



House of Commons
CANADA

**Subcommittee on Solicitation Laws of the
Standing Committee on Justice, Human Rights,
Public Safety and Emergency Preparedness**

SSLR • NUMBER 029 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Monday, May 9, 2005

—
Chair

Mr. John Maloney

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Monday, May 9, 2005

• (1745)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to call our hearing to order. This is the 29th meeting of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

Our guest this evening is His Excellency William Fisher, who is the newly arrived Australian High Commissioner and who has kindly agreed to come to us, as we cannot travel to Australia. It is too far and the costs are too expensive. We hope Mr. Fisher will enlighten us on the situation in Australia, because it's a varied situation, and we'd like to hear more about that.

Thank you, Mr. Fisher, for being with us tonight. We appreciate that you have to be on your way by 6:30 p.m., and we will certainly accommodate you with that.

Go ahead, sir, for approximately 10 minutes. Perhaps you can give us a rundown on the situation in Australia, and then that will be followed by questions from our panellists, for roughly seven minutes each for the first round. If we have time, we'll go to a second round of three minutes.

His Excellency William Fisher (High Commissioner, Australian High Commission): Mr. Chairman, thank you very much indeed, and thank you for your invitation.

I feel a little bit of an impostor coming here today, for two reasons. The first is that I am very new in Canada, having been here only for a few weeks, and therefore my expertise in matters Canadian is still growing. I am very enthusiastic but not yet very expert.

The second reason is that when it comes to questions of prostitution law, I don't feel at all an expert. I only learned this second-hand, you'll be pleased to hear, and therefore I hope my remarks today are of use.

Let me just say that when I got your invitation to appear, I thought carefully about whether I should come or not. I thought that although I'm not an expert, if I could get some useful information from Australia on this subject, I really owed it to you to come in person and to speak. It seems to me that if you have the interest and the concern to look at the Australian practice in this field, then the least I can do, given the very close links that exist between Australia and Canada and between the parliaments of Australia and Canada, is to come and be present in person.

That's the reason I accepted this invitation. I do hope you will not subject me to too much in the way of knowledge tests, which I would certainly fail.

I have gone back to Australia, and I have what I hope will be useful background briefing, which I will share with you.

The first thing I need to say when it comes to prostitution laws in Australia is that this is not a responsibility of the central or national government. It is entirely regulated by the Australian states and territories. In Australia, there are six states and two territories, so that means eight different jurisdictions. You will be amazed, I'm sure, to learn that there is not a great deal of commonality between these eight jurisdictions.

I should note in passing that as a representative of the national government, I would not obviously be able to comment on the efficacy or efficiency of any those prostitution laws. That would require us to go directly to the various states and territories. Because of the rather quick timeframe that we have done this in, that was not possible.

As I said, Australian laws on prostitution are vastly different among the eight jurisdictions, but there are, roughly speaking, three different types of laws governing prostitution. Let's take them three by three.

The first group of laws are those that effectively criminalize most forms of prostitution. This is the case in three of the eight jurisdictions in Australia—Tasmania, South Australia, and Western Australia. The second group are those that decriminalize prostitution, and this applies in the state of New South Wales. Then there is the third group, those that legalize organized prostitution activities. Those are the states of Victoria and Queensland as well as the two territories, the Northern Territory and the ACT.

Perhaps I can take those three categories one by one. Those states and territories that come into category three are those that, as I said, have legalized organized prostitution. They tend to have among them common prostitution offences, which are forbidden in their legislation.

There are four types of prohibited offences.

First, there are offences relating to the spread of sexually transmitted diseases. Those offences are to prevent prostitutes who are infected with sexually transmitted diseases from working as prostitutes, including making it an offence for a person who owns or manages a brothel or an escort agency to discourage the use of prophylactics. The second set of prohibitions is for offences related to children in prostitution. The third relates to prohibitions on street prostitution. The fourth relates to restrictions on advertising.

Those are the four particular laws, which apply to states that legalize organized prostitution, but forbid the four different types of activities to which I referred.

Let me go through the three categories, one by one. The variations are still quite significant among the categories, so I'll take the states more or less one by one, if you can bear with me, while I go through the eight different jurisdictions.

