between adults and young persons, but also on the similarities between them. For example, young people, like adults, have a need for recognition of their sexuality, and for ways in which to express and explore it without doing harm to themselves or others. They are, like adults, capable and desirous of artistic expression. Most importantly, they too are beings with dignity and integrity. All of these characteristics should, in our view, have a bearing on the response of the legal system to children and young people, just as the particular vulnerability of children should be recognized.

For purposes of our discussion, we consider all those under the age of 18 to be young people, and thus distinct from those we deem adults. There is still some variation in the "age of majority" across Canada, with ages other than 18 being the norm in some jurisdictions for purposes like consumption of alcoholic beverages, or driving. The age of leaving school is commonly less than 18, as is the age at which children are considered free to withdraw themselves from parental control. However, 18 is a significant age for many purposes related to majority in many jurisdictions. It is also, in our view, significant that the *Young Offenders Act* defines young person as a person under 18 years of age. There do not appear to be significant reasons for our recommendations to depart from the age of demarcation chosen for this recent and substantial reform of the juvenile justice system.

Footnotes

[1] S.C. 1980-81-82, c.110, proclaimed in force April 2, 1984.

[2] S.C. 1980-81-82, c.110, s.3(1)(b), 3(1)(a), and 3(1)(c).

Chapter 42

Pornography and Prostitution Involving Children

It was very evident at the public hearings that there were major and deeply felt concerns for children and young people in relation to pornography and prostitution. Important among them were concerns about the actual involvement of children in the production of pornography and as prostitutes, and the access and exposure of children to sexually explicit materials, which were considered to be inappropriate given the level of maturity of children and young people. It was impressed upon the Committee time and time again, that young people should be protected from the worst aspects of commercial sexuality and allowed the opportunity to reach adulthood without being subjected to corrupting or distorted views of human sexual relations. The Committee could not fail to be impressed by the sincerity with which groups and individuals made their arguments. There is no doubt in our minds that Canadians from coast to coast see the needs and rights of children and young people to be quite special and deserving of most particular attention.

While the Committee could not doubt the intensity and sincerity of the feelings and arguments made to it, it was apparent that much of the evidence put forward in support of these concerns was problematic. As we have indicated elsewhere in the Report, information on pornography and prostitution in Canada is sparse. This state of affairs certainly characterizes the information available with respect to children's involvement in these areas. Not suprisingly, therefore, those presenting briefs had to draw on research which is often less than satisfactorily carried out, which may report on experiences in other countries with different social and legal systems, or which speaks only to very particular instances of pornography or prostitution. Thus, while the Committee shares and supports the concern of those who urged us to protect children, we do not always find ourselves able to agree with the descriptions put forward as reflecting the current situation with respect to child pornography and prostitution in Canada.

1. Concerns Expressed at the Public Hearings

A number of very basic issues relating to children were identified in the course of submissions at the public hearings.

In the area of pornography, great concern was expressed at the perceived increase in the production and dissemination of child pornography. Where children were concerned, there was perceptibly less tolerance of certain kinds of material which might have been tolerated were the subject an adult. For example, some people appearing at the hearings considered unacceptable a photograph of a nude child, by himself or herself, even though the representation was not explicitly sexual. Mere nudity in photographs of adults was much more widely tolerated.

From the concern about child pornography stemmed recommendations for stiffer measures against those making, disseminating, or using this material.

Exposure of children to pornography, whether of the child or adult type, similarly attracted the concern of the public. There were many aspects to this concern. We were told of children being unwittingly and unwillingly exposed to offensive material, whether through the newsstands in a local variety store, an improperly or inadequately labelled videotape, or television broadcasts reaching the home receiver during family viewing hours. We were also told of young people seeking out material which their elders considered offensive or dangerous, either for amusement or, perhaps more troubling, as a way of trying to understand their own developing sexuality where less harmful methods were not readily available. The brief from the YWCA in Yellowknife summarizes very well the concerns which we heard, from groups in the south as well as the north:

> Children growing up in Yellowknife are fairly unsophisticated, by southern standards, in terms of their exposure to a variety of attitudes and lifestyles. In the last few years, Yellowknife has been inundated with material of a pornographic nature. It concerns the YWCA that the first introduction of young people to sexuality might very well be of a pornographic nature. As with parents everywhere, many Yellowknife parents do not for whatever reason, address the issue of sexuality with their children. We do not have sexual education classes in our schools in Yellowknife. For these reasons we at the YWCA are deeply concerned that our young people will be exposed to material which depicts sexuality in a degrading, violent and unhealthy manner, and that our young people will consider this to be an acceptable expression of sexuality.
>
> Repeated exposure to pornographic material, we fear, will have the effect of desensitizing children to the true nature of sadistic violence...
>
> The YWCA of Yellowknife is concerned that such desensitization of children will negatively affect the development of a healthy sexual self-image and attitudes of both boys and girls, and will negatively affect the development of healthy and satisfying sexual relationships of both young men and women.
>
> We are also concerned that the very presence of pornographic material suggests that the behaviour depicted in this material is condoned by our southern society. This may be interpreted as the norm and thus form the basis for standards of community acceptability, both by southern and other cultural groups in the north.
> *YWCA, Yellowknife*

With respect to prostitution, one of the major concerns of witnesses was how to prevent young people from taking up prostitution; similarly, finding

ways of enabling or encouraging them to leave prostitution was a priority. Criminalizing the street prostitution activities of young persons was seen by some as a way of deterring prostitution or breaking the tie between the youngster and this way of life. There was, however, significant recognition that criminalizing these activities was at best a superficial solution, since the reasons why young people become prostitutes can be very complex. Without adequate support services for runaway youths, for victims of sexual or emotional abuse in the home, or for young people trying to leave prostitution, merely laying a criminal charge against the child would not be effective and could indeed be harmful. As the Centre de Services Sociaux Ville-Marie in Montréal pointed out:

> ...juvenile prostitutes are not a homogeneous group. Some are beginning their careers as prostitutes, some want to stay in prostitution, others want out. Some are involved in prostitution purely for economic reasons, some because the choices made available to them by others have been so unattractive that prostitution seems to be the best alternative. Still others are involved in prostitution because of their experiences of abuse and neglect. They are motivated by the ever present hope of having both their past, unmet psychological and material needs met.

The idea that such a diversity of problems can be addressed solely within the context of the criminal system did not find general support.

Special problems involving young people in the area of street prostitution were identified in the public hearings. Once young people have run away from home, they are faced with the problem of providing at least the basic necessities of life for themselves. Whether or not their original intention was to become a prostitute, they frequently find this their only option and move into the business. Too young to enter licensed premises or rent apartments, too young and often too ill-trained to get regular employment, young people are showing up in street prostitution in significant numbers. Thus, in those areas and districts where public impatience with prostitution is likely to be at its highest because of the public nuisance which is often involved, the juvenile prostitute population may be particularly vulnerable.

Throughout the submissions in both areas of our mandate, there emerged a strong recurring theme. This was the recognition that young people who engage in prostitution or use or see pornography are often merely the victims of adults. Certainly, the market for the services of the young prostitute, male or female, is largely an adult market, as is the market for child pornography. The merchants and entrepreneurs, whether they be the variety store owner, publisher, or pimp are for the most part adults. The briefs at the public hearings were very clearly in favour of bringing responsibility for children's involvement in these activities home to the adults who are the precipitating factor in it. This desire to focus on the adult market, or the adult actor in a transaction, took precedence over any inclination to penalize the child or young person. Measures aimed at eradicating what was clearly seen as exploitation were a high priority with those who made presentations to us.

Implementation of measures and programs for young people was a corollary to the desire for measures aimed at adult exploitation. The desirability of having positive sexual images and good erotic literature available to young people exploring their own sexuality was a recurring theme in the hearings. Sex education by parents and educators was often cited as crucial not only in diverting young people from becoming a market for offensive materials, but also in helping them to be a critical audience for what they do see in the mass media. Supportive programs for youngsters dealing with difficult home or street situations were described, and praised. Unfortunately, all too often, we heard of good programs which were falling victim to government austerity drives.

In addition to the many submissions we received concerning legislative reform and social and educational measures, there were comments about a disturbing cultural phenomenon underlying the overt manifestations of pornography and prostitution. It was pointed out many times that images in the media are increasingly depicting children as sexual objects in order to sell products. Ads showing young girls bare to the shoulder, made up and coiffed like courtesans to display perfume, and an ad for a man's shirt featuring a little girl bare to the waist level, were submitted to the Committee. These, and others using infantile sexuality to sell products, are subject to no control whatever, and form part of what many briefs described as an atmosphere of increasing tolerance of the sexual exploitation of children. As one brief argued:

> The message of "kiddie porn" is echoed everywhere... the image of eroticized childhood has permeated our culture—it pervades film, advertising, popular culture.
> *Women Against Pornography, Victoria*

2. Research Findings

Information with respect to children and pornography and prostitution in Canada comes from two major sources: the Report of the Committee on Sexual Offences Against Children and Youths (Badgley Report)[1] and the program of research completed for the Department of Justice in support of the work of this Committee.

The Badgley Committee on Sexual Offences was established with a specific mandate to investigate:

> ... the incidence and prevalence of sexual abuse against children and youths, and their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material.[2]

The Badgley Committee has, therefore, completed a wide-ranging review of all aspects of these issues as they relate to children. As part of its work, the Badgley Committee undertook an extensive program of research. This has provided us with a very up-to-date and comprehensive analysis of children and pornography and prostitution, and we have relied heavily on this committee's

research in developing our understanding of the issues. The research commissioned by the Department of Justice for this Committee was not focused specifically on children. Nevertheless, relevant information was obtained in many instances as the research projects proceeded.[3] In one project in particular, the National Population Study on Pornography and Prostitution,[4] the public's views were sought on what sort of material would be acceptable or unacceptable for the different media and different audiences. Here specific reference was made to material using child models and the availability or access of young people to sexually explicit depictions.

2.1 Pornography

The issue of children or young people and pornography in Canada really involves a question of their access to pornography rather than their involvement in its commercial production. All the evidence available to the Committee indicates that the commercial production of pornography using children as models does not occur in Canada. None of the briefs presented to the Committee, for instance, indicated that child pornography is being produced commercially in Canada. We are confident, therefore, that when we address the question of child pornography, we are dealing with questions of very small-scale, non-commercial production and accessibility to materials. Indeed, it is doubtful that any country which produces pornography condones the open and commercial use of children in its production.

The child pornography which is produced seems to be the work of amateurs. Men, and occasionally women, are involved in the photographing of children whom they know and in the exchange of photographs among people with the same sexual interests. It appears that after the material leaves the original photographer, sometimes after it has circulated for some time, the photographs may be used in a picture magazine produced by fly-by-night operators who again circulate the material, usually through the mails. Production of these magazines seems to take place in the United States, but the authorities have little success in tracking down the producers as the place, addresses and names of the magazines change frequently and continually. Indeed, many of these magazines contain no information as to where and by whom they are produced. As with virtually all the pornographic material available in Canada, it enters the country through direct mailing or the regular importation channels.

While we may feel somewhat reassured that the use of children in the production of pornography is not condoned and is infrequent, this aspect is, in fact, only one part of the issue. What is termed child pornography may take into account material other than that which depicts those under 18 in sexually explicit poses.

Child pornography epitomizes the difficulty we face in defining pornography and in deciding what action, if any, is appropriate. Whether or not someone considers a work pornographic depends on the subjective

assessment of the viewer and is often a question of the intent of the user. What is labelled child pornography, therefore, is sometimes pictures of children in the nude or pictures of clothed children with their clothing slightly (and some would say provocatively) disarranged. Often there is nothing overtly sexual about the actual photograph and what people see as problematic is the assumed use to which the photograph will be put.

Equally difficult is the fact that although some photographs are obviously of young children, the age of other models is much more debatable. Indeed, in some instances it is explicity stated that they are over 18. The issue then arises whether the concern is the potential harm to young people who are actually participating in the production, or whether it is the condoning of the message that sexual relations with children are acceptable, normal and perhaps even to be encouraged. Using models who look to be under 18 inculcates these ideas just as much as the use of those who are actually under 18.

If one extends the argument in this way, then written matter would be brought within the category of questionable material, even though this does not involve harm to participants. Thus, books and articles which condone or advocate sexual relations with children are arguably just as problematic as material which pictures such activities, since the message itself is being questioned and not just the way in which the message is delivered. These concerns consequently take the issue of child pornography in a different direction, to focus on the impact of the message on adults and children who have access to and use the material. It was this latter issue over which so many groups expressed concern at the public hearings.

As we have discussed in Part II, Section I, Chapter 6, pornography is more available in Canada today than it was five or ten years ago. This availability is related to the use of all forms of media, rather than just print or films, and to the selling or renting of pornography in a much wider variety of outlets than previously. There does not seem any doubt that pornography is widely available in all parts of the country, although there are regional differences, and that adult magazines in particular are available to children throughout the country. From the information presented to the Committee, it also seems highly probable that many young people have relatively easy access to pornographic videos, television shows and films. A major question, therefore, is whether we think it appropriate for children and young people to have easy access to such materials.

The research literature on the harms to individuals which can be associated with the use of pornography, deals exclusively with adults. As we have suggested elsewhere in the Report, there are insuperable ethical problems with exposing children to materials which might harm them. Based on the empirical research, therefore, it is impossible to demonstrate that exposure to pornography does have harmful consequences for children and young people. It should be clearly understood, however, that this lack of evidence does not mean that the contrary is true: that is, that pornography has no harmful effects on those exposed to it. The whole question is unresolved. People have suggested to

the Committee, however, that even though the issue is unresolved, we should be very careful about the welfare of children, since they are seen as the most vulnerable group in society. Thus, while there may be no systematic evidence that pornography causes or does not cause changes in children's attitudes and behaviour, for the better or the worse, there are sufficient questions about the influence of the mass media in general, and about sexually explicit materials in particular, to suggest caution in making them easily and widely available to young people.

Furthermore, as we have argued elsewhere in the Report, we are concerned with depictions that can be seen to undermine the values which we believe are fundamental to our society. It is our view that material which uses and depicts children in a sexual way for the entertainment of adults, undermines the rights of children by diminishing the respect to which they are entitled. In particular, it interferes with their developing sexuality so as to distort it and to encourage the children so used to have aberrant views about human sexual relations.

We have already argued that some adult pornography is also unacceptable because of its distorted message and the resulting harm this causes to our values. It will be evident, given this view of some pornographic material, that we consider it essential to protect children from being exposed to it.

Given the mindless, degrading and sometimes violent depictions of human sexual relations common to some pornographic material, the argument that children should be protected from such distorting images is very powerful. We simply should not run the risk of encouraging young people to believe that the behaviour depicted in pornography is to be accepted or encouraged.

Concern about the possible effect of pornography increases to the extent that there may be no sources of countervailing information available to children and young people. Family life and sex education courses are not universally available in schools and it is not always apparent that parents deal effectively with these topics with their own children. Given these circumstances, we are particularly concerned that children may accept pornography because they do not have access to more accurate information.

It will be apparent that our argument rests on a belief that the harms which have to be demonstrated in order to justify intervention by the state are different for children in comparison with adults. Precisely because of their status as children, they are entitled to protection over a wider range of activities than are adults. That is, intervention by responsible people and authorities is justified before demonstrable physical or psychological harm occurs.

Confirmation of the concerns we heard at the public hearings to protect children from seeing sexually explicit material which is inappropriate for their age or under inappropriate circumstances, comes from the National Population Survey conducted for the Department of Justice in June and July, 1984. This

survey involved a sample of 2,018 Canadians chosen so that they were representative of the over 18 year old population across the country, with the exception of the Yukon and Northwest Territories. The survey had several purposes, two of which were to determine:

> what the public considers to be offensive about prostitution and pornography, and perceptions about the harms (or benefits) of prostitution and pornography to themselves, their children and society in general

and

> the extent of public satisfaction with existing controls covering pornography and prostitution and preferences for various policy options.[5]

Out of all the issues investigated through the survey, the one on which there was overwhelming consensus was the use of children in sexually explicit material. Of the respondents, 94% agreed that sexually explicit material showing children is unacceptable in our society.

Canadians also believe that the harms associated with pornography are particularly evident in relation to children. Three-quarters of the respondents indicated that they thought that "exposure to pornography cannot help children develop healthy sexual attitudes" (76%) and that "availability of sex magazines in areas frequented by children is bad for them [children]" (78%).[6]

There are obviously very strong sentiments within Canada for ensuring that children are not used in the making of pornography, and that their access to such materials is more restricted than is currently the case.

As we have discussed in detail in the section on adults and pornography, there is no consensus among Canadians on how or if the material should be controlled when one is considering adults. Such a lack of consensus does not, however, carry over into the area of children.

For some people the issue of children's access to unacceptable material would be solved by the banning or censoring of all or much of the sexually explicit material now available through the entertainment media. If one takes those who expressed these views, together with those who would prefer to control children's access to the material rather than the material itself, it is evident that there is strong support for ensuring that children do not have access to pornographic material (See Table 4, Part II, Section I, Chapter 6).

2.2 Prostitution

Information from the research program undertaken by the Department of Justice, and from the Badgley Committee, confirms the information given at the public hearings that juvenile prostitution occurs across the country, in many mid-sized and all large cities.[7] Although the great majority of juvenile prostitutes work the streets, it is impossible to determine the size of the juvenile contingent. The problems of assessing the number of adults engaged in prostitution were discussed in Part III, Section I, Chapter 28, and these

problems are compounded with respect to juveniles who do not want their age to be known by the various authorities. It also appears that more juvenile prostitutes work on an occasional or part-time basis, for example, just on weekends, so that the number of juvenile prostitutes fluctuates considerably during the week, as well as between seasons. As with adults, most of the prostitutes are female, although male juvenile prostitutes are more in evidence now than a few years ago. The ratio of female to male juvenile prostitutes, however, is unknown. With respect to male juvenile prostitutes, it is noteworthy that the majority, 75% according to the Badgley Committee's research, consider themselves to be homosexual.

Although very young people, for example, those 14 years or younger, are known to work the streets, most juvenile prostitutes appear to be 16 or older. This coincides with the age range at which some of the adult prostitutes said they began to work. Indeed, most adult prostitutes report starting in the business when they were juveniles although, clearly, this does not characterize all of them.

Just as the career of the adult prostitute is difficult to determine, so is the career of the juvenile. Juvenile prostitutes come from families at all economic levels and from families with a wide variety of social characteristics. Thus, it is difficult to find characteristics in the social backgrounds of these young people which one might argue would predispose them to choosing prostitution as a way to earn a living. Although it is by no means common to all the families of juvenile prostitutes, there is some indication that their families do experience difficulties and tensions in various ways. Divorce, or the absence of one parent, often the father, because of a family break-up or employment away from home, and the dependency on government financial programs appear to be characteristic of the families of many juvenile prostitutes. The majority of prostitutes interviewed by the Badgley Committee's researchers indicated that their home life was not a happy one and this was an important factor in their move to the streets.

The issue which currently receives considerable attention is that of the sexual abuse of children. It is thought that children whose normal sexual development is disturbed by incestuous or other abnormal sexual activities with adults, are likely to go into jobs where sexual precociousness is a prerequisite. Canadian research to date does not support this view.[8] Juvenile prostitutes are the victims of sexual abuse, but not to any significantly greater degree than other groups in society.

As was discussed in Part III, Section I, Chapter 28, however, our understanding of sexual abuse is at a very preliminary stage, and our conclusions about the level and severity of sexual abuse in the population as a whole, and among juvenile prostitutes in particular, are necessarily tentative. What can be stated at this time is that we do not know why some children who are sexually abused eventually turn to prostitution and others do not. Whether it is related to the severity of the abuse, or to the type and quality of the intervention following the incident, are questions to which we have no answers.

According to the Badgley Committee's data, however, the majority of juvenile prostitutes had had sexual experiences of one type or another by the time they were 13.

It also appears to be very characteristic of juvenile prostitutes that they dropped out of school before completing high school, most usually after grade 10. In addition, most of them have run away from home at least once and often several times, as a means of coping with problems with their families, but also as a way of dealing with school problems or of seeking adventure and new experiences. Typically the young people do not run away to become prostitutes, but their low levels of education and the need to support themselves make them particularly vulnerable to the lure of the streets. Economic reasons are indeed cited as the most common reasons for working as a prostitute. Knowledge about the profession typically comes from the media or from knowing someone who is already in the business, but there is little evidence to suggest that young people are actively coerced into prostitution. As the Badgley Report points out, however, there are all sorts of subtle inducements and pressures that may be exerted to encourage them to become part of the business.

One of the areas about which we have the least satisfactory information is in relation to the organization and control of juvenile prostitutes. Given the illegality of pimping, and moral disapproval of the pimping of juveniles, everyone engaged in the prostitution business is extremely reluctant to talk about the issue. Juvenile prostitutes run the risk of violence and physical abuse from their pimps if they talk about the relationship, because intimidation is a means of keeping the whole issue as quiet as possible. It appears that pimping is carried on only in relation to female prostitutes and only in a minority of cases. While 40% of the female juvenile prostitutes in the Badgley Committee's study indicated that they had been pimped at one time, only 10% indicated that they had a pimp at the time of the interview. In addition, adult prostitutes maintain that pimps avoid juveniles, if at all possible, because they are likely to bring them into increased conflict with the police. On this basis, the 10% figure might seem reasonable, but does not explain how such a high percentage of juvenile prostitutes come to have been pimped at some time, or how they now come to be independent operators. Just as the extent to which pimps are involved in the business remains a very debatable issue, so does the question of the prostitute's relationship to the pimp. Perhaps all that can be concluded at this time is that the relationships run from the totally exploitative and abusive to those which are freely chosen and mutually supportive. Which end of the continuum is most characteristic remains to be determined.

The services of juvenile prostitutes are usually bought by men aged between 30 and 50, who are married. Since customers are a very difficult group on which to collect information, researchers typically have to rely on the prostitutes' own assessments of their clients. There is, however, a remarkable degree of consistency in the descriptions of customers from one end of the country to another. The motivations of customers, and especially the motivations to seek out young prostitutes, are issues about which we can only speculate. We simply do not have any information which would lead to firm conclusions about this aspect of the business.

Juvenile prostitutes are most frequently requested to give oral sex or vaginal intercourse. Customers are likely to initiate contact with the prostitute and to indicate the services they are seeking. The sexual acts are usually performed in the customer's car, a hotel or motel room or an apartment belonging to the prostitute or someone else. The whole transaction is accomplished within half an hour.

Although some juvenile prostitutes indicate that they have regular customers, the sexual transaction is usually characterized by its anonymity and its speed. The prostitutes deliberately attempt to distance themselves emotionally from their customers and to provide the services for which they are paid as quickly as possible. This allows them to be back on the streets and be available to other customers and avoids any involvement with customers beyond the commercial transaction. While some of the juvenile prostitutes indicate that they enjoy their work, it appears that the majority of them find their situation to be anything but satisfactory.

The belief that the streets are a source of easy money continues to make the business attractive to young people. Estimates of income are difficult to obtain and even more difficult to substantiate. Juvenile prostitutes, like their adult counterparts, do not keep records of their transactions. Instead the level of earnings has to be reconstructed by calculating how many days a week and weeks a year a prostitute works, the average number of customers a week and typical prices for services. Much of this information depends on how accurately the juvenile prostitutes can remember their activities and the extent to which they wish to make known the full scope of their activities to people outside the business. The Badgley Committee reports that daily earnings average around $190 for the juvenile prostitutes in the national survey. This figure may be reflective of business on a good day in summer, and not be a very good indication of earnings throughout the year. Nevertheless, it is apparent that while some juvenile prostitutes earn very little, for example, under $50 a day, others are very much more successful in terms of their income. Female prostitutes tend to have higher earnings than males because they are not limited physiologically in the number of customers they can service in a day.

Despite the high level of earnings that at least some of the juvenile prostitutes attain, the young people typically have lifestyles that do not encourage planning or saving money. The money is earned and quickly spent, and any tentative plans the prostitutes may have to move out of the business are very difficult to attain. No money is accumulated to carry them out of prostitution and, indeed, the chances of them moving out would appear to rest on the consequences of intervention by various agencies and organizations, ranging from the family to the police.

It appears that most juvenile prostitutes have a criminal record. While the activities with which they are charged are not necessarily prostitution-related offences, it is apparent that the criminal activities are highly related to being a prostitute. Charges for soliciting are not very common because prostitutes are relatively circumspect in their behaviour, and rarely act in such a manner as to

contravene the current interpretation of section 195.1 of the *Criminal Code*. Juvenile prostitutes are picked up for property offences such as shoplifting or theft, sexual offences, drug and alcohol offences, and assault. It would appear that most of the juvenile prostitutes acquire a criminal record after going on the streets and as a consequence of attempting to survive under very harsh conditions.

Drug and alcohol use may be one reaction to these conditions and one way of coping with the business. While some juvenile prostitutes indicated that they were heavy users of alcohol and drugs (about a third of the respondents in the Badgley Committee's research), it is apparent that most of them use such substances infrequently or not at all. Certainly, being on the streets appears to increase the opportunities for access to drugs, but this does not mean that juvenile prostitutes automatically become users. A further note of caution is also necessary on this issue, since we do not know whether the patterns of drug and alcohol use by juvenile prostitutes differ significantly from those of other young people. Thus, while it may seem reasonable to suppose that some of the young prostitutes seek to escape the worst aspects of the business through drugs and alcohol, we do not know whether this is a common response to life on the streets.

A further question related to health is the issue of sexually transmitted diseases (STD's). While adult prostitutes seem to be very aware of these problems, juveniles appear to be less well informed and to take fewer precautions. In some instances, the rates of infection are considerably higher than would be expected in the juvenile population, whereas in other cases, the rates are close to the normal level. Nevertheless, any rate of sexually transmitted diseases is a cause for concern and the fact that most juvenile prostitutes contract such a disease at some time is very serious. Many of the young people do seek routine medical check-ups, but some do not, and generally, juvenile prostitutes appear unconcerned about the possible long-term consequences for their health. STDs are just one more problem which is accepted as part of the life of being a prostitute.

The contacts of juvenile prostitutes with organizations attempting to dissuade them from working on the streets appear haphazard and frequently ineffectual. The police will pick up juvenile prostitutes on the streets and take them to child welfare agencies. Police officers typically see this action as being in the young person's own best interests, or as a way of lessening the number of prostitutes on the street and the associated disruptions. Social agencies are frequently not able to meet the needs of the juvenile prostitute. They lack the authority to hold juveniles for various assessments, they are under-funded and short of staff, and special programs to address the needs of this particular clientele are usually not in place. As the Committee heard time and time again, juvenile prostitutes can be back on the streets within a few hours of being picked up by the police.

On their own initiative, juvenile prostitutes use few social services. The ones they do use are usually those which assist with some immediate problem, for example, the need for medical attention, a room for the night or a meal. On the whole, juvenile prostitutes do not use social services designed to address issues with long-term consequences, such as training programs. Indeed, they appear to have a general contempt for social services and agencies and see themselves as being able to manage their own lives. Social services which have been most successful in assisting juvenile prostitutes are those which have been specially designed to meet their needs such as street worker programs or special hostels.

What happens to most juvenile prostitutes is unknown. Certainly some of them continue in the business as adults, but it is not clear that most of them simply graduate from being juvenile prostitutes to being adult prostitutes. Whether or not juvenile prostitutes move out of the business, and with what short and long term consequences for their lives, are issues which must be addressed in subsequent research.

Given the description of the concerns of those who appeared before the Committee, and the Committee's findings about the involvement in pornography and the nature of juvenile prostitution, let us now examine the present law, and how well it addresses those concerns.

Footnotes

[1] Badgley Report.

[2] *Ibid*, at 3.

[3] N. Boyd, *Sexuality and Violence, Imagery and Reality: Censorship and the Criminal Control of Obscenity*, Working Papers on Pornography and Prostitution (W.P.P.P.)#16; N. Crook, *A Report on Prostitution in the Atlantic Provinces* W.P.P.P.#12; M. El Komos, *Canadian Newspapers Coverage of Pornography and Prostitution, 1978-83* W.P.P.P. #5; J. Fleischman, *A Report on Prostitution in Ontario* W.P.P.P.#10; R. Gemme, A. Murphy, M. Bourque, M. A. Nemeh, and N. Payment, *A Report on Prostitution in Québec*, W.P.P.P.#11; M. Haug and M. Cini, *The Ladies (and Gentlemen) of the Night and the Spread of Sexually Transmitted Diseases* W.P.P.P.#7; C.H.S. Jayewardene, T.J. Juliani and C.K. Talbot, *Prostitution and Pornography in Selected Countries* W.P.P.P.#4; B. Kaite, *A Survey of Canadian Distributors of Pornographic Material* W.P.P.P.#17; John S. Kiedrowski, Jan, J.M. van Dijk, *Pornography and Prostitution in Denmark, France, West Germany, The Netherlands and Sweden* W.P.P.P.#1; M. Lautt, *A Report on Prostitution in the Prairies* W.P.P.P.#9; J. Lowman, *Vancouver Field Study of Prostitution, Research Notes* 2 vs., W.P.P.P.#8; H.B. McKay and D.J. Dolff, *The Impact of Pornography: an Analysis of Research and Summary of Findings* W.P.P.P.#13; T.S. Palys, *A Content Analysis of Sexually Explicit Videos in British Columbia* W.P.P.P.#15; Peat Marwick & Partners, *A National Population Study of Pornography and Prostitution* W.P.P.P.#6; D. Sansfaçon, *Agreements and Conventions of the United Nations with Respect to Pornography and Prostitution* W.P.P.P.#3; D. Sansfaçon, *Pornography and Prostitution in the United States* W.P.P.P.#2; Ian Taylor, *The Development of Law and Public Debate in the United Kingdom in Respect of Pornography and Obscenity* W.P.P.P.#14 Department of Justice, Ottawa, 1984.

[4] Peat Marwick & Partners, *A National Population Study of Pornography and Prostitution*, W.P.P.P.#6.

[5] *Ibid.*, at 1.

[6] *Ibid.*, at III-28 - III-39.

[7] Badgley Report.

[8] *Ibid*, Vol. I, Chap. 6.

Chapter 43

The Present Law

1. Pornography

There is no provision in the *Criminal Code* which addresses specifically the production, dissemination or use of child pornography.

There are, however, a number of substantive provisions in the *Code* which deal with obscenity or indecent materials generally. As these provisions have been analysed in detail in Part II, Section II, Chapter 7, only their main aspects and applicability to child pornography will be considered here. We shall also examine here the provisions of federal legislation other than the *Criminal Code*, which may affect child pornography.

1.1 Making, Possessing and Disseminating

Examining first the applicable provisions of the *Criminal Code*, we note that section 159 is the main section relating to obscenity. It prohibits, inter alia, the making, printing, publishing, distribution, circulating, selling, exposing to public view, or possession for any one of these purposes, of any obscene written matter, picture, model, phonograph record or other thing whatsoever. It also prohibits the public exhibition of a disgusting object or an indecent show.

Additional offences with respect to live shows are found in section 163. Subsection 163(1) makes it an offence for the lessee, manager, agent or person in charge of a theatre to present, give or allow to be presented or given an immoral, indecent or obscene performance, entertainment or representation. Subsection 163(2) makes it an offence to take part or appear as an actor, performer, or assistant in any capacity in an immoral, indecent or obscene performance, entertainment or representation in a theatre.

Section 164 of the *Code* creates the offence of making use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral, or scurrilous. To reinforce this provision, prohibitory orders may be made under the *Canada Post Corporation Act*.[1] Subsection 41(1) of this *Act*

allows the Minister to make an order prohibiting the delivery of mail addressed to or posted by any person that the Minister believes on reasonable grounds is committing or attempting to commit by mail an offence, or who is aiding, abetting, counselling or procuring any other person to commit such an offence. A prohibitory order may also be made against a person who, by means other than mail, is aiding, abetting, counselling or procuring any other person to commit an offence by means of mail.

One of the first questions arising in connection with these *Criminal Code* sections is whether what is popularly regarded as "child pornography" is within the scope of the words "obscene", "indecent" or "immoral" as used in those sections. Not only the meaning of those terms themselves, but also the impact of the so-called "community standards" test must be looked at to determine this question.

Section 159 contains a definition of obscene, but this statutory definition does not apply to the terms indecent and immoral used in sections 163 and 164. However, the common law definition of the terms, which does apply in connection with sections 163 and 164, also relies on the application of the community standards test which figures in the interpretation of section 158.[2]

Subsection 159(8) defines as obscene, "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence...". How this definition would apply to child pornography is a difficult question. The courts have convicted in cases where the material portrays incest[3] or juveniles engaged in sex.[4] Clearly, the more explicit the sexual conduct or the display of the child's sexual organs, the more likely the definition is to apply. However, nude still shots which show only the external sexual organs, particularly if the poses are not suggestive, may not be within the definition.

The application of the community standards test to determine whether something is obscene has important implications for juvenile pornography. In *Re Hawkshaw v. The Queen*[5] the Ontario Court of Appeal considered a charge under subsection 159(1) of the *Code*, arising from the making of an "obscene" picture. It held that the fact that the picture was intended solely for private viewing, and did not come into any hands other than those of the person who took the picture, are relevant in a consideration of what the Canadian community would tolerate. The implication, of course, is that there would be greater community tolerance if the material were designed only for private use, and a correspondingly greater difficulty in convicting under subsection 159(8).

Section 159 does not prohibit the possession of obscene material for private use. Private use has been generously defined by the courts. It may include showing obscene pictures to a friend or projecting an obscene film in one's own home.[6] It has also been held that showing obscene films in a community hall exclusively to invited friends and relatives is tantamount to a showing in a private gathering, and not prohibited by section 159.[7]

It may, however, be illegal under section 159 to make obscene material even for exclusively private use. Unfortunately, the law is not entirely clear on this point. In *Re Hawkshaw v. The Queen* the accused submitted to a developing laboratory a roll of film containing a picture of four persons, one of whom was performing fellatio on a seventeen year old boy. Although the Court accepted that the accused intended to use the photo only for private viewing, it nonetheless upheld his committal to stand trial for the offence of making or printing an obscene picture under section 159. Because the accused has appealed this decision to the Supreme Court of Canada, however, the issue raised by the case cannot be said to have been conclusively determined.

In addition to the *Criminal Code* provisions described above, section 14 and Schedule "C" of the *Customs Tariff* prohibit the importation into Canada of "books, printed paper, drawings, paintings, prints, photographs, or representations of any kind of an immoral or indecent character."[8] The contemporary Canadian community standard of tolerance has emerged as the decisive test in the Customs area as well as in connection with sections 159, 163 and 164 of the *Criminal Code* discussed above.[9]

Subsection 40(1) of the *Canada Post Corporation Act* requires that all mail from a country other than Canada containing or suspected to contain anything the importation of which is prohibited, shall be submitted to a Customs officer for examination. Customs officers are, in turn, required by subsection 40(3) of the *Act* to deal with all mail submitted to them under this section in accordance with the laws relating to the importation of goods. By means of the interrelationship between these subsections and the *Customs Tariff*, mail from outside Canada suspected of containing immoral or indecent material can be inspected.

These provisions with respect to mail and Customs regulations are significant to the issue of child pornography because the mails seem to be one of the frequently used ways of distributing and exchanging such material.

1.2 Involving Children in Pornography

There are a number of *Criminal Code* provisions which might apply in the case of someone securing the participation of a child or young person in the production of pornography. Subsection 168(1) of the *Code* penalizes anyone who, in the home of a child, participates in sexual immorality or indulges in any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in. In *R. v. E. and F.*,[10] the mother of a child and the mother's common law husband were convicted where they had photographed the eleven year old child in sexually suggestive poses. One of the obvious difficulties in looking for widespread use of this section is the requirement that the acts take place in the home of the child. There is no other section which has a direct application to the activities of adults in procuring youngsters for pornography.

Where the child is photographed while engaging in sexual relations with other people, then a number of sections of the *Code* may be applicable to the conduct of the child's partner. These include the offences of a male having sexual intercourse with a female under 14 years of age, or between 14 and 16,[11] having illicit sexual intercourse with a step-daughter, foster daughter or female ward,[12] and committing buggery or bestiality[13] or an act of gross indecency.[14] The parent or guardian of a female person who procures her to have illicit sexual intercourse with a person other than the procurer, or orders, is party to, permits, or knowingly receives the avails of the defilement, seduction or prostitution of the female person, is guilty of an indictable offence.[15] There are comparable provisions relating to the owner, occupier, or manager of premises who permits a female under 18 to resort thereto for purposes of having sexual intercourse with a particular male person or persons.[16]

Persons involved in the preparation of child pornography might also be charged with counselling or procuring a person to be party to an offence,[17] with aiding or abetting a person to commit an offence,[18] with conspiracy to commit an indictable offence[19] or with conspiracy "to effect an unlawful purpose".[20]

With the repeal of the *Juvenile Delinquents Act*,[21] the general offence of contributing to the delinquency of a minor is no longer available to charge persons using young persons in pornography.[22] However, there may be recourse against child exploiters through provincial child welfare laws. For example, section 38 of the *Alberta Child Welfare Act* provides that a person who has the care, custody, control or charge of a child and who ill-treats, neglects, abandons or harmfully exposes a child or causes or procures such ill-treatment, is guilty of an offence.[23] The child welfare statutes of Prince Edward Island, Québec, Manitoba, Saskatchewan, the Yukon Territory and the Northwest Territories create similar offences.[24] Such provisions address the conduct of a parent or guardian who procures or participates in the exploitation of a child by involving him or her in the production of pornography. Because of the stipulation that the accused person have the "care, custody, control or charge" of a child, however, it may be doubtful whether provisions like section 38 of the *Alberta Act* can reach the conduct of third parties not in the child's family or household circle.

The *Alberta Child Welfare Act* also purports to regulate the employment of children over 12 years of age in entertainments; the structure of the *Act* indicates that children under 12 may not in any event be so employed. Before granting a licence for the employment of a child over 12, the Child Welfare Commission must be satisfied of the fitness of the child to take part in the proposed entertainment or series of entertainments without injury to his or her life, limbs, health, education or morals. The Commission must also be satisfied that proper provision has been made to secure the health and kind treatment of the child. It is made an offence for anyone to employ a child under 16 without a licence "for the purpose of singing, playing or performing for profit or of offering anything for sale in a public place or a place to which the public is admitted on payment."[25]

Although provisions of this nature aimed at employment may be useful in addressing some types of child sexual exploitation through pornography, they do not of course address the situation where a child is photographed or filmed without being "employed" - i.e. paid. It is, in our view, likely that many, if not most, of the situations which concern us do involve unpaid use.

