

## Using the Coercive Power of the State to Deal with Child Prostitution and Drug Abuse

By Linda McKay-Panos

### Legislation Considered:

*Protection of Children Abusing Drugs Act*, S.A. 2005, c. P-27.5;

*Protection of Sexually Exploited Children Act*, R.S.A. 2000, c. P-30.3

Canada's laws dealing with problems experienced by children and youth seem to reflect a tension in philosophy between protecting children, and recognizing them as rights-holders who will soon be fully participating members of our society. This post seeks to set out the general procedures provided in these laws and to examine whether these laws actually are successful in using a protectionist coercive model to deal with two serious problems: prostitution and drug abuse by children and youth.

Alberta (*Protection of Children Abusing Drugs Act*, S.A. 2005, c. P-27.5 ("PChAD")), Saskatchewan (*Youth Drug Detoxification and Stabilization Act*, S.S. 2005, c. Y-1.1) and Manitoba (*Youth Drug Stabilization (Support for Parents) Act*, S.M. 2006, c. 22) have passed legislation that provides for involuntary detention of youth who are involved in substance abuse. British Columbia's legislature assented to legislation that deals with both drug abuse and prostitution, but has indicated it will not be proclaimed in force: *Secure Care Act*, S.B.C. 2000, c. 28. With regard to child and youth prostitution, Alberta passed the *Protection of Sexually Exploited Children Act*, R.S.A. 2000, c. P-30.3 ("PSEC"), formerly the *Protection of Children Involved in Prostitution Act*, which provides for the involuntary detention of youth who are involved in prostitution. Saskatchewan (*Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, S.S. 2002, C. E-8.2), Ontario (*Rescuing Children from Sexual Exploitation Act*, S.O. 2002, c. 5 (not yet in force)) and British Columbia (see above) have introduced or effected similar legislation, which does not focus on secure care for children involved in prostitution, but rather on restraining those who sexually exploit children and youth.

### How Drug Abuse Protection Laws Work

Alberta's PChAD allows the guardian of a child under 18 years old to apply to court for an order of apprehension and confinement of the child. The court can grant the order if it is satisfied that the child is abusing alcohol or drugs, which is defined in s. 1(2) as "the child is using the drug and the use caused or is likely to cause psychological or social harm to the child, or physical harm to the child or others." The court order will permit the guardian to apprehend and transport

the child to a safe house where he or she may be kept for up to five days. The police may also be authorized to convey the child to the safe house. Once the child is in the safe house, the Alberta Alcohol and Drug Abuse Commission will assess the child's alcohol or drug abuse and is authorized to treat the child (e.g., by detoxification). Under the *PChAD*, once a child is confined in the safe house, the director of the safe house must provide the child with a "request for review" form and inform the child in writing of the reasons for and the time period of the confinement, the right to ask the Court to review the apprehension and confinement order, the right to contact a lawyer and the telephone number of the nearest Legal Aid office. The court must hold a review within one day of filing the request for a review. Upon release from the mandatory confinement, it is hoped the youth will pursue treatment for his or her substance abuse problem.

Saskatchewan and Manitoba's legislation is similar, although both provinces have indicated that the law is intended "as a last resort, when other measures have been unsuccessful and where a youth is causing serious self-harm through severe, persistent drug abuse." (Manitoba. *Youth Drug Stabilization (Support for Parents Act) Information For Parents* ([online](#))). Saskatchewan's legislation was recently amended to address concerns raised both by the Privacy Commissioner (regarding personal health information of the children) and the Children's Advocate, regarding procedural protections for the rights of the detained children. However, Saskatchewan's legislation was not amended to address the concern that the person who can launch apprehension proceedings against the child need not be a parent, but can merely be "a person with whom the youth has a close personal relationship" (which is not defined in the legislation). The opponents argued that this gave power to a friend of a child, which could be abused.

### **How Child Prostitution Laws Work**

While Saskatchewan's child prostitution laws focus on limiting contact by people who sexually exploit children, Alberta has more interventionist legislation, which focuses on secure care of children. The *PSEC* has undergone several amendments, many in response to expressed concerns and cases about violations of the procedural rights of children who are confined. The *PSEC* allows a police officer or the Director of Protection of Children Involved in Prostitution, who has reasonable grounds to believe that a child is in need of protection, to apply to the court for an order authorizing the police or the Director to apprehend the child (under 18) and either return him or her to a parent, or detain the child in a safe house for up to five days for assessment and counselling. And, if the police or Director believe that the child is in imminent danger because of prostitution, the police or Director may detain the child without a court order. After the initial five day confinement, the Director can apply for a maximum of two additional confinement periods of up to 21 days each if he or she believes the child would benefit from further assessment and counselling. The director must appear before the court within three days of the initial apprehension to show why confinement is necessary, and the child must be informed of the time and place of the hearing, the reasons for the hearing, the child's right to contact a lawyer and to attend the hearing. The law also provides that a child can obtain these services voluntarily if the Director agrees that the child is in need of protection. Recent amendments also provide for restraining orders against those who exploit children through prostitution (e.g., pimps and johns).

### **What are the problems that these laws seek to address?**

The reasons given by each province for passing child substance abuse laws are similar. The increasing abuse of “crystal meth” by youth is causing concern. A Government of Manitoba Press Release on September 6, 2006 stated: “We have seen how crystal meth can destroy families and communities. The government is committed to providing a full spectrum of options for parents and families to combat the effects of this terrible drug.” (“Province Expands Mental Health and Addictions Strategy” ([online](#))). The concern is that youth who abuse this and other drugs (including alcohol) are jeopardizing their futures and their families.