Let's first take the category one group. As you'll recall, that was the group of countries that criminalize most forms of prostitution.

The first one is the State of South Australia. In South Australia, the act of prostitution itself is not illegal, but most prostitution-related activities are illegal.

Let's go through some of those.

Accosting or soliciting a person or loitering in a public place for the purpose of prostitution is illegal. Engaging in procurement for prostitution, such as advertising for prostitutes or approaching people with the aim of encouraging them to become prostitutes, is illegal. A third group of illegal activities would be to knowingly live, wholly or partly, on the earnings of the prostitution of another person. Another one is keeping or managing a brothel or receiving money paid in a brothel. The last one would be renting out a premise, knowing that it will be used as a brothel, or permitting a premise to be used as a brothel.

However, in South Australia, there are no offences that specifically target escort agencies, which I know was one of your concerns.

Another category one state, which is a state that criminalizes prostitution, is the State of Tasmania. Prostitution is governed under the Police Offences Act of 1935, and it sets out four types of offences.

The first offence is to be a common prostitute in a public place, or within the view or hearing of any person, to solicit, importune, or accost any person for immoral purposes, or to loiter about for any such purpose. Secondly, it's illegal to knowingly live, wholly or partly, on the earnings of prostitution. Thirdly, it's illegal to solicit or importune for immoral purposes in a public place. Finally, it's illegal to occupy or keep any house, shop, room, place, public resort, or other premises to harbour prostitutes.

In fact, taken together, you'll see that all of those things effectively prohibit all forms of prostitution, except for sole operators, in the State of Tasmania.

The final category one state, which is the final state where prostitution is criminalized, is the State of Western Australia. Under Western Australia prostitution laws, it is an offence to keep, manage,

act, or assist in the management of any premises for the purpose of prostitution. It's also an offence to be a tenant, a lessee, or an occupier of premises, or to permit knowingly such premises to be used for the purpose of prostitution. It is an offence to be a lessor or landlord of any premises, where the lessor or landlord knows that this premise is being used for the purposes of prostitution. And it does not matter, for these offences, whether those premises are kept or occupied for prostitution by one person or by more than one person.

• (1750)

In Western Australia, the Prostitution Act of 2000 gave police increased power to combat child prostitution and also to combat street sex workers and their clients. Police in Western Australia have also been given additional powers to restrain street sex workers from occupying familiar street collection points. Street sex workers can be asked to move on and police can apply restraining orders to limit the places where street workers may go and to limit the type of behaviour they can engage in.

Mr. Chairman, those are the three category one states, which are Tasmania, South Australia, and Western Australia. Those are the ones that effectively criminalize most forms of prostitution.

Let's go on to category two, which is the opposite case. This is the case of a state that decriminalizes prostitution. That is the State of New South Wales, which takes, as I said, the opposite line.

New South Wales has a decriminalized framework for prostitution under its 1988 Summary Offences Act. The only activities that are illegal—so these are the only ones that are not legal—are firstly, to live on the earnings of a prostitute. That exempts people who own or manage a brothel. It's illegal to cause or to induce prostitution. It's illegal to use premises, or to use premises to be used for prostitution that are portrayed as being available for massage, for sauna baths, steam baths, or as facilities for exercise, or as photographic studios. It's illegal to advertise that a premise is being used for prostitution or to advertise for prostitutes. Finally, it is illegal to solicit for prostitution near or within view of a dwelling, a school, a church, or a hospital. Local authorities handle the siting of brothels and they have developed policies for the management of brothels in their area.

That's the second category of states where prostitution has been decriminalized, and that applies only in the State of New South Wales.

Finally, the third group of states are those that legalize only organized prostitution, and that is the States of Victoria and South Australia and the two territories. In Victoria, prostitution is controlled by the Prostitution Control Act from 1994, which creates a licensing scheme for prostitution service providers. It is an offence to provide prostitution services without a licence. However, small owner-operated brothels are exempt from licensing. If an exemption is claimed, the business must be registered with the Prostitution Control Board. A licensee or an exempted person who wishes to operate a brothel must also obtain a permit from the local council to use the land for the purposes of operating a brothel, and street prostitution is still prohibited. So that's the State of Victoria.

