

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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Applicants
(Respondents in appeal)

– and –

ATTORNEY GENERAL OF CANADA

Respondent
(Appellant in appeal)

– and –

ATTORNEY GENERAL OF ONTARIO

Intervener
(Appellant in appeal)

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PART I: OVERVIEW

1. This intervention is brought in coalition by seven national, provincial and local women's groups whose members and clients include prostituted women: Canadian Association of Sexual Assault Centres, Native Women's Association of Canada, Canadian Association of Elizabeth Fry Societies, Action Ontarienne contre la Violence Faite aux Femmes, la Concertation des Luites contre l'Exploitation Sexuelle, Le Regroupement Québécois des Centres d'Aides et de Lutte contre les Agressions à Caractère Sexuel and Vancouver Rape Relief Society (hereinafter the "Women's Coalition for the Abolition of Prostitution" or "Women's Coalition").

2. The Women's Coalition members work from coast to coast providing front line crisis and anti-violence services and supports, representation and advocacy for women and girls who are or have been prostituted, who are criminalized and incarcerated in relation to prostitution, who are trying to escape prostitution, who are targeted for or are at risk of being prostituted, and who have been subject to male violence, including prostitution. The Coalition members conduct and publish research informed by the experience and first-hand accounts of women in prostitution, including research on the unsolved cases of hundreds of missing and murdered Aboriginal women. The Coalition members develop educational programs and initiatives to prevent entry into prostitution and to address the poverty that drives women to enter prostitution.

3. Prostitution is a deeply gendered practice. Most of the people being prostituted in Canada are women and girls. Most pimps and almost all buyers are men. The buying and selling of women's bodies in prostitution is a global practice of sexual exploitation and male violence against women that normalizes the subordination of women in a

sexualized form. It exploits and compounds the systemic inequality of women based on sex, race, poverty, age, immigration status, disability and Aboriginality.

4. Under international human rights law, Canada is obliged to assist and protect prostituted women; and to constrain those who exploit or traffic in prostituted women. The Women's Coalition submits that the *Charter*, interpreted consistently with these obligations, mandates the asymmetrical criminalization of prostitution as follows:

- a. First, criminalizing prostituted women unconstitutionally punishes women for men's exploitation of them. It deprives them of liberty and security of the person contrary to the principles of fundamental justice because it is arbitrary, overbroad and contrary to equality principles which inform the interpretation of s. 7.¹
- b. Second, insofar as the impugned laws criminalize the activities of pimps, buyers, brothel owners, those who live off the avails of prostitution and others who exploit prostituted women, the laws do not violate the *Charter* rights of prostituted women. Instead, the laws support those *Charter* rights. Prostitution itself is harmful to women. The danger to women's security is a function not of the laws constraining prostitution, but of the actions of men who demand the sale of women's bodies. It would be illogical and contrary to principles of fundamental justice to decriminalize men's prostitution of women in order to protect women from those same men.²

¹ As a result, the Women's Coalition submits that s. 210(2)(a) [inmate of a common bawdy house] is unconstitutional and of no force and effect and that s. 210(1) [keeping a common bawdy house] and s. 213 [communicating for the purpose of prostitution] are unconstitutional only to the extent that they apply to prostituted persons, who are overwhelmingly women and girls.

² As a result, the Women's Coalition submits that s. 210 [keeping a common bawdy house], s. 210(2)(b) [found-in at a bawdy house], s. 210(2)(c) [knowingly permitting a bawdy house], s. 212(1)(j) [living on the avails] and s. 213 [communicating] are constitutional to the extent that they apply to buyers, pimps, brothel owners, and others who exploit prostituted women and/or profit from women's exploitation in prostitution.