One further observation is appropriate concerning provincial child welfare provisions. Again we will use the Alberta statute as an example. The child welfare authorities may detain a child who is neglected as that term is defined in the legislation. There are many aspects of the definition of "neglected child" which would allow the authorities to remove a child from parents who were involving him or her in pornography; for example, paragraph 6(e)(xii) defines as neglected any child "whose life, health or morals may be endangered by the conduct of the person in whose charge he is." There is even the possibility that the child could be apprehended not because of parental defect, but because of third party actions involving the child in pornography; a "neglected child" is defined in paragraph 6(a)(v) as one found associating with an unfit or improper person.

We have not, however, found any provincial child welfare provision which describes a child as "neglected" because of the child's involvement in pornography, whether as an actor or as an unwilling consumer. We note that the Report of the Committee on Sexual Offences Against Children and Youths commented upon the absence from child welfare legislation of any specific provision characterizing a child as neglected because of sexual abuse. The Committee recommended that provincial authorities undertake a full review of local legislation, addressing this terminology issue and other issues relating to the clear specification of the types of investigative responsibility for suspected cases of the physical and sexual abuse of children.[26]

We agree that provincial child welfare authorities should be encouraged to review the question of their response to child sexual abuse, and consider that the more limited issue of children's involvement in the production of pornography should be on the agenda of any such review. However, we caution that not every child who is involved in the production of pornography may necessarily be a "neglected child" within the philosophy of child welfare legislation. In our view, it is useful to bear in mind that a determination that a child is neglected can result in removal of the child from his or her home, either temporarily or, after a court hearing, for a longer period. It may involve intervention by state agencies in the family's life for periods of time and orders that a third party is not to associate with a child, like those discussed elsewhere in this chapter.

In some cases, it may well be desirable to involve youth authorities and precipitate outcomes like these. In other cases, it clearly would not. Very often, the family itself will be quite able to deal with the child's involvement in the production of pornography, once made aware that it is going on. It would be unfortunate if too focused a definition of neglected child were to precipitate state intervention in the family, as described above, each and every time a

situation of exploitation, even by third parties, were discovered. This is not to say that the state should forbear from intervening in a proper case. The problem is to achieve a balance between respect for the autonomy and capacity of the family to deal with exploitation of its own children (especially but not always where such exploitation is by persons outside the family), and the provision of state assistance where that is needed.

Recommendation 66

> **Provincial child welfare authorities are encouraged to review their response to child sexual abuse, as recommended by the Committee on Sexual Offences on Children and Youths (at pp. 548-549). We recommend that the issue of children's involvement in the production of pornography should be on the agenda of any such review. However, we caution that not every child involved in the production of pornography may be a neglected child within the philosophy of child welfare legislation. Accordingly, we recommend that a balance be struck between recognizing the autonomy and capacity of the family to deal with exploitation of its own children and the provision of state assistance where that is needed.**

1.3 Overview

In our view, a number of serious deficiences exist in the present law relating to child pornography. Firstly, there is doubt as to whether the definition of obscene, or immoral, or indecent, would reach some types of material which arguably should be caught by the criminal sanction. Similarly, material prepared for only private use should not, in our view, escape criminalization. At present, it may do so, because of the application of what is, in effect, a more forgiving community standard for materials used privately. Our hearings and research have disclosed that private preparation and use of child pornography is a major mode of resorting to this material. We have also learned that contemporary Canadian community standards are running strongly against such private use.

We also note the absence of a really effective and direct sanction against persons who involve children in pornography. The sanctions against theatrical performances found in subsection 159(2)(b) ("indecent show") and section 163, do not really reach those whose use of children is private. Nor do the child welfare provisions aimed at regulating the use of children in "entertainments".

It must be recognized that much, if not most, exploitation of children occurs in situations which would be defined as private in our law. Existing criminal sanctions are not likely to reach much of the private exploitation of children. Even section 168 of the *Code* has application only where the offence takes place in the child's home, so that exploitation in someone else's home, or a hotel or studio, would not be reached. Section 166 criminalizes only the defilement of female children, and is addressed only to the parents or guardians of the child. Nor is it made clear in the section that securing the child's participation in the preparation of pornography would be criminal conduct.

The provisions of the *Code* criminalizing certain aspects of the production of child pornography have, in our view, obvious limitations and do not represent any serious alternative to a section dealing directly with the use of children in pornography. One of these limitations is that most of the sections listed apply only where the behaviour represented involves two or more persons; in some cases, one of the persons must be an adult for the section to apply. Thus, photographs of a child alone or of two children would not attract to the participants the sanctions described. Most particularly, the sections do not reach the conduct of the person who produces the pornography and benefits from it.

Although child welfare laws may be useful in many situations involving the use of children in pornography, they have several limitations. Not all the provinces have provisions which make it an offence to ill-treat or procure the ill-treatment of a child, and the sanctions attached to this offence in the jurisdictions where it does exist are, in any event, not large. Intervening in the family by way of the neglected child provisions of child welfare legislation is not always a good solution, particularly where the threat to the child has come from outside the family.

In our view, it is necessary to provide direct criminal sanctions which would deter the use of children in the production of pornography. Sanctions against possession of pornography involving children are also, in our opinion, important because they attack the market for such materials and arguably will thereby reduce the incentive to produce it.

Recommendation 67

We recommend the enactment of criminal sanctions for the production, dissemination, and possession of "child pornography".

In chapter 46 of this Part, we propose amendments to the *Criminal Code* to introduce criminal penalties for the production, dissemination and possession of child pornography. Before proceeding to describe those measures, however, we shall examine some of the unsuccessful legislative initiatives in this area.

1.4 Previous Reform Attempts

Since 1959, the year of the last reform of the *Criminal Code* sections dealing with pornography, a number of efforts have been made to introduce bills dealing specifically with child pornography. The thrust of such efforts has been twofold. Proponents of the bills have sought to have included in the *Code* a definition of "obscenity" which specifically mentions portrayal of children, and they have also sought to penalize persons for using children in pornographic materials.

Considering firstly those bills dealing with the definition of pornography, it is noteworthy that nine bills receiving first reading in the House of Commons

on October 31, 1977 all proposed to add to the *Criminal Code* a section creating an offence for everyone who photographs, produces, publishes, imports, exports, distributes, sells, advertises or displays in a public place, anything that depicts a child performing a sexual act or assuming a sexually suggestive pose while in a state of undress. The bills all defined "child" as a person who is or appears to be under the age of 16 years. The bills defined "sexual act" as masturbation, any act of sado-masochism, and any act of anal, oral, or vaginal intercourse, whether alone or with or upon another person, animal, dead body or inanimate object. An attempted or simulated sexual act was included.[27] A tenth bill, also receiving first reading in October 31, 1977,[28] made it an offence knowingly to produce, publish, transmit, distribute, sell or receive for resale, a film or publication of any kind that depicts a child engaged in a sexually explict act. The definitions of "child" and "sexually explicit act" were the same as in the other nine bills.

All of these bills were referred to the Standing Committee on Justice and Legal Affairs. The Committee concluded that "so-called "kiddie-porn" is reprehensible and clearly unacceptable in contemporary Canadian society."[29] It recommended that the definition of obscenity in the *Criminal Code* be amended to include sexually explicit material involving children. The definition proposed by the Committee was that a matter or thing should be deemed to be obscene where it depicts or describes a child engaged or participating in an act or simulated act of masturbation, sexual intercourse, gross indecency, buggery or bestiality, or displaying any portion of its body in a sexually suggestive manner.[30] Child was defined as a person who is or appears to be under the age of 16 years.

Following the report of the Standing Committee, two attempts were made to have this definition or a similar one inserted into the *Code*. Bill C-434, a Private Member's bill introduced into the 1977-78 Session by Mr. Whiteway, sought to include the Standing Committee's definition in the *Criminal Code*. Bill C-21, proposed by the Minister of Justice, received first reading on November 21, 1978. This bill defined a matter or thing as obscene where it "unduly depicts a totally or partially nude child engaged or participating in an act or a simulated act of masturbation, sexual intercourse, gross indecency, buggery or bestiality, or unduly displaying any part of his or her body in a sexually suggestive manner."[31] Whereas Mr. Whiteway's bill tried explicitly to forbid reliance on evidence of community standards where child pornography was concerned,[32] the government bill used the term "unduly", which presumably would have provided the basis for the introduction of community standards evidence.

Neither of these bills was proceeded with. In 1981, however, Bill C-53 was introduced by the Minister of Justice. The bill created a number of offences relating to visual representations of a person under 16 years of age participating in sexually explicit conduct: inducing, coercing or agreeing to use a person under 16 to participate in such conduct for the purpose of making a visual representation; participating in the production of a visual representation; and making, printing, reproducing, publishing, distributing, circulating, selling,

offering to sell, receiving for sale, advertising, exposing to public view, or having such a representation in his or her possession for any such purpose. This bill was not proceeded with either.

A number of attempts have been made since 1959 to strengthen the prohibitions against involving young people in sexually explicit conduct, and these are discussed below in the portion of this chapter dealing with young persons and prostitution. Only two bills have aimed specifically at involvement of young people in sexually explicit behaviour for the purpose of producing pornographic material. Bill C-53, introduced by the Minister of Justice and given first reading on January 12, 1981, would have made it an offence knowingly to induce, coerce or agree to use a person under 16 years to participate in any sexually explicit conduct for the purpose of producing, by any means, a visual representation of such conduct. The bill further provided that a person who at any material time appeared to be under the age of 16 would, in the absence of evidence to the contrary, be presumed to be under 16.

On February 8, 1983, Mr. Kilgour's bill C-673 received first reading. The bill created an offence for everyone who employs, uses, persuades, induces, entices, or coerces a person who is under 18 years of age to engage in sexually explicit conduct with the intent to disseminate any audio, visual or printed medium depicting such conduct. The bill also created the offence of being a parent, legal guardian, or person having the custody or control of a person under 18 years of age, and assisting or permitting such a person to engage in sexually explicit conduct with the intent to disseminate any audio, visual or printed medium depicting such conduct.

The recommendations of this Committee dealing with child pornography and the procurement of children to be in pornography are set out and discussed below. Included in this discussion are observations about how our proposals differ from the numerous attempts over the years to legislate on child pornography. At this point, it is appropriate to consider the other aspect of the pornography problem involving children, that is, their exposure to pornography.

1.5 Exposure of Children to Pornography

The exposure of youngsters to offensive or pornographic material is addressed in a number of ways in federal and provincial legislation.

In the *Criminal Code*, we find, again, the basic prohibition in section 159 against the distribution, circulation, selling, exposure to public view or possession for any of these purposes, of any obscene written matter, picture, model, phonograph record or other thing whatsover. A merchant keeping obscene materials for sale would be caught by this provision; and accordingly, one of the side effects of the provisions may be to encourage some commercial enterprises to restrict the type of material they have available.

Submissions at the public hearings of this Committee did, however, focus on a number of shortcomings of this criminal prohibition as a means of controlling what youngsters have access to, willingly or unwillingly. One such shortcoming is that the section reaches only those found with material within the definition of obscene. That definition, in the view of many, is not broad enough to include the sorts of material they would keep from young people, whatever may be the merits of the section where adults are concerned. Thus, many magazines, notices, posters or advertisements that would be considered inappropriate for young persons to see, are displayed with impunity.

Briefs at the public hearings also indentified enforcement of the *Criminal Code* provisions as a source of difficulty where material offensive to young people is on view. Community groups sometimes charged that material which they consider to be clearly within section 159 is left alone by local enforcement authorities. Many reasons are given, by community groups or police officials, for not responding to citizen complaints about this material. One, of course, is a difference of opinion between citizens and police about the applicability of section 159. The difficulties caused by the vague standards in subsection 159(8) have already been canvassed above. However, other reasons do not seem so reasonable. We have been told, for example, that some local authorities may believe that any publication which has entered Canada must have had clearance from Customs officials. Such clearance is not, however, a defence in law to a charge under section 159. We have also been told that unfortunately, some police authorities or Crown attorneys may not consider charges worth bringing, because of the high likelihood of acquittal. In some communities, too, citizens may be reluctant even to press for police action because of the size or closeness of the community and the prominence of the retailer whose conduct is offensive.

Because the criminal law sanctions against display of material are, for most purposes, of no practical use, more and more muncipalities have turned in recent years to the enactment of by-laws to control display of so-called adult materials. The central features of such by-laws will often be requirements that the merchant place "adult" material at a certain height from the floor, and ensure that it has an opaque cover or is displayed in such a way that only the title is visible.

This course of action was recommended by the Standing Committee on Justice and Legal Affairs in its 1978 Report. Its recommendation number 8 stipulated that:

> Provincial, regional, municipal and local authorities should adopt the necessary licensing, zoning, and child protection legislation, regulations, and by-laws to ensure that acceptable sexually explicit material is advertised, displayed, and sold discreetly to adults and under no circumstances to children or young people.[33]

The availability to young people of offensive records, audiotapes, record jackets, and videotapes was also cited in our hearings as the cause of difficulties. There are at present very few regulatory regimes which deal with

any aspect of this problem. In fact, there are no controls, other than the criminal law, on audio recordings, and in only two jurisdictions, Nova Scotia and Ontario, have videotapes been brought under the aegis of a review board regime. These provinces require licensing of retail film exchanges which sell or lease material for private consumption. Details of the review scheme are outlined above.

We received many representations during the public hearings on the need for a good classification system for videotapes, so that parents wishing to do so could monitor their children's selections. In the absence of such a system, we were told, it is not always possible to determine from the title of a tape what its contents are likely to be, because titles of children's entertainments are sometimes also used for sexually explicit tapes. Similarly, we were told of young people unwittingly being subject to unpleasant material because of the difficulty of predicting from the title and cover what will be in the tape.

For the most part, parents who presented briefs at the public hearings did not expect the state to do the full job of protecting their youngsters from offensive or illegal material. These parents recognized willingly the role of the family in shaping the tastes and standards of young people, and in helping them to understand their developing sexuality. However, there was a distinct expectation on the part of parents that society should assist them in this endeavour. The film classification system now in operation in most jurisdictions was cited as a good example of how the state can provide information to parents. In some briefs, however, there were calls for greater particularity in descriptions of films, and for requirements that operators of movie establishments be more forthright about the classifications assigned by the authorities to movies they display.

Overall, however, the two methods of reviewing and classifying films and videotapes, and display restrictions for other adult material, received widespread and firm support as useful methods of helping parents monitor what young persons are to see. Interestingly, while there was some support at the hearings for the idea of segregating "adult only" movies and books to particular stores or enclaves in the city, such support was not uniformly strong. It appears that there is considerable confidence that properly administered systems of classification on the one hand, and display control on the other, can effectively handle the problems perceived by most.

Recommendation 68

Provincial and municipal authorities should continue their efforts to control the access of young people to offensive material by means of film and video classification systems and municipal by-laws regulating access to adult material.

Some presenters at the public hearings drew to our attention the problem of young people gaining access to offensive material through adults or older children, and asked for measures specifically to deal with this problem. Where

the material is provided by the parent, guardian or other person in charge of a child, then section 168 of the *Criminal Code* or child welfare legislation, may provide some recourse. However, where it is an adult who is not a parent, or an older child, who makes available the material, then there is no readily apparent direct recourse.

The availability problem and other issues related to the display of offensive material to youngsters, have been addressed in a series of bills introduced into federal Parliament in recent years to deal with pornography.

Bill C-210, introduced by Mr. Whiteway and receiving first reading in October, 1976, would have created for the provinces, classification boards which had jurisdiction over "any written matter, picture, model, phonograph record or other thing whatsover." The bill created an offence of knowingly, without lawful justification or excuse, selling, exposing to public view or having in possession for these purposes, any matter classified by the board as "restricted", in any outlet frequented by persons who are or appear to be under 18 years of age.

Mr. Whiteway's Bill C-281, receiving first reading in October, 1977, would have created a new offence of exposing minors to offensive publications or shows. The proposed new subsection 159(2.1) created the offence of knowingly, without lawful justification or excuse, exposing in a public place or in a place where persons under the age of 18 years are admitted, any matter or thing or live show that depicts or presents a person, whether or not in a state of undress, unduly displaying his or her body in a sexually suggestive manner, or engaging or participating in an act or a simulated act of masturbation or sexual intercourse, gross indecency, buggery or bestiality.

In Bill C-325, sponsored by Mrs. Appolloni in 1977, a new subsection 166.1(2) would have made it an offence for the proprietor or manager of premises open to the public to display, exhibit or advertise any matter or thing of a lewd or sexually suggestive nature. The section stipulated that the defence to a charge involved proof that no child has access to the premises, and that no child is exposed to the matter or thing from outside the premises, or proof that the matter or thing cannot harm a child morally or psychologically.

Mr. Kaplan's Bill C-411, which received first reading in December, 1977, made it an offence for the proprietor or manager of an adult bookstore, an adult motion picture theatre, an adult coin-operated entertainment establishment, an adult topless entertainment establishment, or an adult physical culture establishment, to display or describe a specified sexual activity or specified sexual area, as defined, on a sign, in an advertisement, in the window of the premises or by any means that attracts public attention outside the premises.

The Bill included specific definitions for the various "adult" outlets against which the offence was directed. It defined "specified sexual activity" as an act of sexual intercourse, sodomy or masturbation by a person; or fondling

or erotic touching of the genitals, pubic region, buttocks or female breasts of a person; and specified "sexual area" as the naked genitals, pubic region or buttocks of a person, or that portion of a naked female breast located immediately below a point at the top of the areola.

Mr. Kilgour's Bill C-673 received first reading in February, 1983. It would have made it an offence to disseminate pornographic material to a person who is under 18 years of age, or to any person in a manner affording no immediately effective opportunity to avoid exposure to such material, or to commercially disseminate pornographic material to any person.

The recommendations of this Committee concerning availability of pornographic or offensive material to youngsters are set out and discussed below. We have not followed any particular bill described above, although there is some similarity between what is proposed by this Committee and some of the approaches experimented with by the Private Member's bills.

Now let us turn to an examination of the present law relating to prostitution.

2. Prostitution

2.1 Activities of the Child Prostitute

Section 195.1 of the *Criminal Code* provides that:

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

A young person may be charged under this section, and tried for the offence in a youth court pursuant to the *Young Offenders Act*.

The *Young Offenders Act* was proclaimed in force as of April 2, 1984. As mentioned above, a young person is defined in that *Act* as a person who is, or who, in the absence of evidence to the contrary, appears to be 12 years of age or more, but under 18 years of age. It is intended that by April 1, 1985, 18 will be the uniform upper age limit for this *Act* for all of Canada. In the transitional phase spanning the first year of operation of the *Act*, provinces are permitted to establish upper age limits lower than 18. In Newfoundland and British Columbia, the upper limit is now 17, and in Nova Scotia, New Brunswick, Prince Edward Island, Ontario, Saskatchewan, Alberta, the Yukon Territory and Northwest Territories, it is 16.[34]

A significant feature of the *Act* is that it does not apply to anyone under 12 years of age, defined in the *Act* as a "child".[35] Moreover, section 72 of the *Act* enacts a new section 12 for the *Criminal Code*, specifying that no person shall be convicted of an offence in respect of an act or omission on his part while he was under the age of 12 years. Formerly, sections 12 and 13 of the *Code* (repealed by the *Young Offenders Act*) had provided that no person while

over the age of 7 and under the age of 14 years could be convicted of a criminal offence, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong.[36]

Certain important consequences flow from the fact that section 195.1 of the *Criminal Code* creates a summary conviction offence. These consequences arise whether the accused is subject to the *Young Offenders Act* or the *Criminal Code* procedures. By reason of subsection 452(2) of the *Criminal Code*, the arresting officer shall release from custody a person charged with a summary conviction offence, with the intention of compelling his appearance by way of a summons, or shall issue an appearance notice to the person, as soon as is practicable after an arrest. The officer may refrain from following this procedure if he or she has reasonable and probable grounds to believe that it is necessary in the public interest that the person be detained in custody, or that the person will fail to attend in court if released from custody. In making his or her determination about the public interest, the officer is entitled to have regard for the need to establish the identity of the person, secure or preserve evidence of the offence, or prevent the continuation or repetition of the offence or the commission of another offence.

Where the arresting officer does not release the accused pursuant to subsection 452(2), the officer in charge at the police station may do so. The officer in charge may compel the person's appearance by way of a summons,[37] or release him or her on a promise to appear[38] or on a recognizance not exceeding $500.[39] The officer in charge has the same mandate to consider the public interest in favour of keeping the person in custody as does the arresting officer. All of these provisions concerning release by police officers of someone charged with a summary conviction offence are in addition to the judicial interim release provisions of the *Code*.

Significantly, these release procedures are available in the case of a young person charged with soliciting under section 195.1. Both under the former *Juvenile Delinquents Act* and under the *Young Offenders Act*, a police officer might release a young person upon issuing a summons or appearance notice or upon his or her promise to appear on recognizance. The availability of these release procedures is explicitly recognized by subsection 9(2) of the *Young Offenders Act*.

We received many submissions about the difficulty caused by the so-called "revolving door" whereby a young person arrested for soliciting could be out on the street after a few hours. The existence of the revolving door was attributed by some witnesses to defects in provincial child protection laws, or to the scarcity of adequate resources for the detention pending trial of young people charged with soliciting.

Where the young person is charged with an offence under section 195.1, however, it would appear as if the root of the revolving door syndrome is in the release procedure set out in the *Code* for summary conviction offences. This procedure makes possible release without a judicial hearing, and without

conditions about activities and associates being laid down for the young person. It seems as if police officers may give insufficient attention to their discretion to retain someone in custody, if to do so is in the public interest, having regard to the need to prevent the continuation or repetition of the offence or the commission of another offence. It may well be, of course, that the absence of appropriate detention facilities for young persons charged with soliciting contributed to some of the decisions to release them summarily.

Under the *Young Offenders Act*, subsection 9(2), notice of the summary release of a young person must be given to his or her parent. If the whereabouts of the parents are not known or it appears that no parent is available, the notice may be served on an adult who is known to the young person and likely to assist him. A youth court judge may dispense with this requirement of notice.[40]

A similar notice to the parent, guardian or relatives was required under the former *Juvenile Delinquents Act*,[41] and it had been held that lack of notice is a jurisdictional defect which prevents the court from convicting or acquitting.[42] Dismissal of the charge was apparently available at the instigation of defence counsel where the notice was defective.[43] We learned, at the public hearings and in our other research, that young persons sometimes gave false names upon being arrested for soliciting. Such practices may, of course, have led to the inability to proceed on some charges, but we have no information on the number of such cases. The provision in the *Young Offenders Act* that the youth court judge may dispense with notice altogether, may relieve against difficulties caused by the improper identification of young people charged with street soliciting. However, even under the *Young Offenders Act*, failure to give notice will still invalidate any subsequent proceedings where the notice requirement is not dispensed with, or where a parent does not actually attend the hearing.[44]

In addition to the prohibition against street solicitation, the young prostitute could face a charge under subsection 193(1) of the *Code* for keeping a common bawdy house. Under this provision, premises used by only one person for the purpose of prostitution or the practice of acts of indecency, can constitute a common bawdy house. Accordingly, even discreet use by a person of his or her apartment could attract the charge.

Being a keeper of a common bawdy house is an indictable offence. By reason of subsections 483(c)(vi) and 452(1) and 453(1) of the *Criminal Code*, a person arrested on this charge can be released by the arresting officer, or officer in charge, in the same summary way as can someone charged with a summary conviction offence.

The *Criminal Code* is not the only recourse available to law enforcement agencies if young people are found engaging in soliciting or acts of prostitution. They can be taken into care under the child welfare legislation of a province, as a child in need of protection, or a neglected child. It would appear that most provincial statutes include definitions of neglected child which are broad enough to include a child involved in prostitution. The explanation for the so-

called revolving door syndrome in child welfare proceedings may depend to some extent on the wording of the individual provincial legislation. We suggest, however, that one underlying cause for the phenomenon in these proceedings, as in ones based on the criminal law, may be absence of adequate resources for the detention of the young person pending a hearing.

2.2 Using the Services of a Child Prostitute

There is no provision in the *Criminal Code* which specifically addresses the purchase by adults of the sexual services of the young. There are some sections which may, however, apply to particular sorts of conduct.

A male person who has sexual intercourse with a female person, not his wife, who is under the age of 14 is guilty of an indictable offence and liable to imprisonment for life.[45] The provision applies whether or not the person believes that the girl is 14 years of age or more. There is no requirement that the girl be "of previously chaste character", and the fact that the person consented to the commission of the offence is not a defence.[46]

It is an offence for a male to have intercourse with a female person, not his wife, who is 14 years of age or more, and under 16 years. However, the youngster must be "of previously chaste character."[47] Clearly, this requirement means that the provision would be inapplicable in the case of a juvenile prostitute. Also inapplicable for the same reason is section 151 of the *Code*, making it an offence for a male 18 years of age or more to seduce a female of previously chaste character who is 16 years or more of age, but under 18.

The limitations of the foregoing provisions are serious. To be protected by the *Code*, juveniles over 14 must have a previously chaste character, and even then, the *Code* protects only against intercourse. For example, a person could not be charged with requiring a 12 year old girl to masturbate him or perform fellatio on him. None of these provisions applies, in any event, to acts performed on young males, whether by males or by females.

The *Code* provides that everyone who commits buggery or bestiality[48] or an act of gross indecency with another person[49] is guilty of an indictable offence. Acts performed in private between husband and wife or between two consenting persons, each of whom is 21 or over, are not illegal.[50] A person can be charged with an offence of buggery or gross indecency even if the person with whom it is committed is not "of previously chaste character."

Turning now to the *Code* provision about soliciting, it should be noted that because of conflicting decisions from the Courts of Appeal of British Columbia and Ontario, it is unsettled whether a customer or potential customer of a prostitute can be charged with an offence under section 195.1. The B.C. Court of Appeal has ruled that a prospective customer cannot be charged,[51] but, in another case, the Ontario Court of Appeal refused to follow this ruling, and

upheld the charge against the prospective customer.[52] Accordingly, the section offers no reliable protection against the solicitation of young persons.

2.3 Provisions Aimed at those Involving Young Persons in Prostitution

Section 166 of the *Criminal Code* provides that a parent or guardian of a female person who procures her to have illicit sexual intercourse with a person other than the procurer, or orders, is party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of the female, is guilty of an indictable offence.

Section 167 provides that an owner, occupier or manager of premises, or person who has control of premises or assists in their management, who knowingly permits a female person under the age of 18 to resort to or be in or upon the premises for the purpose of having illicit sexual intercourse with a *particular male person, or male persons generally,* is guilty of an indictable offence.

Subsection 195(1) of the *Code* provides for an indictable offence for everyone who:

(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy house of assignation for the purpose of illicit sexual intercourse or prostitution,

(c) knowingly conceals a person in a common bawdy house or house of assignation,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy house, with intent that the person may become an inmate or frequenter of a common bawdy house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed, or takes or causes that person to be taken, to a common bawdy house of assignation,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower

that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

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

Provincial child welfare legislation may also provide recourse against persons introducing children to prostitution or maintaining them in it, or using the services of child prostitutes. We have discussed above some of the shortcomings of provincial child welfare legislation, and here merely point out that those same shortcomings are evident in connection with use of the legislation to deal with child prostitution.

The principal advantage of such provincial legislation may be in enabling some severance of the connection between the child and the person creating the danger. The New Brunswick *Child and Family Services and Family Relations Act*, provides that the security or development of a child may be in danger when the child is physically or sexually abused, sexually exploited or in danger of such treatment.[53] The child may be taken into "protective care" in such a case. Within five days, unless the child is released, a court hearing ensues. At the hearing, one of the orders which may be made[54] is a "protective intervention order", directed to any person who, in the opinion of the court, is a source of danger to the child's security or development. Such an order may contain a direction to any person to refrain from any contact or association with the child. Violation of such an order is an offence.[55] Similarly, Québec's *Youth Protection Act* permits that parents and child may agree with youth protection authorities that certain persons refrain from coming into contact with a child; where there is no such voluntary agreement, a court application may produce an order to this effect.[56]

This Committee did not hear any evidence that would suggest that use of provisions like these is legally improper in the case of persons introducing juveniles to prostitution, keeping them in prostitution, or using their services. It would seem that the main determinants of whether the child welfare legislation will be used are the discretion of law enforcement officials, and availability of resources.

2.4 Previous Reform Attempts

A number of the bills introduced into the House of Commons in the last 10 years which have addressed the issue of involving young persons in sexual activities, have done so from the perspective of both pornography and prostitution. We have discussed above, Bills C-53 and C-673 which sought specifically to forbid the procurement of children to engage in the production of pornography. Other suggestions for reform have been much more broadly worded.

In 1977, Bill C-206, a Private Member's bill sponsored by Mr. Epp, proposed that it be an offence to procure a child to engage in or to assist any person to engage in a sexually explicit act, or to procure, to be party to, or

knowingly receive the avails of the defilement, seduction or prostitution of a child. "Child" was defined as a person who is or appears to be under the age of 16 years. A "sexually explicit act" was defined as any act of masturbation, sado-masochism, or anal, oral, or vaginal intercourse, whether alone or with or upon another person, animal, dead body or inanimate object, and was said to include an attempted or simulated act.

This proposal to amend the present section 166 of the *Criminal Code* was aimed at every person, rather than just parents or guardians as the present section 166 is. It also would have protected young males as well as young females. These two features have characterized every attempt at legislative reform of this section since this bill.

The Standing Committee on Justice and Legal Affairs proposed in its 1978 report that section 166 of the *Code* be amended. The offence recommended by the Committee was identical to that in Mr. Epp's bill, with the exception of the Committee's definition of "sexually explicit act". The Committee proposed that the term encompass any act or simulated act of masturbation, sexual intercourse, gross indecency, buggery or bestiality, or the display of one's body in a sexually suggestive manner. The Committee proposed a slightly more restrictive definition of a "child", namely a person who is under the age of 16 years. Omitted from the definition was a person who appears to be under the age of 16.[57]

It is clear from the Committee's report that it considered that this reform of section 166 would reach the conduct of those who procure children to participate in the production of sexually explicit materials, as well as of those who procure children to engage in prostitution.[58] Mr. Whiteway introduced Private Member's Bill C-434 into the 1977-78 Session in order to implement this recommendation of the Standing Committee, but the bill was not passed.

Two government bills introduced after the Report of the Standing Committee also addressed the issue of procuring children.

Bill C-21, which received first reading on November 21, 1978, would have created two separate offences. The first involved the parent or guardian who procures a person to have illicit sexual intercourse with a person other than the procurer, or who orders, is a party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of that person. Where the young person is under the age of 16 years, the offence was subject to a higher penalty than was the case when the young person was 16 years, but not more than 21 years.

The second offence was with respect to a person, not a parent or guardian, who procures a person under the age of 16 years. That offence carried a penalty similar to that imposed on a parent procuring a child under 16. In respect of both these offences, the bill provided that it is not material that an accused believed that the person in relation to whom the offence was committed was 16 years of age or more.

Bill C-53, which received first reading on January 12, 1981, made it an offence for the parent or guardian or person having the lawful care or charge of a person, or exercising authority over a person under 16 years of age, to engage in sexual misconduct with that person, or procure or knowingly permit sexual misconduct by that person. Similarly, it was made an offence for the owner, occupier or manager of the premises, knowingly to permit the premises to be used for the purposes of sexual misconduct involving a person under the age of 16.

The bill created offences involving third parties who were neither parents nor the managers of premises. A person who engaged in sexual misconduct with a person under the age of 14, or procured sexual misconduct by such a person, was guilty of an offence. Defences to this charge included the fact that the accused was under 14, or less than 3 years older than the complainant, but did not include the alleged consent of the victim, or a mistaken belief about the age of the victim. A comparable offence was created in respect of a person 14 years of age or more but under 16. Defences included the fact that the accused was under 16, or less than 3 years older than the victim, a mistaken belief about the age of the complainant, and the fact that the accused was less responsible than the victim for the sexual misconduct which took place. The bill did not provide a definition of "sexual misconduct".

In addition to these attempts to deal with procuring of a child, there has been one effort to address the issue of solicitation of a child by an adult. Bill C-360, introduced by Mr. Kaplan in 1974, would have added to the *Code* a new offence of inviting a person 14 years of age or under to engage in a sexual act.

This Committee's recommendations with respect to procuring are discussed below. Before proceeding to elaborate upon them, we will examine the activity at the international level, and in certain other jurisdictions, with respect to pornography and prostitution involving children.

Footnotes

[1] *Canada Post Corporation Act*, S.C. 1980-81-82-83, c.54.

[2] *R. v. Popert* (1981), 58 C.C.C. (2d) 505 (Ont. C.A.).

[3] *R. v. McDougall's Drug Store* (1982), 109 A.P.R. 463 (N.S. Co. Ct.) and *R. v. Cinema International* (1981), 13 M.R. (2d) 337 (Man. C.A.)

[4] *R. v. Penthouse* (1979), 96 D.L.R. (3d) 735 (Ont. C.A.).

[5] (1982), 69 C.C.C. (2d) 503 (Ont. C.A.).

[6] *R. v. Rioux* [1970], 3 C.C.C. 149, at p.169 (S.C.C.).

[7] *R. v. Harrison* (1973), 12 C.C.C. 26 (Alta. Prov. Ct.).

[8] *Customs Tariff Act*, R.S.C. 1970, c. C-41, s.14 and Schedule C.

[9] *U. of Manitoba v. Deputy Minister of Revenue for Customs and Excise* (1983), 24 Man. R. (2d) 198 (Man. Co. Ct.).

[10] (1981), 61 C.C.C. (2d) 287 (Ont. Co. Ct.).

[11] *Criminal Code*, s.151.

[12] *Ibid.*, s.153.

[13] *Ibid.*, s.155.

[14] *Ibid.*, s.157.

[15] *Ibid.*, s.166.

[16] *Ibid.*, s.167.

[17] *Ibid.*, s.23.

[18] *Ibid.*, s.22.

[19] *Ibid.*, s.423(1).

[20] *Ibid.*, s.423(2).

[21] *Juvenile Delinquents Act*, R.S.C. 1970, c.J-3.

[22] Section 33 of the *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3 made it a summary conviction offence knowingly or wilfully to aid, cause, abet, or connive at the commission by a child of a delinquency, or to do any act producing, promoting or contributing to a child's being or becoming a juvenile delinquent or likely to make a child a juvenile delinquent. Subsection 2(1) defined juvenile delinquent as any child who violates any provision of the *Criminal Code* or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice.

[23] *Child Welfare Act*, R.S.A. 1980, c. C-8.

[24] Badgley Report, Vol.1 at 548.

[25] R.S.A. 1980, c. C-8, s.40.

[26] Badgley Report, Vol. 1 at 549.

[27] The bills and their proposers were Bill C-207, 30th Parl., 3rd Sess., 1977 (Mr. McGrath); Bill C-239, 30th Parl., 3rd Sess., 1977 (Mr. Whiteway); Bill C-241, 30th Parl., 3rd Sess., 1977 (Mr. Dinsdale); Bill C-318, 30th Parl., 3rd Sess., 1977 (Mr. Epp); Bill C-325, 30th Parl., 3rd Sess., 1977 (Mrs. Appolloni); Bill C-348, 30th Parl., 3rd Sess., 1977 (Mr. Friesen), Bill C-399, 30th Parl., 3rd Sess., 1977 (Mrs. Appolloni); Bill C-400, 30th Parl., 3rd Sess., 1977 (Mr. Reid); Bill C-402, 30th Parl., 3rd Sess., 1977 (Mr. Lawrence).

[28] Bill C-206; 30th Parl., 3rd Sess., 1977 (Mr. Epp).

[29] House of Commons Standing Committee on Justice and Legal Affairs, Third Report, *Pornography*, (1978) Proceedings No. 18 at 18:4.

[30] House of Commons Standing Committee on Justice and Legal Affairs, Third Report, *Pornography*, (1978) Recommendation 4, at 18:8.

[31] Bill C-21, First reading November 21, 1978, s. 18.

[32] The bill provided for a new subsection 159(10), stipulating that "where an accused is tried for an offence under this section, no opinion evidence is admissible with respect to community standards in order to prove that any matter or thing is or is not obscene, any law or practice to the contrary notwithstanding."

[33] House of Commons Standing Committee on Justice and Legal Affairs, Third Report, *Pornography*, (1978) Recommendation 8, at 18:10.

[34] *Martin's Criminal Code*, 1984, at 867.

[35] *Young Offenders Act*, S.C. 1980-81-82, c.110, s.2(1).

[36] *Ibid.*, s.72.

[37] *Criminal Code*, s.453(1)(e).

[38] *Ibid.*, s.453(1)(f).

[39] *Ibid.*, s.453(1)(g).

[40] *Young Offenders Act*, S.C. 1980-81-82, c.110, s.9(10)(b).

[41] R.S.C. 1970, c. J-3, s.10(1).

[42] *R. v. P.* (1979), 48 C.C.C. (2d) 390 (Ont. Prov. Ct.).

[43] *R. v. Wowk* (1981), 61 C.C.C. (2d) 394 (Man. Prov. Ct.).

[44] *Young Offenders Act*, S.C. 1980-81-82, c.110, s.9(9).

[45] *Criminal Code*, s.146(1).

[46] *Ibid.*, s.140.

[47] *Ibid.*, s.146(2).

[48] *Ibid.*, s.155.

[49] *Ibid.*, s.157.

[50] *Ibid.*, s.158.

[51] *R. v. Dudak* (1978), 41 C.C.C. (2d) 31 (B.C.C.A.).

[52] *R. v. DiPaola; R. v. Palactics* (1978), 43 C.C.C. (2d) 199 (Ont. C.A.).

[53] S.N.B. 1980, c. 2.1, s.31(1)(e).

[54] *Ibid.*, s.58(1).

[55] *Ibid.*, s.58(6).

[56] S.Q. 1977, c.20, s.54(6) and s.60, respectively.

[57] House of Commons Standing Committee on Justice and Legal Affairs, *Pornography*, (1978) Proceedings 18, Recommendation 7, at 18:9-10.

[58] *Ibid.*, at 18:9.