With regard to child prostitution, it is necessary to provide some context. The overwhelming majority of youth prostitutes are female (Karen Busby et al, “Examination of Innovative Programming for Children and Youth Involved in Prostitution” in H. Berman and Y. Jiwani, eds., *In the Best Interests of the Girl Child: Phase II Report* (Alliance of Five Research Centres on Violence, January 2002) 89 at 92 (“Busby”). In addition, youth of Aboriginal heritage are overrepresented in prostitution (Cherry Kingsley and Melanie Mark, *Sacred Lives: Canadian Aboriginal Children and Youth Speak Out About Sexual Exploitation* (Ottawa: Save the Children Canada, 2000) at 12 (“Kingsley and Mark”). Finally, inability to meet basic financial needs (poverty) is also a major factor in entering into and returning to prostitution (Busby, at 94-5).

What is needed to assist children involved in prostitution? A number of studies have indicated that these youth need “safe places to frequent and/or live, consistent support from caring individuals, tailored life skills, education and employment programs and financial support” (Kingsley and Mark at 9). Before legislation was introduced and passed in Alberta and Saskatchewan, studies dealing with youth prostitution did not recommend forced confinement legislation, or in the case of Saskatchewan, recommended that secure confinement be implemented cautiously and only on a pilot basis. See: Prostitution Policy, Service and Research Committee for the Calgary Community, *Handbook for Action Against Prostitution of Youth in Calgary*, 1996; Legislative Assembly of Saskatchewan, *Report of the Saskatchewan Special Committee to Prevent the Abuse and Exploitation of Children Through the Sex Trade*, 2001.

### **Does the Protectionist Model Work?**

The question is: Do coercive measures address the problems that they intend to? Are they the best way to deal with prostitution and drug abuse in our children and youth?

While it is probably too early to draw any conclusions about the efficacy of secure care for drug abuse, early indications are that in Saskatchewan at least, secure care may not be addressing the stated area of fear (crystal meth abuse). In the first year of secure care, sixty youth were confined. Fifty-three of them listed marijuana as their drug of choice. Crystal meth was only listed by seven youth, three of whom listed it as their first choice. The three most common drugs used by the youth surveyed were marijuana, cocaine and alcohol: Government of Saskatchewan, News Release, “60 Young People Benefit from Six Months of Secure Care” (19 October 2006) ([online](#))).

Alberta Children's Services released a report in 2004 (*Protection of Children Involved in Prostitution: Protective Safe House Review* ("Alberta Review")). Between 1999 and 2003, more than 700 children had been apprehended (Mario Toneguzzi *Calgary Herald* 22 December 2003 "Anti-child Prostitute Regulation 'Saved Me': Teens, Police, Officials Praise Protection Act" at B1). Early statistics indicate that many of the apprehensions were of repeat customers, with some individuals being apprehended on several occasions (information on file with the author). The Alberta Review also noted that the number of children being apprehended was dropping significantly (p. 60). Does this mean that child prostitution is being reduced or that children are being forced into hidden forms of prostitution, such as trick pads, which are arguably even more dangerous than street prostitution?

The findings in the Alberta Review indicated that:

Protective safe house clients are usually female, have child welfare status, have been a victim of abuse prior to their involvement in prostitution, and are heavily involved in drug and alcohol abuse. There is also a high degree of undiagnosed Fetal Alcohol Syndrome and attention disorders among clients. (p. 58)

The Alberta Review also noted that a high number of children in Edmonton safe houses were of Aboriginal origin and that a significant number of the children in all safe houses were abusing drugs (pp. 58-59). Upon confinement, the most immediate needs of the clients were basic safety, hunger, fatigue, detoxification from drugs, personal grooming and medical/drug assessment (p. 59).

The criteria used in the Alberta Review to evaluate the long term effectiveness of secure care include: the number of clients who, upon release from the safe houses demonstrate a reasonable degree of stability for 90 days; the degree of usage of community resources after release; and whether fewer children are involved in prostitution (p. 97). Using these criteria, the authors of the study stated (p. 60):

Of clients whose placements could be tracked in available data, 50% showed a reasonable degree of stability of placements in the 90-day period following their last release from the PSH [protective safe house], for the calendar year 2002. Clients who stayed in the PSH for a period of 27-47 days were the most likely to demonstrate successful levels of stability following release. This benchmark may gauge the success of only one aspect of the program. It was felt by stakeholders and staff that the success of the program was more difficult to define. Achieving more safety, increasingly client stability, and exiting prostitution are part of an often long-term process - one which may require several stays at a protective safe house.

One negative finding included that staying at safe houses provided a chance for children to network with other child prostitutes or to recruit other children into prostitution (p. 60). In addition, the researchers recommended that the effects of the involuntary program be compared

to effects of the voluntary services provided (p. 63), presumably in order to see which is more effective.

So, it is not (yet) clear that it is effective to use coercive legislation to deal with drug abuse or prostitution in children. While children are considered rights holders, until recent amendments, this legislation induced several procedural rights concerns, and it may also offend substantive equality rights, especially in the case of prostitution, which involves disproportionate numbers of females, poor and Aboriginal people (see: Jennifer Koshan, Alberta (Dis)Advantage: The Protection of Children Involved in Prostitution Act and the Equality Rights of Young Women” (2003) 2(2) J. of Law and Equality 210).

It appears that in many cases, society may be disregarding the procedural and substantive rights of children to solve a problem, when it is not clear that the coercive method even works or that other less intrusive methods may actually be more effective. Clearly, in using a protectionist approach, the government is seen to be “doing something” about these serious problems by detaining children and youth, but may actually be forcing the problems underground, where young people cannot get the help they need, and by failing to address underlying social causes (e.g., poverty) in the first place.

*This comment was originally published in LawNow Volume 33 No. 3.*