

Canada's anti-prostitution laws: 1839-2005

1839

Lower Canada allows police to arrest prostitutes

In Lower Canada (now the province of Quebec) the police are authorized to arrest "all common prostitutes or night-walkers wandering in the fields, public streets or highways, not giving a satisfactory account of themselves." This law is aimed solely at women. No specific offensive act or behaviour is required in order for a woman to be detained. Persons in the habit of "frequenting houses of ill-fame" can also be arrested.

1851-1881

Cities pass by-laws to control prostitutes, clients

Many Canadian municipalities pass new by-laws to suppress houses of prostitution, prostitutes, inmates (brothel workers) and frequenters (brothel users).

1858

Lower Canada and Upper Canada are united. Legislation authorizing the arrest of inmates of bawdy houses is extended throughout this new Province of Canada.

1865

New law says detain diseased prostitutes

The *Contagious Diseases Act* is designed to protect military men from venereal diseases. The statute authorizes the detention of diseased prostitutes at certified hospitals for up to three months.

[This Act may never have been enforced, since no hospitals were ever certified to detain diseased prostitutes. It expired in 1870.]



Good-Time Girls of Dawson City (c.1890)

In 1997, Canada Post issued a series of stamps depicting Canada's gold rush. This one features a Dawson saloon and a "good-time girl." This stamp appears as a book illustration with the caption "Dawson, City of Gold! Meeting place of the Klondike. It supplied provisions and plenty of entertainment."

PHOTO: *The Klondike Official Guide*, William Ogilvie. Toronto: Hunter, 1898



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WOMEN OF THE WILD WEST

Books about the frontier's pioneers

- **Good Time Girls of the Alaska-Yukon Goldrush**
Lael Morgan. Vancouver: UBC Press, 1998
- **Wild West Women: Travellers, Adventurers and Rebels**
Rosemary Neering. Vancouver: Whitecap Books, 2000
- **Lilies & Fireweed: Frontier Women of British Columbia**
Stephen Hume. Vancouver: Raincoast Chronicles, 2004
- **Soiled Doves: Prostitution in the Early West**
Anne Seagraves. Hayden, Idaho: Wesanne Pub., Inc., 1994

1867

New federal laws target pimps, vagrants

The newly created federal government passes an act prohibiting "all persons from procuring the defilement of women under the age of 21..." The *Vagrancy Act* is also passed. It makes the following liable to arrest: "common prostitutes"; keepers of bawdy houses and houses of ill-fame; frequenters of such houses; and all persons who support themselves in whole or in part by the avails of prostitution.

1871

An act is passed requiring women convicted more than once under the *Vagrancy Act* to serve their sentences in the Quebec Female Reformatory. Minimum sentence is five years (in contrast to the maximum penalty under the *Vagrancy Act*: two months).

1874

The *Vagrancy Act* is amended to increase penalties to a maximum of six months of hard labour.

1880

Feds ban Native prostitutes

The federal government decides to regulate against the prostitution of Native women and *An Act to Amend and Consolidate the Laws Respecting Indians* is introduced. This Act prohibits the keepers of bawdy houses from allowing Native prostitutes on the premises.

1879-1899

New provincial institutions for girls "at risk"

Legislators begin to enact a rash of provincial statutes to remove young girls from the custody of parents who live in a socially unacceptable manner and to transfer them to newly established provincial institutions for girls.



1882

An Ontario Grand Jury recommends that imprisonment, as well as a fine, should be inflicted on keepers of bawdy houses; that present laws should be strictly enforced; and that "every publicity be given to those who frequent brothels."

1884

Bawdy-house ban now includes "tents, wigwams"

To ensure that Native Canadians can be convicted of being brothel keepers, the *Indian Act* (see 1880) is amended to state specifically that keepers of "tents and wigwams," as well as houses, fall within the bawdy-house provisions.

1886

An amendment to the *Indian Act* provides that every Indian who frequents a "disorderly house" — or tent or wigwam used for the purpose of prostitution — is liable. [*The federal government repeals this provision in 1887 and adds a new one meant to apply only to native women prostituting themselves.*]

An *Act Respecting Offences Against Public Morals and Public Convenience* is created, making it an offence to entice a woman into a brothel, or to knowingly conceal her. This Act also forbids men to seduce or have illicit connections with any woman of previously chaste character. Bawdy-house provisions are re-enacted, with additional prohibitions against being an inmate.