Chapter 44

International Obligations and Instruments

1. Pornography

The United Nations adopted the Agreement for the Suppression of the Circulation of Obscene Publications in 1910. In 1949, this Agreement was brought under the umbrella of the United Nations. The 1910 Agreement created duties on member states to centralize information in order to facilitate the tracing and suppression of actions of an international character which constitute infringement of states' domestic laws on obscene writings, drawings, pictures or articles. They are also to supply information on the importation of such publications or articles and to ensure or expedite their seizure. There is no definition in the Agreement of the term "obscene".[1]

A second agreement signed in 1923, and amended in 1947, is the *International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications*. This Convention is concerned with the discovery, prosecution, and punishment by member states of those involved in a wide range of offences. All of these offences relate to "obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, films or other obscene objects", but neither does this Convention define the term obscene.[2]

Canada is a member of the Universal Postal Union, whose goals are to ensure the freedom of transit of mail throughout its territory; to secure the organization and improvement of postal services, and to provide technical assistance to member states. The *Universal Postal Convention* lays down detailed regulations as to how these goals will be attained. Article 33.2 of the Convention lists various articles prohibited for insertion into letter post items. "Obscene or immoral" articles are included as subsection (e) of the Article, and Article 33.4 provides that these "shall in no circumstances be forwarded to this destination, delivered to the addressees or returned to origin." Article 34 of the Convention authorizes postal administrations of the countries of origin and destination to submit to Customs control, according to the legislation of those countries, letter post items and, if necessary, officially to open them.[3]

Canada is also a member of the International Telecommunications Union. The first *International Telecommunications Convention*, signed in Madrid in

1932, set up the Union. It provided that the signing governments reserve the right to stop the transmission of any private telegram or radiotelegram which might appear dangerous to the safety of the state or contrary to the laws of the country, to public order, or to decency. This provision also applied to telephone communications. A second Convention was adopted in Montreux in 1965 and revised in Malaga-Torremolinos in 1973, an overhaul made necessary by the profound change in telecommunications methods and capacities. Whereas the provision for stoppage of telegrams described above was carried over into Article 19.1 of the new Convention, the provision relating to telephones was broadened to cover "telecommunications". Article 19.2 of the new Convention thus provides that members also reserve the right to cut off any private telecommunications which may appear dangerous to the security of the state or contrary to their laws, to public order or to decency.[4]

Canada adheres to these Conventions, so that they do not present the same problems of policy as do those in the area of prostitution. However, they do pose problems of interpretation, because the terms "obscene" and "decency" are not defined. This terminology problem becomes even more troublesome when one considers Resolution 1983/30 of the U.N. Economic and Social Council, passed in response to the Report of M. Jean Fernand-Laurent, Special Rapporteur on *The Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*.

Clause 3(d) of Resolution 1983/30 recommends that member states draw up legislation and policies aimed at curbing the "pornography industry and the trade in pornography and penalizing them very severely when minors are involved". Interestingly, this is the first reference relating specifically to minors which can be found in the international instruments in this field. Unfortunately, there is no definition of "pornography" in this resolution. Turning to the Report of the Special Rapporteur, we find the following description of "pornography" involving children, in paragraph 30:

> In some industrialized countries, child prostitution has recently been organized to benefit the pornography industry, which produces photo albums, films and video cassettes. Children are photographed or filmed in indecent positions, and these pictures are sold for high prices through a clandestine network of persons interested in such things. This trade may be national or international.[5]

In discussing the role of UNESCO in combatting prostitution, the Special Rapporteur calls upon the General Conference of that body to invite member states:

> ...to recognize the necessary distinction between the erotic and the obscene, and to declare war on pornography at least, which is most likely to defile the female body and which, by separating sexual relations from affective relations, puts them at a less then human level.[6]

This commentary, while it assists the reader to understand the Special Rapporteur's position, really does little to clarify the problems of terminology in Resolution 1983/30.

U.N. General Assembly Resolution 38/107, passed in response to the Report of the Special Rapporteur, does not address the issue of pornography.

The 1959 *Declaration of the Rights of the Child* does contain a principle which has relevance to the issue of children and pornography. Principle 9 provides that the child shall be protected from all forms of exploitation, and shall not be the subject of traffic, in any form. The Principle also stipulates that the child shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Once again, as in the case of prostitution, it would appear that Canada is missing a chance to assume a leadership role in international circles by not adopting the Universal Declaration.

2. Prostitution

Canada has signed and is a party to a number of international Conventions relating to aspects of prostitution (see Part III, Section II, Chapter 33). Here, however, it will be useful to focus on the provisions relating particularly to children and young persons.[7]

Canada is a party to the first international agreement on prostitution, signed in 1904. The *Agreement for the Suppression of the White Slave Traffic* was mainly concerned with the procuring of women or girls for immoral purposes abroad. It sets up a series of arrangements whereby governments will increase their surveillance at railway stations, ports and en route; arrange for the repatriation of prostitutes, and take a number of other measures aimed at curbing the international traffic.[8]

Canada is also a party to the *International Convention on the Suppression of the White Slave Traffic, 1910*, and the *International Convention for the Suppression of the Traffic in Women and Children, 1921*. The 1910 Convention states that whoever procured, enticed or led away, even with her consent, a woman or girl under age for immoral purposes shall be punished. The 1921 Convention established that the age limit for the purposes of the 1910 Convention would be 21 completed years. It also established that the protection of the 1904 Agreement and 1910 Convention would be extended to children of both sexes. Canada is also a party to the *Protocol to amend the Convention for the Suppression of the Traffic in Women and Children* of 1921, signed in 1947, transferring the powers in the Convention to the Secretary-General and participating countries of the United Nations.[9]

None of these Conventions actually addresses prostitution *per se*. Rather, they concentrate on "trafficking" in women and children. The first, and indeed only, U.N. Convention to deal with prostitution itself in a comprehensive way, is the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*. Adopted by the General Assembly in 1949, it came into effect on July 25, 1951. The preamble states that

> ...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community...[10]

Of significance in this Convention is the adoption of the word "person" rather than "women". It is recognized here, for the first time, that prostitution is not restricted to women, but applies to all persons, even though its practice and exploitation particularly afflict women. Importantly, the use of the word "person" includes children as well as adults. Articles 1 and 2 provide that the parties to the Convention agree to punish any person who, to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; or exploits the prostitution of another person, even with the consent of that person. Further, the parties to the Convention agree to punish any person who keeps or manages, or knowingly finances or takes part in the financing of a brothel; or knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.[11]

In these two articles and in articles 6 and 16, the signing parties agree to restrict repressive measures to those who "exploit the prostitution of others" (i.e., pimps and other procurers). While the Convention considers prostitution to be an evil, Article 6 recognizes that those who prostitute themselves should not be subject to special registration or to any exceptional requirements for supervision or notification. Furthermore, in Article 16 signatory states agree to take or to encourage, through their public or private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution.

No other Convention on prostitution has been developed by the international community since this one. Canada has not ratified the 1951 Convention.[12] Nor has Canada adopted the 1959 *Declaration of the Rights of the Child*.[13]

The Mexico World Conference of the International Women's Year in 1975 was the first of several U.N. forums that urged governments to adopt the 1951 Convention. As already noted, the U.N. Commission on the Status of Women persuaded, in 1982, the U.N. Secretary General to appoint a Special Rapporteur, M. Jean Fernand-Laurent, to examine the issues of suppression of traffic in persons and the exploitation of the prostitution of others. His report, submitted in March of 1983, focused on a number of issues of special relevance to the prostitution of young persons.[14]

In Chapter 1, the Special Rapporteur recites his findings concerning prostitution. In describing the activities of procurers, he points out that when it comes to the prostitution of children, it can be an older child who runs the business.[15] The Report discusses the various means that are used to recruit young people into prostitution. It should be noted that the Rapporteur was

looking at the global scene when formulating these observations. However, the following remarks may be instructive for Canadians:

> There is no doubt that in the slum belts of certain large cities, children sometimes have no other choice in order to survive but to pick through garbage, beg, steal or become prostitutes. But adults - paedophiles or procurers - often take the initiative by offering money or gifts. In depressed rural areas, where the helpless peasant families are heavily in debt to a usurer, the children are sometimes bought or rented by a procurer from their parents, who may or may not be aware of their ultimate fate. If the child is an orphan, an abandoned child, a runaway or temporarily separated from his parents by some catastrophe, he is especially vulnerable and can simply be kidnapped. Paedophile tourists may be involved.[16]

The Report describes the phenomenon of the package "sex tour" in which the services of a prostitute are included in the price paid for the ticket; such phenomena are said to encourage the prostitution of young children, particularly in South-East Asia and Africa.[17]

The Rapporteur makes a number of recommendations for national governments and international organizations. The Report takes the position that a realistic goal is to combat procuring now and in the short term, while aiming in the long term at reducing actual prostitution.[18]

On the subject of child prostitution, the Report calls for dissemination of information and sensitization of public opinion as the most effective means of in-depth action. In particular, it recommends publicizing findings of physicians and medical associations on the lasting dangers to children's minds and bodies caused by sexual acts imposed on them by adults, and on the social cost of such traumas. The Report recommends that parents be informed of the risks associated with sexual abuse of youngsters, and that there be an increase in the number of teachers in what it calls "open environments" - youth clubs, sport clubs, and health clubs.[19]

M. Fernand-Laurent points out, however, that the campaign against prostitution and its physical and mental consequences, particularly among boys and girls, should not be restricted to the medical approach. It is also necessary to develop rehabilitative programs.[20] In this connection, particularly, he mentions the program of studies on "street children and street youth" sponsored by the International Catholic Child Bureau, begun in 1982, which should culminate in a publication proposing a program and methods for preventive action.[21]

The report highlights the position taken by the Secretariat of UNESCO that prostitution in general and the exploitation involved, are revealing of the image of women in the collective thinking of society. Accordingly, UNESCO is focusing attention on moral education, in order to arm children against manipulation of their minds by the media. Pointing out that "stereotypes that debase women and present them as being destined for physical pleasure of men are projected by magazines, advertising and the various cultural industries" the

special Rapporteur cites the declaration of UNESCO's medium-term plan[22] that:

> It might henceforth be one of the essential functions of educational institutions to help young people to bring their critical faculty to bear in selecting and sorting the messages spread abroad by the communication media.[23]

On the legislative level, the Report calls for stiffer penalties for procuring. Specifically with regard to children, it urges that the exploitation of child prostitution should carry sanctions at least as severe as those applied to the crime of sexual abuse of a minor.

Following the presentation to it of the Special Report, the Economic and Social Council passed Resolution 1983/30, again inviting U.N. member states to ratify and implement the *1951 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.*[24] The Resolution also recommended that states draw up legislation and policies in keeping with the report of the Special Rapporteur. Among those recommended were several with particular relevance to child prostitution. The Resolution recommended that states punish all forms of procuring in such a way as to deter it, particularly when it exploits minors, and that they aim at preventing prostitution through moral education and civics training in and out of school. In keeping with the emphasis of the 1951 Convention, and the report of the Special Rapporteur, Resolution 1983/30 recommended that states eliminate discrimination that ostracizes prostitutes and makes their reabsorption into society more difficult, and that states facilitate occupational training and reintegration into society of persons leaving prostitution.

The U.N. General Assembly referred to Resolution 1983/30 of the Economic and Social Council when it, in turn, passed a Resolution dealing with the prevention of prostitution. Resolution 38/107 of the General Assembly recites that:

> ...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the state ... and that women and children are still all too often victims of physical abuse and sexual exploitation.[25]

It urges member states to take all appropriate humane measures, including legislation, to combat prostitution, exploitation of the prostitution of others and all forms of traffic in persons, and appeals to member states to provide special protection directed towards rehabilitating victims of prostitution through measures including education, social guarantees and employment opportunities.

Canada, along with 24 other countries, abstained from voting on this Resolution. It seems that Canada's abstention was, in part, related to its view that the resolution dealt only with women and in part, because of concern over the issue of child prostitution.[26] While we find these reasons somewhat

perplexing in the light of the text of the Resolution, we nevertheless believe that the thrust of the Resolution coincides very closely with the action that we think is appropriate with respect to children and prostitution.

Although Canada has not signed the 1951 Convention on prostitution, it is a party to the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women,*[27] which provides in Article 6 that state parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

It seems unfortunate that Canada has not ratified the 1959 *Declaration of the Rights of the Child.* It would appear that national legislation does not diverge significantly from the position of this international instrument. Thus, formal adherence to it would not be burdensome for Canada, and would, moreover, permit Canada to take a stronger role in international forums addressing the issue of, for example, child prostitution. The timing for the assumption of a clear leadership role in this area is opportune.

Recommendation 69

Canada should ratify the 1959 Declaration of the Rights of the Child.

Footnotes

[1] House of Commons Standing Committee on Justice and Legal Affairs, *Pornography*, (1978), Proceedings 18, Recommendation 7, at 12.

[2] *Ibid.*, at 12-13.

[3] *Ibid.*, at 13.

[4] *Ibid.*, at 14.

[5] U.N. Economic and Social Council, Report of Fernand-Laurent, para. 30, p. 10 (in Sansfaçon, *op. cit.*, note 7, Appendix 4).

[6] *Ibid.*, para. 95, p. 32.

[7] This account of the international instruments is taken largely from D. Sansfaçon, *United Nations Conventions, Agreements and Resolutions on Prostitution and Pornography* W.P.P.P. #3.

[8] *Ibid.*, at 2 and 9.

[9] *Ibid.*, at 3 and 9.

[10] *Ibid.*, Appendix 1, at 19.

[11] *Ibid.*, at 4.

[12] *Ibid.*, at 4 and 9.

[13] The United Nations General Assembly adopted the Declaration unanimously on November 20, 1959.

[14] U.N. Economic and Social Council, Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others, March 17, 1983, Document E/1983/7. A portion of the Report is included in Sansfaçon, *op. cit.*, Appendix 4.

[15] Sansfaçon, *op. cit.*, Appendix 4 para. 19 at 7.

[16] *Ibid.*, Appendix 4, para. 29, at 9.

[17] *Ibid.*, Appendix 4, paras. 30 and 31, p. 10.

[18] *Ibid.*, Appendix 4, para. 63, p. 18.

[19] *Ibid.*, Appendix 4, para. 68.

[20] U.N. Economic and Social Council, Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the Suppression of the traffic in persons and the exploitation of the prostitution of others, March 17, 1983, Document E/1983/7 para. 68 at 32.

[21] *Ibid.*, para. 102, at 35-36.

[22] 1984-89; adopted in November, 1982. U.N. Economic and Social Council, Report of Fernand-Laurent, para. 95, at 31 and fn 42.

[23] *Ibid.*

[24] The text will be found in Sansfaçon, *op. cit.*, Appendix 3 at 37.

[25] U.N. General Assembly, Thirty-eighth session, Resolution Adopted by the General Assembly: 38/107 Prevention of Prostitution, Document A/RES/38/107, February 3, 1984.

[26] Sansfaçon, *op. cit.* at 11.

[27] *Ibid.*, Appendix 2, at 27.

Chapter 45

Other Countries

The experience of other countries in the regulation and control of pornography and prostitution is discussed at length elsewhere in this Report. Here, we present for comparative purposes, the experience of the United States and the United Kingdom, in addressing these issues as they relate to children.

1. Pornography

1.1 United States

The *Child Protection Act*, Chapter 110 of Title 18 of the *United States Code*, is a federal statute dealing with the exploitation of children for pornography which is transported in interstate or foreign commerce, or mailed. Because the individual states possess the constitutional jurisdiction over the criminal law, the U.S. federal government's main initiative against involvement of children in pornography comes in this *Act*. In 1984, the *Act* was amended in the hope of increasing substantially its impact on what the amending *Act* described as "a highly organized multi-million dollar industry which operates on a nationwide scale".[1]

Paragraph 2251(a) of Chapter 110 is directed against any person who:

> employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Paragraph 2251(b) is directed against:

> any parent, legal guardian or person having custody or control of a minor who knowingly permits such minor to engage in or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Because of the constitutional arrangement in the U.S., the offence consists of engaging in this conduct if the person knows or has reason to know that the visual depiction will be transported in interstate or foreign commerce, or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce, or mailed.

On the first conviction, the person engaging in such conduct shall be fined not more than $100,000, or imprisoned not more than 10 years. Any organization committing a violation shall be fined not more than $250,000. The amendments of 1984 added for the first time this criminal liability for the organization; they also increased the fines for individuals from $10,000 to $100,000. The maximum fine for the second or subsequent conviction is $250,000. This fine, too, was increased from $15,000 by the 1984 amendments. The jail term for someone with a prior conviction under the section is not less than two nor more than 15 years.

Subject to the same penalties is any one who:

1) knowingly transports or ships in interstate or foreign commerce or mails any visual depiction, if:

(A) the producing of such visual depiction involves the use of a minor engaged in sexually explicit conduct; and

(B) such visual depiction is of such conduct; or

2) knowingly receives, or distributes, any visual depiction that has been transported or shipped in interstate or foreign commerce or mailed, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails if:

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

A "minor" is any person under the age of 18 years, raised from 16 by the 1984 amendments. "Sexually explicit conduct" is defined as real or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex), bestiality, masturbation, sadistic or masochistic abuse or the lascivious exhibition of the genitals or pubic areas of any person.

Added to chapter 110 by the 1984 amendments was a new section 2253 providing that any person convicted of any offence under sections 2251 or 2252, shall forfeit to the government the person's interest in any property constituting or derived from the gross profits or other proceeds obtained from the offence, and any property used, or intended to be used, to commit the offence. This provision for "criminal forfeiture", is matched by a provision for "civil forfeiture" in section 2254 of Chapter 110, also enacted by the 1984 amendments. The "civil forfeiture" section provides that the following kinds of material are liable to forfeiture: firstly, any material used, or intended for use, in producing, reproducing, transporting, shipping or receiving any visual depiction in violation of the chapter; secondly, any visual depiction produced, transported, shipped or received in violation of chapter 110, and thirdly, any property constituting or derived from gross profits or other proceeds obtained from a violation of the chapter.

In two decisions of the United States Supreme Court, important findings are made concerning the right of the state to deal with pornography and children.

At issue in *Federal Communications Commission* v. *Pacifica Foundation*[2] was the constitutional validity of an F.C.C. ruling that it was wrongful to broadcast over the radio, during the afternoon period, the George Carlin monologue "Dirty Words". The Commission cited four reasons why it believed broadcast messages deserved special treatment. One was that children have access to radios and in many cases are unsupervised by parents while listening to them. The Commission said this reason was "of special concern" to it and to parents.

The Commission placed a warning letter in the file of Pacifica Broadcasting as a result of the Carlin incident, and the Supreme Court held that this decision did not violate Pacifica's First Amendment rights. An essential element in the Court's holding was the proposition of American constitutional law that, of all forms of communication, it is broadcasting which has received the most limited First Amendment protection. One of the reasons for such limited protection, cited by Mr. Justice Stevens for the Court, was that broadcasting is uniquely accessible to children, even those too young to read.[3] The ease with which children may obtain access to broadcast material, coupled with the government's interest in the well-being of its youth and in supporting parents' claim to authority in their own household, were said by the Court amply to justify special treatment of indecent broadcasting.[4]

As mentioned previously, the states have jurisdiction over criminal law in the United States Constitution. A significant case dealing with the reach of permissible state action vis-a-vis children and pornography was *New York* v. *Ferber*.[5] In that case, the Supreme Court held that "the States are entitled to greater leeway in the regulation of pornographic depictions of children"[6] for five reasons. Firstly, the state's interest in protecting children from sexual abuse and exploitation is of surpassing importance. Secondly, the distribution of pornographic films depicting children is intrinsically related to the sexual abuse of children, because the materials are a permanent record of the abuse; the harm to the child is increased by their circulation, and because the distribution of such materials provides the impetus for the child abuse involved in producing them. Thirdly, the advertising and selling of pornographic material involving children provides an economic motive for the production of these materials. Fourthly, the value of permitting live performances or representations of children engaged in sexual activity is minimal. And fifthly, classifying child pornography as outside the First Amendment guarantee of freedom of speech is not inconsistent with prior Supreme Court decisions in the area.

In *Ferber*, the Court also addressed the standard to be met when determining whether material portraying children is obscene. It did so with reference to the test enunciated in *Miller* v. *California*,[7] a test which has now been adopted with some modifications in the criminal statutes of 43 states.[8] The Supreme Court declared in *Miller* that the basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently

offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[9]

In *Ferber*, the Supreme Court noted that where pornography involving portrayals of children is under review, the *Miller* formulation is adjusted in the following respects:

> A trier of fact need not find that the material appeals to the prurient interest of the average person; it is not required that sexual conduct portrayed be done so in a patently offensive manner; and the material at issue need not be considered as a whole.[10]

However, the type of works to be prohibited by the statute must be adequately defined, as must the type of "sexual conduct" proscribed.

At issue in *Ferber* was the New York statute on sexual performance by a child,[11] first enacted in 1977. One provision of Article 263 criminalizes the use of a child less than 16 years of age in a sexual performance. A person is guilty of the offence if, knowing the character and content of the performance, he employs, authorizes or induces the child to engage in it, or being a parent, legal guardian or custodian of the child, consents to his or her participation. At issue in the *Ferber* case was a second provision of Article 263, providing that a person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child under 16.

The definition of "promote" was very broad, including procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, and a number of other activities. The definition of "sexual performance" was so wide as to include much material which would not have been regarded as obscene under the *Miller* test. It included actual or simulated sexual intercourse, deviant sexual intercourse, bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

This decision was the first in which the Court examined a statute directed to depictions of sexual activity involving children. Its significance can be appreciated when one considers that at the time *Ferber* was heard, the Court observed that 20 states had prohibited the distribution of material depicting children engaged in sexual conduct, regardless of whether the material was obscene.

It is beyond the scope of this study to document the state laws in the various United States jurisdictions dealing with child pornography and dissemination of pornography to minors. The diversity of laws from state to state, and even within the various states makes such an undertaking difficult. What is striking to the observer of American law and policy in this area, is the wide discrepancy between what is alleged to be the problem in the area of child pornography, and what appear to be the inroads made in solving it.

Section 2 of the *Child Protection Act* of 1984[12] recites the Congressional finding that "child pornography has developed into a highly organized, multi-million dollar industry which operates on a nation wide scale" and "thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials." By contrast, this Committee learned that in the fiscal 1978-79, the U.S. Department of Justice obtained the convictions of 24 defendants on obscenity charges, 13 of whom were distributors of child pornography. In 1979-80, 8 of the 20 defendants successfully prosecuted by the Department were distributors of child pornography, and in 1980-81, half of the 18 convicted defendants were convicted on charges involving child pornography.[13] These statistics, of course, cannot reveal the whole pattern of enforcement activity. What seems significant, however, is that while child pornography convictions represent about half of the total number of convictions, the total number of convictions is strikingly small.

1.2 United Kingdom

The general outlines of the laws of the United Kingdom relating to pornography have been given elsewhere in our Report (see Part II, Section III, Chapter 17). Here we examine certain features of that law which have particular reference to young persons.

The *Children and Young Persons (Harmful Publications) Act, 1955*,[14] was a reaction to the entry into Britain, especially in 1954, of a new wave of horror comics produced in the United States. The *Act* applies to any book, magazine or other similar work which is of a kind likely to fall into the hands of children or young persons, and which consists wholly or mainly of stories told in pictures, with or without the addition of written matter, portraying the commission of crimes, acts of violence or cruelty, or incidents of a repulsive or horrible nature, in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.

The *Act* provides that a person who prints, publishes, sells, lets on hire or possesses, for any of these purposes, a work to which the *Act* applies, shall be guilty of a summary conviction offence. The penalty is imprisonment for up to four months, or a fine not exceeding '100, or both. The *Act* provides that a Justice of the Peace may issue a warrant authorizing the seizure of offending publications from the premises of one charged with an offence, and it further provides for the forfeiture of copies of the work, and any plate or film prepared for the purpose of making copies of it, which are in the possession of a person convicted under the *Act*. No prosecution may be brought except by, or with the consent of, the Attorney General. Although the *Act* provided that it was to have expired at the end of December, 1965, it was renewed by the *Expiring Laws Act* of 1969 and remains in force today.

The *Protection of Children Act, 1978*,[15] was passed to prevent children being involved in the production of pornography. The *Act* provides that it is an offence for a person to take, or permit to be taken, any indecent photograph of

a child, to distribute or show such indecent photographs, to have in his possession such indecent photographs with a view to their being distributed or shown to himself or others, or to publish, or cause to be published, any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or intends to. "Child" means a person under the age of 16, and the *Act* makes it clear that distribution need not be for gain. A person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person. Prosecution under the *Act* may be by way of indictment or by way of summary proceedings. If convicted on indictment, a person is liable to imprisonment for not more than three years, to a fine or to both. A person convicted summarily shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding £1,000 or to both.

A Justice of the Peace may authorize seizure of articles which are, or are believed with reasonable cause to be, or include indecent photographs of children taken or shown on the premises, or kept there with a view to their being distributed or shown. The occupier of the premises must then show cause why the articles should not be forfeit.

In July, 1977, the Committee on Obscenity and Film Censorship, under the Chairmanship of Bernard Williams, was appointed by the Home Secretary to review the laws concerning obscenity, indecency and violence in publications, displays and entertainments and the arrangements for censorship in England and Wales. Excluded from the Committee's mandate was the field of broadcasting because the Annan Committee review of the whole field of broadcasting had been completed only the preceding February.

The *Protection of Children Act, 1978*, discussed above, was enacted by Parliament while the Williams Committee was sitting. It was introduced as a Private Member's bill and approved by Parliament, though with substantial amendments made by the government, to meet a public demand for action to prevent the use of children in pornography.[16]

The Williams Committee devoted very little of its report to a specific consideration of pornography and children. Although it had been set up at least, in part, as a response to public concern about an increasing use of children in pornography, it observed that no evidence was put before it that child pornography was a growing problem.[17] It observed that the new *Protection of Children Act, 1978* had been used in "only a very few cases" between the time of its passage and the publication of the Committee's report.[18]

The Committee records a certain caution about how susceptible children might be to the influence of pornography; its caution is predicated on the absence of experimental evidence, because for obvious reasons, children are not used in such experiments. Moreover, the Committee states that it heard no evidence of actual harm being caused to children.[19]

The Committee observed that it was clear from its discussions with witnesses that no very definite answer could be given about the age at which special protection of children is no longer necessary. It recorded that some witnesses declined to offer any view at all as to the age at which special protection should cease. The choice of others tended to hover between the ages of 16 and 18. The main determinant of the various views was the witness's idea about when individual sexual maturation might take place, so as to enable a young person to cope with exposure to pornography.[20]

The Committee is much more definite when it deals with the issue of the use of children to make pornography. Its report states:

> Few people would be prepared to take the risk where children are concerned and just as the law recognizes that children should be protected against sexual behaviour which they are too young to properly consent to, it is almost universally agreed that this should apply to participation in pornography.[21]

The Committee observes that participation in pornography will often involve the commission of offences like indecent assault, but recommends strongly that the problem of children's participation in pornography should not be left to the law of sexual offences. It observes:

> ...there are strong arguments that the prevention of this harm also requires the power to suppress the pornographic product as well as the original act, so as not to provide the incentive to pornographers to flout the sexual offence law, or to deal without inhibition in products which are imported from other legal jurisdictions.[22]

The Committee urges against a parochial approach to the prevention of harm to children, arguing "if English law is to protect children against offences in this country, it is hypocritical to permit the trade in photographs and films of the same activity taken overseas."[23]

The Williams Committee proposed an entirely new and comprehensive approach to the control of offensive material. The principles on which the scheme was structured were well defined. Firstly, the Committee argued that the law should rest partly on the basis of harms caused by, or involved in the existence of, the material. Only these harms could justify prohibitions. The law should also rest partly on the public's legitimate interest in not being offended by the display and availability of material. This interest, in the Committee's view, would justify restrictions designed to protect the ordinary citizen from unreasonable offence.[24] The Committee believed that the principal object of the law should be to prevent certain kinds of material causing offence to reasonable people or being made available to young people.

The Committee divided material into two classes, that subject to restrictions and that subject to prohibitions. Prohibited material includes photographs and films whose production appears to the court to have involved the exploitation for sexual purposes, of a person appearing from the evidence as a whole, to have been at the relevant time under the age of 16. The law should explicitly state that consent by a person under 16 is not a defence.[25] The

Committee recommended that it should be an offence to take any prohibited photograph or film, to distribute or show it, to have it with a view to its being distributed or shown, or to advertise it as being available for distribution or showing.[26] The offence would carry a maximum term of three years' imprisonment and an unlimited fine.

The Committee recommended[27] that the police have power to obtain a warrant for the seizure of material they believe to be prohibited, which is being kept in circumstances in which the police believe an offence is being committed. The court convicting a person of an offence involving prohibited material, should order that any material seized, which is in their view prohibited material, should be forfeited. However, the Committee recommended that there not be any procedure aimed at the forfeiture of prohibited material, separate from the criminal proceedings.

Prohibited material was to be prohibited from circulation in the post, and should be included in the list of goods prohibited from importation.

The Committee also considered that live performances, which involve the sexual exploitation of any person under the age of 16, should be prohibited. They recommend that it should be an offence to present, organize or take part in a performance which contravenes the prohibition. Although they do not specifically provide this exemption, it seems clear from the tenor of their remarks on this subject that the Committee would not be in favour of prosecuting the child participant himself or herself. The Committee does recommend, by way of exception, that the law should not be so framed as to apply to what is performed in a private house, so long as no person under 18 is present and no admission charge is made.

The Committee recommends that no prohibitions or restrictions should apply to the printed word. It proposes that restrictions should apply to matter other than the written word, and to a performance, whose unrestricted availability is offensive to reasonable people by reason of the manner in which it portrays, deals with or relates to violence, cruelty or horror, or sexual, faecal or urinary functions or genital organs.

Restriction is to consist in a ban on the display, sale, or hire of restricted material and on the presentation of restricted performances, other than in premises to which persons under the age of 18 are not admitted; to which access is possible only by posting a prominent warning notice in specified terms, and which make no display visible to persons not passing beyond the notice.

The Committee proposes that it be an offence to display, sell, or hire any restricted matter or to present a restricted performance in contravention of the restrictions laid down. Moreover, it would be an offence to send or deliver restricted material or advertisements for such material to a person who the sender knew, or ought reasonably to have known, was under the age of 18.

Interestingly, however, the Committee specifically provides that it should not be an offence for a person under the age of 18 to seek to gain entry to premises in which restricted material is being displayed, sold, or hired, or in which a restricted performance is being presented, or to order restricted material to be sent to him or her.

The Committee's proposals with respect to restricted material do not apply to films, because a separate film censorship regime is proposed. A Statutory Film Examining Board would take over the censorship powers of local authorities and the functions exercised by the British Board of Film Censors. The Board's examiners should allocate films to one of the following six categories: suitable for all ages; children under the age of 11 should be accompanied by a responsible adult; no person under the age of 16 to be admitted; no person under the age of 18 to be admitted; and for restricted exhibition (also forbidden to those under 18). A film would be refused a certificate altogether if it is unfit for public exhibition because it contains material prohibited by law, or is unacceptable because of the manner in which it depicts violence or sexual activity or crime, notwithstanding the importance of allowing the development of artistic expression and of not suppressing truth or reality.

The Committee recommends that in determining whether films are suitable to be shown to those under 18, the Board should take account of the protection of children and young persons from influences which may be disturbing or harmful to them, or from material whose unrestricted availability to them would be unacceptable to responsible parents. It would be an offence, punishable by fines of up to £1,000, to show an unclassified film or to show a film in a manner not in compliance with its classification. The Committee recommends, however, that it should not be an offence for a person under the age of 18 to seek to gain entry to a film designated as unsuitable for persons of that age.

The Williams Committee Report was delivered to the British government in November, 1979. The government largely ignored its recommendations, with the first legislative activity in relation to pornography coming in 1981, as a result of a Private Member's bill. The *Indecent Displays Control Act, 1981*,[28] provides that if any indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made, shall be guilty of an offence. A display in a place for which the public must pay an admission fee, or in a shop to which access can be had only after passing by a warning sign, are not caught by the *Act*, provided that persons under the age of 18 years are not permitted to enter while the displays are continuing.

The most recent initiative of the British government is the *Video Recordings Act, 1984*.[29] This legislation establishes a classification regime for video works. The only such works exempt from the scheme will be those which, taken as a whole, are designed to inform, educate or instruct; or are concerned with sport, religion or music. Video games are also exempt.

However, even video works in these exempt categories are not exempt if they are works which, "to a significant extent", depict "human sexual activity or acts of force or restraint associated with such activity", "mutilation or torture of, or other acts of gross violence towards, humans or animals", or "human genital organs or human urinary or excretory functions." Video works in the exempt categories which are "designed to any significant extent to stimulate or encourage" human sexual activity, or acts of force or restraint associated with such activity, or are designed to any extent to stimulate or encourage "mutilation or torture of, or other acts of gross violence towards humans or animals", are also caught by the scheme.

The *Act* allows the Secretary of State to designate an authority to classify video works which will be viewed in the home. The *Act* contemplates three separate classifications for such video works. The first category is for works which are suitable for general viewing and unrestricted supply, with or without advice as to the desirability of parental guidance with regard to the viewing of the work by young children or as to the particular suitability of the work for viewing by children. The second category is for works suitable for viewing only by persons who have attained the age (not being more than 18) specified in the classification certificate. The third is suitable for supply only through a licensed sex shop.

The *Act* provides that where a classification certificate states that no recording containing the particular work is to be supplied to a person who has not attained the age specified in the certificate, a person who supplies or offers to supply the work to a person under that age commits an offence. The defence to the charge is to prove that the accused neither knew nor had reasonable grounds to believe that the person concerned had not attained the age.

The regulatory system contemplated by the legislation has not yet been implemented, although the British Board of Film Censors has been designated as the certifying authority.

2. Prostitution

2.1 The United States

Legislation relating to child prostitution exists at both the federal and state level in the United States.[30]

For many years, the sole federal statute was the *Mann Act*, enacted in 1910 by Congress in the midst of the "white slavery scare".[31] Section 2432 of that *Act* made it an offence to transport or finance the transportation of a person under 18 in interstate or foreign commerce for the purpose of engaging in prostitution or "prohibited social contact for commercial purposes." As might be expected with legislation of that vintage, the *Act* referred solely to the exploitation of female minors.

In the late 1970s, after considerable discussion in the media and congressional hearings, the *Protection of Children Against Sexual Exploitation Act* of 1977[32] was passed. The major purpose of the legislation was to extend the protection offered by the *Mann Act* to male minors.

Despite the extension of the federal criminal law protection in this way, doubts exist as to the efficacy of the legislation.[33] While it has been employed effectively in the case of female victims, who are often controlled by pimps who will move them around, it is not effective in the case of young males, who, if they travel across state lines, do so of their own volition. Even in the case of females, however, conviction rates are minimal: 14 in 1980, 16 in 1981, and 8 in the first 9 months of 1982.[34]

A second federal legislative initiative in the field of juvenile prostitution is the *Child Abuse (Prevention and Treatment) and Adoption Reform Act* of 1974, as amended in 1978.[35] The latter amendments were significant because they defined social exploitation as a form of child abuse.

After further amendment in 1977 the statutory definition now reads:

> ...the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby...[36]

Regulations under the *Act*, governing the eligibility of states for funds, define "social exploitation" as "allowing, permitting or encouraging a child to engage in prostitution, as defined by state law, by a person responsible for a child's welfare".[37] These regulations encourage the states to address "social exploitation", including juvenile prostitution.

A perceived weakness with this legislation, and in particular, the definitions under it, is that it focuses upon the involvement of parents and guardians in encouraging prostitution, but omits the influence of pimps for females and that of friends for males.[38] Moreover, in many instances, the decision by the young person to prostitute occurs only after he or she is "on the street". It is recognized, of course, that the legislation does have a vital role to play in allowing detection of child abuse by a parent or guardian, which may if not stopped lead to a drift into prostitution.[39]

A third piece of federal legislation which is relevant is the *Runaway and Homeless Youth Act*[40] which provides for the funding of shelters for runaway youths on a nationwide basis, and in the process, assists young prostitutes of both sexes who are runaways. Several runaway shelters with exemplary records have been funded under this program: especially *Bridge* in Boston, *The Shelter* in Seattle and *Huckleberry House* in San Francisco. The services provided include: attempts at family reunifications; short term residential care; medical screening; employment training; counselling for court referred youths; guidance on housing resources; counselling in self awareness, sociability, social

identity, substance abuse and peer relations.[41] *Huckleberry House*, in particular, has developed a project related to an increase in prostitute clients, as well as those identified as gay or bisexual.[42]

This federal initiative in funding, which has helped to attract further public and private financial support, has both prevented runaways from turning to prostitution, and provided a crucial support system to those already engaged in it. Moreover, the educational and employment training programs have provided a way for young prostitutes to change their lifestyle and eventually, to leave the trade.[43] The level of funding for this program has been a matter of contention between the Reagan administration and Congress, but no appreciable cuts have been made.[44]

The fourth and final piece of federal legislation which bears on juvenile prostitution is the *Missing Children Act*[45] which establishes a national clearinghouse to facilitate identification of missing children, including runaways. As with the previous legislation discussed, the tracing of a child may prevent his or her induction into prostitution. It may also provide a means of finding young practising prostitutes and referring them to social service agencies, which can assist in assimilation back into the community.[46]

The legislation has some drawbacks, however, as far as juvenile prostitutes are concerned. In the first place, it involves a cumbersome and frustrating process for parents.[47] Secondly, it is of little value where, as is often the case with juvenile prostitutes, the runaways have been rejected by their families or have no stable family to worry about them. In these cases, they are all too often not reported as missing.[48] Finally, juveniles in this type of situation often tend to give false identification in order to cover their tracks.[49]

In the wake of the congressional hearings on the sexual exploitation of children in 1977, a proliferation of new or revised legislation on juvenile prostitution, both criminal and civil, emerged in the States. The criminal statutes are designed to punish adults who engage in acts of prostitution with young people, or pimps or procurers who exploit them.[50] The legislative provisions typically contain harsher penalties for those who patronize juvenile prostitutes, and the harshest penalties for pimps and procurers. Penalties are often increased where the exploiter uses force, threats or intimidation. The law also treats harshly those parents or guardians who promote prostitution by their own offspring or children in their custody.

In most state legislation, juveniles are characterized as victims and not penalized, although they may be subject to the penalties under juvenile delinquency statutes. There are also provisions which parallel the *Mann Act*, as amended, and are directed against transporting minors within the state for purposes of prostitution. Legislation diverges over whether a mistake of age is a valid defence, with some states adopting a strict liability approach, and others allowing the defence.

The civil enactments on juvenile prostitution typically relate to child abuse and the reporting of it. However, only a few states include sexual exploitation in their definition of child abuse.[51]

When it comes to enforcement, much of the potential in the wording of these state enactments remains unrealized.[52] Enforcement against pimps is woefully inadequate, despite the fact that the occasional vigorous exception proves that pimps can be neutralized by it.[53] The record of prosecuting customers is no better. As in the case of federal legislation, it is questionable how far it recognizes the differences in the social context between male and female prostitution. The defence of reasonable mistake, where recognized, is a very real impediment to successful prosecution. The civil legislation on the reporting of child abuse suffers from the limited focus on parent and guardian, which has already been discussed with regard to the equivalent federal legislation.

