

Seizure of Motor Vehicles Involved in Prostitution Related Offences

Date:	January 25, 2007
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

At its meeting on September 28, 29, and 30, 2005 City Council requested the City Solicitor to report back with respect to legislation in other provinces dealing with this issue, and in particular, Bill 28 of Nova Scotia, which proposed to give municipalities authority to seize and impound vehicles being used to commit offences under the prostitution related sections of the Criminal Code of Canada.

Currently the only jurisdictions in Canada with legislation providing for the seizure of vehicles, in prostitution related offences are Alberta, Manitoba and Saskatchewan. No province has granted the authority to municipalities to pass by-laws in this regard. The validity of the legislation in Manitoba and Saskatchewan has not been challenged. However, if Ontario were to pass a similar law, there are strong legal arguments to challenge the law's validity.

DECISION HISTORY

<http://www.toronto.ca/legdocs/2005/minutes/committees/pof/pof050920>

COMMENTS

At this time, Manitoba, Saskatchewan and Alberta are the only provinces that have legislation in place that authorizes the seizure of motor vehicles involved in the prostitution related offences set out in the sections of the *Criminal Code of Canada* referred to below. The proposed Nova Scotia legislation was not enacted.

Section 242.2 (3) of the *Highway Traffic Act* of Manitoba provides that “an officer who on reasonable grounds believes that a motor vehicle is being operated in the course of committing an offence under any of the following provisions of the *Criminal Code of Canada*, shall seize a vehicle and take it into the custody of the law:

- (a) Section 211 (transporting person to a bawdy house),
- (b) Section 212 (procuring),
- (c) Section 213 (offence in relation to prostitution).

Saskatchewan’s legislation is similar to Manitoba’s.

Alberta’s legislation is predicated on a person being charged with an offence under sections 211, 212, or 213 of the *Criminal Code*. It provides that where a person has been charged with an offence under section 211, 212 or 213 of the *Criminal Code*, a peace officer may seize or immobilize the motor vehicle that was being operated by that person at the time the person was charged.

According to the annual report of Manitoba’s Seizure and Impoundment Registry, in Fiscal Year 2005/2006, there were 46 prostitution related vehicle seizures in Manitoba. There were 22 such seizures in 2004/2005. The program has been in place since 1999.

Saskatchewan’s Vehicle Impoundment against Sexual Exploitation (VISE) office indicates that in 2006/2007, there have been 73 impounds, down from a high of 93 in 2004/2005. This program has been in place in Saskatchewan since 2002.

I am advised by Alberta’s Correctional Services Division in the Ministry of the Solicitor General and Public Security, that since the legislation was proclaimed on October 23, 2006, 23 vehicles have been seized.

Nova Scotia’s proposed legislation would have permitted municipalities to pass by-laws dealing with the seizure and forfeiture of motor vehicles involved in the commission of prostitution related offences under sections 211, 212 or 213 of the *Criminal Code*. Nova Scotia does have general legislation which authorizes an officer to seize and impound vehicles for any offence committed under the *Highway Traffic Act* or the *Criminal Code of Canada*. I am advised by the Deputy Registrar of Motor Vehicles of Nova Scotia that this is rarely, if ever, done and would likely only occur if the vehicle was relevant as evidence in the prosecution.

A review of case law reveals that there have been no court challenges to the Saskatchewan, Manitoba or Alberta legislation. As well, staff in each of Alberta, Manitoba and Saskatchewan are unaware of any legal challenges to the legislation. However, it is not clear that these laws could withstand a legal challenge.

There are arguments to be made both in favour of upholding such legislation and against it. If a court were to consider that the province was legislating in the area of criminal law, which is in the exclusive jurisdiction of the federal parliament, the law would be

invalid. If, however, it was seen as legislation dealing with control of the streets, which is within provincial legislative jurisdiction, it could be a valid law.

Case law appears to be divided in this respect. Some cases suggest that the subject matter of the seizure law is the prohibition of prostitution. A leading case in this issue is *R. v. Westendorp*, a 1983 decision of the Supreme Court of Canada which dealt with a City of Calgary bylaw creating the charge of ‘being on a street for the purpose of prostitution’. In that case the court concluded the purpose of the provision was not to control the streets but an attempt to control or punish prostitution which is a matter of morality and accordingly is a matter beyond the competence of the legislature of Alberta and the City of Calgary. Accordingly, the by-law was declared invalid. Although the seizure of motor vehicles involved in prostitution related offences is different than the Calgary by-law which appears to actually ban prostitution, a court might follow similar reasoning.

On the other hand, there are cases that appear to give provinces wide authority to regulate traffic safety. For example, Ontario Courts have upheld the *Safe Streets Act* which prohibits aggressive solicitation as a “proper exercise of provincial authority to pass legislation in relation to the safe use of highways by both vehicles and pedestrians”. Accordingly, if a court were to determine that the matter of the law is dealing with control of roads it could be a valid law. Much would depend on how the legislation was crafted.

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SIGNATURE

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