1892

New *Criminal Code* adds laws against "procuring"

The *Criminal Code of Canada* is enacted. The federal government adopts a statute against "procuring women for unlawful carnal connection" and makes it unlawful for parents or guardians to encourage the "defilement" of their daughters or wards. "Conspiracy to defile" is also prohibited. Provisions under the *Indian Act* are inserted into the *Criminal Code*, but restricted to unenfranchised Native women.



"Soiled Doves," 19th-Century American West

"Soiled doves," "sporting girls," "painted and bedizened women" and "women of the unfortunate class" were some of the terms used to refer to prostitutes. Brothels were known as "finishing schools," "sporting houses," or "houses of uneasy virtue," and were located on the outskirts of town.

Making Sex Work Safe, Paulo Longo, Cheryl Overs. Rio de Janeiro: Network of Sex Work Projects, 1997 (<http://www.nswp.org/safety/msws>)
PHOTO: Timothy Gordon Collection, Montana



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Mata Hari (1876-1917)

Born Margaretha Geertruida Zelle in Holland, Mata Hari (Malayan for "Dawn") claimed she was raised in Java by temple priests and taught to dance naked before being rescued by an English officer. Mata Hari's dancing (described as "hypnotic" and "charming") earned her rave reviews as she delighted audiences across Europe — including German officers during WWI.

Without a shred of evidence, the infamous courtesan was convicted of spying in France. Dressed in a long, grey dress and gloves, Mata Hari refused to be bound and blindfolded before being executed at dawn by firing squad.

An Underground Education, Richard Zacks. New York: Doubleday, 1997

1907

Bawdy-house ban expands definition

The definition of a bawdy house is amended to include "a house, set of rooms or place of any kind kept for the purposes of prostitution or occupied or resorted to by one or more persons for such purpose."

1909

'Procuring' laws expand, penalty increases

The maximum penalty for procuring women increases from two to five years.

1913

The procuring provisions are extended to include everyone who "on the arrival of any woman or girl in Canada, directs her to any common bawdy house," or who, "for the purposes of gain, exercises control, direction or influence over the movements of any woman or girl in such a manner as to show that he is aiding, abetting or compelling her prostitution with any person or generally." The procuring penalty is increased to include whipping on second and subsequent convictions.

A man who lives off the avails of the prostitution of another person is subjected to a reverse-onus clause: "Where a male person is proved to live with or to be habitually in the company of a prostitute . . . and has no visible means of support, or to live in a house of prostitution, he shall, unless he can satisfy the court to the contrary, be deemed to be living on the earnings of prostitution."

"Everyone found in any disorderly house" is now subject to conviction. Proof is no longer required that the accused has "habitually frequented" a bawdy house.



1915

The maximum penalty for being an inmate of a common bawdy house is increased from six months to a year; keepers and inmates of bawdy houses convicted three or more times are required to serve a term of three months to two years.

1918

New law makes "corrupting children" a crime

The *Criminal Code* is amended to create a new federal offence of "corrupting children through such behaviour as indulging in 'sexual immorality' in the home."

1920

"Procuring" penalty increases

Penalty for procuring is increased to a maximum of ten years.

1931

Canada's laws now independent of U.K.

The *Statute of Westminster* gives Canada the power to enact its own laws, independent of Britain. The laws of Britain no longer apply to Canada unless adopted by Canada's Parliament.

1939

Homes can be bawdy houses

The Supreme Court of Canada (*The King v. Betty Cohen*) finds that the habitual use by one woman of her own premises for prostitution is sufficient grounds to convict for the offence of keeping a common bawdy house.

1947

New law bans "transporting"

The maximum sentence for keepers and inmates of bawdy houses is increased to three years. Another offence is added: "Everyone who knowingly takes or transports ... any other person to any common bawdy house is guilty of an offence and liable on summary conviction."