It is clear that a considerable amount of legislative activity in this area has taken place in the United States in the past 10 years. Progress has been made in clearly identifying juvenile prostitution as a serious social problem, and taking steps to combat it. However, with the exception perhaps of the federal legislation on runaways, which has generated some excellent lifetime programs, much of it is too narrow in ambit, or impervious to the social causes and context of prostitution to have a significant impact. It has been suggested by one writer that the States, in particular, need to commit themselves and their resources to identifying the causes of juvenile prostitution and the identification, prevention and treatment of sexual abuse.[54] The suggestion is also made that the parental rejection which causes many youths to run away should draw penalties, and that parental support obligations should be enforced, especially when parents refuse to take back a runaway.[55] Finally, the same writer calls for more inter- and intra-state co-operation on runaways and the provision of state funding for shelters, which are crucial to the welfare of runaways in general, and runaway prostitutes in particular.[56]

2.2 England and Wales

The process of discovering the law and practice in England and Wales on child prostitution requires an analysis of the criminal law, the law relating to juvenile delinquency and the child welfare system. The criminal provisions are stated quite simply in the *Street Offences* and *Sexual Offences Acts*.[57] Juvenile delinquency is the subject of the recent and controversial *Criminal Justice Act* of 1982.[58] Child welfare in general is governed by a system of local authority initiative and care under the aegis of the *Children and Young Persons Acts*.[59]

Assuming that a female child practising prostitution is above the age of criminal responsibility, which in England and Wales is set at 10 years, that person can be charged with soliciting or loitering as a common prostitute under section 1 of the *Street Offences Act*. A male would be subject to prosecution

under the broader offence in section 32 of the *Sexual Offences Act* "to solicit or importune in a public place for immoral purposes".

It is a criminal offence under section 23 of the *Sexual Offences Act* to procure a female under the age of 21 "to have unlawful sexual intercourse in any part of the world with a third person".[60] "Unlawful sexual intercourse" presumably refers both to sexual acts, such as buggery, which are criminal with any person under 21, as well as to any sexual intercourse with a female under 16, with or without her consent (statutory rape).[61] The *Sexual Offences Act* also contains the offences of keeping a brothel and living on the earnings of a prostitute.[62] Neither offence limits its application to adult prostitution activity. Accordingly, the provisions must be taken as applying to juvenile prostitution as well. Moreover a child of over 10 and under 18 years could be charged with any of the "exploitation offences". While somewhat fanciful in the case of the brothel offence, it is not entirely unreal in the case of procuring and living on the earnings, especially in the case of 16 and 17 year olds.

The current system for responding to juvenile delinquency is one which is marked by conflicting philosophies. Until recently, the main philosophy of the system has been "treatment" rather than punishment. This type of regime is embodied in both the 1963 and 1969 *Child and Young Persons Act*.[63] The 1963 Act placed a duty on local authorities to provide services to families to prevent children being brought before a juvenile court.[64] The 1969 *Act* took this one step further by emphasizing that children were only to be brought to court when they could not be helped by other means.[65] For those brought to court, the Act specified, as the major means for dealing with them, a "supervision order" combined with what is called Intermediate Treatment (I.T.). Every area of the country is required to provide I.T. which is designed to provide positive guidance and activities for and stimulate new and beneficial attitudes in the subject of the supervision order.

Juvenile courts date from 1908 in England and Wales and are serviced by Magistrates (typically lay people). They are not open to the public. With some exceptions, they deal with juveniles up to and including the age of 16 years. A supervision order, prescribed by a juvenile court, places the juvenile under the supervision of the local authority, social worker or probation officer for up to three years.[66] Participation in I.T. may only be ordered if a scheme is locally available, and for a maximum period of 90 days during the currency of the supervision order.

An alternative to a supervision order is a care order committing the child to the care of the local authority which, after observation, decides where the juvenile should live and what treatment he or she should receive.[67] The options for care are: home; a foster home; a residential community home; or a secure community home.

For those who are considered in need of somewhat stiffer treatment, other options exist for the juvenile courts. In the case of a child between 10 and 17 who has been convicted of an offence which would be punishable by

imprisonment in the case of an adult (including indecency between men, male soliciting and the exploitation offences), he or she may be ordered to attend, on a part-time basis, an attendance centre (where the emphasis is on physical fitness, citizenship training etc.).[68] Those between 14 and 17, who have committed such offences and are considered to need disciplinary treatment under a brisk, firm regime, can be sent to a custodial detention centre for 3 to 6 months.[69] Currently, these facilities are only available for males. In the case of an offence which is imprisonable for an adult, a juvenile may be fined, the parents usually be liable to pay. Moreover, parents or guardians may be bound over to take good care or exercise proper control of their offspring.

The *Criminal Justice Act* of 1982 reflects a somewhat different philosophy. It embodies the present British Government's view that more juvenile offenders need a "short, sharp shock". It makes it more attractive for magistrates to prescribe time in attendance at detention centres and these centres have been increased in number. Other changes include the extension to those 16 years old of a "community service order", previously confined to those of 17 years or more; and the investing of the courts with the power to specify the program of activities under a supervision order, including a "night restriction" or "curfew" order.[70]

Critics have pointed to the uneasy co-existence of elements of the former "welfare" regime and the new "law and order" philosophy.[71] While it is too early to assess the impact of the more draconian regime, it is clear that attendance at detention centre orders have increased. Based on past experience in which a recidivism rate of two thirds has been noted, the prognosis is said not to be good for these establishments.[72]

A juvenile, including a young prostitute, may of course not fall afoul of the criminal law, and yet may be the subject of the child welfare system.[73] A child of under 17 years of age, who is in need of care, may become the recipient of "voluntary" care by a local authority (voluntary because the parents may request the child's return); or of non-voluntary care, (where the judgment is made by the local authority that the welfare of the child already in care demands it and the parents or guardians are considered incapable of providing it); or be the subject of a "care order" sought by the local authority.[74] Among the reasons for granting such an order are that the child's proper development is being impaired or neglected or the individual is being ill-treated, or that he or she is exposed to moral danger. The latter typically involves moral danger in the sexual sense.

Law enforcement authorities in England and Wales do not see juvenile prostitution as a serious problem, although it undoubtedly exists to some extent. As in Canada, it is the runaway juveniles, who are close to 18 years old, who are the most problematic. The police are often of the view that it is pointless returning them to their homes. All they can do is to report the matter to the local authority, if they are concerned about the welfare of the child.[75]

Footnotes

[1] Public Law 98-292, May 21, 1984, s.2(1).

[2] 438 U.S. 1801 (1978).

[3] 438 U.S. 1801, at 749.

[4] 438 U.S. 1801, at 749-750.

[5] 458 U.S. 1113 (1982).

[6] 458 U.S. 1113, at 1122.

[7] 413 U.S. 15 (1973).

[8] D. Sansfaçon, *Pornography and Prostitution in the United States* W.P.P.P.#2 at 12.

[9] 413 U.S. 15, at 24.

[10] 458 U.S. 1113, at 1127.

[11] Penal Law, Article 263.

[12] See note 1.

[13] Sansfaçon, *op. cit.* at 23.

[14] U.K. 1955, c.28.

[15] U.K. 1978, c.37.

[16] Williams Report, para 2.28, at 19.

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*, para. 6.67 at 89.

[20] *Ibid.*

[21] *Ibid.*, para. 6.68 at 90.

[22] *Ibid.*

[23] *Ibid.*

[24] *Ibid.*, para. 9.7 and 10.2, at 114 and 130.

[25] *Ibid.*, para. 10.6, at 131-132.

[26] *Ibid.*, para. 10.13, at 134.

[27] For a summary of the Williams Report recommendations, see Chapter 13, at 159 ff.

[28] U.K. 1981, c.42.2

[29] U.K. 1984.

[30] This segment draws upon D. Weisberg, "Children of the Night: The Adequacy of Statutory Treatment of Juvenile Prostitution", (1984) 12 *Am. J. Crm. Law* 1.

[31] Ch. 395, 36 Stat. 825 (1910).

[32] 18 U.S.C. §§ 2251, 2253-2254 (1978).

[33] Weisberg, *op. cit.* at 50-51.

[34] *Ibid.*

[35] 42 U.S.C. § 5101 - 5106 (1974), as amended by *Child Abuse Prevention and Treatment and Adoption Reform Act*, 92 Stat. 205 (1978).

[36] 42 U.S.C. § 5102 (1977).

[37] 48 Fed. Reg. 3701, § 1340.2.

[38] Weisberg, *op. cit.* at 52.

[39] *Ibid.*, 53.

[40] Pub. L. No. 93-415, 88 Stat. 1109.43 (1974).

[41] Weisberg, *op. cit.* at 54-55.

[42] *Ibid.*, at 55-56.

[43] *Ibid.*, at 56.

[44] *Ibid.*, at 29.

[45] 28 U.S.C. § 534 (1982).

[46] Weisberg, *op. cit.* at 57.

[47] *Ibid.*

[48] *Ibid.*, at 57-58.

[49] *Ibid.*, at 58.

[50] *Ibid.*, at 39-47.

[51] *Ibid.*, at 47-49.

[52] *Ibid.*, at 59.

[53] *Ibid.*, at 60. Weisberg notes that in this research, the staff of a few law enforcement agencies (eg. Louisville, Kentucky; Minneapolis; Seattle) suggested that when police take time to be especially supportive of a prostitute, she is more willing to testify. He also notes "[s]ome progressive police departments now provide emotional and residential support services to prostitutes as well as protection from the pimp."

[54] *Ibid.*, at 62-63.

[55] *Ibid.*, at 63.

[56] *Ibid.*, at 64-65.

[57] *The Street Offences Act*, 1959. 7. 8 Eliz. 2, c.57; *The Sexual Offences Act*, 1956, 4 c. 5 Eliz. 2, c. 69. See generally on this topic M. Freeman, "The Rights of the Child in England" (1981-2). 13 *Columbia Human Rights L. Rev.* 601.

[58] *The Criminal Justice Act*, 1982.

[59] *The Children and Young Persons Act*, 1963, 17 Statutes, 669; *The Children and Young Persons Act*, 1969, 40 Statutes 843.

[60] *Sexual Offences Act*, 1959, 7.8 Eliz.2, c.57.

[61] *Ibid.*, s.6.

[62] *Ibid.*, § 33, 30.

[63] *The Children and Young Persons Act*, 1963, *The Children and Young Persons Act*, 1969.

[64] *Children and Young Persons Act*, 1963, s.1.

[65] *Children and Young Persons Act*, 1969, s.2.

[66] *Ibid.*, § 11-13.

[67] *Ibid.*, § 7, 20, 21.

[68] *Freeman, op. cit.* at 668.

[69] *Ibid.*, at 669.

[70] For details, see J. McEwan, "In Search of Juvenile Justice - The Criminal Justice Act 1982" (1983) *J. of Social Welfare Law* 112.

[71] *Ibid.*, at 116.

[72] *Freeman, op. cit.* at 669.

[73] *Ibid.*, at 629-30.

[74] *The Children and Young Persons Act*, 1969, s.1(2).

[75] *Freeman, op. cit.* at 606.

Chapter 46

Legal Recommendations

1. Introduction

In this section, we discuss our proposals for reform of the *Criminal Code* respecting prostitution involving youths, pornography involving youths, and access to pornography by young people. We also consider what reforms may be necessary to the criminal law in order to protect the young complainant or witness.

We recommend that all of these suggested reforms apply to persons below the age of 18 years.

Recommendation 70

All of the reforms to the criminal law and related statutes dealing with pornography and prostitution involving children and youths should be applicable to persons under 18 years of age.

This division between adult and youth corresponds to that which is found in the text of the *Young Offenders Act*. The scheme of the *Young Offenders Act* is, we note, one of the main reasons why we have departed from the thrust of previous law reform initiatives in this area, which used the age of sixteen as the boundary between adulthood and childhood. We consider that not only the correspondence with this major criminal procedure statute for young persons, but also the merits of the age, amply justify our selection. We are particularly interested in the reality that having 18 as the dividing line means that persons up to 17 are protected, whereas a dividing line of 16 includes only those up to 15 years of age. Evidence at the hearings, and gathered in the studies available to the Committee, place a substantial number of young prostitutes in the age range of 15 to 19. By choosing 18 as a cut-off point, we ensure that the provisions we have crafted will benefit those in half this range at least, instead of almost none of them.

Of course, this observation does point out that the dividing line is a somewhat arbitrary one. Some persons 18 and over may, in fact, be more vulnerable to exploitation than some under 18. We do not claim that the age

we have chosen is perfectly appropriate. Yet we are reluctant to suggest that the age be higher, because of the restraints on personal autonomy which are inherent in providing "protection" for the vulnerable by means of the criminal law. At some point, society has to relinquish its protective instincts and trust that persons can look after themselves as adults. There is substantial social consensus that 18 is an acceptable point for this transition to occur.

We considered the possibility of using in the *Code* a flexible age for majority with respect to illegal activities. This approach is a feature of some European legislation.[1] It is, however, out of keeping with the way in which we commonly deal with young persons in Canadian law. Moreover, the flexible age leaves considerable vagueness in the criminal law, about which accused persons could properly complain. Although a fixed age limit may result in overprotection of some young people, we think that this risk is a very acceptable one, given the kinds of harms to which these recommendations are directed.

We have also noted that the Badgley Committee, in setting out offences, draws a line in its offences between those who are under 14, on the one hand, and on the other, those who are over 14 but under 18. The same distinction was featured in some of the bills we have reviewed, and, indeed, is found in some sections of the *Criminal Code*. We do not think that it would be useful to follow this pattern. It seems that the reason for it is to ensure that younger children get a level of protection which is high enough, while still accounting for the greater maturity to be found in those over 14. We are not sure that the results which may ensue from this approach justify its cumbersome nature, and we have declined to adopt it.

A note of caution must be sounded, however, about our choice of 18 as the significant age. While the text of the *Young Offenders Act* stipulates that a young person is one up to the age of eighteen, practice in the early phase of implementing the *Act* has resulted in a lower threshold age in many provinces. Pressure is building in some provinces to delay the date at which eighteen will be the uniform age across Canada for purposes of the *Young Offenders Act*.

We have recommended that persons under 18 be charged with the offences we have recommended be created only on the premise that the procedures of the *Young Offenders Act* will apply to their trial and the disposition of their cases. Should that *Act* not apply in some provinces after the effective date of any of our recommended reforms, then we would deplore the prosecution of a person between the age of eighteen and the upper age limit for the *Young Offenders Act* which is in effect in that province. We do not welcome the idea that a person of 17, or even sixteen, might be tried and incarcerated with adults, and like an adult, simply because of federal-provincial difficulties in the implementation of the *Young Offenders Act*.

Recommendation 71

Trials of persons under 18, accused of any of the offences proposed in our recommendations should be conducted in accordance with the Young

Offenders Act. Accordingly, if the minimum age of 18 as provided in that Act is not fully implemented across Canada by the time these recommendations are in effect, no person under 18, who is not given the protection of the Young Offenders Act, should be charged.

Now we turn to a discussion of the recommendations in the areas of pornography and prostitution.

2. Pornography

This Committee is making a number of recommendations for reform of the *Criminal Code* in order specifically to address the use of young persons in the production of sexually explicit material, and the availability of such material to them. The overall scheme of our recommendations respecting pornography depends on classifying pornographic material into three categories or tiers. The sanctions attached to the material would depend on what category it is in and are described in detail in Part II, Section IV, chapter 20 of the Report. Here we will simply give an overview of the scheme so that the proposals we make about children can be seen in their proper context.

The first tier includes the material which we consider the most harmful. In this tier we have placed material which gives reason to believe that actual physical harm was experienced by the person or persons depicted in it. Such material is in this category because there is no doubt about the harm which has been experienced.

For the purposes of this Chapter, the more important components of tier one are those relating to the use of children in the production of pornographic material and the encouragement of sexual abuse of children. Thus, we subject to strong criminal sanctions both the production, distribution and possession of visual representations of the explicit sexual conduct of persons under 18 years of age, and the production and distribution of material that encourages sexual abuse of children.

We think that it will be apparent from our discussion of the principles underlying our view of children, why we consider it so essential to protect them from being used in the making of pornography. We consider any dissemination of such material to be harmful because it implies that children's sexuality can be exploited by adults. Clearly, to the extent that we can stop the production of such material and its distribution, then the problem of its possession and use by pedophiles becomes less significant.

The reason for prohibiting the production and distribution of material that encourages the sexual abuse of children, is equally clear. The harm to children that results if the message conveyed by such material is absorbed and acted upon by the viewer, is particularly serious.

For adult portrayals, we develop a second category of material which will be proscribed unless it can be shown to have genuine educational or scientific

purpose or artistic merit. This tier, called "Sexually Violent and Degrading Pornography", contains material which we believe is extreme in its depictions and, for that reason, is harmful. Nevertheless, in the interest of striking a balance between competing values, we recommend that the material be available to consenting adults if it can be shown to have a scientific or educational purpose or artistic merit.

The third category of material is that which is sexually explicit but which lacks the violence or degradation of the sort we believe characterizes the tier two material. Consequently, we are recommending that this material not be prohibited, but be subject to regulation in terms of where it can be displayed and who can purchase it.

The relevance of tier two and tier three material for the purposes of children is that any material which is permitted under these categories, is subject to display and access restrictions. In all cases, a prominent warning notice must indicate that visual pornographic material is being displayed and that no one under 18 years of age can have access to the premises or part of the premises where the material is displayed. In addition, those under 18 will not be able to buy, rent or see the material in question. These provisions are, of course, designed to ensure that young people do not have access to material which we believe can be harmful to them.

The approach the Committee has adopted is to be as precise as possible in describing the kinds of material to be prohibited or subject to restrictions. In this way, the adjudication of the question of whether particular material falls within a particular tier, does not depend on discerning the community standards of tolerance for that material. For many reasons, we agree with those who have found this approach to be highly problematic. In fact, it is, in part, because we have to avoid the community standards of tolerance approach, that we have developed the system we have just described.

Let us turn now to an examination in more detail of the proposals relating to children.

2.1 Pornography Involving Children

Recommendation 72

Pursuant to recommendation 2 in this Part, the following new section of the Criminal Code should be enacted:

(1) Everyone who:

(a) Uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to
(i) participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;
(ii) participate in any explicit sexual conduct in the context of a live show;

(b) induces, incites, or coerces another person to use a person under 18 years of age to
(i) participate in any explicit sexual conduct for the purposes of producing, by any means, a visual representation of such conduct;
(ii) participate in any explicit sexual conduct in the context of a live show;

(c) participates in the production of a visual representation of or a live performance by a person under 18 years of age participating in explicit sexual conduct;

(d) makes, prints, reproduces, publishes or distributes, or has in his possession for the purposes of publication or distribution, a visual representation of a person under 18 years of age participating in explicit sexual conduct

is guilty of an indictable offence and is liable to imprisonment for 10 years.

(2) For the purpose of subsection (1)

(a) a person who at any material time appears to be under 18 years of age shall in the absence of evidence to the contrary, be deemed to be under 18 years of age.

(3) Everyone who sells, rents, offers to sell or rent, receives for sale or rent, exposes to public view, or has in his possession for the purpose of sale or rent a visual representation of a person under 18 years of age participating in explicit sexual conduct, is guilty
(i) of an indictable offence and is liable to imprisonment for 5 years, or
(ii) of an offence punishable on summary conviction and is liable to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for six months or to both.

(4) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18 years of age participating in explicit sexual conduct, is guilty of an offence punishable on summary conviction, and is liable to a fine of not less than $500 and not more than $2,000 or to imprisonment for six months or to both.

(5) For the purposes of subsections (1), (3) and (4) above,

(a) "explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sexually violent behavior, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted;

(b) "sexually violent behavior" includes
(i) sexual assault, and
(ii) physical harm, including murder, assault or bondage of another person or persons, or self-infliction of physical harm, carried out for the apparent purpose of causing sexual gratification or stimulation to the viewer;

(c) "visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

This section would create a number of offences relating to the participation of a person under 18 in explicit sexual conduct, in two contexts: the

production of a visual representation of such conduct, and the live show. The proposed section is intended to specify various offences relating to young persons and to that extent is a departure from the general style of the present section 159 dealing with obscenity.

The offences in our proposed section consist of using, inducing, coercing or agreeing to use a person under 18 to participate in any explicit sexual conduct for the purpose of producing a visual representation of the conduct, or in such conduct in the context of a live show. Also criminalized is the act of inducing, inciting or coercing another person to use a person under 18. The person who participates in the live show or the recorded performance with the person under 18 is subject to prosecution under paragraph (1)(c). A party who makes, prints, reproduces, publishes, distributes, circulates or has in his possession for such purposes a visual representation of a person under 18 engaged in explicit sexual conduct would be included within paragraph 1(d).

The penalty for the maker and the wholesale distributor is set at ten years imprisonment. By reason of section 646(2) of the *Code*, the court may in addition impose a fine, the amount of which would be in its discretion. The term of imprisonment cannot be imposed on the corporation, but paragraph 647(a) of the *Code* allows the court to impose a fine on the corporation in lieu of imprisonment.

The retailer is given somewhat different treatment. If convicted of an indictable offence, the retailer is subject to imprisonment for two years. Subsection 646(2) of the *Code* allows the court to impose a fine, the amount of which would be in its discretion, in lieu of imprisonment. Where the accused is a corporation, paragraph 647(a) of the *Code* provides for a fine, in the discretion of the court, but no period of imprisonment.

However, the Crown may also proceed against the retailer by way of summary conviction. In that event, we have provided that the retailer is liable to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for six months or both. Unfortunately, these specially tailored penalties are available only where the accused is an individual, because paragraph 647(b) of the *Criminal Code* provides that a corporation cannot be fined an amount exceeding $1,000 where the offence is a summary conviction offence. We recognize that we are bound at this time by this general provision applying to corporations convicted of any summary conviction offence in the *Code*. However, in our view, the fine is very low, given the other penalties we are proposing, particularly those directed against individuals.

Recommendation 73

Paragraph 647(b) of the Criminal Code should be amended to provide a higher maximum penalty for a corporation convicted of a summary conviction offence; or the section should provide, as does subsection 722(1), that a higher penalty may be provided with respect to a particular offence.

The rationale behind our creation of smaller penalties for sale of material lies in the position of the ordinary retailer. Although we are aware of the many cynical merchants who sell pornographic material fully knowledgable of what it is, yet we still think it necessary to preserve some flexibility to deal with the merchant who may be, if you will, a less cynical person. We are also concerned about the position of employees of such concerns, who are often those charged, but who may have little leverage to force a change in a situation they consider improper or illegal. In addition to a reduced sentence, we have provided, in our general provisions applicable to all of these suggested reforms, a defence for those who can demonstrate that they used due diligence in inspecting the material offered for sale to see that it did not contain illegal material.

Although the retailer is treated more leniently than the producer or wholesaler of such material, we have nonetheless provided for a minimum fine, to demonstrate that we view the offence as a serious one.

We have included in the draft section a summary conviction offence of possessing a visual representation of a person under 18 participating in explicit sexual conduct. We are aware of the argument that adults should be free to read whatever they wish in private surroundings. We have not dealt lightly with this principle in considering our recommendations. However, we are also mindful that private consumption is very frequently the method of using pornography involving juveniles. We know that youth pornography, like all pornography, has a long life, often circulating or being kept for some time after its original production or sale. Often, there will be no clue at all as to the original producer of the pornography.

We have been told that private production and use of such pornography occurs in circumstances where the only evidence of its production may be that of the child who was videotaped or photographed; for many reasons, that child may be unable or unwilling to testify. The recollection of the child may simply not be detailed enough to establish the requisite connection between the events he or she experienced and the accused's production through home photographic equipment of the representation in question. For these various reasons, the possibility of charging someone with possession of an offending representation is a desirable one. We believe that the availability of such a charge will act as some deterrent to the production and exchange of this material, particularly if convictions under the section are accompanied by publicity and offenders are sentenced to jail.

There is yet another reason for proposing a possession offence. We agree with the Williams Committee that a nation should not be isolationist, protecting only children who are its own nationals from use in pornography. The Report of M. Fernand-Laurent to the United Nations Economic and Social Council described the unfortunate circumstances which may involve children in other countries in pornographic productions. We believe that if creation of the possession offence could reduce, even a little, the international child pornography traffic, it would be well worth while.

We do not propose that persons under 18 years of age who themselves offend against this section should be given any immunity from prosecution. The provisions of the *Young Offenders Act* will provide for a trial procedure and sentencing options particularly designed to deal with the youthful offender. Within such a context, we are satisfied that a youthful offender against this, and the other recommendations we have made on pornography involving children, will be adequately safeguarded.

We have made the penalty for the offence a fine of not less than $500 nor more than $2,000, or six months imprisonment, or both. The minimum penalty is present to ensure that courts will treat the offence with at least some seriousness, but the maximum figure is high enough to deal with a situation where even a "first offender" may have a quantity or a type of material that is regarded as particularly serious. In the case of a repeat offender, of course, the penalty allows for either escalation of the fine or a sentence of imprisonment.

We have recommended provisions which address specifically the procurement of children to engage for reward in sexual acts, and the involvement of children in the production of pornography. These specific recommendations will, in our view, reduce the justification for retaining in the *Criminal Code* the present section 168.

Recommendation 74

Section 168 of the Criminal Code should be repealed.

Section 168 provides that everyone who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence. As we mentioned above, this section has been used to prosecute a mother and her common law husband who took suggestive photographs of her eleven year old daughter.

We do not think that the section will continue to have much utility at all once the recommendations we have made have been implemented. We suspect that its main utility up to now, as in the case we mentioned, lay in the fact of its general wording; because there were no specific offences, section 168 might be pressed into service to cover particular instances of sexual exploitation.

However, the section presents enormous hazards. Its language is broad enough to cover, at least, the situation of two persons living common law, with the children of one or another, while awaiting the chance for one to secure a divorce from a former spouse. Such a couple would be participating in adultery in the home of a child. The use of the terms "sexual immorality", "other form of vice" endangering the morals, and rendering the home an unfit place, all contribute to the vagueness and elasticity of the section. That the administration of this section was seen even by its framers to present some difficulties is seen by the inclusion of a requirement that the Attorney General consent to any prosecution not brought by a recognized child welfare authority.

2.2 The Sexual Abuse of Children—Advocating or Encouraging

Recommendation 75

A new section of the Criminal Code should be enacted to deal with production, dissemination and possession of material advocating, encouraging or presenting as normal the sexual abuse of children in the following form:

(1) Everyone who makes, prints, reproduces, publishes, or distributes, or has in his possession for the purposes of publication or distribution material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of an indictable offence and liable to imprisonment for 10 years.

(2) It shall not be a defence to a charge under subsection (1) that the accused was ignorant of the character of the material, matter, thing or production.

(3) Everyone who sells, rents, offers to sell or rent, receives for sale or rent, exposes to public view, or has in his possession for purpose of sale or rent material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty
(i) of an indictable offence and liable to imprisonment for 5 years, or
(ii) of an offence punishable on summary conviction and liable to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for six months or to both.

(4) Everyone who knowingly, without lawful justification or excuse, has in his or her possession material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of a summary conviction offence and is liable to a fine of not less than $500 and not more than $2,000 or to imprisonment for six months or to both.

(5) For purposes of this section "material" includes any written, visual or recorded matter.

(6) For purposes of this section "sexual abuse" means any sexual activity or conduct directed against a person under 18 years of age which is prohibited by the Criminal Code.

In this provision, we have followed the same pattern as was established with the preceding section on pornography involving children. Everyone who makes, prints, reproduces, publishes, distributes or has in his possession for these purposes the offending material is guilty of an indictable offence punishable with 10 years imprisonment. An offence subject to lesser penalties is created for everyone who sells, offers to sell, receives for sale, advertises, exposes to public view, or has in his possession for these purposes the material. Simple possession, in turn, is made an offence punishable on summary conviction.

The material which will attract the sanction is that which advocates, encourages, condones or presents as normal the sexual abuse of children. We have not limited the sanction to material which consists of visual representa-

tions. Material which is entirely written will attract the sanction. We have seen, during the course of our research, a number of publications, entirely in prose, which focus on various aspects of sex with children. Many involve incestuous relationships. Often, the descriptions of sexual activities with young people will be explicit, if not lurid, in detail. The general tenor of such publications is that sexual relations with young persons is acceptable, or desirable, and indeed that young people themselves welcome such activities, whether incestuous or not. We did not want to create a criminal law scheme which would omit this type of material from its reach.

It has been drawn to our attention that there may well be a cultural dimension to material discussing or promoting sexual activities with young people. Spokespersons for the gay community in particular have cautioned us against measures which would make legitimate communication and exploration of sexual identity in that community a perilous activity. We are appreciative of the thoughtful and informed advocacy of this point of view which we received during our hearings.

We believe that we can respond to this interest in only a limited fashion, because of the other concerns which we must take into account in formulating our recommendations. Subsection (6) of this proposed section describes "sexual abuse" as any sexual activity or conduct directed against a person under 18 years of age which is prohibited by the *Criminal Code*. In discussing our recommendations on procuring, we have reviewed the offences which deal with sexual activity with young persons, and have noted that the upper age limit for prohibited acts is 21 with respect to buggery and gross indecency. We have recommended lowering that limit to "under 18" in order to rationalize these provisions with the other sections of the *Code* dealing with sexual offences involving young people. We have also recommended extending the protection of the *Code* which now is available only to young females to young males.

We think that this review of sections 140 to 157 of the *Code* should put treatment of sexual activity with young males on the same footing as that with young females; adults involved with young people should also be placed in the same position whether their activities are with young people of the same sex as they are or of a different sex. If that rationalization of the criminal law relating to sexual activity with young persons occurs, then we think that it is fair to incorporate the reformed sections into the definition of "sexual abuse" used in this proposed section.

We are not prepared to go further. We cannot, for whatever cultural reasons, accept that advocacy of sexual relations between adults and young people under 18 is a beneficial or even neutral act. The same observation applies to material encouraging, condoning, or normalizing such acts. We do not countenance such messages where the relations being advocated are heterosexual ones between adults and children. There has not been made out any special reason why it should be tolerated when the partners are of the same sex.

2.3 Live Shows

Recommendation 76

Section 163 of the Criminal Code should be repealed and replaced by a new section which would include provisions dealing specifically with the presentation of a live show advocating, encouraging, condoning, or presenting as normal the sexual abuse of children, in the following form:

(1) Everyone who, being the owner, operator, lessee, manager, agent or person in charge of a theatre or any other place in which live shows are presented, presents or gives or allows to be presented or given therein a performance which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of an indictable offence and liable to imprisonment for 10 years.

This provision with respect to live shows is a supplement to the subsections on live shows which are included in the section dealing with using children in pornography. The intent of the provision is to penalize advocacy, encouragement, condonation, or normalizing of sexual abuse of children when it occurs in a live show. The definitions applicable to this provision are the same as those which we use in conjunction with the subsections on the use of children in pornography.

2.4 Use of the Mails

Recommendation 77

Section 164 of the Criminal Code should be repealed and a section enacted which includes provisions dealing explicitly with use of the mails to transmit material involving children or advocating the sexual abuse of children, along the following lines:

(1) Everyone who makes use of the mails for the purpose of transmitting or delivering any material which:

(a) depicts a person or persons under the age of 18 years engaging in explicit sexual conduct,

(b) advocates, encourages, condones, or presents as normal the sexual abuse of children,

is guilty of an indictable offence and liable to imprisonment for 10 years.

This section is intended to replace the present section 164 of the *Criminal Code*, which makes it an offence to use the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous. In our proposed section, we have once again tried to be specific, and to directly refer to material involving children.

Distribution by mail of material which depicts a person or persons under the age of 18 engaged in explicit sexual conduct or which advocates, encourages, condones or presents as normal the sexual abuse of children is an indictable offence attracting a penalty of 10 years imprisonment. In addition to this penalty, the provision in the general section of our recommended provisions permitting forfeiture of such material applies to this section.

2.5 Pornography, Sale to and Access by Children

Recommendation 78

A new section should be included in the Criminal Code, to control display of visual pornographic material to persons under 18 years of age, in the following form:

(1) Everyone who

(a) sells, rents or offers to sell or rent visual pornographic material to anyone under 18 years of age; or

(b) displays for sale or rent visual pornographic material in such a manner that it is accessible to and can be seen or examined by anyone under 18 years of age; or

(c) being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein to anyone under 18 years of age any visual pornographic material

is guilty of a summary conviction offence and is liable to a fine not to exceed $1000 or to imprisonment for 6 months or to both.

(2) No one shall be convicted of an offence under subsection (1) who can demonstrate that

(a) he used due care and diligence to ensure that there was no such visual pornographic material in the materials which he sold or rented, offered for sale or rent, displayed for sale or rent, or presented, gave or allowed to be presented or given; or

(b) the visual pornographic material has a genuine educational or scientific purpose and was sold or rented, offered for sale or rent, or displayed for sale or rent, presented, given, or allowed to be presented or given, for that purpose; or

(c) according to the classification or rating established for film or videotape material in the province or territory in which it is sold, rented, offered for sale or rent, displayed for sale or rent, presented, given or allowed to be presented or given, the film or videotape has been classified or rated as acceptable for viewing by those under the age of 18 years.

(3) For purposes of this section, "visual pornographic material" includes any matter or thing or live performances in which is depicted or described vaginal, oral or anal intercourse, masturbation, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals, but does not include any material prohibited by [offences involving portrayals of children and sexually violent or degrading material].

Recommendation 79

Subsections 159(2)(b), (c) and (d) of the Code should be repealed and replaced by a provision specifically directed at selling or displaying sex aids to a person under 18 years of age, in the following form:

(1) Everyone who

(a) sells or offers to sell a sex aid to anyone under 18 years;

(b) displays for sale sex aids in such a manner that they are accessible to and can be seen or examined by anyone under 18 years of age,

is guilty of a summary conviction offence and is liable to a fine not to exceed $1000 or to imprisonment for 6 months or to both.

(2) For the purposes of subsection (1) "sex aid" includes any device, apparatus or object designed solely to stimulate sexually the user of it.

In the two draft sections set out above, we address the problem of access by children to pornographic material. The first section deals with the sale and availability to children of "visual pornographic material". This matter is broadly defined as including any material whether in the form of books, magazines, films or video-cassettes in which vaginal, oral or anal intercourse, bestiality, masturbation, sexually violent behaviour, lewd touching of the breasts or the genital parts of the body or the lewd exhibition of the genitals is depicted.

We have included in our recommendations a proposed section of the *Code* to prohibit display of visual pornographic materials generally. The thrust of that section is to prohibit the display of those materials so that they are visible to members of the public in a place to which the public has access by right or by express or implied invitation. The defence to the charge is to demonstrate that the material was displayed in a part of the premises to which access is possible only by means of passing a prominent warning notice advising of the display therein of visual pornographic material.

The section described above makes it an offence to sell or offer to sell visual pornographic material to anyone under 18 years of age. We do not recommend creation of a similar offence with respect to persons generally.

The section described above also creates an offence of displaying, for sale or rent, visual pornographic material in such a manner that it is accessible to and can be seen or examined by anyone under 18 years of age.

Because of the breadth of the definition of visual pornographic material, we have considered whether the section should provide any defences like those provided for the second tier of material, namely defences resting on artistic merit or on the scientific or educational purpose of the work. Alternatively, we have considered the possibility of lowering to 16 the age below which the young person cannot see the material.

We are not in favour of lowering the age in this one case. Upon close examination, the problem prompting consideration of these two options is the problem of the student of sixteen or seventeen, possibly at a CEGEP or university, whose curriculum may involve reading material which technically is within this definition. Or, consider too the case of the young married person who may be able to do some of the things described in the definition without fear of sanction but may not see representations of them. In either case, we think that the appropriate response to the dilemma is to provide exceptions, but

not to lower the age. Even with the age at 18, it is likely that persons quite a bit younger than 18 will pass unchallenged into some premises. Were we to lower the limit, we think that we would, in reality, be lowering the effective age at which persons permit young people access to this material to a point quite a bit below 16. Accordingly, we have chosen to provide the artistic merit, and educational or scientific purposes, defences with regard to this offence. We have also provided a defence based on the due diligence of the proprietor in inspecting the material offered for sale or rent.

The provision with respect to sex aids is intended to replace, in part, the current offences in subsections 159(2)(b), (c) and (d). Paragraph (b) creates the offence of publicly exhibiting a disgusting object or show, and paragraphs (c) and (d) create offences relating to means, instructions, medicine, drugs or articles intended or represented as a method of causing abortion or miscarriage or of restoring sexual virility or curing venereal diseases or diseases of the generative organs.

We have framed a general definition of "sex aid" which we think will encompass the "disgusting object" now dealt with in paragraph 159(2)(b) and the materials claiming to restore virility described in paragraph 159(2)(d). The disgusting show covered in paragraph 159(2)(b) is, we think, adequately dealt with in our provisions respecting live shows. Medicines or agents aimed at curing diseases or procuring miscarriage are, in our opinion, more appropriately regulated by way of food and drug legislation, aimed at safety of product, accuracy of claims, and the social and medical desirability of the substance.

Our focus, in the recommendation concerning sex aids, is on the availability of such devices and substances to persons under 18 years of age. With some such mechanisms or substances, the concern of the criminal law is with actual safety, particularly when the youth who may get such a device or substance is quite young. In other cases, the concern is similar to that of the provision about accessibility of visual pornographic material: we desire to put out of the way of even a moderately curious young person, the chance of being unwittingly and unwillingly alarmed or upset by such materials. As it is certainly within the power of merchants to arrange their premises and displays so as to effect this object, we consider that it is quite reasonable to penalize failure or refusal to do so.

We propose to include in the foregoing sections the following definitions, which will be applicable to all of the provisions:

Recommendation 80

The following definitions should apply to the sections of the Code dealing with pornographic offences:

"sexually violent behaviour" includes

(i) sexual assault,

(ii) physical harm depicted for the apparent purpose of causing sexual gratification or stimulation to the viewer, including murder, assault or bondage of another person or persons, or self-infliction of physical harm.

"visual pornographic material" includes any matter or thing or live performances in which is depicted or described vaginal, oral, or anal intercourse, masturbation, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals.

2.6 Evidence

With respect to a number of the reform proposals we have made in the foregoing sections, it is apparent that law enforcement authorities will be relying on the evidence of young persons under 18 in order to proceed successfully with a prosecution. In some cases, only the evidence of the child or young person will be available.

We are not in favour of hedging the child's testimony with any requirement that it be corroborated, or that the court advise a jury that it is unwise to convict on the basis of such evidence alone. The Report of the Committee on Sexual Offences Against Children and Youths concluded, on the basis of its research, that young persons, even those young in years, can be reliable witnesses.[2] Persons who gave briefs at our hearings were in agreement that a child's testimony could be accepted without qualifications which would limit its probative value: we took the opportunity ourselves of probing this issue with those whose views we thought might assist us.

Recommendation 81

The Evidence Acts of Canada, the provinces and the territories should be amended to provide that every child is competent to testify in court and the child's evidence is admissible; the weight of the evidence should be determined by the trier of fact.

Recommendation 82

There should be no statutory requirement for corroboration of "unsworn" child's evidence; this would entail repeal of section 586 of the Criminal Code, section 16(2) of the Canada Evidence Act and section 61(2) of the Young Offenders Act, and corresponding sections of provincial Evidence Acts.