• (1755)

In the other category three state that has decriminalized organized prostitution, Queensland, the 1992 prostitution laws were amended to target people who organize and profit from prostitution, rather than the prostitutes themselves. Laws in Queensland at this time prohibited brothel keeping and made it an offence to permit premises to be used as a brothel. These laws used to be considered the toughest in Australia on prostitution, but still fell short of total prohibition. However, in 1999, these laws were amended and a licensing scheme for brothels was created.

There are three main points. A person may apply for a brothel licence or for a certificate to manage a brothel on behalf of the licensee; secondly, a brothel may be declared to be a prohibited brothel, and once an order has been made declaring a building to be a prohibited brothel, anyone found entering the building can be charged with an offence; and finally, individual sex workers are not prevented from conducting their business, although public solicitation for prostitution is illegal.

I mentioned that the two territories are both in this category three—that is, the category of states and territories that legalize organized prostitution. Our Northern Territory, first, before 1992, had a de facto system of regulation that allowed escort agencies to operate in a police-regulated environment. However, in 1992, this system was given a basis in law, and the Prostitution Regulation Act of 1992 now regulates escort agencies.

Operators or managers of escort agencies must be licensed by the Escort Agency Licensing Board, and the board assesses applications to determine the eligibility and the suitability of applicants. A person is not eligible to apply for a licence if they are under 18, if they're not a resident of the Northern Territory, if they've been found guilty of a disqualifying offence, or if they have an associate, such as a spouse or a business partner, who has been found guilty of a disqualifying offence. In our Northern Territory, brothels and street work are illegal. Sole operators can operate legally but are not regulated.

The last territory, the Australian Capital Territory, which is the territory around the national capital in Canberra, is also a category three jurisdiction, which, as I've said, is a category where organized prostitution is allowed. Prostitution in the ACT was effectively decriminalized in 1992, and under the new Prostitution Act 1992, brothel keeping, or living on the earnings of prostitution of another person, or procuring a person to engage in prostitution are not offences under the act. Escort agencies and brothels are, however, required to register as a business. Brothels are only allowed to operate in prescribed areas, but these restrictions do not apply to sole operators. There is no limit on the number of rooms for brothels, and soliciting or loitering in a public place for the purpose of prostitution does remain an offence in the ACT.

Those are the rather complex, I'm afraid, set of laws that apply in Australia. As I've said, they vary between the eight states and territories, but essentially they can be grouped into those three different categories according to whether prostitution is effectively criminalized, decriminalized, or legalized in an organized way.

• (1800)

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Fisher.

Madame Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Good evening, Mr. Fisher; I would like to thank you for appearing before the committee.

I would like to get a better handle on the issue. I am interested in the Australian model which defines criminal law as a matter of state jurisdiction. To what extent do you think it would be possible for us, in Canada, to grant this regulatory power to the provinces?

When we travelled around Canada, I was struck by just how open people were to legalizing sex work in cities such as Montreal, while in other cities, the preference was for criminalization.

To what extent is the Australian Constitution truly different from the Canadian Constitution? As you know, Canada grapples with its own specific problems; it would be highly problematic to reopen the Constitution.

Mr. William Fisher:

Thank you.

I am simply here as a representative of Australia, and I do not, therefore, have any suggestion to make as to what Canada should do. I am not mandated to comment upon the Canadian situation.

Australia differs from Canada in that, under our Constitution, this particular legislation is a matter of state and territorial jurisdiction. There is no one system, at a national government level, which deals with legislation on prostitution. That is why, in Australia, it is incumbent upon the eight local governments, be they state or territorial governments, to assume responsibility for legislation governing prostitution.

• (1805)

Ms. Paule Brunelle: Are you saying that the federal government has no role to play in regulating prostitution?

Mr. William Fisher: That is correct, it is a matter of provincial jurisdiction.

Ms. Paule Brunelle: Were you around when the different states implemented their different ways of dealing with sex work; be it by criminalization, decriminalization or legalization? Can these differences be attributed to the fact that attitudes vary across your vast country? Why is it that the various states have opted for such different solutions?