Prostitutes Perform at Paris Brothel (c. 1930)

Born Gyula Halász in Hungary in 1899, Brassai was once called the "Eye of Paris." Capturing Parisian night life with his photographs, he led the modern school of photography in France. Never before seen, Brassai's "secret photographs" were finally published in 1976. Over 150 photographs show the brothels, madams, pimps and opium dens where high society of the 1930s mingled with the underworld. The photos are accompanied by Brassai's own descriptions of the often extraordinary circumstances under which he took his photographs. (*Brassai, The Secret Paris of the Thirties*, Pantheon Books, 1976) He died in 1984.

Gentlemen's Quarterly, October 1976



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Gerda Munsinger (1926-1998)

A sensational sex-and-spy scandal broke in 1966, when it was revealed that several cabinet ministers had had affairs with Gerda Munsinger, an East German prostitute whom U.S. sources claimed was a spy. The scandal escalated when Munsinger was found alive in Germany, after the government had said she died of leukemia years before.

To draw attention away from the scandal, Prime Minister Pearson opened a debate on capital punishment while two terrorist bombers — members of the Québec Liberation Front — waited on death row. After riotous debate an initial vote retained the death penalty. However, the ensuing national debate led the government to abolish capital punishment in 1967.

PHOTO: *Vancouver Sun*, February 28, 1997

1968

The Supreme Court of Canada (*Patterson v. the Queen*) rules that isolated instances of prostitution do not make a place a common bawdy house. There must be evidence of habitual use.

1972

New law makes “soliciting” a crime

In force since 1867, “Vag-C” — the *Criminal Code* section used to arrest a “prostitute or night-walker who ... fails to give a good account of herself” — is repealed. It is replaced by a law stating 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.”

An Ontario County Court (*R. v. Patterson*) rules that only females can be prostitutes.

1973

The B.C. Supreme Court (*R. v. Obey*) rules that males can be prostitutes after all.

1978

Supreme Court ruling defines “soliciting”

The Supreme Court of Canada (*R. v. Hutt*) rules that the term “soliciting” refers to “pressing or persistent” conduct. Furthermore, a car is deemed not to be a public place. However, this is not binding, because it was not one of the grounds of the appeal brought before the court.

The B.C. Court of Appeal (*R. v. Dudak*) rules that a customer cannot be convicted of soliciting, and gives approval to the earlier Obey decision (1973) that a prostitute can be either female or male. The Ontario Court of Appeal (*R. v. DiPaola* and *R. v. Palatics*) rules that both customer and prostitute can be convicted of soliciting for the purpose of prostitution.



Regarding the use of premises, the Ontario Court of Appeal (*R. v. Ikeda and Widjaja*) rules that use of the same room twice in one night for the purpose of prostitution is not sufficient to brand a place as a common bawdy house.

1980-1982

Cities pass by-laws banning prostitution

Montreal, Calgary, Vancouver, Niagara Falls and Halifax enact by-laws dealing with street prostitution. The content of all five by-laws is quite similar. The first, enacted in the City of Montreal in 1980, forbids remaining in a public place (any place to which the public has access, by right or explicit or implicit invitation) for the purpose of prostitution, or approaching others for the same purpose in such a place. The Calgary by-law enacted in 1981 forbids being, remaining or approaching another on a street for the purpose of prostitution. Punishment consists of substantial fines, increased for subsequent offences. This by-law becomes the model for subsequent ones. Vancouver, Niagara Falls and Halifax enact their by-laws in the spring of 1982.

1981

The Montreal by-law is declared "*ultra vires*" — beyond {Montreal's} jurisdiction — by the Superior Court of Québec. The Supreme Court of Canada rules in *R. v. Whitter* and *R. v. Galjot* that the term "pressing or persistent" refers to the practice of repeatedly soliciting the same person.

1982

The B.C. County Court of Cariboo (*R. v. Wise*) finds a motor vehicle to be a public place. The Alberta Court of Appeal (*R. v. Cline*) holds that a person who is already a prostitute cannot be procured (lured into prostitution). The Ontario Court of Appeal (*R. v. Pierce and Gollaher*) holds that a parking space habitually resorted to by a prostitute in various motor vehicles belonging to her customers can be deemed a bawdy house.