We think that it is in keeping with our approach to the dignity of the young person that no categorical restriction be placed on the reception or weight of a young person's evidence. It should be treated by a court according to the same principles as would be applied to the testimony of an adult.

We have included below some recommendations concerning protection from publicity which we think should be extended to the youthful witness and complainant. These protections should be available whether the accused is an

adult being tried pursuant to the *Criminal Code* or a young person whose trial is governed by the *Young Offenders Act*. At present, the protections extended to the youthful complainant or witness are not as complete in a trial of an adult under the *Code* as are those available in a *Young Offenders Act* proceeding.

If the *Code* were amended to provide a more sheltered environment for the young complainant or witness, we do not think that further protections would be warranted. In particular, we would avoid any amendment or relaxation of the hearsay rules in order to permit a child's account of an act of sexual abuse to be presented to the court through the testimony of an adult to whom the child may have told the story on a previous occasion. We are not persuaded that such an adult, who will probably be quite close to the child in most cases, can in fact serve merely as a neutral conduit for the child's evidence. Neutrality in the initial reception of the story and in its subsequent retelling not being reliably predictable, we do not believe that a departure from the normal hearsay rules is warranted.

Recommendation 83

> **No alteration be made to the Evidence Acts of Canada or the provinces and territories to permit reception by a court of hearsay evidence of a child's account of the commission against him or her of a sexual offence.**

This Committee is recommending that persons who involve young people in prostitution, or in the production of pornography, be subject to penalties. The creation of these new offences raises questions concerning the publicity to be given to the trials of accused persons, to convictions, and to the identity of youthful complainants, witnesses and accused.

There are at present provisions in both the *Criminal Code* and the *Young Offenders Act* which deal with these questions.

Subsection 442(1) of the *Criminal Code* states the general rule that proceedings against an adult accused shall be in open court. The subsection also provides, however, that where the presiding judge, magistrate or justice is of the opinion that it is in the interest of public morals, the maintenance of order, or the proper administration of justice to exclude all or any members of the public from the court room for all or part of the proceedings, he or she may so order.

In deciding whether to exclude the public under this section, a court is likely to bear in mind the principle enunciated by the Supreme Court of Canada that, as a general rule, the sensibilities of the individuals involved are not a basis for exclusion of the public from judicial proceedings.[3] As observed by Mr. Justice Brooke of the Ontario Court of Appeal:

> It is hard to imagine any trial, civil or criminal, where men or women, boys or girls, and particularly the latter have to testify as to sexual behaviour that the witness will not be embarrassed. But this alone is not reason to suppose that truth is more difficult or unlikely or that the witness will be so frightened as to be unable to testify.[4]

In one case arising under the section, the Crown's fear that teenaged girls who were being called as witnesses would be embarrassed to testify was held to be insufficient basis for an order excluding the public throughout the trial.[5] In another, it was ruled improper for a trial judge to have excluded from a trial on charges of keeping a common bawdy house a local reporter who refused to undertake to keep the names of found-ins out of the newspaper.[6] An order has also been refused in the case of the trial of a number of persons on gross indecency charges.[7]

This provision of the *Criminal Code* applies to the trials of accused persons who are eighteen years of age and over. Trials of persons under the age of eighteen years are governed by the *Young Offenders Act*. Section 39 of that *Act* contains a number of provisions dealing with exclusion of persons from the courtroom during the trial of a young person. Paragraph 39(1)(b) provides that where a court or justice is of the opinion that it would be in the interest of public morals, the maintenance of order, or the proper administration of justice to exclude any or all members of the public from the courtroom, any person may be excluded from the courtroom if the court or justice deems that person's presence to be unnecessary to the conduct of the proceedings.

It will be noted that this standard for excluding the public from a trial under the *Young Offenders Act* is quite similar to that in the *Criminal Code*, except that the *Young Offenders Act* imposes the further requirement that the presence of a person to be excluded must be "unnecessary" to the proceedings.

The *Young Offenders Act* includes, however, certain other provisions for the exclusion of persons from trials which are not found in the *Criminal Code*. Where the court or justice is of the opinion that any evidence or information would be seriously injurious or seriously prejudicial to the young person who is being dealt with in the proceedings, who is a witness in the proceedings, or who is aggrieved by the offence charged in the proceedings, then paragraph 39(1)(a) allows the court to exclude any person from all or part of the proceedings if it deems the person's presence to be unnecessary to the conduct of the proceedings.

The provisions of subsection 39(1)(a) were considered by Mr. Justice R.E. Holland of the Ontario High Court in *Southam Inc.* v. *Her Majesty the Queen*[8]. He held that it was valid under the *Canadian Charter of Rights and Freedoms*, as a reasonable limit on freedom of expression, demonstrably justifiable in a free and democratic society.

Subsection 39(1)(a) presumably allows the court to exclude a young person from the court while evidence is given which would harm him or her, or presumably to exclude another person from court while the young person is testifying. However, the *Young Offenders Act* provides that the court may not exclude the accused, his or her counsel, or parent from the trial pursuant to any power to exclude granted in subsection 39(2).

Differences between the *Criminal Code* and the *Young Offenders Act* may also be noted with respect to the court's power to forbid publication of details from the trial.

The *Criminal Code* provides in sections 246.4 and 442(3) that in cases of incest, gross indecency, sexual assault, sexual assault with a weapon and aggravated sexual assault, when an application is made by the complainant or the prosecutor, the presiding judge shall make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast. Where there is no such application from the complainant or the prosecutor, the judge may still make this order, but is not bound to do so. Subsection 442(3.1) obliges the presiding judge to draw to the complainant's attention at the first reasonable opportunity the right to make an application for an order of non-publication.

The validity of those sections was considered recently by the Ontario Court of Appeal, in the case of *Canadian Newspapers Company Limited* v. *A-G Canada*.[9] Subsection 422(3.1) was upheld. However it was held that the mandatory element in subsection 442(3) was contrary to the *Charter of Rights*. The Court accepted that the social value to be protected, namely the bringing to justice of those who commit these kinds of sexual offences, is of superordinate importance and justifies a prohibition against publication of the victim's identity or of anything that could disclose it.[10] However, it ruled that making the order automatically, on the application of the complainant or the Crown, went beyond what could be considered a "reasonable limit" on the right to freedom of expression. This decision has the effect of removing this mandatory element, so that now, it is up to the court's discretion in every case whether an order of non-publication should issue, even if the victim applies for it.

The Chief Justice of Ontario, in coming to this decision, observed:

> The discretion given to the trial judge under s. 442(3) to make a prohibition order is a sufficient safeguard for the protection of the identity of the complainant. In most cases it will no doubt be made as a matter of course. However, in an exceptional case where it is not merited the presiding judge should have an opportunity to refuse to make it.[11]

As comforting as these words may be, one wonders if the courts will indeed be ready to grant non-publication orders all that readily. In *R.* v. *McArthur*[12] Mr. Justice Dupont granted an order refusing the publication of names of witnesses who were prison inmates and feared physical harm if other prisoners learned they testified. In the course of his reasons for doing so, he observed

> This case must be distinguished from those where the court is asked to restrain publication of names where not to do so would create embarrassment, humiliation or even financial loss. Under most of such circumstances, the rights [sic] of complete public disclosure is paramount.[13]

In cases where the grant of an exclusion order formerly was automatic, more judges may well now refuse them on the ground that potential embarrassment

to the victim does not outweigh the public's interest in knowing her name. Unfortunately, it can be predicted that a few well-publicized decisions to this effect will have a negative effect on the willingness to report sexual assault.

Subsection 442(3) in the *Criminal Code* would protect a complainant who is an adult or a young person. There is, however, no provision to protect a witness from disclosure of his or her identity. Nor is there a provision to permit withholding the identity of an accused, and the case law shows an unwillingness to use the provisions of subsection 442(1) to achieve this purpose indirectly.

By contrast, subsection 38(1) of the *Young Offenders Act* prohibits the publication of a report of an offence allegedly committed by a young person or of any proceeding in connection with such an offence, in which the name of the accused young person, a child or young person aggrieved by the offence or a child or young person who appeared as a witness in connection with the offence is disclosed. It is also forbidden to publish any information which would serve to identify such child or young person. The protection against publication which is provided by subsection 38(1) of the *Young Offenders Act* is automatic; it does not depend on whether an application is made to the presiding judge. The validity of this provision was upheld in a decision of Mr. Justice Holland of the Ontario High Court, albeit before the decision of the Ontario Court of Appeal invalidating the mandatory element in subsection 442(3).

In our view, it is necessary to rationalize these provisions of the *Criminal Code* and *Young Offenders Act* if they are to be applied to the new offences we recommend. We note the following significant discrepancies between the protections afforded by the *Criminal Code* and those in the *Young Offenders Act*. Firstly, with respect to excluding persons from judicial proceedings, we note that the *Young Offenders Act* provides for an exclusion in order to protect a child or young person who is the complainant or witness from evidence or information which would be "seriously injurious" or "seriously prejudicial" to the young person. Similarly, where evidence is offered by a child or youth that may be seriously injurious or seriously prejudicial to a youthful accused, complainant or witness, the *Young Offenders Act* would allow exclusion of third parties during the taking of such evidence. The youthful witness or complainant in a trial involving an adult accused is not given similar protection, unless one can regard the possibility of an order under subsection 442(1) as equivalent.

It seems to this Committee that the position of the youthful witness or complainant should not depend on whether an accused is an adult or a young person. We recommend that provisions like those of subsection 39 of the *Young Offenders Act*, permitting exclusion of young complainants or witnesses, or of third parties, when the evidence will be seriously prejudicial or seriously injurious to the young witness or complainant should be inserted into the *Criminal Code*. We expect that judicial sensitivity to the dangers of having

"secret" trials may cause courts to be sparing in their resort to such sections, but believe that the provisions should be there in the event that they are really needed.

Recommendation 84

> **Subsection 442(1) of the Criminal Code should be amended to allow the court to exclude any person from the courtroom where any evidence or information presented to the court would be seriously injurious or seriously prejudicial to the complainant or witness who is under 18.**

Turning now to the question of reports of trials, we note that while the identity of the youthful accused may not be published, that of the adult accused may be. We do not recommend changing that scheme. We have considered the position of the adult from two perspectives, that of the adult charged with an offence, but not convicted and that of the adult who has been convicted. In our view, publication of the names of an adult convicted of an offence involving use of young people in prostitution or pornography would serve an extremely valuable deterrent function. In fact, we would urge that as much publicity as possible be given to conviction and sentencing of these offenders, so that others may learn that such activites will not go unpunished. We would however, make an exception to this general principle in the case of those convicted of incest, where adverse consequences to the victim will ensue from publication of the perpetrator's name.

Recommendation 85

> **As much publicity as possible should be given to the name of an accused who is convicted of an offence involving the child pornography or child prostitution offences we propose, and the sexual offences in the Code, with the exception of the name of a person convicted of incest.**

In the case of adults accused and convicted of offences involving children, we see no compelling reason to extend to them the anonymity which now is given the youthful accused. There should be no ban on the publication of the names of such accused; however, mindful of the impact of publicity, we do not urge that accused persons' identities be publicized in the same way as we have urged that the names of the convicted be published.

With respect to the position of complainants and witnesses, we note that the protection afforded by the *Young Offenders Act* against identification of the youthful complainant or witness is better than that offered by the *Criminal Code*. The recent invalidation of the mandatory publication ban simply makes the position of the youthful victim of adult crime all the worse. Once again, we find it hard to justify providing better protection to a youthful witness or complainant where the accused is youthful than where the accused is an adult. The harm which can be done by publication of the identity is the same in both types of case. Accordingly, we would recommend that the youthful com-

plainant, and youthful witnesses, be given, in the *Criminal Code*, the same automatic protection against publication of identity as provided now in subsection 38(1) of the *Young Offenders Act* to youthful complainants and witnesses.

Recommendation 86

Subsection 442(3) of the Criminal Code should be amended to provide for the complainant and witness under 18 years of age the same mandatory protection from publication of name or identifying information as is now extended to youthful witnesses and complainants in trials of young offenders by section 38 of the Young Offenders Act.

The question of course arises whether a mandatory provision protecting youthful complainants and witness in the *Criminal Code* would survive a challenge brought under the *Charter of Rights*. On the one hand, it is the decision of the Ontario Court of Appeal in *Canadian Newspapers* stating that the mandatory ban in subsection 442(3) is improper, but on the other hand, a decision upholding a similar mandatory ban in the *Young Offenders Act* in favour of protecting youthful complainants and witnesses.

One hopes that the philosophy of protecting youth and encouraging them to report sexual assault would prevail, to justify inclusion of a mandatory ban for youthful complainants and witnesses in subsection 442(3). If not, then there is a real prospect that a youthful complainant or witness in an adult proceeding will be denied "equality before the law" contrary to section 15 of the *Charter of Rights*. This is because the youth who is assaulted by an adult is, in the matter of protection of identity, treated less favourably than a youth assaulted by another youth. Given that aggression against children by adults is, arguably the more serious of the two situations, the discrepancy in protection is hard to justify.

It will be noted that section 442 is applicable to the offences described in section 246.4 of the *Code*. As a housekeeping matter, it will be necessary to include in section 442 reference to the offences which we have recommended be created, and we so recommend.

Recommendation 87

Subsection 442(3) of the Criminal Code should be amended so as to make it clear that section 442(3) applies to the offences recommended by this committee.

2.7 Defences

We have provided, in our draft legislation, for a due diligence defence in certain circumstances. With respect to the offence of sale of visual pornographic material to children, for example, we have provided that an accused may defend on the basis that he used due care and diligence to ensure that there was no such visual pornographic material in the materials sold or rented.

We propose that the due diligence defence be available in two other sections of our criminal law recommendations concerning child pornography. These two offences are the sale of child pornography and the sale of material advocating the sexual abuse of children.

Recommendation 88

> **A person accused of the offence of selling pornography containing sexually explicit portrayals of children, or of selling pornography advocating the sexual abuse of children, should be entitled to defend the charge on the basis that he had used due diligence to inspect the materials.**

The draft section which we propose to make applicable to these offences is:

> Nobody shall be convicted of the offences in sections—who can demonstrate that he used due diligence to ensure that there were no representations in the materials, matters or things which he sold, rented, offered for sale or rent, exposed to public view, or had in his possession for purposes of sale or rent, which offended the section.

Particularly at the retail level, there may well be situations where large volumes of material come from a wholesaler. We heard evidence at the public hearings that sometimes the retailer will not even inspect the material before it is put on the shelves. Often, the material will be shelved by young employees of a retail concern who would not, in any event, have the authority to prohibit display of improper material even if they detected it.

By making available a due diligence defence, we hope to encourage persons at the mangement level of retail enterprises to take an interest in what goes on the shelves, and to inspect the material for compliance with the law.

We have given considerable thought to the question of penalties for the proposed offences. The rationale for one particular choice of penalty is discussed above with the various recommendations.

2.8 Penalties and General Sections

In addition to the specific penalties for offences which are contained in the proposed sections, we note the impact of certain general sections of the *Criminal Code*.

Subsection 646(1) of the *Code* provides that an accused convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized. Where the accused is convicted of an indictable offence punishable with imprisonment for more than five years, subsection 646(2) of the *Code* allows imposition of a fine in addition to any other punishment that is imposed. The size of the fine in either case is in the discretion of the Court.

Some of the offences we recommend are punishable upon summary conviction, rather than as indictable offences. Some of our proposals would permit the Crown to proceed either by indictment or by summary conviction.

Subsection 722(1) of the *Criminal Code* provides that, except where otherwise expressly provided by law, every one convicted of an offence at summary conviction is liable to a fine of not more than $500 or to imprisonment for six months or both.

As we have discussed above, we have departed from this minimum with respect to all the summary conviction offences which we recommend, because it is too low. By reason of paragraph 647(b) of the *Code*, a corporation convicted of a summary conviction offence may be fined, in lieu of imprisonment, an amount not to exceed $1,000. We view this provision as much too low. This statutory maximum fine provision would apply, for example, in the case of a corporation convicted, in summary proceedings, of selling a visual representation of someone under 18 participating in explicit sexual conduct. We do not think that a maximum fine of $1,000 adequately reflects society's opinion of the seriousness of this offence. It is true, of course, that in this instance, the Crown would have the option of proceeding by way of indictment, and thus securing a higher fine. However, this is not the case with some of the other summary conviction offences, like those involving display of visual pornographic material to children.

Paragraph 647(b) does not recognize the option that a higher fine may be attached to a particular crime, as does subsection 772(1). Accordingly, we cannot craft a penalty which we think appropriate for the corporate offender, in the case of a summary conviction offence. Such a change must come, as offences must come, as part of an across the board change, or not at all.

That is why we have recommended above that paragraph 647(b) be amended to raise the maximum fines for corporations convicted of a summary conviction offence, or to provide that the penalty can be individually suited to each offence enacted, as is the case with section 722(1).

There are, however, two other recommendations which will have a bearing on the corporate offender. The first of these is for forfeiture of the offending materials and copies of it in the event of a conviction under our proposed sections.

Recommendation 89

The Criminal Code should be amended to add a provision that:

> **In any proceedings in which a person is convicted of producing, distributing or selling pornographic material the court shall order the offending material or matter or thing or copies thereof forfeited to Her Majesty in the Right of the Province in which proceedings took place, for disposal as the Attorney General may direct.**

This provision is not a free-standing section which would allow forfeiture proceedings to be brought whether or not a criminal charge had been laid against an individual or corporate accused, like the present section 160. Rather, it is an integral part of the penalty for the offence. It is some advance

over the provisions which permit seizure only of the material before the court *in the trial, because copies of that material may also be seized.*

We believe that it is also important to have a section which addresses the criminal liability of the managers or directors of a company which offends the recommended provisions.

There are good reasons for wanting to go behind the corporate façade. Either in the notable case of a Bob Guccione or Hugh Hefner, or in the less grand case of a fly-by-night operator, the real advocate and purveyor of certain material will be an individual, but he will act through a corporation. The corporate structure may be such that he never can be said to be personally involved in the act of production, distribution or sale. In such a case, a section aimed at the director would help bring to account the person responsible for the behaviour.

Recommendation 90

A section should be added to the Criminal Code to provide for criminal liability of officers and directors, along these lines:

Where an offence under this act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

3. Prostitution

The Committee recommends that the sections of the *Criminal Code* dealing with soliciting, procuring, and bawdy houses be completely restructured, so that they address the contemporary reality of prostitution. The sections we have drafted to replace the present *Code* provisions deal with street nuisance, procuring, and prostitution establishments. The proposed provisions dealing with procuring and prostitution establishments contain special parts to address the situation of young persons. These parts are set out and discussed below. In addition, we create a new offence of engaging in, or attempting or offering to engage in sexual activity for money or other consideration with a person under 18. It, too, is set out and discussed in this part.

3.1 Procuring

Recommendation 91

Sections 166 and section 195(1)(a) to (i) of the Criminal Code should be repealed and replaced with a new prohibition on procuring, which would deal specifically with the procuring of those under 18. That section is:

(1) Everyone who

(a) by force, by threat of force or by other coercive or threatening behaviour induces a person of 18 years or older to engage in prostitution with another person or generally, or

(b) by force, by threat of force or by other coercive or threatening behaviour compels a person of 18 years or older to continue engaging in prostitution with another person or generally

is guilty of an indictable offence and liable to imprisonment for 14 years.

(2) Everyone who

(a) persuades, coerces or deceives a person under 18 years of age in order to induce that person to engage in sexual activity for money, or for any other consideration or reward, or in illicit sexual conduct with another person or generally, or

(b) encourages, coerces or deceives a person under 18 years of age in order to induce that person to continue to engage in sexual activity for money, or for any other consideration or reward, or in illicit sexual conduct with another person or generally,

is guilty of an indictable offence and liable to imprisonment for 14 years.

(3) For the purposes of subsection (2), "illicit sexual conduct" means any sexual behaviour or act which is prohibited by the Criminal Code, whether or not such prohibition is based upon the age of the parties to the act or of any one of them.

These provisions about procuring are intended to replace the present procuring provisions of the *Criminal Code* which are found in paragraphs 195(1)(a) to (i). The procuring provisions relating to young persons which we recommend are found at subsections (2) and (3), outlined in heavy type. These provisions represent an innovation of sorts, because the *Code* does not now treat procuring of children any differently from procuring of an adult, except for the creation, in section 166 of the *Code*, of a prohibition against a parent or guardian procuring the defilement of a female child. Our provisions in (2) and (3) above would replace the present section 166.

Some important differences may be noted between subsection (1) of our procuring section, dealing with those 18 years and over, and subsection (2), dealing with those under 18. Firstly, the burden of the procuring offence vis-a-vis the adult victim is in the would-be procurer's use of force or threats. We have proceeded on the assumption that an acceptable degree of freedom of choice may be present in the decision of an adult to engage in prostitution, assuming that the element of coercion may be controlled. We do not make the same assumption about the decisions of those under 18. Accordingly, persuading or deceiving a person under 18 to engage in sexual activity is made a criminal offence, as is coercion of such a person.

It may well be argued that the distinction between the two cases is a somewhat artificial one. Someone over 18 may be persuaded or deceived into prostitution; some of those under 18 may be quite capable of realistically assessing efforts to "persuade" them to a particular course of conduct and of resisting such blandishments. We recognize that the distinction based on age in

this way is not a perfect one. However, we believe that overall the greater harm may arise from underprotecting the younger person than from underprotecting the older one.

Secondly, the offence in regard to the older person consists of coercing him or her to engage, or continue to engage in prostitution. The definition of "prostitution" for purposes of this provision is "the provision of sexual services by one person to another in return for money". By contrast, the offence with regard to the younger person is to induce him or her to engage, or continue to engage, in sexual activity for money, or for other consideration or reward, or to engage or continue to engage in illicit sexual conduct. These types of activities are more extensive than "prostitution". The extension in the language is intended to cover the case where a young person receives no cash, but rather room and board, or presents, or other payment in kind in return for sexual activity. Sometimes, the young person may in fact receive nothing at all for his or her activities. We would prohibit procuring a child to engage in sex for no reward, just as we prohibit procuring of the child to engage in sex for reward. The prohibition against procuring the child to engage in "illicit sexual conduct" would, accordingly, cover this type of case.

The category of situations which would come within the definition of "illicit sexual conduct" must be carefully examined. Given the present wording of the *Criminal Code*, we believe that there are a number of problems arising from this formulation. For example, the "illicit sexual conduct" definition would encompass buggery and bestiality, as well as gross indecency. In order to escape prosecution for these offences, the acts have to be committed in private by two persons each of whom is 21 years of age or more. Unless this age limit is lowered to 18 years of age or more, the combination of our definition of illicit sexual conduct and these provisions will cause some awkward discrepancies. For example, a person could be charged with procuring a person to commit buggery only if the person were under 18, but it would still be illegal to commit buggery with someone between 18 and 21. Rather than extend our procuring recommendations to protect persons up to 21, we recommend dropping the upper age limit for the buggery and gross indecency offences to 18.

Recommendation 92

The age specified in section 157 of the Criminal Code should be lowered to 18 from 21, so that the prohibition against buggery in section 156 of the Code and against an act of gross indecency in section 156 will not apply to acts committed in private between persons who are 18 or over.

Elsewhere, we have recommended that section 157 be repealed altogether. It may be thought that this leaves a gap in the protection afforded to young persons against certain kinds of assault. However, we consider that it is desirable for the sexual offences in sections 140 to 157 to be overhauled and brought up to date, and are satisfied that the protection afforded to young people by section 157 could be extended in a re-worked section which would

not feature such vague and broad language as "gross indecency". Such an overhaul could, we recognize, also involve repeal of section 157 as we now know it.

A number of offences in the *Code* involve sexual intercourse with a female under a certain age, or in certain circumstances.[14] The prohibition does not extend to sexual intercourse with a male. Because we intend to prohibit procuring of young males for sexual activity just as surely as we intend to prohibit procuring of young females, we believe that these sections of the *Code*, to which the "illicit sexual conduct" definition applies should be rationalized, with their protection being extended to males as well as females.

Recommendation 93

Sections 146, 151, 152, and 153 of the Criminal Code should be amended in order to provide that the protection against sexual assault extended thereby to females is also available to males.

Additionally, we note that many of the offences to which the "illicit sexual conduct" definition may refer require, as an element of the offence, that the victim be "of previously chaste character". It is not our intention to restrict the protection of the procuring provisions which we recommend; accordingly, we recommend that references to the previous chaste character be removed from the offences.

Recommendation 94

In offences involving sexual assault on young persons, the requirement that the victim be of "previously chaste character" should be removed from the Criminal Code.

We have considered whether the problems raised by the use of our phrase "illicit sexual conduct" should require spelling out in our proposed section exactly what it is that we think is involved in illicit sexual conduct. Having considered this possibility, however, we have rejected it. We think that it is important for the procuring section to forbid procuring young people to perform acts which would themselves be illegal, whether the procuring had taken place or not. Thus, we want to maintain, in our procuring section, the reference to other *Code* offences.

We note with considerable interest that changes to this part of the *Code* have been recommended by the Committee on Sexual Offences Against Children and Youths.[15] Further, it would appear that extending the benefit of some of these *Code* provisions to males as well as to females may be mandated by the provisions of sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*. Accordingly, we urge not only the enactment of the section on procuring of young persons which we have outlined above, but also the rationalization of sections 140 to 157 of the *Criminal Code* which appears to be required.

Recommendation 95

The offences involving young persons set out in Part IV of the Code should be reviewed with the aim of rationalizing them by repealing outmoded sections.

In our view, the proposed provisions on procuring will, when taken with our recommended provision on financial support from prostitution, substitute quite satisfactorily for the provisions of section 166 which are now, in our opinion, outmoded. The procuring proposal does not include the offence, now in section 166, of knowingly receiving the avails of the defilement, seduction or prostitution of the female child or ward, but our proposal to deal with financial support from prostitution will address this aspect of the conduct now dealt with by section 166.

We are mindful that previous reform attempts have all focused on trying to rework and broaden section 166, while leaving intact the basic approach of penalizing a parent, guardian or custodial adult more harshly for interference with children than is a third party. We also note, however, that attempts to follow this model have resulted in more and more complex proposals, in order to maintain the distinction between parents and third parties, as well as accommodate the various defences relevant to each separate offence. In our view, the basic offence created by our procuring proposal is one that can appropriately be applied to parents and guardians, as well as to third parties. The proposed penalty is serious enough to signal the gravity of the breach of social and emotional trust involved in a parent introducing his or her child to illicit sexual conduct. We do not think that a penalty of more than 14 years is required for parents committing such an offence. By the same token, we are not convinced that, given the seriousness of the offence, we should propose any lesser penalty for persons other than parents who engage in this conduct.

It may be noted that the proposed procuring provisions do not contain any term which replaces exactly the offence which is now found in section 167 of the *Criminal Code*. That section makes it an offence for the owner, occupier, or manager of premises, knowingly to permit a female person under the age of eighteen to resort to or be in the premises for the purpose of having illicit sexual intercourse with a particular male person or male persons generally. The harms aimed at by the offence are those of facilitating the sexual misconduct of a young female, and of facilitating male access to the young female. We note that the presence or absence of financial advantage to the manager of the premises is immaterial to the offence. In our view, this provision should be repealed altogether.

We acknowledge, of course, that previous efforts to rationalize the law in this area have included redrafted versions of this provision. However, we refrained from doing so because we think that the worst of the conduct reached by the section, namely facilitating sexual access to young persons, is addressed by the procuring provisions which we have recommended. We note that there have been very few reported cases under section 167 in this century. The section, as it now stands, could easily be used against friends or contemporaries

of the young person who simply offer her the use of an apartment in which to engage in consensual sexual relations with a boyfriend of the same age. We consider such use inappropriate and recommend that this seldom used provision is better repealed than reformed.

Recommendation 96

Section 167 of the Criminal Code should be repealed.

We do not intend to suggest by the foregoing, however, that persons under 18 who procure the sexual activity for reward of other youths should escape the reach of the proposed section. In our opinion, a youth who preys on other youths does not deserve immunity from the law; such a person should be tried for the offence, pursuant to the procedures set out in the *Young Offenders Act*, in the same way as he or she would be charged and tried with any other offence he or she commits.

3.2 Financial Support from Prostitution

Recommendation 97

Section 195(1)(j) of the Criminal Code be repealed and replaced with a new prohibition against receiving financial support from prostitution, which would contain provisions dealing specifically with receiving support from the prostitution of those under 18. The section is:

(1) Everyone who by force, threat of force or other coercive or threatening behaviour induces a person of 18 years or older to support him or her financially in whole or in part by acts of prostitution is guilty of an indictable offence and liable to imprisonment for 14 years.

(2) Everyone who is supported financially in whole or in part by a person under 18 years of age from the proceeds of sexual activities by that young person for money or for other consideration or reward is guilty of an indictable offence and liable to imprisonment for 14 years.

(3) For purposes of subsection (2), evidence that a person lives with a person or persons under the age of 18 who engage in sexual activity for money or for other consideration or reward is, in the absence of evidence to the contrary, proof that that person is supported, in whole or in part, from the proceeds of that activity.

These provisions with respect to financial support from prostitution are intended to replace paragraph 195(1)(j) of the *Criminal Code*, which makes it an offence to live wholly or in part on the avails of the prostitution of another person. We have fashioned provisions which relate specifically to being supported from the proceeds of the activities of a juvenile prostitute. There are now no provisions of the *Code* addressing this issue separately, with the exception of the offence created by section 166 for a parent or guardian knowingly to receive the avails of the defilement, seduction or prostitution of a female person. We take the view that section 166 is too narrow because it

relates only to female victims, and it does not reach the conduct of third parties who are receiving support from the activities of juvenile prostitutes. Accordingly, as we have done in other cases, we have given particular attention, in the drafting of our recommendations, to the situation of juveniles.

It will be noted that the offence involving adults depends on the presence of force, threat of force or other coercive or threatening behaviour being used. In all other situations, the conduct of the adult prostitute and his or her "dependents" is, in our view, no business of the criminal law. We must assume that an adult has the appropriate judgment to avoid being exploited, but, if he or she does not have that judgment, then we have concluded that the law must not interfere. As we argued in the case of the procuring provisions, regard for individual liberty and responsibility dictates that, at some point, societal protection against non-coercive behaviour must come to an end, however much protection may turn out to be needed in some individual cases.

By contrast, we think that society has an interest in protecting persons under 18. Society has an interest in their development free from what we regard as potentially harmful influences and activities, and society accordingly has a corresponding duty to shield them. Hence, we have made the offence of being supported from the proceeds of the sexual activities of a young person an offence which does not depend on the use of coercive behaviour. Even if the young person's contribution of support is voluntary, it would attract a charge under the proposed section.

Adult prostitutes told the Committee that the present provisions with respect to living on the avails of prostitution could jeopardize a person to whom the prostitute has an emotional attachment. They pointed out that a boyfriend with no job, or little income of his own, who lives with a prostitute or is supported by her, is liable to be charged under paragraph 195(1)(j) with living on the avails of prostitution. The risk extends, we were told, to other persons supported by the prostitute as part of her family or friendship network.

Our recommendations with respect to the person over 18 are intended to be responsive to this concern. Unless the support is exacted from the prostitute by coercive behaviour, then, in our view, society should not penalize the person who receives that support. We are not convinced that we should afford the same shelter for persons supported by the young person. The evidence before the Committee indicates that young people, particularly females, may be introduced to prostitution or maintained in it, by males with whom the young people believe they have an affectionate relationship. The creation of some sort of personal bond of this nature, being one of the methods of recruitment to prostitution, should not attract any comfort from the law, direct or indirect, to the unscrupulous who create such bonds.

The recommended offence, in the case of an adult, is that of coercing a person to support the accused financially "in whole or in part by acts of prostitution". In the case of the person under 18, the conduct generating the support is described as "sexual activites for money or for other consideration or

reward". We believe that young people who receive, and pass on to others, payment in kind for sexual activities should also be protected against exploitation, just as we protect those who support others by means of monetary proceeds of sexual activity. We do not wish to encourage a person to manipulate the type of reward for sexual activity received by juveniles in order to escape criminal sanctions for being supported from those proceeds.

As mentioned, we think that the proposed financial support section is broad enough to cover the activities of parents, guardians and other adults in charge of young people who may be receiving benefit from their sexual activities. Given the strength of the penalty which we have attached to this offence, we see no need to create a separate offence referable only to this one class of adult exploiter. This section is also broad enough to cover receipt of support by another person under the age of 18. There appears to be no special reason for specifically excluding these persons from the application of the section. The methods of trial and disposition provided for in the *Young Offenders Act* provide adequate protection to the youth charged.

Subsection (3) of our proposed provision is a reworking of the presumption which now appears in the *Code* as subsection 195(2). That subsection, drafted in language reflecting the other concepts in section 195, provides that evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy house or house of assignation, is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. This presumption would apply to cases of living on the avails of the prostitution of the adult or the young person, because section 195 does not distinguish between these two types of case.

The presumption which we have created in the new subsection (3) applies only to the offence involving persons under 18. The offence dealing with adults depends on there being an actual showing of coercive behaviour. There is thus no need or justification for a presumption. The offence with respect to youths does not depend on this showing of violence or threat; the behaviour encompassed by the offence may present few outward, distinctive signs apart from the signal of residence. Thus, the effectiveness of law enforcement may well depend on the use of a presumption, that if certain facts are present, receipt of support from a young person's sexual activity can be assumed, in the absence of proof to the contrary.

In our opinion, living with a person or persons under 18 who engage in sexual activity for reward is a sufficiently distinctive characteristic to justify its use as a trigger for the presumption that a person is being supported from these proceeds. Maintenance of a common living place involves an element of shared decision making about the expenses of that living place. It is thus a characteristic rationally connected to the question of support. The "living with" test is more strict than the test in the present subsection 195(2) of being "habitually in the company" of prostitutes.

Once the element of "living with" has been established, we think that the state would be justified in calling upon the accused for an answer. The financial resources which the accused has at his or her command, the other calls on those resources, and an explanation of his or her sources of support are all particularly within the knowledge of the accused and of no one else. The provision that the presumption extend to someone who lives with "a person or persons" is intended to cover the situation of one who may be involved with more than one person and thus living full time with no one of them. We heard evidence at the hearings that a pimp may convince several people that he is their lover, spending some time with each, and telling none of his other involvements. We want the provisions with respect to financial support from sexual activity to reach this sort of person, as well as the person who is supported by only one young person.

3.3 Prostitution Establishments

We propose amendments to the existing provisions in section 193 of the *Criminal Code* relating to "common bawdy houses". We have replaced the historic terminology with the term "prostitution establishment" and have proposed that the sanctions against operating a prostitution establishment not apply to one or two persons over the age of 18 who perform acts of prostitution in their own homes. Moreover, we have recommended that the governments of the provinces consider development of programs whereby prostitution establishments could be licensed and regulated as other businesses are, such businesses to be exempt from the application of the *Criminal Code*.

We emphasize, however, that the person under 18 has no place in such an establishment. We do not intend by our proposals to create any enclave in which a young person may engage in prostitution, for to do so is merely to encourage the commercial instincts of any who would exploit that young person. It is clear to us that the exemption for one or two prostitutes operating from their own residence should be confined to persons 18 or over and that no provincial regulatory program should permit use of those under 18 in any licensed premises.

Recommendation 98

No person under 18 should be permitted to be employed in any prostitution establishment which might be set up pursuant to the exception for provincially regulated establishments provided in our proposal about prostitution establishments.

3.4 Sexual Activity for Reward with Juveniles

Recommendation 99

The following new section should be added to the Criminal Code:

(1) Everyone who engages in, or attempts or offers to engage in sexual activity for money or for other consideration or reward with a person under 18 years of age is guilty of an indictable offence and liable to imprisonment for five years.

(2) It is no defence to a charge under this section that the accused believed the other person to be 18 years or older.

We think that it is essential that the *Criminal Code* contain an offence specifically framed around sexual activity for reward with a person under 18. There is no provision now in the *Code* which adequately addresses this sort of behaviour. The usefulness of section 195.1, the soliciting provision, is seriously impaired by the doubt in some jurisdictions concerning its applicability to customers and by the attitude toward enforcement generated by judicial interpretation of its provisions. The section cannot be counted upon at all to curb the sexual exploitation of the young. The *Criminal Code* provisions respecting sexual assault would not apply to the majority of the ordinary commercial transactions involving young persons because of the young person's consent to the behaviour. The provisions of child welfare legislation, which we have considered, have too diffuse an impact on this conduct.

Accordingly, we recommend the creation of a specific offence aimed at those who engage in, attempt or offer to engage in sexual activity for money or other consideration or reward with persons under 18. We have not limited the types of reward to the monetary ones because of our understanding that youths may receive food, lodging, or presents for sexual activities rather than money. The attempt and the offer are prohibited in order to emphasize the seriousness with which the behaviour is viewed. In our opinion, a young person who is even approached by an adult should be able to invoke the law enforcement process. To await the completion of the sexual activity before triggering the criminal process is to lose a substantial portion of the deterrent value of this provision. Moreover, including attempt and offer offences means that law enforcement authorities will be able to use surveillance methods instead of relying exclusively on undercover officers or child complainants in order to enforce the law. Use of undercover operations presents tremendous difficulties in the context of this offence, ranging from finding a youthful appearing officer, to the problem of securing convictions based upon evidence of an undercover complainant who is actually over 18.

The section is directed toward the party whom we think is more likely to be the "aggressor" in the contacts between the user and provider of the sexual services of youths. Included in that group is the person under 18 who as the customer engages in, or attempts or offers to engage in sexual activity for reward with another young person. The behaviour aimed at by the section is the instigation, or attempted instigation, of commercial sexual activities with a young person. A would-be customer under 18 who engages in this conduct should be charged, and tried according to the procedure provided in the *Young Offenders Act*.

Recommendation 100

A young person who engages in sexual activity for reward as the provider of sexual services should not be subject to a criminal penalty.

There are many reasons for our decision not to create such an offence. It appears to us as if enforcement of such a provision presents two equally undesirable alternatives. The provision could be enforced by way of undercover police activity. The prospect that officers would actually approach persons under 18 and try to engage their sexual services, for purposes of effecting an arrest, is very distasteful to us, and we are sure that it would be equally repelling to most police authorities. Alternatively, one can consider the possibility that customers, or prospective customers, would complain to police authorities.

It is doubtful whether customers who had actually received sexual services for a consideration would complain, because of the prospect of being charged themselves. We doubt that police officials would welcome an adult's offer to give evidence against a child in order that the adult might secure immunity from prosecution. However, the adult customer could well use the threat of a report to the police in order to control the behaviour of the young person. Whether the threat were groundless would not matter if the youth believed that the customer would carry it through. The danger of blackmail is, in our view, real enough to merit caution about creating this offence.