Mr. William Fisher: In Australia, it is relatively commonplace for states to opt for different solutions. Sometimes, efforts are made to harmonize legislation across the states and territories; however, under the Australian Constitution, the issue is clearly one of provincial jurisdiction.

Ms. Paule Brunelle: This committee was struck primarily due to our grave concerns about violence against women. In Canada, there have been instances of prostitutes being murdered. Reducing violence against women is part of our committee's mandate.

We have been told that prostitution was decriminalized in New South Wales in 1988. Has there been a decline in violence against women since that time? Do you think that one of the Australian models could serve as a solution for Canada?

Mr. William Fisher: Unfortunately, as a diplomat, I have very little experience in such matters. Personally, I am not able to provide you with the comparative merits of the different models. However, I could, of course, give the committee the contact details of some useful addresses in the states and territories, and perhaps somebody would be able to provide you with a comparative analysis of the choices made by the different states. However, from a national point of view, it is entirely beyond my remit to comment on the different solutions adopted by the various states.

Ms. Paule Brunelle: Do you know how many prostitutes there are in Australia?

Mr. William Fisher: How many what?

Ms. Paule Brunelle: Prostitutes. Are there 10,000, 20,000, or 100,000 prostitutes in Australia?

Mr. William Fisher: I really think that you should speak to somebody who has more expertise in the field than I do. As I only had a few days to come up with this information, our research on the states was carried out somewhat expeditiously. We sought to find out information on the legislation governing prostitution in Australia, rather than studying the problem itself.

I do apologize, but I have provided you with virtually all of the information that we have been able to find thus far.

The Chair: Mr. Ménard.

Mr. Réal Ménard (Hochelaga): Thank you.

I shall try to stick to some more general questions. I appreciate that, in many instances, we are asking questions which require a degree of expertise that cannot be expected from a diplomat. It would be more appropriate to ask these questions of those who are responsible for enforcing legislation.

The Australian model has been used as a benchmark in several papers which have been brought to the committee's attention. It has been remarked that Australia has served as a model to New Zealand and other countries. My question pertains strictly to street prostitution.

Do you know whether street prostitution in communities has declined in those states where it has been decriminalized?

• (1810)

Mr. William Fisher: I cannot really offer an opinion on such questions. As I said, I have very little experience in the matter. People speak of the Australian model when, in fact, it is difficult to choose among the various models which exist in Australia. As you will have noted, there are at least three different models, if not eight. I would not like to venture that one of these models has proved more successful than the others. It goes without saying that these are highly controversial issues for the states.

Personally, I am a diplomat with the federal government, not an expert in criminal law. I would not presume to choose one model over another. That being said, I am sure that you will be able to find

ardent supporters from both camps in each Australian state; however, gathering opinions on this subject is not part of my remit.

Mr. Réal Ménard: Please understand that the committee would not like to cause you embarrassment or undermine your diplomatic immunity under any circumstances.

Mr. William Fisher: I am delighted to be here.

Mr. Réal Ménard: We really are a very nice group, even if there are not many of us.

I am going to ask one last question. Do you know Ms. Sheila Jeffrey, a professor of political science at the University of Melbourne?

Mr. William Fisher: I do not know her personally.

Mr. Réal Ménard: Ms. Jeffrey is a feminist professor from the University of Melbourne who specializes in sexual policy.

Mr. William Fisher: My colleague has heard of her, but I have not.

Mr. Réal Ménard: She has had some very harsh words to say on these policies.

However, as you do not have the necessary expertise, I will not continue with this line of questioning. Nevertheless, if the federal government has carried out analyses or studies on this subject, I would ask that you be kind enough to send copies to our researcher so that we may consult them.

Mr. William Fisher: Thank you very much. I would be happy to provide the committee with some suggestions of people who have far more expertise in the matter than I do.

Mr. Réal Ménard: Very well. Thank you.

[English]

The Chair: I have a couple of questions.

Is organized crime involved in the sex trade in Australia, or in any of the three different categories of states that have different approaches?

Mr. William Fisher: It is in some jurisdictions but probably not in all. Note, though, that I speak not as an expert, but simply as somebody who has read the newspapers and has seen cases that have successfully been brought by police against big crime involving prostitution.