5. On this appeal, three basic approaches are before the Court:
 - a. The Appellants' position of maintaining the *status quo* requires the Court to overlook the documented harms to prostituted women of their criminalization;
 - b. The Respondents' position of striking down all three provisions requires the Court to decontextualize the provisions from the totality of the *Criminal Code* sanctions against prostitution; to treat as irrelevant systemic inequality, child prostitution, trafficking, the global nature of the prostitution industry, and the profit motive in commercializing prostitution; and to treat all actors as functionally equivalent, effectively guaranteeing men a right to buy and sell women in prostitution;
 - c. The Women's Coalition asks the Court to anchor its analysis in the full context of the prostitution industry, and to recognize the connections between child and adult prostitution, local prostitution and national/international trafficking, indoor and outdoor prostitution, prostitution and violence against women, and personal security and equality. In this context, it is clear that the *Charter* rights of prostituted women do not require decriminalization of the men who harm them.
6. In *Charter* litigation, the Court must decide no more than is necessary and must avoid an overbroad remedy that would inappropriately pre-empt or constrain Parliament's response. The Women's Coalition asks this Court to find that the *Charter* does not prevent Parliament from treating prostituted women differently from the buyers, pimps, brothel owners and others who exploit them. The *Charter* guarantees women the right not to be criminalized for their own exploitation. The *Charter* does not guarantee men a right to the prostitution of women or a right to profit from the prostitution of others.

PART II: STATEMENT OF FACTS

7. The Women's Coalition generally agrees with the Statement of Facts of the Attorneys General of Canada and Ontario and relies on the following facts in the record.

8. Prostitution is not engaged in by a random cross-section of the domestic and international population. The sexual exploitation, coercion, and violence that define prostitution are practices committed overwhelmingly by men against their social and economic subordinates, women and children.³ This sexual and sexualized inequality is compounded by other systemic inequalities defined by Aboriginality, race, poverty, age, disability, and immigration status. The court below erred in giving little weight to the affidavits from women currently or historically engaged in prostitution. While Himel J. found that the affiants were an "extremely diverse group" whose experiences differed,⁴ the evidence in fact demonstrates the profound commonalities of their lived inequality.

9. Contrary to the analysis in the court below, it is not possible to draw a bright line between child and adult prostitution and to exclude consideration of the former. Many prostituted women entered prostitution as teenage girls.⁵ Women who were first

³ *Report of the Special Committee on Pornography and Prostitution in Canada, Vol. 2* (Fraser Report, 1985), Joint Application Record (**JAR**) vol. 71, Tab 154B, p. 20889; Report of the Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws* (Challenge Report, 2006) **JAR** vol. 82, Tab 164, pp. 24918, 24930.

⁴ Appeal Book (**AB**), Tab 5, Reasons of Himel J. at paras 85-88.

⁵ Cross-examination of Valerie Scott, **JAR**, Vol. 4, Tab 17, p. 582 (age 15); Affidavit of Terri Jean Bedford, **JAR**, Vol. 2, Tab 11, p. 45 (age 16); Affidavit of Wendy Babcock, **JAR**, Vol. 4, Tab 19, p. 791 (age 15); Cross-examination of Carol-Lynn Strachan, **JAR**, Vol. 8, Tab 33, p. 1865 (age 16); Affidavit of Natasha Falle, Exhibit Book (**EB**), Vol. 1, Tab 1, p. 4 (age 14); Affidavit of Dawn Hodgins, **EB**, Vol. 1, Tab 5, p. 214 (age 16); Affidavit of T.D., **EB**, Vol. 1, Tab 6, p.231 (age 15); Affidavit of P.M., **EB**, Vol. 1, Tab 11, p. 296-97 (13-17 years old); Fraser Report, **JAR** vol. 71, Tab 154B p. 20890 (average age of entry likely 15-16); Dept. of Justice, *Street Prostitution: Assessing the Impact of the Law* (Synthesis Report, 1989) **JAR**, Vol. 75, Tab 157, p. 22349 (for girls average age 16); Challenge Report, **JAR** vol. 82, Tab 164, p.24918 (average likely between 14 and 18).

prostituted as girls were often homeless or in state care.⁶ Most had already endured male sexual abuse before entering prostitution.⁷ Some of these girls made the decision “to get paid for the abuse.”⁸ Others did not even realize they were in prostitution and thought they were partying or helping their boyfriend.⁹ The continued prostitution of these girls into adulthood does not transform that prostitution into an uncoerced choice or negate the state interest in disrupting their continued exploitation.