The Penthouse Dinner Club (1941)

Formerly the home of Diamond Cabs (1019 Seymour St.), Joe Philliponi opened a club to teach boys how to box — the Eagle Time Athletics Club — in 1945. Upstairs they opened a dinner club, where customers could drink and enjoy burlesque entertainers and live music. Vancouver was famous for such nightclubs: The Cave, Isy's Supper Club, the Kobenhavn and the Zanzibar. Police raids in search of liquor and vice were so routine that clubs had buzzers to alert customers to hide their bottles.

In the 1950s and 1960s, The Penthouse featured such famous acts as Harry Belafonte, Ella Fitzgerald and Sammy Davis Jr. On any given night, as many as 100 hookers frequented the club, in search of clients.

In 1975, undercover police closed The Penthouse (and one other club), and charged the owners with keeping a bawdy house. All of the owners appealed, and their convictions were overturned. The Penthouse reopened in 1979 and still operates today, featuring exotic dancers.

PHOTO: Heritage Vancouver Society
(<http://www.vcn.bc.ca/hrtgvanc/social.htm>)



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Julia Soaemias Bassiana (180-222 A.D.)

In 218, Rome's Emperor Macriims was killed in a battle that delivered the throne to Julia's 13-year-old son, Elagabalus, in a victory engineered by Julia. Upon his first audience with the senate, the young emperor gave orders inviting his mother into the senate-chamber, where women had never been allowed. Elagabalus was wholly under his mother's control and Julia, a notorious harlot, became *de facto* ruler of Rome. She took a place in the senate, making herself president of a female parliament which regulated the morals, dress, and etiquette of matrons. Julia's lewd manner quickly made her unpopular. She and her son were killed by the Praetorian Guard, March 11, 222, and her body was thrown into a sewer. She was later declared a public enemy, and her name was erased from all records.

ILLUSTRATION: Miniature showing Julia Soaemias murdered from an illuminated manuscript by Giovanni Boccaccio, 1313-1375.

(New York Public Library: <http://digitalgallery.nypl.org>)

1983

Men can be prostitutes under new law

Bill C-127, proclaimed January 4, 1983, makes several changes to the *Criminal Code*:

- "prostitute" now means "a person of either sex engaging in prostitution"
- any person (regardless of gender) who is not a common prostitute or a person of "known immoral character" is protected under the procuring section
- any person (regardless of gender) living on the avails of prostitution is liable
- a person can be convicted of procuring upon the evidence of only one witness

The Supreme Court of Canada (*Westendorp v. the Queen*) finds the Calgary by-law to be invalid and *ultra vires* of the power of the City of Calgary.

The Justice Minister tables in the House of Commons proposals to amend the soliciting section of the *Criminal Code*. The Proposed amendments would make prospective customers liable to soliciting charges, and would include within the definition of a "public place" a motor vehicle "in or on a public place." The Minister also announces the creation of a special committee to make further recommendations on both prostitution and pornography. The committee is to report its findings no later than December 31, 1984.

1984

B.C. Justice McEachern grants the city a "Quiet Zone" injunction, to prohibit prostitution in Vancouver's West End, in response to complaints about nuisance and traffic congestion (*A.G.B.C. v. Couillard*).



1985

New law makes “communicating” a crime

Bill C-49 (see Page 29) replaces Section 195.1 of the *Code*. C-49 states that “Every person who, in a public place or open to public view, stops or attempts to stop any motor vehicle, blocks any pedestrian traffic going into or out of any building, stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute, is guilty of an offence punishable on a summary conviction.” “Public places” include any place to which the public has a right of access by invitation (such as clubs, hotels, apartment lobbies and motor vehicles).

1986-1988

Arrests spark national protests

On January 18, 1986, a nationwide street demonstration calling for the review and repeal of Bill C-49 brings out 100 prostitutes and their supporters in Vancouver, 50 in Toronto, 30 in Calgary, 60 in Montreal, and 25 in Ottawa. By February 19, 1986, 117 women and 57 men have been arrested in Vancouver; 180 women and 53 men in Toronto; and 22 women in Calgary. Several lower provincial courts rule that C-49 infringes on freedom of association and freedom of expression and therefore is of no force (because it violates the *Charter of Rights and Freedoms*). These rulings are later overturned at appeal. Decisions rule that any *Charter* infringements are “reasonable limits demonstrably justified in a free and democratic society.” *R. v. Cunningham* (1986) (Manitoba Provincial Court), *R. v. Skinner* (1987) (Nova Scotia Court of Appeal), *R. v. Jahelka*; *R. v. Stagnitta* (1987) (Alberta Court of Appeal), *R. v. Smith* (1988) (Ontario Provincial Court).