Even if the customer or would-be customers were not inclined to blackmail, one wonders about the effectiveness of an enforcement system dependent to any significant degree on complaints. The most likely persons to bring complaints are persons who are offered but do not accept the services. Yet indifference, a desire to avoid involvement in the criminal justice system and even compassion may inhibit complaints from these individuals.

The question of the equity of our proposal must, of course, be faced. We have recommended penalizing one actor in a sexual transaction, or would-be transaction, while leaving the other outside the reach of the prohibition. Some have mentioned in the Committee hearings the possibility that youths will be the aggressors in these situations, and that a manipulative youth may well threaten to blackmail a customer. We must take those possibilities into account when assessing the impact and the fairness of our recommendation.

We point out that an adult prostitute suffers no criminal sanction for the straightforward activity of sale of sexual services, under our recommendations or, with one or two exceptions, under the present *Criminal Code*. We do not believe that there is any justification for penalizing in a young person what is not criminal when done by an adult. The rationale that is sometimes advanced for making sale of sexual services by a youth an offence is that it would have the beneficial effect of bringing the young person into contact with law enforcement officials and social agencies which would help break the links of the child to the life of prostitution. We have received little or no evidence of the efficacy of such intervention. In fact, the evidence we have received tends to show that this expected benefit will not arise, because young people are out on the street again within hours of arrest, and because effective rehabilitative programs are either seriously crowded or simply disappearing because of

government restraint programs. Such a notional support system cannot possibly justify the criminalization of conduct by a youth which would not be criminal by an adult.

In fact, when one analyses the thrust of our recommendations, one sees that the difference in treatment under the law would be a difference between the customer of the adult prostitute and the customer or would-be customer of the youth. We think that there is ample justification for imposing sanctions on the customer of the youth. We heard arguments at the public hearings that penalizing the customer is an effective method of reducing the market for sexual services. We also heard complaints at the public hearings and in some private sessions that the penalties now applied to those who sexually exploit children are pitifully light, amounting to no sort of deterrent at all.

We consider use of children in commercial sexual activities to be a serious harm which should be deterred, because of what is often the imbalance of power and resources between perpetrator and victim, and the lasting interference with the child's personal integrity, both mental and physical. Accordingly, we consider it appropriate that a means which we have reason to believe will be effective as a deterrent, and which can be enforced by orthodox and acceptable law enforcement methods, should be employed to curb resort to children for commercial sex. We have considered it unnecessary to resort to punish the customers of adult prostitutes, because the social harm to adult prostitutes is arguably somewhat less than affecting children, and because we take the view that society can and should accord to adults more autonomy in their own lives and more responsibility for their own well being.

3.5 Disorderly Conduct, Indecent Exhibition, Loitering, Soliciting

It is not our intention to criminalize street soliciting *per se*. Rather, we have chosen to deal with the problem of street soliciting which presents itself to nearby residents and those who seek to use the streets and other public and private facilities, where prostitutes ply their trade. This problem is the nuisance created by some prostitutes, some customers, and sightseers, in any location which becomes a regular site of prostitution activity.

We have proposed the following revision of section 171 of the *Criminal Code*:

(1) Everyone who

(a) not being in a dwelling house causes a disturbance in or near a public place,
(i) by fighting, screaming, shouting, swearing or using insulting or obscene language,
(ii) by using sexually offensive remarks or suggestions,
(iii) by being drunk, or
(iv) by impeding or molesting other persons,

(b) openly exposes or exhibits an indecent exhibition in a public place,

(c) loiters in a public place and in any way obstructs persons who are there,

(d) stands, stops, wanders about in or drives through a public place for purposes of offering to engage in prostitution or of employing the services of a prostitute or prostitutes and on more than one occasion
(i) beckons to, stops or attempts to stop pedestrians or attempts to engage them in conversation,
(ii) stops or attempts to stop motor vehicles,
(iii) impedes the free flow of pedestrian or vehicular traffic, or of ingress or egress from premises adjacent to that public place,

(e) disturbs the peace and quiet of the occupants of a dwelling house by discharging firearms, by any of the forms of conduct in paragraphs (a), (b), (c) or (d) of this subsection, or by other disorderly conduct in a public place,

(f) not being an occupant of a dwelling house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of the building or structure to which at the time of such conduct, the occupants of two or more dwelling houses comprised in the building or structure have access as of right or by invitation, express or implied,

is guilty of an offence punishable on summary conviction.

We do not, as we have stated, recommend creating an offence which focuses on the sale of sexual services by young persons. However, we see no good reason why young persons who are using the streets and offend against any of the provisions of the redrafted section 171 should not be charged with that offence. The trial and disposition after conviction of any such youngster would be governed by the *Young Offenders Act*. We consider that this statute offers sufficient procedural protection to the young person.

Recommendation 101

Persons under 18 who are using the streets and commit any of the nuisances prohibited in our proposed section 171 of the Criminal Code should be prosecuted in accordance with that section.

Footnotes

[1] John S. Kiedrowski and Jan Van Dijk, *Pornography and Prostitution in Denmark, France, West Germany, The Netherlands and Sweden* W.P.P.P.#1 at 100.

[2] Badgley Report, Vol. I, at 67.

[3] *Attorney General of Nova Scotia et al* v. *MacIntyre* (1982), 132 D.L.R. (3d) 385 (S.C.C.), *per* Dickson, J. at 401.

[4] *R.* v. *Quesnel and Quesnel* (1979) 51 C.C.C. (2d) 270 (Ont. C.A.) *per* Brooke, J.A. at 274-5.

[5] *R.* v. *Quesnel and Quesnel*, (1979).

[6] *Re F.P. Publications (Western) Limited and The Queen* (1979), 108 D.L.R. (3d) 153 (Man.C.A.).

[7] *R.* v. *Several Unnamed Persons* (1983), 44 O.R. (2d) 81 (Ont.H.C.).

[8] 1984 Unreported (Ont.H.C.).

[9] *Canadian Newspapers Company Limited* v. *A.-G. for Canada; R.V.D.D.*, Feb. 1985 Unreported (Ont.C.A).

[10] *Canadian Newspapers* v. *A-G for Canada; R.V.D.D.* Feb. 1985 unreported at 30.

[11] *Canadian Newspapers* v. *A-G for Canada; R.V.D.D.* Feb. 1985 unreported at 38-39

[12] (1984), 13 C.C.C. (3d) 152 (Ont.H.C.).

[13] (1984), 13 C.C.C. (3d) 152 (Ont.H.C.).

[14] *Criminal Code*, ss. 146, 151, 152, 153.

[15] Badgley Report, Vol. I, at 46-48.

Chapter 47

Education and Social Services

The reform of the law with respect to child pornography and prostitution cannot be seen as the only action necessary to provide children and young people with better conditions in which to reach maturity. The law is not a particularly effective tool to bring about fundamental changes in the attitudes and behaviour of large numbers of people and organizations. While law clearly has role in defining the limits of acceptable behaviour, it is less likely to affect the more subtle aspects of the issues with which we are concerned. The law can and must state that activities, such as buying the sexual services of juveniles, or using them to make pornographic material, are unacceptable. But it is difficult to use the law to arrest a gradual shift towards acceptance of sexual relations between young children and adults or of the notion that the satisfaction of sexual desires justifies any and all indignities to one's partner.

Similarly, using the law may not be the most effective means of undermining long held and erroneous beliefs about sexual equality or sexual preference. Here it becomes evident that the need for education in the widest sense of the word is essential. This was a view expressed by many who made submissions to the Committee and one which we strongly endorse. Programs addressed to the public in general, specific professional groups in particular and to children and young people are needed.

It is assumed that, if programs are directed towards today's children, we will eventually have adults who are better informed about human sexuality and less likely to depend on misleading and erroneous material such as pornography. This is clearly a long term and slowly attained objective, but it is the core of any action to lessen the dependency on and effect of pornography. In addition, accurate information about the buying and selling of sexual services and the harms associated with such activities for young people should be available to counteract the partial and misleading information which is often contained in the media.

Although the focus of attention must be on children and young people, the integrity of the programs depends on the understanding of adults about such issues. It is important, therefore, that parents and adults with whom children come into contact in a professional way, for example, teachers, social workers

and the medical profession, are informed and understanding of both adult sexuality and the developing sexuality of children. We do not believe that the education of children can or should be left just to the school system. Parents, religious groups and other organizations indicated their wishes for involvement in the process and this we consider entirely appropriate and to be encouraged. We need, however, to ensure that adults do have the requisite understanding of the issues and how the information can be given in a way appropriate to a child's level of comprehension.

More generally, we consider it important that the Canadian population as a whole be better informed about the rights of children and the developmental processes which are part of the child's growth towards maturity. If we have a better understanding of individual and societal responsibilities towards children, it is hoped that children can grow up free of exploitation and harmful interference. In order to achieve these objectives we believe that it is necessary to promote programs and make more widely available the necessary information rather than simply hope that, in some vague and unspecified way, young people and adults will learn what they think they need to know.

Educational programs for children and in relation to sex or family life education are not the only areas in need of attention. As we were often reminded, pornography is just one part of the mass media and shares many common elements with mainstream communications. Children using the media receive implicit if not explicit messages about such issues as the role of women, how to be successful in life, and the commodities necessary in order to be happy. Despite the overwhelming presence of the media in our lives, we do little to educate children about how they should interpret the messages they receive or how and why the programs on television, for instance, are constructed in a particular way. There is, therefore, a real need to increase children's awareness of these issues through what was sometimes referred to as media literacy programs.

As will be evident, the distinction between media literacy programs and sex education and family life programs is not necessarily clear. Rather they are inter-connected and inter-dependent since, in the final analysis, our concern is that children learn about the dignity and worth of human beings in all their variations and subtleties. The brief from the B.C. Teachers' Federation spoke to these issues and represents the concerns and interests of many groups who came before the Committee:

> The communications media have long been acknowledged as an important tool in the educational process. Video, films, records, magazines and other media have great influence on the values and behaviour of people, whether or not they have been designed as educational materials. Young people are particularly susceptible to this influence because they lack the analytical skills to evaluate the effects of the media upon them. Images present in the mass media have become ever more pornographic over the last decade. Society has increasingly allowed these images to become an acceptable and normal component of entertainment. The juxtaposition of 'sex' and overtly aggressive behaviour—from beatings to rape—is commonly found on prime-time television.

> Children are impressionable. Their perceptions of the world and of the roles of men and women as sexual beings in the world are in an (sic) process of development. Children seek self-definition and strive to create individual and special identities, of which an important part is sexuality. The function or (sic) role models in this process is paramount. Children define themselves and learn to be 'attractive' and 'desirable' within externally established limitations. These limitations are set out by an adult-conceived and controlled 'teen culture' that provides role models which are strong determinants in the development of self-image, of personal sexuality and of the perception of others as sexual beings. Elements of that, 'teen culture', which begins with eight-year-olds, include advertising, rock music, rock videos, and television and film.

As the Canadian Teachers' Federation indicated, programs of media literacy should be designed, among other things:

> (a) to decrease children's belief that TV programs depict real life;
>
> (b) to increase children's tendencies to compare what they see on TV with other information sources;
>
> (c) to decrease television's credibility by teaching children about economic and production aspects of television.

While the emphasis on educational programs is justifed with respect to the more long term goals, children in need of special care and protection have to receive immediate attention. As we do not believe that children should be regarded as criminals, it is essential that social services and programs be in place to meet the needs of young people. Our level of success to date in this regard is not satisfactory.

This lack of success is due in part to the need for specialized training for those working with children with problems; in part to the lack of specialized programs which address the specific needs of the children, and in part to the lack of commitment to fund social programs designed to assist children. Although we are emphasizing the needs of children, it is apparent that these needs often arise because of the failure of other units in society adequately to care for the young people. It is more than likely, therefore, that many of the needs of children cannot be addressed in isolation from the family or school.

Perhaps one of the most disheartening aspects of the whole phenomenon of child prostitution is the frequency with which young people have come into contact with social service agencies and the seeming inability of these agencies to be of real assistance. If we are indeed serious about protecting children from the exploitative and destructive aspects of our society, then we have to commit ourselves to a sustained effort in educating professionals, developing programs, and allocating the necessary resources. There are some examples of effective and innovative programs across the country, but all too frequently our efforts have been meagre and subject to the financial vagaries of govenment funding.

The leadership and assistance of governments at all levels will be needed to implement appropriate educational and social service programs. It is not expected, however, that governments will be the only or major presence in

these activities. Indeed, many of those making submissions to the Committee indicated a clear preference for joint and collaborative action between governments and existing organizations and agencies. There are organizations which have developed expertise and programs in some of the areas of concern, and rather than ignoring this, it is necessary to learn of these efforts and support their further development and more widespread use whenever possible and appropriate. Organizations such as Media Watch and Planned Parenthood Associations can offer assistance in media literacy and sex and family life education programs as can religious organizations and provincial authorities. Their efforts should be encouraged and not duplicated.

Recommendations

Some of the recommendations in other parts of the Report, if implemented, will have an impact on children and the care we give them. In this section, however, we are making recommendations which are designed to have a specific effect on children and their environment. Although responsibility for many aspects of children's well-being is within provincial jurisdiction, it is our view that, in order adequately to address the needs of children, there must be co-operation, financial and other assistance among the federal, provincial and municipal governments and between governments and private agencies and organizations. There should be encouragement to develop new approaches and recognition that overly standardized programs may not be effective in meeting the different levels of need and the different experiences across the country.

Recommendation 102

Federal, provincial and territorial governments should reaffirm their commitment to providing an environment where all children have the opportunity to develop to the fullest extent, their intellectual, physical and spiritual attributes. To this end, the Secretariat proposed in this Report should give high priority to issues affecting children and young people.

Recommendation 103

The federal government should collaborate with and assist the provinces, territories and private organizations and agencies in the development of educational programs for children, and those with special responsibilties for the welfare of children, in the areas of family life, human sexuality and media literacy.

Recommendation 104

Provincial and territorial governments should give high priority to programs in family life, human sexuality and media literacy at all levels within the school system.

Recommendation 105

The federal government should collaborate with and assist the provinces, territories, and private organizations and agencies in assessing the effectiveness of social service programs designed to assist children and young people, in developing new programs and in implementing changes designed to better meet the needs and current realities of young people in the 1980s and 1990s.

Part V

Summary of Recommendations

Chapter 48

Recommendations on Pornography

1. Criminal Code

Recommendation 1

The term "obscenity" should no longer be used in the Criminal Code, and the heading "Offences Tending to Corrupt Morals" should also be removed.

Recommendation 2

New criminal offences relating to "pornography" should be created, with care being exercised to ensure that the definition of the prohibited conduct, material or thing is very precise.

Recommendation 3

The federal government should give immediate consideration to studying carefully the introduction of criminal sanctions against the production or sale or distribution of material containing representations of violence without sex.

Recommendation 4

There should be no sanctions introduced respecting material that is 'disgusting' even though our proposed repeal of section 159 would remove the existing offence related to a disgusting object.

Recommendation 5

Controls on pornographic material should be organized on the basis of a three-tier system. The most serious criminal sanctions would apply to material in the first tier, including a visual representation of a person under 18 years of age, participating in explicit sexual conduct, which is defined as any conduct in which vaginal, oral or anal intercourse, bestiality, necrophilia, masturbation, sexually violent behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted. Also included in tier one is material which advocates, encourages, condones, or presents as normal the sexual abuse of children, and material which was made or produced in such a way that actual physical harm was caused to the person or persons depicted.

Less onerous criminal sanctions would apply to material in the second tier. Defences of artistic merit and educational or scientific purpose would be available. The second tier consists of any matter which depicts or describes sexually violent behaviour, bestiality, incest or necrophilia. Sexually violent

behaviour includes sexual assault, and physical harm depicted for the apparent purpose of causing sexual gratification or stimulation to the viewer, including murder, assault or bondage of another person or persons, or self-infliction of physical harm.

Material in the third tier would attract criminal sanctions only when it is displayed to the public without a warning as to its nature or sold or made accessible to people under 18. In tier three is visual pornographic material in which is depicted vaginal, oral, or anal intercourse, masturbation, lewd touching of the breasts or the genital parts of the body or the lewd exhibition of the genitals, but no portrayal of a person under 18 or sexually violent pornography is included.

Recommendation 6

The provinces and the municipalities should play a major role in regulation of the visual pornographic representations that are not prohibited by the Criminal Code through film classification, display by-laws and other similar means. The provinces should not, however, attempt to control such representations by means of prior restraint.

Recommendation 7

Section 159 of the Criminal Code should be repealed, and replaced with the following provision:

PORNOGRAPHY CAUSING PHYSICAL HARM

159(1)(a) Everyone who makes, prints, publishes, distributes, or has in his possession for the purposes of publication or distribution, any visual pornographic material which was made or produced in such a way that actual physical harm was caused to the person or persons depicted, is guilty of an indictable offence and liable to imprisonment for five years.

(b) Everyone who sells, rents, offers to sell or rent, receives for sale or rent or has in his possession for the purpose of sale or rent any visual pornographic material which was made or produced in such a way that actual physical harm was caused to the person or persons depicted is guilty

(i) of an indictable offence and is liable to imprisonment for two years, or

(ii) of an offence punishable on summary conviction and is liable to a fine of not less than $500 and not more than $2,000 or to imprisonment for six months or to both.

(c) "visual pornographic material" includes any matter or thing in or on which is depicted vaginal, oral or anal intercourse, sexually violent behaviour, bestiality, incest, necrophilia, masturbation, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals.

SEXUALLY VIOLENT AND DEGRADING PORNOGRAPHY

159(2)(a) Everyone who makes, prints, publishes, distributes or has in his possession for the purposes of publication or distribution any matter or thing which depicts or describes:

(i) sexually violent behaviour;
(ii) bestiality;
(iii) incest, or
(iv) necrophilia

is guilty of an indictable offence and liable to imprisonment for five years.

(b) Everyone who sells, rents, offers to sell or rent, receives for sale or has in his possession for the purpose of sale or rent any matter or thing which depicts or describes:
(i) sexually violent behaviour;
(ii) bestiality;
(iii) incest, or
(iv) necrophilia

is guilty

(i) of an indictable offence and is liable to imprisonment for two years, or
(ii) of an offence punishable on summary conviction and is liable to a fine of not less than $500 and not more than $1,000 or to imprisonment for six months or to both.

(c) Everyone who displays any matter or thing which depicts
(i) sexually violent behaviour;
(ii) bestiality;
(iii) incest; or
(iv) necrophilia

in such a way that it is visible to members of the public in a place to which the public has access by right or by express or implied invitation is guilty of

(i) an indictable offence and is liable to imprisonment for two years, or
(ii) an offence punishable on summary conviction and is liable to a fine of not less than $500 and not more than $1000 or to imprisonment for six months or to both.

(d) Nobody shall be convicted of the offence in subsection (2)(a) who can demonstrate that the matter or thing has a genuine educational or scientific purpose.

(e) Nobody shall be convicted of the offence in subsection (2)(b) who can demonstrate that the matter or thing has a genuine educational or scientific purpose, and that he sold, rented, offered to sell or rent or had in his possession for the purpose of sale or rent the matter or thing for a genuine education or scientific purpose.

(f) Nobody shall be convicted of the offences in subsections (2)(a) and (2)(b) who can demonstrate that the matter or thing is or is part of a work of artistic merit.

(g) Nobody shall be convicted of the offence in subsection (2)(c) who can demonstrate that the matter or thing
(i) has a genuine educational or scientific purpose; or
(ii) is or is part of a work of artistic merit,
and
(iii) was displayed in a place or premises or a part of premises to which access is possible only by passing a prominent warning notice advising of the nature of the display therein,

(h) In determining whether a matter or thing is or is not part of a work of artistic merit the Court shall consider the impugned material in the context of the whole work of which it is a part in the case of a book, film, video recording or broadcast which presents a discrete story. In the case of a magazine or any other composite or segmented work the court shall consider the impugned material in the context of the specific feature of which it is a part.

DISPLAY OF VISUAL PORNOGRAPHIC MATERIAL

159(3)(a) Everyone who displays visual pornographic material so that it is visible to members of the public in a place to which the public has access by right or by express or implied invitation is guilty of an offence punishable on summary conviction.

(b) No one shall be convicted of an offence under subsection (1) who can demonstrate that the visual pornographic material was displayed in a place or premises or a part of premises to which access is possible only by passing a prominent warning notice advising of the display therein of visual pornographic material.

(c) For purposes of this section "visual pornographic material" includes any matter or thing in or on which is depicted vaginal, oral or anal intercourse, masturbation, lewd touching of the breasts of the genital parts of the body, or the lewd exhibition of the genitals, but does not include any matter or thing prohibited by subsections (1) and (2) of this section.

FORFEITURE OF MATERIAL

159(4) In any proceedings under section 159(1)(a) and (b), 159(2)(a) and (b), and 164, where an accused is found guilty of the offence the court shall order the offending matter or thing or copies thereof forfeited to Her Majesty in the Right of the Province in which proceedings took place, for disposal as the Attorney General may direct.

ABSENCE OF DEFENCE

159(5) It shall not be a defence to a charge under sections 159(1)(a) and 159(2)(a) that the accused was ignorant of the character of matter or thing in respect of which the charge was laid.

DUE DILIGENCE DEFENCE

159(6) Nobody shall be convicted of the offences in sections 159(1)(b) and 159(2)(b) who can demonstrate that he used due diligence to ensure that there were no representations in the matter or thing which he sold, rented, offered for sale or rent, or had in his possession for purposes of sale or rent, which offended the section.

DIRECTORS

159(7) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

DEFINITIONS

159(8) For purposes of this section, "sexually violent behaviour" includes

(i) sexual assault,

(ii) physical harm, including murder, assault or bondage of another person or persons, or self-infliction of physical harm, depicted for the apparent purpose of causing sexual gratification to or stimulation of the viewer.

Recommendation 8

Section 160 of the Code, allowing forfeiture proceedings to be brought, as an alternative to a criminal charge, should be retained in the Code but its application should be limited to tier one and tier two material.

Recommendation 9

To clarify the law on this point, section 160 should be amended to make it clear that the onus rests on the Crown under this section to prove beyond a reasonable doubt that the material comes within either tier one or tier two.

Recommendation 10

Section 161 of the Code should be amended as follows:

161. Everyone who refuses to sell or supply to any other person copies of any publication for the reason only that such other person refuses to purchase or acquire from him copies of any other publication that such other person is apprehensive may offend section 159(1) or section 159(2) of the Code is guilty of an indictable offence and as liable to imprisonment for two years.

Recommendation 11

Section 162 of the Code should be repealed.

Recommendation 12

Section 164 of the Code should be repealed and replaced by:

MAILING PORNOGRAPHIC MATERIAL

164(1) Everyone who makes use of the mails for the purpose of transmitting or delivering any matter or thing which:

(a) depicts or describes a person or persons under the age of 18 years engaging in sexual conduct,

(b) advocates, encourages, condones, or presents as normal the sexual abuse of children

is guilty of an indictable offence and liable to imprisonment for ten years.

(2) Everyone who makes use of the mails for the purpose of transmitting or delivering any matter or thing which:

(a) by virtue of its character gives reason to believe that actual physical harm was caused to the person or persons depicted, or

(b) depicts or describes:

(i) sexually violent behaviour,

(ii) bestiality,

(iii) incest, or

(iv) necrophilia

is guilty of an indictable offence and liable to imprisonment for five years.

(3) Everyone who makes use of the mails for the purpose of transmitting or delivering unsolicited visual pornographic material to members of the public is guilty of an offence punishable on summary conviction.

(4) Nobody shall be convicted of the offence in subsection (2)(b) who can demonstrate that the matter or thing mailed

(i) has and is being transmitted or delivered for a genuine educational or scientific purpose, or

(ii) is or is part of a work of artistic merit.

(5) It shall not be a defence to a charge under subsections (1) and (2) of this section that the accused was ignorant of the character of the matter or thing in respect of which the charge was laid.

(6) For purposes of this section "visual pornographic material" includes any matter or thing in or on which is depicted vaginal, oral or anal intercourse, masturbation, sexually violent behaviour, incest, bestiality, necrophilia, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals.

Recommendation 13

Section 165 of the Criminal Code should be repealed.

Recommendation 14

Section 163 of the Code should be repealed and replaced by:

LIVE SHOWS

163(1) Everyone who, being the owner, operator, lessee, or manager, agent or person in charge of a theatre or any other place in which live shows are presented, presents or gives or allows to be presented or given therein a performance which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of an indictable offence and liable to imprisonment for ten years.

(2) Everyone who, being the owner, operator, lessee, manager, agent or person in charge of a theatre or any other place in which live shows are presented, presents or gives or allows to be presented or given therein a performance which

(a) involves actual physical harm is being caused to a person participating in the performance, or

(b) represents:

(i) sexually violent behaviour;
(ii) bestiality;
(iii) incest; or
(iv) necrophilia

is guilty of an indictable offence and liable to imprisonment for five years.

(3) Everyone who, being the owner, operator, lessee, manager, agent or person in charge of a theatre or any other place in which live shows are presented, presents or gives, or allows to be presented or given therein without appropriate warning a performance in which explicit sexual conduct is depicted

is guilty of an offence punishable on summary conviction.

(4) It shall not be a defence to a charge under subsections (1) and (2) that the accused was ignorant of the character of the production.

(5) Nobody shall be convicted of the offence under subsection (2)(b) who can demonstrate that

(i) the performance is or is part of work of artistic merit; and
(ii) the performance was presented or given in a place or premises or a part of premises to which access is possible only by passing a prominent warning notice advising of the nature of the performance.

(6) For purposes of subsection 3 it shall be sufficient to establish that an appropriate warning was given that the performance was presented or given in a place or premises or a part of premises to which access is possible only by passing a prominent warning notice advising of the nature of the performance.

(7) For purposes of subsection 3 "explicit sexual conduct" includes vaginal, oral or anal intercourse, masturbation, lewd touching of the

breasts or the genital parts of the body, or the lewd exhibition of the genitals.

Recommendation 15

The provinces and the municipalities should play a major role in regulation of live performances involving sexual activity that are not prohibited by the Criminal Code, through licensing, zoning and other similar means.

Recommendation 16

Section 170 of the Criminal Code should be amended to add the following provision:

This section has no application to a theatre or other place licensed to present live shows

2. Canada Customs

Recommendation 17

The amendments we have proposed to the Criminal Code with respect to prescribed pornographic material should be incorporated by reference into the list of goods prohibited entry into Canada by Schedule C of the Customs Tariff and incorporated by reference into the Customs Act.

Recommendation 18

If, in administering the Customs Tariff, it becomes necessary for Customs to formulate descriptions of pornographic material more precisely than do our Criminal Code recommendations, Customs should put such formulations in the form of Regulations rather than internal policy guidelines or memoranda.

Recommendation 19

The Criminal Code should be amended to provide that it be an offence to import into Canada pornographic material proscribed by the Criminal Code.

Recommendation 20

Judges should be entitled to consider at the time of sentencing a person convicted of dealing in one manner or another with proscribed pornographic material that the person disclosed to law enforcement officers the source of the material in question.

Recommendation 21

The federal government should give higher priority than it now does to the control of the importation of pornography.

Recommendation 22

The basic 1977 policy guidelines on the interpretation of prohibited goods should be immediately revised to contain more precise and contemporary formulations of characteristics which must be present to make materials "immoral or indecent".

Recommendation 23

The jurisdiction to clear film and video recordings for importation into Canada should remain with Canada Customs. The jurisdiction to classify

film and video recordings for sale or rent or public showing should remain with the provincial film classification boards.

Recommendation 24

Co-operation between Customs and provincial film classification boards should continue in order that the classification of film and video recordings can take place as part of a single, integrated administrative procedure.

Recommendation 25

Film or video recordings referred by Customs to provincial classification boards should remain in the continuous control of both agencies until the classification and clearance process is complete.

Recommendation 26

The management information services of Customs should be upgraded to provide an adequate central data base and the ancillary systems necessary to capture, store and retrieve information relating to the importation of prohibited material into Canada.

Recommendation 27

Customs should be adequately equipped to fulfill its responsibilities in contributing to the information flow required for an effective interface between the resources of Customs and law enforcement agencies.

Recommendation 28

Customs should investigate the practicality of charging appropriate fees for the filing and hearing of appeals from classification decisions.

Recommendation 29

Customs, as part of a combined project to be undertaken with the Department of Communications and the CRTC, should examine the Customs implications involved in trans-border telecommunication of pornographic material.

3. Canada Post

Recommendation 30

The Postal service should assign policy and administrative priority to the effective control of distribution of pornographic material by mail. We further recommend that the postal service actively participate with the RCMP and the Customs service in gathering and exchanging information and data in an effort to better co-ordinate effective investigation and enforcement techniques to control the distribution of pornographic material by mail.

4. Broadcasting and Communications

Recommendation 31

The amendments we have proposed to the Criminal Code with respect to proscribed pornographic material should be incorporated by reference into Regulations passed or to be passed by the CRTC pursuant to the Broadcasting Act with respect to all broadcast media.

Recommendation 32

Canada should take the initiative to immediately open discussions on the international regulation of both public broadcasting signals and private signals emanating from fixed satellite services.

Recommendation 33

The CRTC should conduct the appropriate research into and promote appropriate public discussion about technology capable of scrambling and descrambling satellite signals, in order that there can be a measure of practical control over the transmission and reception of satellite signals.

Recommendation 34

Upon the issuing or renewal of a broadcast licence, a licensee should be required to post a bond in an appropriate amount to ensure compliance with the Regulations and conditions of licence relating to program content. In the event that a complaint about program content is upheld by the CRTC, the Commission should have the discretion to compensate the complainant for the costs incurred in presenting the complaint, such costs to be paid the licensee and secured by the aforesaid bond.

5. Human Rights

Recommendation 35

Human rights commissions should vigorously explore the application of their existing legislation and jurisprudence to pornography issues, including exposure to pornography in the workplace, stores and other facilities. However, we do not recommend that a separate pornography-related offence be added to human rights codes at this time.

Recommendation 36

Legislation along the lines of the Civil Rights Protection Act, 1981 of British Columbia should be enacted in all Canadian provinces and territories to provide a civil cause of action in the courts in respect of the promotion of hatred by way of pornography, and the existing British Columbia Act itself should be extended to cover the promotion of hatred by way of pornography.

Recommendation 37

Even if legislatures decide to include in human rights codes a specific pornography-related provision, we recommend that the civil cause of action described in Recommendation 36 be provided as an alternative.

6. Hate Literature

Recommendation 38

The definition of "identifiable group" in subsection 281.1(4) of the Criminal Code should be broadened to include sex, age, and mental or physical disability, at least insofar as the definition applies to section 281.2 of the Code.

Recommendation 39

The word "wilfully" should be removed from section 281.2(2) of the Code, so as to remove the requirement of specific intent for the offence of promoting hatred against an identifiable group.

Recommendation 40

The requirement in s.281.2(6) that the Attorney General consent to a prosecution under s.281.2(2) should be repealed.

Recommendation 41

The text of subsection 281.2(2) should be amended to make it clear that graphic representations which promote hatred would be covered by the provision. The subsection could prohibit "publishing statements or visual representations or any combination thereof, other than in private communications" which promote hatred against any identifiable group.

7. Film Classification and Censorship

Recommendation 42

Canada should not opt for a national film review system, but rather maintain the existing arrangement whereby review is done on a province by province basis.

Recommendation 43

Those provinces and territories which have not implemented a film review system should consider doing so.

Recommendation 44

Film review boards and Customs authorities should not enter into arrangements whereby local film review boards have de facto control over what enters Canada; we further recommend that the 60-day clearance period allowed by Customs to films entering by way of Québec ports be discontinued.

Recommendation 45

Provincial film review boards should have an explicit statutory mandate to refuse to permit exhibition in the province of films which are contrary to the Criminal Code. Provincial film review boards should not be empowered to prohibit or cut films which are not contrary to the Criminal Code.

Recommendation 46

Provincial film review legislation or regulations should contain explicit standards to govern the boards' activities in classifying and, where these powers exist, in prohibiting and cutting films.

Recommendation 47

The provinces should not exercise a power of prior restraint over advertising of films; however, the power to require that film classifications be included in an advertisement should be kept.

Recommendation 48

Clearance for exhibition by a provincial authority should not constitute a defence or a discretionary bar to a prosecution under the Criminal Code, with the exception that a film classification permitting a film to be shown to persons under 18 will constitute a defence to a charge of displaying visual pornographic material to a person under 18.

Recommendation 49

Each province should establish a system of review and classification for video recordings intended for private use in the province. Under such a system, the review board should be given an explicit statutory mandate to refuse to classify video recordings which are contrary to the Criminal Code but not be empowered to prohibit or cut video recordings which are not contrary to the Criminal Code.

Chapter 49

Recommendations on Prostitution

Recommendation 50

The government of Canada in conjunction with the governments of the provinces and territories should strengthen both their moral and financial commitment to removing the economic and social inequalities between men and women and discrimination on the basis of sexual preference.

Recommendation 51

The government of Canada in conjunction with the governments of the provinces and territories should ensure that there are adequate social programs to assist women and young people in need.

Recommendation 52

The government of Canada in co-operation with the provinces and territories, should provide financial support for both research into and the implementation of sensitive and relevant educational programs on human sexuality for use in the country's schools; in particular the governments should jointly fund a National Centre and Program in Sexuality and Life Education to bring together the leading scholars and clinicians in the field to conduct research and formulate program and pedagogical models.

Recommendation 53

The government of Canada in conjunction with the governments of the provinces and territories should undertake the direct funding or indirect financial support of community groups involved in the care and welfare of both practising and reformed prostitutes, so that adequate social, health, employment, educational and counselling services are available to them.

Recommendation 54

The Government of Canada in co-operation with the governments of the provinces and territories should commission further research on prostitution as a means of informing attempts to address it as a social phenomenon, and to deal effectively with its adverse impact on those who are or who have been involved in it.

Recommendation 55

The prostitution related activities of both prostitutes and customers should be removed from the Criminal Code, except insofar as they contravene non-prostitution related Code provisions, and do not create a definable nuisance or nuisances.

Recommendation 56

In the Criminal Code provisions dealing with exploitative conduct other than running a prostitution establishment, the concern of the criminal law should be confined to conduct which is violent or which threatens force; special police details or units should be established, and adequately funded, where required, to investigate and prosecute violent and abusive procurers and pimps; any prostitution business which operates without contravening the Criminal Code should be subject to municipal regulation.

Recommendation 57

The criminal law relating to prostitution establishments should be drawn so as not to thwart the attempts of small numbers of prostitutes to organize their activities out of a place of residence, and so as not to prevent provinces from permitting and regulating small-scale, non-residential commercial prostitution establishments employing adult prostitutes.

Recommendation 58

STREET PROSTITUTION

1. Repeal section 195.1 of the Criminal Code.

2. Amend section 171 of the Criminal Code as follows:

SECTION 171(1): DISORDERLY CONDUCT, INDECENT EXHIBITION, LOITERING, SOLICITING, ETC.

(1) Everyone who
- (a) not being in a dwelling house causes a disturbance in or near a public place,
  - (i) by fighting, screaming, shouting, swearing or using insulting or obscene language,
  - (ii) by using sexually offensive remarks or suggestions,
  - (iii) by being drunk, or
  - (iv) by impeding or molesting other persons,
- (b) openly exposes or exhibits an indecent exhibition in a public place,
- (c) loiters in a public place and in any way obstructs persons who are there,
- (d) stands, stops, wanders about in or drives through a public place for purposes of offering to engage in prostitution or of employing the services of a prostitute or prostitutes and on more than one occasion
  - (i) beckons to, stops or attempts to stop pedestrians or attempts to engage them in conversation,
  - (ii) stops or attempts to stop motor vehicles,
  - (iii) impedes the free flow of pedestrian or vehicular traffic, or of ingress or egress from premises adjacent to a public place
- (e) disturbs the peace and quiet of the occupants of a dwelling house by discharging firearms, by any of the forms of conduct in paragraphs (a), (b), (c) or (d) of this subsection, or by other disorderly conduct in a public place,
- (f) not being an occupant of a dwelling house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling house comprised in the building or structure by discharging firearms or by other disorderly conduct

in any part of the building or structure to which at the time of such conduct, the occupants of two or more dwelling houses comprised in the building or structure have access as of right or by invitation, express or implied,

is guilty of an offence punishable on summary conviction subject to a maximum fine of $1,000.

(2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a), (d), (e) or (f) was caused or occurred.

3. Remove definition of "public place" from section 179(1) of the Criminal Code, and revise the definition of "public place" in section 138 of the Code to read:

'public place' includes any place to which the public have access as of right or by invitation, express or implied, doorways and hallways of buildings adjacent to public places and to vehicles situated in public places.

Recommendation 59

PROCURING

1. Substitute for the existing section 195(1) the following:

Everyone who

(a) by force, threat of force or by other coercive or threatening behaviour induces a person of 18 years or older to engage in prostitution with another person or generally,

(b) by force, threat of force or by other coercive or threatening behaviour compels a person of 18 years or older to continue engaging in prostitution with another person or generally is guilty of an indictable offence and liable to imprisonment for 14 years.

2. Repeal subsections (3) and (4) of section 195.

Recommendation 60

FINANCIAL SUPPORT FROM PROSTITUTION

1. Substitute for section 195(1)(j) (living on the avails) the following:

Everyone who by force, threat of force or other coercive or threatening behaviour induces a person of 18 years or older to support him financially in whole or in part by acts of prostitution is guilty of an indictable offence and liable to imprisonment for 14 years.

2. Repeal subsection (2) of section 195(1).

Recommendation 61

PROSTITUTION ESTABLISHMENTS

1. Replace existing section 193 of the Criminal Code with the following provision:

(1) Everyone who operates or aids in the operation of any place which is used in whole or in part for purposes of prostitution is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Everyone who as owner, landlord, lessor, tenant, occupier, or otherwise having charge or control of any place, knowingly permits it to be let or used for purposes of prostitution is guilty of an offence punishable on summary conviction, subject to a maximum fine of $5,000.

(3) This section does not apply to:

(a) a place of residence in which two residents of 18 years or more of age of that place engage in acts of prostitution;

(b) a prostitution establishment licensed and operated in accordance with a regulatory scheme established by the provincial or territorial legislature in that jurisdiction.

(4) Where a person is convicted of an offence under subsection (1) the court shall cause a notice of the conviction to be served on the owner, landlord, or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

(5) Where a person upon whom a notice is served under subsection (4) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the place, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent a recurrence of the offence.

(6) For purposes of this section "place" includes any place, whether or not

(a) it is covered or enclosed,

(b) it is used permanently or temporarily, or

(c) any person has an exclusive right of user with respect to it.

2. Repeal definition of "common bawdy house" in section 179(1) of the Criminal Code.

3. Repeal clauses (a) and (d) of section 180(1) of the Criminal Code.

Recommendation 62

1. Amend section 155 and 157 of the Code, so that they no longer extend to consensual acts between those of 18 years or older.

