



Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy

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EXECUTIVE SUMMARY

Planning for the adult entertainment and sex industry is incredibly controversial. Issues of morality, safety, and health all play major roles on where adult entertainment and sex establishments should be located in cities. Given the municipal government's role in land-use planning it holds strategic position to influence where legal bawdy-houses (brothels) are located. Municipalities have taken a variety of approaches to regulating the location of adult entertainment establishments. As more jurisdictions legalize brothels, municipalities will need to ensure that these establishments are located in the optimal location to ensure safety and security for the workers, their patrons, and the general public.

While it is anticipated that this report will generate recommendations applicable to many municipalities across Canada, it will focus on the City of Toronto's adult entertainment and sex industry governance strategy. This report will present and analyse the City of Toronto's current governance practices as they pertain to legal adult entertainment establishments. Such practices include the review of bylaws, business licensing processes and procedures, and legal regulations governing adult entertainment businesses in Toronto. This report will make recommendations on how the governance tools and regulations can be improved to include brothels and will propose strategies for implementing proposed regulations.

Background

Prior to analysing how Toronto's adult entertainment governance tools can be improved and modified to incorporate brothels, they must understand how they are situated in the realm of adult entertainment and the sex industry. In order to understand the public's contention with brothels they must be placed in the context of other adult entertainment establishments and understand

differences between brothels and other adult entertainment and sex-related businesses.

There are differences between brothels and other adult entertainment businesses. At the core of the adult entertainment hierarchy is “laddering” (Cameron, 2004). Laddering refers to the classification of types of adult entertainment according to different hierarchy. For example a society ranks establishment according to perceived social stigma and the level of human contact that is involved. The example Cameron uses is an adult magazine shop involves much less human contact as compared to visiting a prostitute (Cameron, 2004).

Officially, brothels are illegal in Canada; however it is widely known that brothels operate “underground” or under aliases. These establishments are generally inconspicuous in nature in order to not draw attention to the safety and discretion of both the workers and patrons. In Toronto, establishments operating under the licensing of “Body Rub Parlours” or “Holistic Centers” established in the city’s licensing parameters, are not policed but have been known to operate as an illegal sex industry establishment.

However, in March 2012 the Court of Appeal for Ontario was asked to address three provisions of Criminal Code, R.S.C. 1985, c. C-46, known as “the Bedford case”. The respondents argued that the provisions deprive them of their right to life, liberty and security of the person as protected under s. 7 of the *Canadian Charter of Rights and Freedoms*. The respondents also argued that the communicating provision violates the guarantee of freedom of expression covered under s. 2(b) of the *Charter*.

The Court of Appeal for Ontario held that the Criminal Code provisions are unconstitutional and must be struck down because they do not accord with the principles of fundamental justice enshrined in s. 7 of the *Canadian Charter*. In April 2012, the Federal Government of Canada launched an appeal to the Supreme Court of Canada on the Court of Appeal for Ontario's decision. The hearing is set for early 2013.

Findings

The findings of this report were derived from a variety of sources and methods of data collection: a literature review of adult entertainment zoning strategies; a review of international examples drawn from brothel zoning approaches in Sydney, Brisbane, and Auckland, a policy review of Toronto's bylaws and licensing processes and interviews with two informants.

The literature review outlines ways in which municipalities have used a variety of zoning techniques to control where adult businesses operate. The review highlights the history of the zoning of the sex industry, examining the three different approaches: red light districts, placing businesses at the city periphery, and scattering businesses throughout the city. Some cities have taken the approach of grouping similar adult entertainment businesses in a concentrated district. Others have zoned so that adult entertainment establishments are located at the periphery of the city in industrial areas. Municipalities have also taken the approach of scattering adult businesses throughout the city with minimal distance restrictions from institutions such as schools and places of worship.

The review of international examples introduced a number of policy and governance practices that can potentially be adopted by Toronto, pending the decriminalization of brothels in Canada. Sydney (Australia) introduced a new tool

that accompanies the municipal bylaws and licensing process, the Adult Entertainment and Sex Industry Premises Development Control Plan (2006). The tool represents a comprehensive document that covers all elements of governing the sex industry in the city of Sydney. Locational restrictions, internal and external design standards, operational requirements, and health and safety standards are all detailed in a single document that serves to protect owners, employees, and patrons of a variety of adult entertainment and sex industry establishments. Brisbane (Australia) highlighted the importance of a common governance structure and common definition across jurisdictions of the sex industry. A state-wide body, the Prostitution Licensing Authority, defines the regulations for an entire jurisdiction, allowing for slight variance within certain municipalities. The common definitions and regulations enables state officials, police, prospective and current establishment owners, and employees to be familiar with the regulations regardless of their location in the state of Queensland. Finally, Auckland (New Zealand) exercises a different locational restriction approach to Sydney and Brisbane. Auckland's regulations foster a clustered approach to zoning the adult entertainment industry, creating a small "red-light district".

In the review of Toronto's adult entertainment bylaws and administrative processes gaps were identified. Interviews with a planner and a sex worker advocate highlighted thoughts on future directions for the inclusion of brothels in land use policy and how the sex industry can be better governed. Although no specific policies are developed for brothels, there are bylaws and regulations that govern other types of sex industry establishments including body rub parlours and strip clubs.

Recommendations

The major policy components of the report are: regulatory authority, consultation processes, governance tools, and locational zoning approach. The

recommendations address the identified issues and steps moving forward. The recommendations are intended for the administrators of the governance tools, city planning officials. The political climate must be considered prior to implementation of the recommendations. The recommendations are proposed in a technical manner, however political sensitivity should be exercised when moving to implementation. Additionally, the recommendations are put forward at a strategic level. If decriminalization becomes a reality in Canada, specific regulations included within the recommended governance tools will need to be worked out further with consultation from a wider stakeholder group. The recommendations include:

Recommendation 1 – Establish common governance tools, definition of sex and adult industry establishments (including brothels) and locational restrictions for all areas of the city. The City of Toronto government should continue to set regulations and manage the tools.

Recommendation 2 – Establish regulations specific to brothels must be an inclusive process involving relevant stakeholders and should be initiated and led by the municipal authority. Consultation should take place via a variety of methods deemed necessary by a working group with representation from relevant stakeholders.

Recommendation 3 – Create a single governance tool that details all aspects of regulation for the adult entertainment and sex industry including locational restrictions, design standards, operational standards, and health and safety regulations.

Recommendation 4 – Continue to take a scattered approach to zoning adult entertainment and sex industry establishments. Minimal distances between establishments should also continue; however separation distances between establishments and sensitive land uses (places of worship and schools) should be reconsidered.

Conclusion

The report has taken an investigative nature and has identified areas for Toronto to develop and improve policies and governance tools related to regulating the sex industry, more specifically inclusion of brothels as a type of sex establishment.

The recommendations of this report are geared to municipal decision makers and aim to begin the discussion and set out a strategic direction on this important and pressing planning topic. It is also important, however, that the political climate is considered prior to implementation of any of the recommendations outlined in this report. It is imperative for the safety of the community, sex workers, and their clients that municipalities begin this policy discussion now. It is clear that, although not at the forefront of municipal policy-makers, this topic is of interest.

Future research can further examine specific regulations relating to brothel location, managerial/operational standards, design guidelines, and health and safety regulations. Any one of the above mentioned areas can be investigated and recommendations about the specific regulations can be an outcome of the research. Additionally, if brothels are decriminalized and regulations have been put in place by municipalities, research can take place in studying the impact of these regulations and their success.