1989

New law targets “proceeds of crime”

Parliament enacts Bill C-61, the *Proceeds of Crime Act*. For the first time in Canada it is an offence for anyone, including bank officials, to participate or knowingly assist in the laundering of proceeds obtained from criminal activity.

1990

Supreme Court upholds new laws

The Supreme Court of Canada upholds the bawdy-house and communicating sections of the *Criminal Code*, overturning the Nova Scotia Court of Appeal decision in *R. v. Skinner*.



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1993

New law outlaws child porn

Parliament passes Bill C-128, a new child pornography law, which police immediately use to arrest and detain dozens of male sex workers in Toronto and London, Ontario — including youths under 18 years of age.

1997

Parliament passes Bill C-27, *An Act to Amend the Criminal Code (Child Prostitution, Child Sex Tourism, Criminal Harassment and Female Genital Mutilation)*.

1998

Manitoba amends its *Highway Traffic Act* to give police the power to seize the cars of drivers found communicating in known prostitution areas.

1999

"Secure care" law upheld by Alberta court

Alberta passes the *Protection of Children Involved in Prostitution Act*. An Alberta Provincial Court rules that the law violates the *Charter of Rights and Freedoms*. The case goes to appeal, and the Court of Queen's Bench of Alberta overturns the lower court ruling.

2000

Alberta passes a second act to amend the 1999 legislation. Ontario passes the *Protecting Children from Sexual Exploitation Act*, which gives police and child welfare workers the power to detain anyone under 18 considered to be at risk for prostitution. B.C. passes similar legislation: the *Secure Care Act*. Nova Scotia amends its *Motor Vehicles Act* to allow the seizure of vehicles used for prostitution-related offences. Saskatchewan and Nova Scotia each pass a *Protection of Children Involved in Prostitution Act*. Ontario passes the *Remedies for Organized Crime and Other Unlawful Activities Act*, giving courts the power to seize property deemed to be an instrument in, or proceeds of, unlawful activity.

2001

New anti-trafficking law complies with U.N. protocol

Parliament passes Bill C-11, the *Immigration and Refugee Protection Act*, which replaces the former *Immigration Act* and creates a new offence to deal with trafficking in persons (in compliance with the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*).



2002

Parliament passes Bill C-20, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and Canada Evidence Act*, which changes the rules for cross-examining under-age prostitutes and victims of child abuse, allowing for video testimony.

2004

Parliament introduces Bill C-42, *The Public Safety Act*, which includes a new offence — trafficking in persons — with very high maximum penalties (again, in keeping with the United Nations protocol).

2005

In April the first charges under the 2001 *Immigration and Refugee Protection Act* are laid — against the manager of King City Massage Parlour, southeast of Vancouver. Maximum penalties include life imprisonment and \$1 million in fines.

REFERENCE: *Pornography & Prostitution*, Canadian Advisory Council on the Status of Women, 1985

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Including court rulings, trial transcripts and criminal laws.

→ **Canadian Legal Information Institute**

Published judgments from federal and provincial courts

<http://www.canlii.org>

→ **Department of Justice Canada**

Search all major federal laws, or access such educational booklets as

The Legislative Process, Canada's Court System, Canada's System of Justice
and *Guide to Making Federal Acts and Regulations*

<http://canada.justice.gc.ca>

→ **Supreme Court of Canada Reports of Published Judgments**

From 1983 up; provided by the University of Montreal

<http://www.lexum.umontreal.ca/csc-scc/en>

→ ***Trials of the Sex Trade: A Survival Guide to Canada's Legal Jungle***

Six easy-to-read booklets, fun illustrations; published in 1994

http://www.walnet.org/csis/legal_tips/trials