The Chair: What about the drug trade? Is the drug trade prevalent around aspects of prostitution?

Mr. William Fisher: Again I have only general knowledge of this from reading the press, rather than any expert briefing. But it has certainly been commonly reported in the press in places like Sydney that the drug trade and prostitution in some cases regrettably go hand in hand.

The Chair: One of the problems in Canada is that physical abuse to the extent of murder is all too prevalent. What is the situation in Australia? Going back to the three categories, does one perhaps have more prevalence of violence than another?

Mr. William Fisher: I'm really quite incompetent to make comparisons between the categories. I think one of the problems in making comparisons is that the size of the states is quite different, one from another. The situation in Sydney, which is a very large city of over four million people, where you would get an element of big organized crime, would be quite different from the situation in some of the smaller state capitals that are the size of Ottawa, Windsor, or Quebec City, where the social conditions are quite different, just by virtue of the size of the city, as far as the presence of organized crime or not.

Certainly part of the debate in Australia about the decriminalization, or otherwise, of prostitution has revolved around the issue of the safety of sex workers and what is the best way to handle the safety of sex workers. I am from Canberra in the ACT, a jurisdiction that has decriminalized organized prostitution. There is indeed a union of sex workers that is regularly in the press and is quite active in asserting its union rights. It considers that its legal standing has assisted in the safety of sex workers.

But what might apply in a relatively small town like Canberra, with a population of only one-third of a million, might not necessarily translate to a much larger place like Sydney or Melbourne, which have populations of 3.5 million and 4.5 million respectively.

So as I say, I am quite inexperienced in this. I hesitate to make any comment. I will certainly give you websites for the committee's staff perhaps to pursue. You'll certainly find enthusiastic defenders on both sides of the equation in each of the jurisdictions.

• (1815)

The Chair: What about exit strategies—social assistance to prostitutes to leave the sex trade and move on to other forms of work?

Mr. William Fisher: I'm afraid I just don't know anything at all about that. Again I'm happy to pursue questions like this with the relevant authorities, but personally I have no knowledge of this.

[Translation]

The Chair: Do you have any further questions, Ms. Brunelle?

Ms. Paule Brunelle: No.

[English]

The Chair: Our researcher has a question for you.

[Translation]

Ms. Lyne Casavant (Committee Researcher): Good evening. I would like to come back to the issue that our chairman, Mr. Maloney, just mentioned.

I understand that the Australian federal government has no jurisdiction in criminal matters. Does the government, however, have a role to play in the fight against prostitution, be it through crime

prevention, or other programs, for example? Does the Australian government have a role other than a regulatory role in criminal matters?

[English]

Mr. William Fisher: I'm afraid I could hardly hear you. Are you asking about government programs to help men and women leave prostitution?

Ms. Lyne Casavant: Yes—either leave prostitution, or prevention programs to make sure people don't go into prostitution because they have no other choices in life. Social programs, economic reforms, or...

Mr. William Fisher: Again that would be organized at the state level. I'm sure the position would be very different between various jurisdictions.

As I said, in Canberra, where I come from, the sex workers union is quite a strong body, and they consider it to be a perfectly legitimate form of work. So I don't think they would consider themselves perhaps in that position. But in a major city like Sydney, you'd probably find a lot of women who had been forced into prostitution by circumstance, bad luck, personal disaster, or whatever, and would certainly benefit from such programs. I'm afraid I don't know what they are because that is something I'm just not expert enough about.

If you have a list of questions like this, I'd be very happy to put them to the various state authorities and get some more information for you.

The Chair: Are there any other questions?

Mr. Fisher, thank you very much for appearing before us. Certainly the three categories of offences is an interesting study. We'll take you up on your offer to supply additional information. Perhaps our researchers could contact your research assistant at the commission. Would that be okay?

• (1820)

Mr. William Fisher: Sure.

Mr. Chairman, thank you very much. I wish you good luck with your inquiries. I'd like to express the goodwill of the Australian Parliament, here in these hallowed halls of a fellow Parliament of the Westminster system.

Thank you very much for letting me come.

The Chair: Thank you.

We will adjourn this portion of the meeting and perhaps go into a very quick in camera discussion on future business.

[Proceedings continue in camera]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.