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Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAM CONSISTS OF 3 PAGES**

**THE ALLARD SCHOOL OF LAW, UNIVERSITY OF  
BRITISH COLUMBIA**

**MID-COURSE EXAMINATION - FALL - 2018**

**LAW 201  
CONSTITUTIONAL LAW**

**Professor J. Bakan**

**TIME ALLOWED:** 1 hour plus 10 minutes reading time

**NOTES:**

1. This examination is **OPEN BOOK**. Candidates may use any materials they have brought into the examination room (with the exception of library and text books) during the examination and the reading period.
2. I advise you to use the reading period to read through the whole of the exam, identify the issues raised by the questions, and think about possible approaches to answering the questions. You may write on scrap paper during this period if you wish. **YOU MAY NOT TYPE ON YOUR COMPUTER OR WRITE IN YOUR EXAMINATION BOOKS DURING THE READING PERIOD.**
3. Do not concern yourself with provisions, statutes, cases or other sources not covered in the course materials.
4. It is better to cover more points in brief than fewer points in detail. **State clearly any facts you assume in answering the questions.** You should describe the arguments that might be made on both sides of an issue, and give some sense of the relative strengths of the arguments.
5. Full citations of cases are not necessary. You may refer to cases in short form.

## QUESTION

### Total marks: 100

The federal *Criminal Code* was recently amended in relation to the sale of sexual services. The new provisions prohibit individuals from buying sexual services, but not from selling them. On introducing the provisions in the House of Commons, the Minister of Justice stated: “These new provisions have three objectives – to protect those who sell their own sexual services; to protect communities, and especially children, from the harms caused by prostitution; and to ensure those who sell their own sexual services are protected from criminal liability.” Under the new provisions buying sexual services from a minor attracts a 6-month mandatory minimum sentence and a 10-year maximum sentence, while buying sexual services from an adult attracts a five-year maximum and no mandatory minimum sentence.

Shortly after Parliament enacted its new provisions, Alberta added its own new provisions to the provincial *Child Welfare Act*, under the heading ‘Save the Children’. These allow a police officer, when there are reasonable and probable grounds to believe a "minor is engaging in prostitution," to obtain a judicial order that the minor be apprehended and conveyed to a protective safe house for 72 hours for "safety" and "assessment". After the 72-hours, a child welfare director must either return the minor to the "responsible adult who has legal care and control of the child", or make an application for a supervision or guardianship order (which puts the minor in the care of the state, temporarily or permanently).

When he introduced the ‘Save the Children’ provisions in the Legislative Assembly, the Premier of Alberta said:

Recently, an international report by the Committee to End All Sexual Exploitation (CEASE) concluded that flawed legislation and an overall lack of planning by the federal government is turning Canada into a haven for the sexual exploitation of children. For years we have been frustrated by a lack of federal action in doing something about the evils of child prostitution. We are now taking our own action on this matter. The measures I introduce today take important steps in attacking this socially injurious practice.

In the debate that followed, members from all parties spoke in favor of the ‘Save the Children’ provisions which ultimately received unanimous assent and became law. Hansard reveals that, during debate, most members supported the ‘Save the Children’ provisions because they aligned with the fundamental purpose of the *Child Welfare Act*, as stated in its preamble – “to protect and promote the safety, security and well-being of

children and families." No member suggested the new provisions were aimed at punishing minors involved in prostitution, and some members specifically stated they were not.

Karen, a sixteen-year-old, has been living on the streets since she fled her foster home a year ago. She was apprehended by Calgary police officers and, in accordance with the 'Save the Children' provisions, conveyed to a "protective safe house" where a staff member assessed she was involved in prostitution. Karen was confined to the "protective safe house" for 72 hours and then released to her foster parents. Karen then ran away from her foster parents, of whom she is afraid ("they hate me and have been abusive", she said), and returned to the streets. Karen has now been charged with the offense, under the *Child Welfare Act*, of "willfully interfering with the operation of this Act", punishable by fines of up to \$25,000 and/or imprisonment for up to 2 years.

### **ANSWER THE FOLLOWING**

Assume you are a staff lawyer at a clinic providing legal aid to youth and Karen asks you to defend her. Part of your case is to challenge the constitutionality of the new 'Save the Children' provisions of the *Child Welfare Act* by addressing two questions:

1. Are the 'Save the Children' provisions valid? [You can presume that the matter of child welfare falls within the provincial class of 92(16), and that the *Child Welfare Act* as a whole is valid] **(70 marks, 42 minutes)**
2. Assuming the 'Save the Children' provisions are valid, are they nonetheless inoperative? **(30 marks, 18 minutes)**

**END OF EXAMINATION**