2. Repeal section 158 of the Criminal Code.

Recommendation 63

In view of the uncertainty which surrounds the meaning and purpose of section 176 of the Criminal Code, and the confusion over the relationship between the nuisance provisions in the Code and the power of an Attorney General of a province to seek a civil injunction to restrain a common nuisance, the federal Minister of Justice and his provincial counterparts should, if necessary, make a reference of this issue to the Supreme Court of Canada, or seek a legislative solution to the problem.

Recommendation 64

Repeal section 253 of the Criminal Code.

Recommendation 65

Canada should review its position on its failure to become a party to the 1951 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others and its low profile international stance on prostitution and how to deal with it, in general; in particular, if it

takes issue with some of the prescriptions of the Convention, or future resolutions of international bodies on prostitution, then it should be on grounds of principle rather than expediency.

Chapter 50

Recommendations on Children

1. The Present Law

Recommendation 66

> Provincial child welfare authorities are encouraged to review their response to child sexual abuse, as recommended by the Committee on Sexual Offences on Children and Youths (at pp. 548-549). We recommend that the issue of children's involvement in the production of pornography should be on the agenda of any such review. However, we caution that not every child involved in the production of pornography may be a neglected child within the philosophy of child welfare legislation. Accordingly, we recommend that a balance be struck between recognizing the autonomy and capacity of the family to deal with exploitation of its own children and the provision of state assistance where that is needed.

Recommendation 67

> We recommend the enactment of criminal sanctions for the production, dissemination, and possession of "child pornography".

Recommendation 68

> Provincial and municipal authorities should continue their efforts to control the access of young people to offensive material by means of film and video classification systems and municipal by-laws regulating access to adult material.

2. International Obligations and Instruments

Recommendation 69

> Canada should ratify the 1959 Declaration of the Rights of the Child.

3. Legal Recommendations

Recommendation 70

> All of the reforms to the criminal law and related statutes dealing with pornography and prostitution involving children and youths should be applicable to persons under 18 years of age.

Recommendation 71

Trials of persons under 18, accused of any of the offences proposed in our recommendations should be conducted in accordance with the Young Offenders Act. Accordingly, if the minimum age of 18 as provided in that Act is not fully implemented across Canada by the time these recommendations are in effect, no person under 18, who is not given the protection of the Young Offenders Act, should be charged.

Recommendation 72

Pursuant to recommendation 2 in this Part, the following new section of the Criminal Code should be enacted:

(1) Everyone who:

(a) Uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to

(i) participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;

(ii) participate in any explicit sexual conduct in the context of a live show;

(b) induces, incites, or coerces another person to use a person under 18 years of age to

(i) participate in any explicit sexual conduct for the purposes of producing, by any means, a visual representation of such conduct;

(ii) participate in any explicit sexual conduct in the context of a live show;

(c) participates in the production of a visual representation of or a live performance by a person under 18 years of age participating in explicit sexual conduct;

(d) makes, prints, reproduces, publishes or distributes, or has in his possession for the purposes of publication or distribution, a visual representation of a person under 18 years of age participating in explicit sexual conduct

is guilty of an indictable offence and is liable to imprisonment for 10 years.

(2) For the purpose of subsection (1)

(a) a person who at any material time appears to be under 18 years of age shall in the absence of evidence to the contrary, be deemed to be under 18 years of age.

(3) Everyone who sells, rents, offers to sell or rent, receives for sale or rent, exposes to public view, or has in his possession for the purpose of sale or rent a visual representation of a person under 18 years of age participating in explicit sexual conduct, is guilty

(i) of an indictable offence and is liable to imprisonment for 5 years, or

(ii) of an offence punishable on summary conviction and is liable to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for six months or to both.

(4) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18 years of age participating in explicit sexual conduct, is guilty of an offence punishable on summary conviction, and is liable to a fine of not less than $500 and not more than $2,000 or to imprisonment for six months or to both.

(5) For the purposes of subsections (1), (3) and (4) above,

(a) "explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sexually violent behavior, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted;

(b) "sexually violent behavior" includes

(i) sexual assault, and

(ii) physical harm, including murder, assault or bondage of another person or persons, or self-infliction of physical harm, carried out for the apparent purpose of causing sexual gratification or stimulation to the viewer;

(c) "visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

Recommendation 73

Paragraph 647(b) of the Criminal Code should be amended to provide a higher maximum penalty for a corporation convicted of a summary conviction offence; or the section should provide, as does subsection 722(1), that a higher penalty may be provided with respect to a particular offence.

Recommendation 74

Section 168 of the Criminal Code should be repealed.

Recommendation 75

A new section of the Criminal Code should be enacted to deal with production, dissemination and possession of material advocating, encouraging or presenting as normal the sexual abuse of children in the following form:

(1) Everyone who makes, prints, reproduces, publishes, or distributes, or has in his possession for the purposes of publication or distribution material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of an indictable offence and liable to imprisonment for 10 years.

(2) It shall not be a defence to a charge under subsection (1) that the accused was ignorant of the character of the material, matter, thing or production.

(3) Everyone who sells, rents, offers to sell or rent, receives for sale or rent, exposes to public view, or has in his possession for purpose of sale or rent material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty

(i) of an indictable offence and liable to imprisonment for 5 years, or

(ii) of an offence punishable on summary conviction and liable to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for six months or to both.

(4) Everyone who knowingly, without lawful justification or excuse, has in his or her possession material which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of a summary conviction offence and is liable to a fine of not less than $500 and not more than $2,000 or to imprisonment for six months or to both.

(5) For purposes of this section "material" includes any written, visual or recorded matter.

(6) For purposes of this section "sexual abuse" means any sexual activity or conduct directed against a person under 18 years of age which is prohibited by the Criminal Code.

Recommendation 76

Section 163 of the Criminal Code should be repealed and replaced by a new section which would include provisions dealing specifically with the presentation of a live show advocating, encouraging, condoning, or presenting as normal the sexual abuse of children, in the following form:

(1) Everyone who, being the owner, operator, lessee, manager, agent or person in charge of a theatre or any other place in which live shows are presented, presents or gives or allows to be presented or given therein a performance which advocates, encourages, condones or presents as normal the sexual abuse of children is guilty of an indictable offence and liable to imprisonment for 10 years.

Recommendation 77

Section 164 of the Criminal Code should be repealed and a section enacted which includes provisions dealing explicitly with use of the mails to transmit material involving children or advocating the sexual abuse of children, along the following lines:

(1) Everyone who makes use of the mails for the purpose of transmitting or delivering any material which:

(a) depicts a person or persons under the age of 18 years engaging in explicit sexual conduct,

(b) advocates, encourages, condones, or presents as normal the sexual abuse of children,

is guilty of an indictable offence and liable to imprisonment for 10 years.

Recommendation 78

A new section should be included in the Criminal Code, to control display of visual pornographic material to persons under 18 years of age, in the following form:

(1) Everyone who

(a) sells, rents or offers to sell or rent visual pornographic material to anyone under 18 years of age; or

(b) displays for sale or rent visual pornographic material in such a manner that it is accessible to and can be seen or examined by anyone under 18 years of age; or

(c) being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein to anyone under 18 years of age any visual pornographic material

is guilty of a summary conviction offence and is liable to a fine not to exceed $1000 or to imprisonment for 6 months or to both.

(2) No one shall be convicted of an offence under subsection (1) who can demonstrate that

(a) he used due care and diligence to ensure that there was no such visual pornographic material in the materials which he sold or rented, offered for sale or rent, displayed for sale or rent, or presented, gave or allowed to be presented or given; or

(b) the visual pornographic material has a genuine educational or scientific purpose and was sold or rented, offered for sale or rent, or displayed for sale or rent, presented, given, or allowed to be presented or given, for that purpose; or

(c) according to the classification or rating established for film or videotape material in the province or territory in which it is sold, rented, offered for sale or rent, displayed for sale or rent, presented, given or allowed to be presented or given, the film or videotape has been classified or rated as acceptable for viewing by those under the age of 18 years.

(3) For purposes of this section, "visual pornographic material" includes any matter or thing or live performances in which is depicted or described vaginal, oral or anal intercourse, masturbation, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals, but does not include any material prohibited by [offences involving portrayals of children and sexually violent or degrading material].

Recommendation 79

Subsections 159(2)(b), (c) and (d) of the Code should be repealed and replaced by a provision specifically directed at selling or displaying sex aids to a person under 18 years of age, in the following form:

(1) Everyone who

(a) sells or offers to sell a sex aid to anyone under 18 years;

(b) displays for sale sex aids in such a manner that they are accessible to and can be seen or examined by anyone under 18 years of age,

is guilty of a summary conviction offence and is liable to a fine not to exceed $1000 or to imprisonment for 6 months or to both.

(2) For the purposes of subsection (1) "sex aid" includes any device, apparatus or object designed solely to stimulate sexually the user of it.

Recommendation 80

The following definitions should apply to the sections of the Code dealing with pornographic offences:

"sexually violent behaviour" includes

(i) sexual assault,

(ii) physical harm depicted for the apparent purpose of causing sexual gratification or stimulation to the viewer, including murder, assault or bondage of another person or persons, or self-infliction of physical harm.

"visual pornographic material" includes any matter or thing or live performances in which is depicted or described vaginal, oral, or anal intercourse, masturbation, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals.

Recommendation 81

The Evidence Acts of Canada, the provinces and the territories should be amended to provide that every child is competent to testify in court and the child's evidence is admissible; the weight of the evidence should be determined by the trier of fact.

Recommendation 82

There should be no statutory requirement for corroboration of "unsworn" child's evidence; this would entail repeal of section 586 of the Criminal Code, section 16(2) of the Canada Evidence Act and section 61(2) of the Young Offenders Act, and corresponding sections of provincial Evidence Acts.

Recommendation 83

No alteration be made to the Evidence Acts of Canada or the provinces and territories to permit reception by a court of hearsay evidence of a child's account of the commission against him or her of a sexual offence.

Recommendation 84

Subsection 442(1) of the Criminal Code should be amended to allow the court to exclude any person from the courtroom where any evidence or information presented to the court would be seriously injurious or seriously prejudicial to the complainant or witness who is under 18.

Recommendation 85

As much publicity as possible should be given to the name of an accused who is convicted of an offence involving the child pornography or child prostitution offences we propose, and the sexual offences in the Code, with the exception of the name of a person convicted of incest.

Recommendation 86

Subsection 442(3) of the Criminal Code should be amended to provide for the complainant and witness under 18 years of age the same mandatory protection from publication of name or identifying information as is now extended to youthful witnesses and complainants in trials of young offenders by section 38 of the Young Offenders Act.

Recommendation 87

Subsection 442(3) of the Criminal Code should be amended so as to make it clear that section 442(3) applies to the offences recommended by this committee.

Recommendation 88

A person accused of the offence of selling pornography containing sexually explicit portrayals of children, or of selling pornography advocating the sexual abuse of children, should be entitled to defend the charge on the basis that he had used due diligence to inspect the materials.

Recommendation 89

The Criminal Code should be amended to add a provision that:

> In any proceedings in which a person is convicted of producing, distributing or selling pornographic material the court shall order the offending material or matter or thing or copies thereof forfeited to Her Majesty in the Right of the Province in which proceedings took place, for disposal as the Attorney General may direct.

Recommendation 90

A section should be added to the Criminal Code to provide for criminal liability of officers and directors, along these lines:

Where an offence under this act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Recommendation 91

Sections 166 and section 195(1)(a) to (i) of the Criminal Code should be repealed and replaced with a new prohibition on procuring, which would deal specifically with the procuring of those under 18. That section is:

(1) Everyone who

(a) by force, by threat of force or by other coercive or threatening behaviour induces a person of 18 years or older to engage in prostitution with another person or generally, or

(b) by force, by threat of force or by other coercive or threatening behaviour compels a person of 18 years or older to continue engaging in prostitution with another person or generally

is guilty of an indictable offence and liable to imprisonment for 14 years.

(2) Everyone who

(a) persuades, coerces or deceives a person under 18 years of age in order to induce that person to engage in sexual activity for money, or for any other consideration or reward, or in illicit sexual conduct with another person or generally, or

(b) encourages, coerces or deceives a person under 18 years of age in order to induce that person to continue to engage in sexual activity for money, or for any other consideration or reward, or in illicit sexual conduct with another person or generally,

is guilty of an indictable offence and liable to imprisonment for 14 years.

(3) For the purposes of subsection (2), "illicit sexual conduct" means any sexual behaviour or act which is prohibited by the Criminal Code, whether or not such prohibition is based upon the age of the parties to the act or of any one of them.

Recommendation 92

The age specified in section 157 of the Criminal Code should be lowered to 18 from 21, so that the prohibition against buggery in section 155 of the Code and against an act of gross indecency in section 156 will not apply to acts committed in private between persons who are 18 or over.

Recommendation 93

Sections 146, 151, 152, and 153 of the Criminal Code should be amended in order to provide that the protection against sexual assault extended thereby to females is also available to males.

Recommendation 94

In offences involving sexual assault on young persons, the requirement that the victim be of "previously chaste character" should be removed from the Criminal Code.

Recommendation 95

The offences involving young persons set out in Part IV of the Code should be reviewed with the aim of rationalizing them by repealing outmoded sections.

Recommendation 96

Section 167 of the Criminal Code should be repealed.

Recommendation 97

Section 195(1)(j) of the Criminal Code be repealed and replaced with a new prohibition against receiving financial support from prostitution, which would contain provisions dealing specifically with receiving support from the prostitution of those under 18. The section is:

(1) Everyone who by force, threat of force or other coercive or threatening behaviour induces a person of 18 years or older to support him or her financially in whole or in part by acts of prostitution is guilty of an indictable offence and liable to imprisonment for 14 years.

(2) Everyone who is supported financially in whole or in part by a person under 18 years of age from the proceeds of sexual activities by that young person for money or for other consideration or reward is guilty of an indictable offence and liable to imprisonnement for 14 years.

(3) For purposes of subsection (2), evidence that a person lives with a person or persons under the age of 18 who engage in sexual activity for money or for other consideration or reward is, in the absence of evidence to the contrary, proof that that person is supported, in whole or in part, from the proceeds of that activity.

Recommendation 98

No person under 18 should be permitted to be employed in any prostitution establishment which might be set up pursuant to the exception for provincially regulated establishments provided in our proposal about prostitution establishments.

Recommendation 99

The following new section should be added to the Criminal Code:

(1) Everyone who engages in, or attempts or offers to engage in sexual activity for money or for other consideration or reward with a person under 18 years of age is guilty of an indictable offence and liable to imprisonment for five years.

(2) It is no defence to a charge under this section that the accused believed the other person to be 18 years or older.

Recommendation 100

A young person who engages in sexual activity for reward as the provider of sexual services should not be subject to a criminal penalty.

Recommendation 101

Persons under 18 who are using the streets and commit any of the nuisances prohibited in our proposed section 171 of the Criminal Code should be prosecuted in accordance with that section.

Recommendation 102

Federal, provincial and territorial governments should reaffirm their commitment to providing an environment where all children have the opportunity to develop to the fullest extent, their intellectual, physical and spiritual attributes. To this end, the Secretariat proposed in this Report should give high priority to issues affecting children and young people.

Recommendation 103

The federal goverment should collaborate with and assist the provinces, territories and private organizations and agencies in the development of

educational programs for children, and those with special responsibilities for the welfare of children, in the areas of family life, human sexuality and media literacy.

Recommendation 104

Provincial and territorial governments should give high priority to programs in family life, human sexuality and media literacy at all levels within the school system.

Recommendation 105

The federal government should collaborate with and assist the provinces, territories, and private organizations and agencies in assessing the effectiveness of social service programs designed to assist children and young people, in developing new programs and in implementing changes designed to better meet the needs and current realities of young people in the 1980's and 1990's.

Chapter 51

General Recommendations

There are a number of recommendations in this Part which also appear in other Parts of this Report. They are repeated here because they are of a general nature and are applicable to the areas of pornography and prostitution involving both adults and children as addressed in this Report.

Recommendation 50

> The government of Canada in conjunction with the governments of the provinces and territories should strengthen both their moral and financial commitment to removing the economic and social inequalities between men and women and discrimination on the basis of sexual preference.

Recommendation 51

> The government of Canada in conjunction with the governments of the provinces and territories should ensure that there are adequate social programs to assist women and young people in need.

Recommendation 52

> The government of Canada in co-operation with the provinces and territories, should provide financial support for both research into and the implementation of sensitive and relevant educational programs on human sexuality for use in the country's schools; in particular the governments should jointly fund a National Centre and Program in Sexuality and Life Education to bring together the leading scholars and clinicians in the field to conduct research and formulate program and pedagogical models.

1. Education

There was recognition throughout the public hearings that pornography is just one part of our entire communications media. While it was argued that pornography is often the most extreme material with respect to its depiction of dehumanized sex and sexual violence, it shares many common elements with other media content. What starts as sex-role stereotyping in much of the mainline content, ends as obscene violence and degradation. Pornography, therefore, cannot be separated from other aspects of our communications

industry and dealt with in complete isolation. Nor can we expect that legal remedies alone will be successful in dealing with such a complex issue.

The Toronto Task Force on Public Violence Against Women and Children expressed this common view:

> Law reform will not eliminate pornography from our society. Neither will the disappearance of pornography eliminate the problems that pornography has caused. The problems in our society and the violence to which women and children are subjected go far beyond imagery. People's attitudes must change and in the long run this will only evolve through positive depictions in all forms of the media.

The views on why pornography will not be adequately addressed through legal channels alone are summarized very succinctly in the following statement:

> For centuries, perhaps always in civilization as we know it, this inequality, this power imbalance has existed. As many pornographers rightly point out, pornography has long been with us; as they neatly omit, so has sexual inequality, sexism and misogyny ... pornography mirrors and celebrates this inequality.
> New Brunswick Advisory Council Status of Women

Such a view suggests, of course, that pornography is not just an issue relating to the mass media, but that its roots are deep within our society. Long term solutions to the display of dehumanized sexual activities will, therefore, require sustained efforts towards achieving greater equality of opportunity for all people in society, and an new consciousness on the part of Canadians about the detrimental impact of sex-role stereotyping and the role the media plays in maintaining inequalities between women and men.

Arguments such as these, led many organizations appearing before the Committee to call for wide ranging educational and informational programs to be addressed to the public in general, and to specific groups such as parents, teachers, judges, police and social workers, and other professionals who work with children or young people. The objectives of such programs would be to increase public understanding about human sexual relations and the ways in which the media, and pornography in particular, present distorted images of human behaviour. Related to such a program is the aim of encouraging positive media images of women and men and a corresponding elimination of the traditional sex-role stereotyping which is still all too common in programming.

While acknowledging that the magnitude of such public education programs would require the leadership (and financial support) of federal government departments such as Health and Welfare Canada and the Department of Communications, many briefs stressed the importance of government funding to encourage the participation of community groups, many of which are already providing sex education and information on sex role stereotyping, usually on a shoe-string budget or a voluntary basis.

One of these groups, the Vancouver Status of Women, strongly urged that financial support be provided to existing groups which are: doing research and

public educational work in the area of pornography; providing adults and teenagers with accurate and positive information regarding sex, including birth control and health matters (Planned Parenthood, for example); doing research and public educational work in the area of female sexuality; and producing alternative media imagery which engages in an exploration of sexuality and sexual issues from a woman's point of view.

They also recommended that financial support be provided for research and implementation of projects aimed at counteracting the persistent media acceptance and legitimization of violent behaviour towards women, with the goal of prevention of violent and sexual crimes against women and girls.

A similar point was made by the the Anglican Church of Canada, Diocese of New Westminster, which urged that funds be directed to such groups as Media Watch and Status of Women groups to monitor and control stereotyping of women in the media.

Other groups urged that the Federal Government reinstate funding that had been cut from existing programs:

> [The] Federal Government [should] take serious consideration of the recent cutbacks to federal programs re: sexuality and family planning education and health services and ... this funding [should] be markedly increased. Further ... the federal government [should] develop a strong policy statement in favour of sexuality and family planning education and health services and [should] set financial policy which will encourage every province to support these areas, both through policy and through financial assistance ....
> Planned Parenthood of Nova Scotia, Halifax

It was also suggested to the Committee that the support and funding of Women's Studies Programs in educational institutions should be recognized as a fundamental necessity in creating broader educational awareness of the questions of issues and sexuality.

Many organizations believed that an inextricable part of the public education program should be a campaign to combat the sex-role stereotyping of women in the news media. Media Watch, Vancouver, a national women's organization dedicated to improving the portrayal of women and girls in the media, has taken the lead on this issue. Its objective is to eliminate sexist and pornographic images and to encourage the creation of images that reflect the changing and diverse roles of women in Canadian society.

Media Watch defines sex role stereotyping as:

> failure to represent women in their full variety of ages, shapes, sizes and colours;
>
> failure to reflect the increasing diversity of women's lives;
>
> failure to portray a representative range of the occupations that women hold;
>
> invisibility of women in discussion of many issues;
>
> portrayal of women as sexual lures and decorative objects;

invisibility of female experts and decision makers;

language which assumes that everyone is male unless identified otherwise.

Media Watch considers sex-role stereotyping to be harmful to women because it dehumanizes, misrepresents and degrades them. The extreme form of this distortion is, of course, pornography.

Media Watch, Calgary, in its presentation to the Committee, described the stereotyped portrayal of women in the media.

> Media images reflect and magnify the prevalent ways that our culture defines women, and illustrates how limiting and offensive these stereotypes are ... In the media men are identified by occupations in the public sphere. Women are shown performing household and child care tasks and this work is constantly trivialized ... They have to be perfect mothers, perfect wives, perfect employees, and perfect bed partners. In short, women are defined by their relationship to men, they are not shown to have a legitimate identity that is separate from men ....
>
> In the media women are rarely portrayed as gainfully employed. Their contribution to the work world is either systematically ignored or distorted ... their value is judged according to their ability to perform a given task ... it doesn't matter what the woman's occupation is, she is supposed to be occupied by a continual concern about whether or not her body is beautiful or sexually attractive enough ....
>
> Media Watch considers that sex role stereotyping of woman creates an environment that encourages the dehumanization, misrepresentation and degradation of women. The extreme form of this attitude is pornography. Presently our environment is polluted with messages that tell us women are powerless, feebleminded, submissive, victims, and only valuable if they are young, beautiful and white ....
>
> Male dominance and female submissiveness are at the very heart of the stereotype of men and women. Pornography is the extreme portrayal of dominance-submissiveness, the objectification and the abuse of women. Media Watch views sex role stereotyping and pornography as a continuum which must be uprooted from our culture.
> Media Watch, Calgary

In order to reduce or eliminate sex-role stereotyping and pornography from the news media, several national organizations, among them the Canadian Teachers' Federation, the Canadian Coalition Against Media Pornography, Media Watch, and the Canadian Congress for Learning Opportunities for Women, proposed that guidelines on sex-role stereotyping and pornography should be established for the CRTC, The Canadian Film Development Corporation, the Department of Communications, the Canada Council and all other government-funded communications and cultural agencies.

The Committee found many of the suggestions made at the public hearings compelling and persuasive. As will have been apparent throughout our Report, we do not believe that legal action alone can deal with the disturbing and pervasive nature of many aspects of the media and of pornography in particular. Most clearly, of course, legal remedies cannot address the lack of

understanding about human behaviour and specifically human sexual relations which appear to lead some people into believing that media and pornographic representations are truthful and accurate depictions of people. Accordingly, the Committee is making a series of recommendations about public educational programs.

Recommendation 106

The federal government in conjunction with the provincial governments should initiate and supporto public education programs designed too

(a) increase the general understanding of human sexual relations;

(b) promote a fuller appreciation of the impact of the mass media in creating or maintaining beliefs and attitudes about human behaviour.

In implementing such programs, the governments should fund and assist the work already being carried out by numerous voluntary, community or religious organizations.

Recommendation 107

The federal government should ensure that all its departments and agencies which have responsibility for research, culture and communications, e.g., the CRTC, the Canadian Film Development Corporation, the Canada Council, the Social Sciences and Humanities Research Council, the Department of Communications, develop guidelines designed to reduce or eliminate sex-role stereotyping in the programs or work for which each is responsible.

Chapter 52

Implementation of Recommendations

Recommendation 108

(1) A Secretariat should be set up under the aegis of the federal Departments of Justice, of the Solicitor General and of Health and Welfare:

(a) To stimulate and co-ordinate efforts at the federal level to deal with pornography and prostitution as social phenomena;

(b) To stimulate discussions and co-operation with the governments of the provinces and territories, and with social, education and charitable organizations in the private sector, on ways and means of dealing with these two problems;

(c) To monitor and inform public opinion and seek public input on these two problems.

(2) The Secretariat should as priorities:

(a) Canvass all levels of government to determine what social and educational programs relating to the problems surrounding pornography and prostitution are presently in place;

(b) Establish federal-provincial task forces on various elements of the social problems associated with pornography and prostitution to develop working papers on those problems and approaches to them.

We have made a number of recommendations which will require effective and co-ordinated effort by all levels of government to ensure their implementation.

Our recommendations are directed to a wide variety of government departments and their agencies which have a coincidental interest in both the causes and effects of pornography and prostitution. There is currently such a diffusion of interest and effort that one of our tasks has been simply to identify who is involved and in what role.

A number of federal government departments are concerned with the social, legal and remedial aspects of both problems. The Department of Justice and the Ministry of the Solicitor General share the principal responsibility for the enactment and enforcement of laws. The Departments of National Revenue, Communications and the Ministry responsible for the Canada Post Corporation administer legislation which regulates the flow and distribution of material and electronic communication into and throughout Canada. The regulatory agencies they use include Canada Customs, the Canadian Radio-

Television and Telecommunications Commission, and Canada Post Corporation. The following other federal departments are interested in both the social causes and consequences of pornography and prostitution:

The Department of National Health and Welfare
The Ministry Responsible for the Status of Women
The Department of Employment and Immigration
The Department of Labour
The Department of Youth
The Secretary of State

At various places in this Report we have described both the specific and integrated roles played by these several federal departments and agencies. We have described what we have been able to find out about areas where there has been and continues to be inter- and intra-departmental co-operation. With some exceptions, we have found that the diffusion of interests has led to an almost complete decentralization of response at the federal level.

The departments and agencies of the provinces and their municipalities are also currently involved in the effort to deal with the social phenomena of pornography and prostitution. During our public hearings we were told about various local initiatives taken by both concerned governments and citizens. The programs are so numerous and so disparate that we will not attempt to describe them. Suffice it to say that we found the same decentralization that exists nationally to be present in the provinces and municipalities.

Agencies and organizations in the private sector play an important role in the educational and remedial aspects of the problems associated with pornography and prostitution. It is essential not only that new initiatives in the private sector be encouraged, but also that the development of those private organizations already established, be fostered.

If we are going to have any chance for real progress in dealing with both the causes and effects of pornography and prostitution, it will be because all members of the Canadian community want there to be progress. It will be necessary to include all members of the community in the work that must be done to find solutions. If some members of the community are excluded or are allowed to excuse themselves from the debate, an opportunity will be lost. One way of involving the community is to encourage private foundations, trusts and charities to play a larger role in providing services.

These charitable institutions have already made distinguished contributions to our country. They have undertaken projects and have supplied services and facilities that governments either cannot or will not. Private charitable institutions have a long history of helping children.

It is fine for a committee such as ours to recommend increased government funding for what we are convinced is an urgent cause. But, we can hardly expect that our commitment to these issues soon become the commitment of government. Not because the government is mean or will refuse to listen, but because the public purse is limited and there are many calls on the public list of priorities.

For all of these reasons we are of the view that tax incentives and concessions to those of our private and corporate citizens who may be eager to help fund the kind of effort we recommend will result in more happening and sooner.

There will always, of course, be a primary obligation on all levels of government. It is, of course, to be expected that all those concerned with the problems have so far responded to the acknowledged need for action in a way that reflects their particular interest. Because of the community of interest that exists, however, there has been some sensible sharing of information and effort. Nevertheless, it is apparent that much more can and should be done to strategically plan and co-ordinate efforts by all those who clearly have a stake in both understanding the need for concerted action and in designing programs and initiatives.

Canadians are clearly expecting as much. Many of the hundreds of people who came to the Committee's public discussions, expressed an animated urgency about both these subjects. They wanted better co-operation within government, better organization of effort and better execution and results. There were the inevitable, although genuine, complaints about lack of funding and misdirected government priorities, but what is more important, they complained about hesitation and inertia in both law enforcement and remedial treatment, two areas where governments have the principal roles to play. These complaints were usually accompanied by the suggestion that the purpose of government needs to be better understood and that the efforts of the various departments could be much better co-ordinated.

How can these complaints, concerns, and suggestions be translated into accomplishment?

First and most obvious is the requirement that there be actual consultation between governments. That may seem a benign suggestion, but the fact is that there has not been much consultation so far in these areas. It may be true that Canadians have an almost unparalleled belief in the consultative process. If that is so, it is because we have learned to talk and to listen to one another. That is how we have tried to manage both the duality and plurality of this country, and it is the only way that we have been able to make sure that our regional and cultural diversity helps to unite the country rather than divide it. Increased formal consultation about pornography and prostitution clearly must take place, early and often.

Talking and listening are only a prelude to effective ultimate action. While there is a continuing need for decentralized effort, there must be some better centralization of planning and purpose. We think, therefore, that a Secretariat should be established to ensure that urgent steps are taken to consider and to co-ordinate the various interests involved.

In our view, the Secretariat should be established under the joint aegis of the federal Departments of Justice, the Solicitor General and Health and Welfare. While the Secretariat should report to these three sponsoring departments, we think that it should include representatives from other relevant federal and provincial governments and agencies, as well as interested members of the public. Such broad membership is necessary not just to ensure

that all interests are represented, but also to make sure that there is a broad base of both support and response.

We expect that separate task forces would have to be created to deal with particular aspects of the Secretariat's work. Some examples of the wide variety of activity to be undertaken are services for young people, co-ordinated investigation techniques, and education and employment opportunities for those wanting to join the work force.

The Secretariat could quickly begin its work by canvassing all levels of government to determine what relevant programs are presently in place where information and experience either is being or could usefully be shared. The Secretariat could then determine its priorities for the first two years of its operation and ensure that those priorities are published and understood across the country.

We would hope that by publishing annual reports, the Secretariat could maintain contact with the public and promote response. We also think that from time to time, the Secretariat would benefit from public participation at well structured symposia where its work and continuing priorities could be reviewed and critically assessed.

It is our hope that the Secretariat will be a co-ordinating vehicle accountable for specific programs, rather than the random arrangements that now exist. Canadians are anxious to have not only a better understanding of what problems we face and why, but also to know that something is actually being done to achieve tangible progress.

Recommendation 102

> Federal, provincial and territorial governments should reaffirm their commitment to providing an environment where all children have the opportunity to develop to the fullest extent, their intellectual, physical and spiritual attributes. To this end, the Secretariat proposed in this Report should give high priority to issues affecting children and young people.

Recommendation 103

> The federal government should collaborate with and assist the provinces, territories and private organizations and agencies in the development of educational programs for children, and those with special responsibilities for the welfare of children, in the areas of family life, human sexuality and media literacy.

Recommendation 104

> Provincial and territorial governments should give high priority to programs in family life, human sexuality and media literacy at all levels within the school system.

Recommendation 105

> The federal government should collaborate with and assist the provinces, territories, and private organizations and agencies in assessing the effectiveness of social service programs designed to assist children and young people, in developing new programs and in implementing changes designed to better meet the needs and current realities of young people in the 1980's and 1990's.

Appendix

The Committee received submissions both at the public hearings and by mail. The following is a list of those groups and individuals who submitted briefs. The list is presented in the order in which the public hearings were held. Non-appearing submissions are listed in accordance with their place of origin and are shown below the names of those who made presentations at the hearings.

Many other people sent letters to the Committee. We are not able to acknowledge all of those correspondents here, and can only thank them as a group for their interest.

APPENDIX

EDMONTON, ALBERTA

January 9, 1984

Presentation by:

Every Woman's Place	Christine Kulyk
The Ukranian Catholic Women's League of Canada (Edmonton Eparchy)	Catharine Chickak Adlynn Hewitt, Q.C.
University Women's Club of Edmonton	Tammy Irwin
Herbert Presley Mark Pickup	
Across-Canada	Shirley Krause
Ross Olsen	
Ukranian Women's Association of Canada	Helen Raycheba
Dave Billington (The Edmonton Sun)	
The Ecumenical Women's Group of Edmonton	Jean Armstrong
City Centre Association	Maury G. Van Vliet, Chairman
Roy Piepenburg	
Concerned Citizens on Pornography and Prostitution	Manfred Lucat
Alberta Human Rights Assoc.	Allan Welsh
Pornography Action Committee	Tina Rogers Chairperson

Edmonton Local Council of Women	Olga Cylurik, President
Mair Smith, "Violent Response to a Violent Issue", Webspinner, December, 1983	
Alberta MacKenzie Council of the Catholic Women's League of Canada	Rose-Marie McCarthy
Alberta Federation of Women United for Families	Jean Takahashi Joanne Lewicky Kathleen Higgins
Il Nuovo Mondo	Janak Advani, Editor
Women's Section, Alberta NDP	Starr Curry Terry Hatrichuk
Alliance Against Sexual Harassment	Mary Hickmore
Non-Appearing Submissions:	
Alberta Women's Institutes	Kay Rowbottom, President Aileen Kritzinger Beryl Ballhorn Olive Meyer
Alberta Association of Registered Nurses	Beverly Anderson Arnette Anderson Jeanette Boman Joyce Relyea An Ad Hoc Committee of the A.A.R.N. Provincial Council
Laurence Decore, Mayor	Supported by: City of Edmonton Police Local Board of Health Edmonton Social Services Edmonton Public Library Edmonton Separate School Board Edmonton Public School Board
Don Burdego President, Board of Directors Boys' and Girls' Clubs of Edmonton	
Edmonton Women's Shelter Ltd.	Mary F. Weir, President
La Fédération des femmes canadiennes-françaises	Églande Mercier President

Edmonton Federation of Community Leagues	Arlene Meldrum, Chairman Ad Hoc Committee

CALGARY, ALBERTA

January 9, 1984

Presentation by:

Calgary Police Commission	Brian E. Scott, Chairman Inspector Frank Mitchell Staff Sergeant Boiteau
Calgary Media Watch	Dr. Maria Ericksen
Calgary Y.W.C.A.	Felicia Melnyk Pat Cooper Janice Sich-Thompson Prof. Kathleen Mahoney Lee Kasdorf
J.W.S. Smyth	Private Citizen (former member of R.C.M.P.)
Brothers & Sisters in Christ	Bart Craig
Calgary Status of Women	Lynne Fraser Cheryl Kehoe
Darwin Cronkhite	
Dr. John Heintz	Philosophy Department University of Calgary

CALGARY, ALBERTA

January 10, 1984

Presentation by:

Calgary Local Council of Women	Dorothy Groves Donalda Vine
Fred Wagner "Your Choice" Video Service	
Kathleen Gilbert	
Susan Morgan	

Deborah Carnat	
University Women's Club of Calgary	Lois Cummings Janice Hecht
Gordie Lagore Calgary Christian Centre	
Calgary Free Presbyterian Church	Thomas Tice — Minister Darrell Urushi
Henry Nielsen	
Calgary Evangelical Ministerial Association	Rev. Alan Dunbar
Annette Lengyel	
Darrell Uruski	
Gary Duffy	

Non-Appearing Submissions

Hugh Jones	
Council for the Family	Ardis Beaudry
Laura Henkel	
Family Resource Centre of the Roman Catholic Diocese of Calgary	

VANCOUVER, BRITISH COLUMBIA

January 11, 1984

Presentation by:

Rental Housing Council of B.C.	J.L. Hayes, Executive Director
City of Vancouver — Submission by Alderman May Brown	May Brown Terry Bland, City Solicitor
The West End Seniors' Network	Catherine B. Jensen
St. Andrew's - Wesley Church	Bob Shank, Senior Minister George Balfour, Board Chairman
Vancouver Archdiocesan Council Catholic Women's League	Rose Kamm

W.E.D.N.E.S.D.A.Y. (West End Dedicated Neighbours Emphasizing Solutions Designed Around You)	Howard Faulkner
Vancouver Multicultural Women's Association	Deletia Crump Mary Lakes
Chris J. Garside	
Pat Carney, M.P.	Donna MacKie, President Vancouver Centre Riding Association
C.R.O.W.E. (Concerned Residents of the West End)	Gerry Stafford Davis & Company Elliott Myers Glen Tynan Howard La Favor Heinz Brett Barbara Brett
West End Community	Gordon Price
Gordon Neighbourhood House	Richard P. Morley

VANCOUVER, BRITISH COLUMBIA

January 12, 1984

Presentation by:

British Columbia Hotels' Association	Virginia Engel Boughton & Co., Barristers
Group of Concerned Social Workers	David Butcher
Cecilia von Dehn	Private Citizen
Eleanor Hadley	Private Citizen
N.D.P. Women's Rights Committee	Joan Smallwood, Chairman Margaret Birrell
Women Against Pornography (Victoria)	Jan Boudelier Teresa Sankey Pam Blackstone
B.C. Civil Liberties Association	Dr. Alister Brown Dr. David Copp Non-written brief

First United Church	Barry Morris Linda Irvin Alan Alvare Leslie Black
Sam Campbell	Street Worker
Nancy Morrison (Lawyer)	
Hospital Employees Union, St. Paul's Unit	Raimo Hietakangas Marie Hietakangas
West End Community Advisory Council	Peter Westlake Carole McIntyre
West End Traffic Committee	Carole Walker
Terrence Bland, Vancouver Corporation Counsel	

Non-Appearing Submissions:

Mary Lakes

Raymond Lee

B.C. Conference of the
United Church of Canada

VANCOUVER, BRITISH COLUMBIA

January 13, 1984

Presentation by:

West End Tenants' Association	Greg Richmond, Project Director Anna Snelling, Treasurer
Tom Vikander	
Amelia Alvarez	
Nancy Tillson	
Georgia Hotel	Lee Cusak, General Manager
Vancouver Status of Women	Lorri Rudland, Researcher

Group of Clergy	Rev. Jeremy Bell Endorsed by: — 7 Signatures of Concerned Individuals
Frederick Gilbertson Content Co-ordinator of "Angles" Magazine	
Nona Thompson Founder of "Step Up" School	
Arleigh Haynes	
R. Burda	
Vic Redmond	
Vancouver Council of Women	Margaret Piggot
Larry Splanna	
Rick Smith	
Harry Rankin	Vancouver Alderman; former head, L.S.B.S.

Non-Appearing Submissions:

Brig Anderson and Concerned Women	
Alliance for the Safety of Prostitutes (A.S.P.)	Marie Arrington Sally de Quadros

TORONTO, ONTARIO

February 6, 1984

Presentation by:

Mayor Art Eggleton City of Toronto	Mary Lunch, Executive Director Patricia McCarney Research Associate
Roman Catholic Archdiocese of Toronto	Dr. Suzanne Scorsone, Office of Catholic Family Life
Glad Day Bookshop	Paul Jenkins and Jerald Moldenhauer
Canadians for Decency	Nancy Pollock

Canadian Organization for the Rights of Prostitutes (Toronto Chapter)	Peggy Miller
National Action Committee on the Status of Women	Doris Anderson Kathy Coffin Jillian Riddington
Libertarian Party of Canada	Paul Vesa
The Pentecostal Assemblies of Canada	Rev. Hudson T. Hilsden On behalf of: —Members and adherents 155,000 in 970 local congregations and Pentecostal Assemblies of Canada with additional 30,000 members and adherents in 160 churches
David Crombie, M.P.	
P.O.I.N.T. (People and Organizations in North Toronto)	Freda Finlay Marion Langford Roberta McFadden Members: Ann Barrett Marilyn Cullum Anne Gordon Mandy Macrae Roberta McFadden A. Cecila Pope
Toronto Area Caucus of Women and the Law	Reva Landau Stephanie Holbik Marla S. Kelhorne Mary Lou Fassel
Esther Harshaw with 176 Supporting Signatures	Esther Harshaw, Trustee Ward 10, Toronto Board of Education Co-Sponsored by: North Rosedale Ratepayers' Association Rosedale United Church with support and co-operation of other local concerned groups

Non-Appearing Submissions:

P. van Lammers, Chairman
Advocacy Committee, Ontario Association of Family Service Agencies

Jean Fenton (Oakville)

Fred Light (Nepean)

John Mascotto (Geraldtown)

James Savage (Kendal)

TORONTO, ONTARIO

February 7, 1984

Presentation by:

Helen Porter	
Right to Privacy Committee	George W. Smith
Canadian Federation of University Women, Metro Toronto Clubs	Elizabeth Tugman Shirley Sims Carolyne Keene (Representatives of nine Metro Toronto University Women's Clubs with combined membership of approximately 2,500 women).
United Church of Canada, Division of Mission	Joanne Fairhart Liz McCloy Rev. Peter Wyatt Jean Westney Ruth Evans
Rosedale Church Group and Public Health Nurses Group	Patricia Fenton President, UCW Rosedale United Church Petition of 95 names in support. 11 Public Health Nurses Signatures
Alderman, Ward 6, Jack Layton	
Elizabeth Fry Society of Toronto	Nina Quinn
Metro Toronto Board of Commissioners of Police	N. Jane Pepino Membership: Doris Anderson John Bousfield Inspector Jean Boyd Austin Cooper Trudy Don

	Norm Gardner Jo-anne Grayson Mary Hall Sgt. Jackie Hobbs Burthe Jorgenson Dr. Pat Kincaid Pat Marshall Debbie Parent Judith Ramirez Dr. Gail Robinson Marlaina Sniderman Jan Tennant
Task Force on Public Violence Against Women and Children	Jane Pepino Marilou McPhedran June Rowlands Stephen Watt
Alderman June Rowlands	
Pink Ink	Gary Kinsman
Film and Video Against Censorship Statement	Varda Burstyn
Y.W.C.A. of Metropolitan Toronto	Denise Gardian Francis Hogg —Metro Task Force on Public Violence Against Women and Children —Toronto Area Caucus of Women and the Law —Judy Campbell —Wendy King —Lisa Freedman —Marilou Fassel —Reva Landau —Stephanie Holbick —Linda Patton
Dahn Batchelor, Criminologist	
Carl E. Beigie Ellen G. Shapiro	
The Body Politic	Christine Bearchell, Co-Editor
Non-Appearing Submissions:	
Candace Woolley, M.S.W. Eganville, Ontario	

The Ontario Film & Video Appreciation Society	Malcolm Dean
Freedom of Expression Committee	Catharine Wismer, Chairman
Y.W.C.A. of Canada	Vera de Bues
Alan V. Miller	

TORONTO, ONTARIO

February 8, 1984

Presentation by:

Alderman Ann Johnston	Ward 11 — Toronto — "Comments reflecting views expressed to [her] by people who [she] has been elected to represent"
A.C.T.R.A.	Alex Barris, V.P. Paul Siren Arden Ryshpan Colleen Murphy Michael Mercer Ronald Lieberman
Ontario Liberal Party	David R. Peterson, M.P.P. Terry Kirk
Toronto Residents on Street Soliciting (T.R.O.S.S.)	Christopher Bolton Haney Tom Morris L. Castonquay Shirley Krause (spokesperson for Alliance of Concerned Residents on Street Soliciting A.C.R.O.S.S.) —over 80 names of representatives and organizations; and private and public companies
David Scott	Action Group on Media Pornography Canadian Coalition against Violent Entertainment National Coalition on Television Violence
R.E.A.L. Women of Canada	Jean Murphy Gwen Landolt

Susan Cole	
Evangelical Fellowship of Canada	Rev. Brian C. Shiller
The Anglican Diocese of Toronto	Rev. Arthur Brown, Bishop
Girl Guides of Canada	Joan Howell Sheila Crosby
Salvation Army, Toronto	Major Russell Hicks Major Ruth Meakings Major Maxwell Ryan J. Ellery
Seneca College Women's Caucus	Sarah Kelley
B'Nai Brith Women of Canada	Sharron Tenhouse Selma Sage
John Lee Prof. of Scarborough College	

TORONTO, ONTARIO

Non-Appearing Submissions:

Ontario Committee on the Status of Women	Helen Findlay Lee Grills for the Steering Committee
Viking Houses	David M. Aird, M.E.D. Executive Director
Federation of Women Teachers' Associations of Ontario	Representing 31,000 women who teach in Ontario
Mary Brown, Director, Ontario Film Review Board	
Rev. Brad Massman	
Rose Dyson	
St. John's Prayer Group Community, Newmarket	—Endorsed by 16 signatures
Wilma Voortman	
Harold Backer	
Valerie M. Perkins	
Mike van Dyke (Brockville)	
Joan B. Getson (Dryden, Ontario)	

B.L. Lavieille (Willowdale)

Leslie Lawlor
Board of Directors,
Education Wife Assault
Margaret Smith
Barbara Waisberg

Frank G. Sommers, M.D.

The Action Learning Group on
Pornography
Jon Arnold
Michael Bach
Adrienne Braitmann
David Hunwicks
Shirley Perry
Sue Wilson

The Board of Directors of Catholic
Family Services of Toronto
William Howlett, President

Réseau des femmes du sud de
l'Ontario,
Sous-comité sur la violence

Toronto Spokespersons for Commit-
tee Against Pornography
Reva Landau
Jean Westney
Denise Gardian

Stephen G. McLaughlin, Commis-
sioner
City of Toronto
Planning & Development Department

The Writers' Union of Canada
Penny Dickens, Executive Director

Additional Ontario Submissions:

Dr. J. Lamont
McMaster University

Council of Christian Reformed
Churches in Canada

Rev. A.G. Van Eek

D. L. Valentine

Chris Asseff
Executive Director
Ontario Separate School
Trustees' Association

Diana Cherry

Women of Halton Action Movement
Helen Vaccaro

Prof. T.C. Jarvie
York University

Prof. L. Groake
Philosophy Dept.,
Sir Wilfred Laurier University

John Osborne
Campaign "P"

Tony Matrosous

F. Schultz-Lorentzen

LONDON, ONTARIO

February 9, 1984

Presentation by:

The National Council of Women of Canada	Margaret McGee
Marc Emery, Publisher of London Metro Bulletin	
Clarke Leverette (Librarian and Small Press Publisher)	
The Catholic Women's League of Canada, London Diocesan Council	Muriel Murphy
The Executive of London Conference of the United Church of Canada	Susan Eagle
Robert Metz, President of Freedom Party of Ontario	

Students from the Faculty of Law, University of Western Ontario	Elaine Deluzio Sharyn Langdon Barbara Boake Michele Dodick Susan Sleman (Non-Appearing Co-Authors Jasmine Belis Helen Brooks)
Prof. Constance Backhouse Faculty of Law, University of Western Ontario	
London Status of Women Action Group	Erin Hewitt, M.A. Gail Hutchinson, Ph.D Marion Gerull, B.A.A. Peggy Jurimae, B.A.
Citizens for Decent Literature	J.K. MacKenzie Various written comments from concerned citizens from London and area —Signatures totalling 1,069 names
Citizens Concerned for Community Values	Rev. J. Kirk Rev. Alan Ahlgrim S. Blanken Rev. L.D. Campbell Rev. J. Crumpler Monty Lobb Rev. Clyde Miller Rev. Hugh Rosenberg Rev. Harold Russell Rev. E.O. Thomas Cathy Woods
Central Committee of Catholic Women's League of Canada, London	Sheila M. Coughlan (Representing approximately 1,719 women)
Prof. W.K. Fisher, Department of Psychology, University of Western Ontario	
Stephen Males	
Donald Huffman, Jr. Port Elgin, Ontario	
Anglican Diocese of Huron	John J. Robinson (on behalf of 90,000 active members of Anglican Diocese of Huron)

Uniondale Women's Institute	Irene Robinson, President Robert Smith, Secretary
St. Mary's (Ont.) Coalition Against Pornography	Margaret McBride Kathy Monks-Leason
B.H. Barrett	
Nancy Muller and S. Muller	

Non-Appearing Submissions:

The Church in Society Committee of the Middlesex Presbyterial United Church Women	Joan Mitchell Bernice Santor Marie Campbell Phyllis Hanna Endorsed by a Petition totalling 143 signatures
D.B. Andrews, Superintendent Criminal Investigation Division	
Doris Moore for P.C. McNorgan City Clerk	

NIAGARA FALLS, ONTARIO

February 9, 1984

Presentation by:

Catholic Women's League of Canada	Jacqueline Herman Janice DesLauriers Verna Morgan Vivian Malouin Joan Bell Barbara Telesnicki
Social Planning Council of Niagara Falls	John Walker Study Group: John Carson Isabelle Boild Gary H. Enskat Dr. Keith Knill Dianne Sheppard Emma Spironella Stacey Schmagala

Positive Action Committee Downtown Board of Management	Michael Halle Mark McCombs
C.A.R.S.A. Inc., Niagara Region Sexual Assault Centre	Cindy Davis
Ed Mitchelson	
Patrick Cummings, Acting Mayor of Niagara Falls	Endorsed by: Donald Harris, Chief of Police
Superintendent of Police	James Moody Also Brief by: Sgt. George McGloin Cst. Kenneth Conhiser
Local Council of Women	Margaret Harrington
Thomas Prues League	
Chamber of Commerce	Bill Thompson, President
Joe Hueglin, M.P.	Michael Halle
The Federal Progressive Conservative Women's Caucus of Niagara Falls	Bonnie Gillings
Non-Appearing Submissions:	
Lioness Club of Georgetown	Endorsed by: Signatures of 23 members

WINDSOR, ONTARIO

February 10, 1984

Presentation by:

The Salvation Army	Capt. William Blackman Capt. Neil Watt Lt. Aldo Di Giovanni
Windsor Coalition Against Pornography	Anne McIntyre Rose Voyvodic Sheelagh Conway Lenore Langs Maryellen MacGuigan
Students for the University of Windsor School of Social Work, Human	Rose De Rosa Antoinette De Troia

Sexuality Course of Dr. Kumar Chatterjee	Michelle Goudreau John Loewen Kathy Moran (Including 158 additional University of Windsor Students, Non-Appearing)
James Meredith	
Rev. Donald Bardwell (Chalmers United Church)	
The Elizabeth Fry Society of Kingston	Felicity Hawthorn Liz Elliot
The Catholic Women's League of Canada (London Diocese)	Betty Scherer
Ian Benson (Law Student)	

MONTRÉAL, QUÉBEC

February 27, 1984

Presentation by:

Concordia (University) Women's Collective	Dame Maria Peluso Students: Isabel Bliss Joanne Poirier Leeanne Francine Catherine Easels
Denis Côté	
Service de police de la Communauté urbaine de Montréal	André DeLuca, directeur Guy LaFrance, avocat
Centre de services sociaux Ville-Marie	Laurier Boucher Mike Godman Kathy Faludi
Suzanne de Rosa	
Rassemblement des citoyens et citoyennes de Montréal	Jean Doré, President Cathleen Verdun John Gardiner Barbara Carie
Centre de recherche — Action sur les relations raciales	Fo Niemi, Executive Director Kevin Cadloff, Legal Counsel

Ben Wilson-Williams

Normand Montminy

Judith Dobbie

Non-Appearing Submissions:

Le Comité de la protection de la jeunesse	Tellier Béranger
Mayor Drapeau, M[e] Allard, M[e] Laliberté for City of Montreal	
Canada Customs from Montréal	Vital Marin Roger Barron
Montreal Citizenship Council	Margaret A. Dvorsky, President
Eastern Orthodox Clergy Association	Archpriest Antony Gabriel, President
La Fédération des Unions de familles Inc.	André Buhl Président
Marielle Landry, Présidente Comité d'Information et d'action anti-pornographie	

MONTRÉAL, QUÉBEC

February 28, 1984

Presentation by:

Bruno Tousignant
Proprietor of Club Video
Fantastique

Regroupement féministe contre la pornographie	Diane Bronson Élise Massicotte
Dame Monica Matte	
La Fédération des femmes du Québec	Ginette Busque Suzanne De Rosa Noëlle-Dominique Willems
Conseil de la Famille Richelieu - Yamaska	Helen Petit Pierrette Perreault

Le Conseil des femmes de Montréal	Emily Dubé Aimée Williams
Fraternité des policiers de la Communauté urbaine de Montréal Inc.	Réal Déry Gilles Massé Président
Association nationale de la femme et le droit	Suzanne Boivin
Sabrina Vézina	
Jacques Cimon	
Le centre des services sociaux du Montréal métropolitain	Thérèse Wiss Thérèse Johnson Denis Ménard
L'Association féminine d'éducation et d'action sociale	Lise Paquette Lise Houle Johanne Des Rosiers Alice Buttel
Eric Johnson	
Diane De Rase Bonne	

MONTRÉAL, QUÉBEC

February 29, 1984

Presentation by:

Deborah Seed Department of Humanities John Abbott College	Endorsed by: Alan Silverman Renée Lallier Patricia McGraw Sharon Rozen-Aspler Marcia Kovitz Bert Young Carolyn Henderson
Collectif masculin contre le sexisme	Alan Besré Denis Laplante
Emergency Committee of Gay Cultural Workers Against Obscenity Laws	Thomas Waugh Jose Arroyo

Elana Medicoff

Montreal Actra Women's Caucus	Linda Lee Tracy Ardyn Rishpan Kelly Ricard
Comité des ex-détenues	Marcelle Grondine
Jean-François Larose	
Fernand Tremblay	
Marcelle Brisson Professeur au C.E.G.E.P. Ahuntsic	

Non-Appearing Submissions:

Comité contre la pornographie à Ripon	Dame Nathalie Duetam El Mascotto
L.S. Jayasooriya	
Women's Collective to Overthrow the Patriarchy	
Cécile Richard Adjointe administrative	
André Guérin Président du Bureau de surveillance du cinéma et directeur de l'Office du film du Québec	
Stuart Russell	
Germain Trottier Prof., Laval University	
Women Against Pornography	Beabea Jones
Comité de lutte contre la pornographie de Châteauguay	Alice Herscovitch Nicole Ladouceur Marjolaine Dufort Christine Poirier Denise Filion Louise Dufort Patricia Gauthier Michelle Lalonde

SHERBROOKE, QUÉBEC

March 1,1984

Presentation by:

Lennoxville and District Women's Centre	Rina Kampeas
L'Escale de L'Estrie Inc.	Danielle Houle Dominique Gagné
Le Centre d'Aide et de Lutte contre les agressions à caractère sexuel, au nom du Regroupement québécois des Centres d'Aide et de lutte contre les agressions à caractère sexuel	Diane Lemieux
L'Association féminine d'éducation et d'action sociale, région de Sherbrooke	Pauline Paradis
Pierre Gagné Head of Psychiatry, Sherbrooke Hospital	
Arlene and Pierre Schiettekatte	
Professor René Turcotte Faculty of Law University of Sherbrooke	

VAL D'OR, QUÉBEC

March 1, 1984

Presentation by:

Les femmes de Senneterre	G. Trudel Martine Gendron (No Written Brief)
La cause d'elle	A.M. Bebard M. St-Germain
Knights of Columbus	Ivan Boucher Edgar Wait
Le Collectif "Alternative pour elles" de Rouyn-Noranda	Mychèle Balthazard Chantal Genesse

	Carole Bouffard Denise Stewart Marie Brunelle Louise Delisle
U.Q.A.T. La Sarre	Serge Tessier Suzanne Baril-Lavigne Ghislaine Camirand Solange Morin-Lavoie Michel O'Dowd Madeleine Paré Danielle Simard-Gagnon
Pétition des femmes de l'Abitibi-Témiscamingue Madeleine Lévesque	Endorsed by: Signatures of 432 Concerned Citizens
Mission Pentecôte	Bruce Muirhead
Groupe Renaissance	Normand Tremblay

QUÉBEC CITY, QUÉBEC

March 2, 1984

Presentation by:

Le regroupement des femmes de la région de Québec contre la pornographie	Diane Grenier
Le groupe d'hommes contre la pornographie et l'exploitation sexuelle	Jean Lemarre
La Fédération des femmes du Québec, Conseil régional Saguenay Brief and Annexes	Marthe Vaillancourt Antoinette Dubé
Paul Beaulé	
L'Armée du Salut de la Ville de Québec	Major Stuart Booth Major S.W. Booth Joy Rennick Arthur R. Pitcher
Le Réseau d'Action et d'Information pour des femmes (R.A.I.F.)	Marcelle Dolment

Pierre Maranda Nicole Coquatrix Laval University	
Le groupe d'hommes contre la pornographie et l'exploitation sexuelle	Geoffrey Edwards
Roger Delorme	
Camil Aubin	

Non-Appearing Submissions:

Fran Shaver
Research Consultant
Laval, Quebec

Robert Dufault

CHARLOTTETOWN, PRINCE EDWARD ISLAND

May 7, 1984

Presentation by:

Media Watch, P.E.I.	Margaret Ashford
Canadian Congress for Learning Opportunities For Women (C.C.L.O.W.)	Bea Mair John MacFarlane Heather Orford (Director C.C.L.O.W.)
Transition House Association	Joanne Engs
P.E.I. Women's Liberal Association	Dorothy MacKay
Canadian Federation of University Women	Daphné Dumont
Charlottetown Business and Professional Women's Club	Evelyn Matheson
Federated Women's Institute of P.E.I.	Doris Worth
Ad Hoc Committee on Pornography	Janice Devine
The Advisory Council on the Status of Women of P.E.I.	Delores Crane Ruth Power

Catholic Women's League	Mona Doiron Rev. Wendell MacIntyre Phyllis Quinn Elaine Gallant Helen Macisaac

Non-Appearing Submissions:

Beth Percival, Ph.D.
University of P.E.I.
Charlottetown, P.E.I.

VICTORIA, BRITISH COLUMBIA

April 2, 1984

Presentation by:

Rosemary Brown, M.L.A., Brief

City of Victoria	Alderman Gretchen Brewin Georgene Glover
Canadian Federation of University of Women - and -	Margaret Strongitharm
The University Women's Club of Victoria	Sharon Vipond Victoria Pitt
Prof. Charles B. Daniels, Philosophy Dept., University of Victoria	
People Opposed to Pornography	Janet M. Baird Lynne McFarlane Pat Webber Endorsed by 7 Signatures of Concerned Citizens
Anglican Diocese of B.C., Diocesan Program Committee	Gregg Perry Dianne Taylor Maureen Franks Endorsed by: H.J. Jones, Bishop and Executive Council of the Anglican Diocese of B.C.
Women Against Pornography	Susan Isomaa Pam Blackstone Rebecca Pazdro

Laurence E. Devlin Brishkai Luna	
Victoria Status of Women Action Group	Avis Rasmussen Diana Butler Josephine Adams Shirley Avril Office Coordinator
B.C. Public Interest Research Group	Alison LeDuc Mercia Stickney
Vancouver Island Co-Operative Pre-School Association	Jack Dorgan
Concerned Citizens Action Group Against Pornography	Murray and Rita Coulter
Dorothy Smith	
B.C. Association of Social Workers	Chris Walmsley Jocelyn Gifford

Non-Appearing Submissions:

Catholic Women's League Sacred Heart Council Victoria, B.C.	
Police Perspective on Prostitution and Soliciting	Supt. D.E. Richardson
Anthony Burke Victoria Civil Liberties Association	
Raymond Lee	
B.C. Conference of the United Church of Canada	

VANCOUVER, BRITISH COLUMBIA

April 3, 1984

Presentation by:

City of Vancouver	Mayor Mike Harcourt Alderman Libby Davies Chris Warren, Social Planning Council

B.C. Civil Liberties Association	Dr. John Dixon Dr. Bob Rowan
Red Hot Video Ltd.	Mark Dwor, Counsel
Working Group on Sexual Violence	Francis Warrerlein Kate Andrew
British Columbia Teachers' Association	Jane MacEwan Marcia Toms
Jancis Andrews	Brief Sponsored by: 16 additional names and addresses of concerned citizens
Vancouver Status of Women	Pat Feindel
Vancouver Association of Women and the Law	Heather Holmes Linda King Laura Parkinson Deborah Strachan
Anglican Church of Canada, Diocese of New Westminster Task Force on Pornography	Margaret Marquardt
University Women's Club of Vancouver	Catherine A. Stevenson
Port Coquitlam Area Women's Centre	Karen Phillips
North Shore Women's Centre	Donna Stewart
United Citizens for Integrity	Rev. Bernice Gerard
West Kootenay Women's Assn.	Surindar Dhaliwal Rena Armstrong
Daryl Nelson C.R.O.W.E. (Concerned Residents of the West End)	Richard J. MacKinnon
Knights of Columbus, B.C. and Yukon State Council	
Vancouver Council of Women	Helen Totarek Margaret Pigott Pat Hutcheon Bernece Williams Doris Mellish
Vancouver Archdiocesan Council Catholic Women's League	Rose Kamm

University Women's Club of South Delta	
Media Watch	
British Columbia Provincial Women's Institute	Ruth Fenner
The Corporation of the District of Central Saanich	F.B. Durrand
B.C. NDP Women's Rights Committee	
P. Condie	
R. Moeliker	
R.L. Stirling Dept. of Consumer Affairs	
National Watch on Images of Women in the Media Inc.	Lucy Alderson Project Coordinator
Brian D. Robertson	
P. Susan Penfold Assoc. Prof. Division of Child Psychiatry	
Linda King	

REGINA, SASKATCHEWAN

April 4, 1984

Presentation by:

City of Saskatoon	Mary Cliff Wright Mayor Clifford
Alderman Donna Birkmaier, Saskatoon	
The Feminist Research Group	Mary Wilson Sally Chaster
Saskatchewan Action Committee on the Status of Women	Palma Anderson, President Arlene Franko Susan Duzl

Regina Council of Women	Marion Beck Jacquie Hogan Rita Labiola
Saskatoon Committee Against Pornography	Pat Lorje
Saskatchewan Federation of Women	Sally Hitchins Betty Lepke
Christian and Missionary Alliance Churches	Rev. Richard Sipley
Y.W.C.A. of Saskatoon	Ruth James Marie Dunn Gwen Anderson Marie Kiskchuk
Swift Current Council of Women et al	Jean E.M. Read Marlene Hoffert

Non-Appearing Submissions:

Ukranian Catholic Women's League of Canada	Adeline Dudar Jean Saran Chuk

WINNIPEG, MANITOBA

April 4, 1984

Presentation by:

Manitoba Action Committee on the Status of Women	Lydia Giles Caroline Garlich Penny Mitchell Pam Jackson Sherry Dangerfield
Y.W.C.A. of Winnipeg	Georgia Cordes Dale Unruh Bernice Sisler
Thunder Country Jaycees	Nancy Doetzel
The Children's Home of Winnipeg	Sel Burrows Vera Steinberger Linda Trigg (Social Policy Committee)
Catholic Women's League of Canada, National Council	Evelyn Wyrzykowski
Concerned Morality League	Bernadette Russell

Manitoba Advisory Council on the Status of Women	Jennifer Cooper Roberta Ellis
Men Against Sexism	Bruce Wood
Manitoba Women's Institute Brief prepared by:	Gwen Parker Louis Neabel
University Women's Club of Winnipeg	Susan Currie Nina C. Phillips, President
Communist Party of Canada	Paula Fletcher Manitoba Provincial Leader D. Davis Paul Madock
Inter-Agency Group	Clark Brownley Endorsed by: 18 Signatures from Concerned Citizens

Non-Appearing Submissions:

T.L. Coles, Instructor
Anthropology Dept.
University of Winnipeg

Don Mills, President
Manitoba Library Association

Elsie Jawolik

Robert Ellis, Chairperson
Manitoba Advisory Council
on the Status of Women

Stella Carson

Judy Holden
Public Affairs Chairman
Junior League of Winnipeg

REGINA, SASKATCHEWAN

April 5, 1984

Presentation by:

Regina Women's Centre and Sexual Assault Line	Abby Ulmer

Regina Evangelical Ministerial Association	Rev. Wayne Kerr Rev. Ross Ingram
Catholic Women's League of Canada, Saskatchewan Provincial Council	Claire Heron Fern Foster
Ernest Lyon Estevan, Saskatchewan	
Saskatchewan Human Rights Commission	Ron Kruzinski, Chief Commissioner Shelagh Day, Executive Director
Steve Selenski	
City of Regina	Mayor Larry Schneider Raymond Tessier
L.R.S.	Ron Richmond, Associate Prof. of Education University of Regina
Government of Saskatchewan	Hon. Pat Smith Hon. Gary Lane Hon. Gordon Dirks

Non-Appearing Submissions:

Jean Baptiste John L. de Bruyne	
Jean E.M. Reid	Endorsed by: List of 642 signatures from various organizations
Miron Balych	
Saskatchewan Women's Institutes	Margaret E. Peterson, Executive Secretary
Catholic Women's League of Canada	Evelyn Wyrzykowski
L.A. Copeland	
University of Regina Dr. Agnes Groom	
Lorraine Samborsky Canadian Federation of University Women	

WINNIPEG, MANITOBA

April 5, 1984

Presentation by:

Réseau	Janick Belleau
Wayne Sowden	
Klinic, Inc.	Brenda L. Johnson
Manitoba Teacher's Society	Audrey Burchuk, Chairperson, Status of Women in Education Committee
ACTRA	Alice Porper Edward Ledson Brief by: Margaret Allan
Ukranian Canadian Women's Committee	Dorothy Cherwick, President Vera Werbeniuk, President
Mother's Union of the Anglican Church of Canada	Marion Lepinsky, President
P. Snowdon	

Non-Appearing Submissions:

Council of Women of Winnipeg	Rosemary Malahar, President
Seven Oaks School Division #10	N.P. Isler
Manitoba Association for Rights and Liberties	J.J. van der Krabben, President

OTTAWA, ONTARIO

April 6, 1984

Presentation by:

Canadian Civil Liberties Association	Alan Borovoy General Counsel; Prof. Louise Arbour, Board Member
City of Ottawa	Mayor Marion Dewar

Canadian Advisory Council on the Status of Women	Lucie Pepin, President; Jennifer Stoddart, Director of Research Merilee Stephenson, Chief Researcher
Periodical Distributors of Canada	Gerald Benjamin, President Ron Thomas, Counsel Tobi Levinson, Ontario Advisory Committee
Canadian Association of University Teachers	Dr. Sarah Shorten, President Dr. Donald Savage, Executive Director
Ontario Advisory Council on the Status of Women	Sheila Ward, Vice-President Gail Hutchinson
Dianne Kinnon Cynthia Manson	
Canadian Library Association	Paul Kitchen Lois M. Bewley, President
Canadian Conference of Catholic Bishops	Bishop James MacDonald
Public Service Alliance of Canada	Pierre Samson, President Bonnie Carroll Susan Kilpatrick Steven Chilkenny
Lynn McDonald, M.P.	
Video Retailers' Association	James Sintzel Kathleen Curry

Non-Appearing Submissions:

Mary Nickson, President Council of Women of Ottawa and Area	
The Canadian Home Economics Association	Diana Smith Executive Committee
Editorial Advisory Board Goodwin's Magazine	Donna Balkan

OTTAWA, ONTARIO

April 7, 1984

Presentation by:

Comité contre la pornographie à Ripon	Nathalie Duhamel Mascotto
Federated Women's Institutes of Canada	Alice McLaggan Bernice B. Noblitt, President
Canadian Coalition Against Media Pornography	Cynthia Wiggins, President Rose Potvin
Canadian Teachers Federation	Brian Shortall, President Dr. Stirling McDowell Sylvia Gold
The Hastings-Prince Edward County Roman Catholic Separate School Board	Gerald Bibby, Chairman Principals' Association Sister Mary Joan
Gays of Ottawa	Blair Johnston Barbara McIntosh
Group of Concerned Parents in Ottawa	Bruce Pringle
Roots and Wings	Inez Berg

Non-Appearing Submissions:

Ottawa Women Fight Pornography (OWFP)

Ottawa Council for Low Income Support Services

Randal Marlin — Associate Prof. Carleton University

ST. JOHN'S, NEWFOUNDLAND

May 7, 1984

Presentation by:

Provincial Advisory Council on the Status of Women, Newfoundland and Labrador	Ann Bell, President Dorothy Robbins Jennifer Mercier

The Newfoundland Teachers' Association	Grace Howlitt Barbara Lewis
Citizens' Coalition Against Pornography	Dr. John Lewis Judy Facey
Community Against Pornography	Sharon Parsons-Chatman Cynthia O'Toole Joanne Cranston Kathy Porter
Dorothy Inglis Vice President N.A.C.	
Archdiocesan Pastoral Council Roman Catholic Diocese of St. John's Newfoundland	Sister Lorraine Michael Brian F. Furey
Newfoundland and Labrador Women's Institutes	Angela Sullivan — 1st Vice President Jennifer Perry — Executive Director Patty Martin — Convener
The Salvation Army Newfoundland	Major Margaret Hammond
The Canadian Catholic School Trustees' Association	Molly Boucher Frank Furey
The Newfoundland Status of Women Council	Pauline Stockwood Beth Lacey
Newfoundland Provincial Council Catholic Women's League of Canada	Val McNiven Catherine Power J.W. Allen Iris Kendall
Archdiocese of St. John's Family Life Bureau	Margaret Bruce Tom Milla

Non-Appearing Submissions

Cornerbrook Satus of Women Council	Marie Furlong-Bass
St. John's Status of Women Council	Judith Skidmore
Newfoundland and Labrador Women's Institutes	Jennifer Perry Executive Administrator

Newfoundland Assoc. of Social Workers	Nancy Forsey Wanda Lundrigan Pres. N.A.S.W.
Newfoundland & Labrador Assoc. of Youth Serving Agencies	D. Paul Althouse, President

FREDERICTON, NEW BRUNSWICK

May 8, 1984

Presentation by:

St. John and District Ministerial Association	Rev. Ramon Hunston Rev. Mel Norton Malcolm Berry Rev. Roy Campbell
Max M. Wolfe	
People Opposing Pornography	Timothy Johnson
La Fédération des dames d'Acadie	Rachel Guérette
Federation Clergy Council	Eleanor Johnson
Kathy Royama	
New Brunswick Advisory Council on the Status of Women	Madeline Le Blanc, Presidente Myrna Richards, Vice President Elspeth Tullock, Researcher
Carlton-Victoria Association of the United Baptist Churches	Rev. N.W. MacKenzie, Chairman Pastor Steven Mullin Margaret McIsaac
Saint John Deanery of the Anglican Diocese of Fredericton	Archdeacon Harry Quinn Rev. Christopher Pratt Endorsed by: Harold J. Nutter, Archbishop
Association des enseignants francophones du Nouveau-Brunswick	Rosemarie Coule, President Nicole Dupéré
Saint John Chapter, Canadian Federation of University Women	Jane Barry
Catholic Women's League New Brunswick	Rita Milner Kay Robinson

Arthur Standing

Tom Evans

Lea Robichaud

Non-Appearing Submissions:

Women's Institute New Brunswick	Bernice Noblitt, President
Board of School Trustees School District Number 20	Anne Marie McGrath Assistant Superintendent
Asst. Superintendent Board of School Trustees	Dale Horncastle

HALIFAX, NOVA SCOTIA

May 9, 1984

Presentation by:

Mayor Ron Wallace, Halifax

Atlantic Provinces Library Association	Terry Paris Andre Guay Elinor Benjamin Gerard Lavoie John Mercer Janet Phillipps
Prof. Richard Beis	
Voice of Women of Nova Scotia	Elizabeth Mullaby
P.C. Women's Association of Nova Scotia	Gloria Marshall, President
Nova Scotia Advisory Council on the Status of Women	Francene Cosman, President
Downtown Halifax Residents' Association	Mila Riding Elizabeth Pam Piers Howard McNutt
Lloma Jane Chase	
Le Conseil des Acadiennes de la Nouvelle-Écosse	Alphosine Saulnier Denise Sancon

Social Action Committee Antigonish Women's Association	Donna Wallaver Lucille Sanderson Pat Halper

Non-Appearing Submissions

John Poag

St. John The Evangelist Mothers' Union, Lower Sackville Nova Scotia	Geraldine Connors

North End Area Council
Halifax

Family Life Council

Diocese of Nova Scotia
Rev. Lewis H. How

Dalhousie Legal Aid Service
C. Birnie

Gerald B. Freeman

J.W. Clattenberg
Municipal Clerk (Pictou)

Gilles G. LeBlanc

Dale Godsoe, President
Y.W.C.A.

Prof. John Fraser
Department of English
Dalhousie University

HALIFAX, NOVA SCOTIA

May 10, 1984

Presentation by:

R.C. Archdiocese of Halifax Nova Scotia	Archbishop James M. Hughes
Pictou County Branch, Canadian Federation of University Women	Penny Mott Pamela MacDonald

Libby Fraser Charmaine Wood	Endorsed by: Session J. Wesley Smith United Church Halifax
Robert Bean Grant MacDonald Neil Purcell Ken Ward Jim Drobnick Jim McCalla Smith Michael Welton George Peabody Doug Meggison John Bouris Steve Campbell	
Student Union Women's Committee Nova Scotia College of Art and Design	Karen Fainman Barbara Lounder Liz MacDougall
Nova Scotia Association of Social Workers	Freda Bradley Norma Jean Profitt
Francene Cosman	
Nova Scotia Branch Canadian Research Institute for the Advancement of Women	Barbara Cottrell Adele McSorley Susan Shaw
Prof. Clare F. Beckton	
Planned Parenthood of Nova Scotia	Katherine McDonald, President Mary Hamblin, Executive Director Endorsed by: Marilyn R. Peers C.A.S. of Halifax
Group from Atlantic School of Theology	Gordon MacDermott Joyce Kennedy Endorsed by: The Signatures of 49 Citizens
Jill Robinson	

Non-Appearing Submissions:

Nova Scotia Provincial Council of the *Catholic Women's League*	Doreen MacDonnell *Msg. J. Niles Theriault,* Spiritual Director

Peter Clark Anthony Davis (Dalhousie University)	
P.C. Women's Association of Nova Scotia	Gloria Marshall
Public School Responsibility Unit of the Program Committee — Diocese of Nova Scotia	Rev. Lewis How
Mount Saint Vincent University Re: The Institute for the Study of Women	Christine Ball
Donald J. Weeren (Associate Prof. of Education at Saint Mary's University)	
William Morse, M.D., C.M. F.R.C.P.(C) Jean M. Morse, B.Sc., M.S.W.	

THUNDER BAY, ONTARIO

June 19, 1984

Presentation by:

The Northwestern Ontario Women's Centre — Thunder Bay	Fiona Karlsteot Margot Blight Endorsed by: —Social Action Committee, Cambrion Presbytery, The United Church of Canada —The Faye Peterson Transition House —Crisis Homes Inc. —Northwestern Ontario Women's Decode Council
Lakehead Evangelistic Association	Rev. Roy Kemp Rev. Ron Ashton
City of Thunder Bay Police Force	Inspector John Boulter
Dr. Ruth Kajander, Psychiatrist	
Thunder Bay Council of Clergy	Kerry Craig

	Rev. Richard Darling Anne K. McLaughlin, Director of Communications Roman-Catholic Diocese of Thunder Bay
Murray R. Gadica	
Joan Skelton (Chairperson, Committee Against Harmful Pornography	Endorsed by: —Petition of 5,068 signatures —City Council of Thunder Bay —Lakehead District Separate School Board —Lakehead Board of Education —Federation of University Women of Thunder Bay —C.U.P.E. Local 2486 —Lakehead Women Teacher's Association —Office & Professional Employees International Union —Ontario Federation of Home and School Assoc. —Ontario Public School Teachers' Federation —Ontario Secondary School Teachers' Federation
Blake Kurisko, Law Researcher Lakehead Board of Education	Susan Braun, Chairperson Dr. Riley Moynes Mel MacLachlan
Committee on Outreach and Social Action, United Church of Canada	
Non-Appearing Submissions:	
Thunder Bay Public Library	Gerry Meek Lois M. Bewley, President Canadian Library Association
The United Church of Canada Cochrane Presbytery	Rev. William Ferrier, Secretary
Jack Masters, M.P. (Thunder Bay, Nipigon)	
J.A. MacDonald Secretary-Treasurer, Northwestern Ontario Municipal Association	

YELLOWKNIFE, NORTHWEST TERRITORIES

June 19, 20, 1984

Presentation by:

Y.W.C.A. of Yellowknife	Michele Boon Eya Lewycky Lynne MacLean Lynn Saunders
Dennis Patterson	Member of Legislative Assembly, N.W.T.
Sheila Keete	Co-Ordinator, Women's Bureau, N.W.T.
Media Watch, N.W.T.	Jean Wallace
Bob MacQuarrie Member of Legislative Assembly	
Native Women's Association	Violet Erasmus
Foster Family Association of Yellowknife	Nancy Harrison
Anglican Church of Canada — N.W.T.	Bishop John Sperry
Rev. Henry Barch	
Yellowknife Catholic School Board	Paul Driscol

WHITEHORSE, YUKON

June 21, 1984

Presentation by:

Yukon Status of Women Council Media Watch	Sharon Hounsell Vera Blackwell
Whitehorse United Church Social Justice Committee	Trevor Martin Helen Bebak Blair Kirby Rosemary Cormie

Hopkins
(N.A.C. Executive Member)

Government	Chris Pearson, Government Leader Bill Klausen, Health & Human Resources Lorrie McFeeters, Women's Bureau Bob Cole, Acting Administration Justice Pat Harvey, Corporate and Consumer Relations Jill Thomson, Intergovernmental Relations Officer
Official Opposition	Tony Penikett, Leader Roger Kimmerley, MLA