10. Women commonly identify poverty as a major cause of their prostitution and a serious barrier to exiting prostitution.¹⁰ Most women entering prostitution – particularly girls and Aboriginal women - have low levels of education and limited job prospects.¹¹

11. Pimps use deception and coercion to recruit girls and women into prostitution and use intimidation and violence to keep them there. Many women who testified were

⁶ Bedford Affidavit, JAR, Vol. 2, Tab 11, p. 45; Cross-examination of Wendy Babcock, JAR, Vol. 4, Tab 20 pp. 791-793; Falle Affidavit, EB, Vol. 1, Tab 1, p. 3; Hodgins Affidavit EB, Tab 5, p. 213; T.D. Affidavit, EB, Vol. 1, Tab 6, p. 233; P.M. Affidavit, EB, Vol. 1, Tab 11, p. 296.

⁷ Babcock Cross-examination, JAR, Vol. 4, Tab 20, p. 839; Bedford Cross-examination, JAR, Vol. 2, Tab 12, p.110-114 (male relatives, brother at age 8); Falle Affidavit, EB, Vol. 1, Tab 1,p.16 (babysitter);Hodgins Affidavit, EB, Vol. 1, Tab 5, p. 213(3 men, age 6); Affidavit of J.S. EB, Vol. 1, Tab 7 at p. 244 (stepfather, age 12); P.M. Affidavit, EB, Vol. 1, Tab 11, p. 295 (male relatives, age 7).

⁸ J.S. Affidavit, EB, Vol. 1, Tab 7, p. 245; D.S. Affidavit EB, Vol. 1, Tab 4,p. 205-06; Hodgins Affidavit EB, Tab 5, at p. 215; Falle Affidavit EB, Vol. 1, Tab 1, p. 5.

⁹ P.M. Affidavit, EB, Vol. 1, Tab 11, p. 296-97; Affidavit of H.C., EB, Vol. 1, Tab 8, p. 263; Hodgins Affidavit EB, Vol. 1, Tab 5, p. 220.

¹⁰ Bedford Cross-examination, JAR, Vol. 2, Tab 12, pp. 91-92 (poverty nips at your heels); Affidavit of Wendy Harris, JAR, Vol. 7, Tab 27, p. 1574 (needed to support child); Affidavit of Linda Shaikh, JAR, Vol. 8, Tab 31, p. 1862 (child with heart condition, welfare not enough); Affidavit of Darlene Mooney, JAR, Vol. 7, Tab 29, pp. 1685-1686 (years of poverty); D.S. Affidavit EB, Vol. 1, Tab 4, p. 191; Hodgins Affidavit, EB, Vol. 1, Tab 5, p.214; Fraser Report, JAR, vol. 71, Tab154B, p. 20894; Challenge Report, JAR vol. 82, Tab 164, p. 24919.

¹¹Bedford Cross-examination, JAR, Vol. 2, Tab 12, p. 140-142; Scott Cross-examination, Vol. 4, Tab 17, p. 617; Babcock Cross-examination, JAR, Vol. 4, Tab 20, p. 793; Harris Affidavit, JAR, vol. 7, Tab 27, p. 1596 (grade 9); Strachan Cross-examination, Vol. 8, Tab 33, p. 1913 (grade 8); Falle Affidavit, EB, Vol. 1, Tab 1, p. 4; (grade 7) D.S. Affidavit, EB, Vol. 1, Tab 4, p. 190 (left in high school); T.D. Affidavit, EB, Vol. 1, Tab 6, p. 233 (left in high school); J.S. Affidavit, EB, Vol. 1, Tab 7, p. 245 (left in high school); Hodgins Affidavit EB, Vol.1, Tab 5, p. 214 (left school at 16); P.M. Affidavit, EB, Vol.1, Tab 11, p. 301 (grade 6).

under the control of a pimp at some time. Pimps took most or all of their money, set earnings targets, imposed fines and exit fees, moved women around to isolate them, beat them, and threatened them with violence, deportation, and exposure to their families.¹²

12. Contrary to the analysis of the court below, there is no clear distinction between pimps, agency/brothel owners, driver/bodyguards or others who live off the income of prostituted women. Women testified about agency owners and drivers who raped prostituted women, got them hooked on drugs, or offered them up to groups of other men. Women testified that these men rarely provided protection from johns.¹³

13. Contrary to the analysis of the court below, it is not possible to draw a bright line between outdoor and indoor prostitution. Women who are prostituted for any length of time are typically prostituted in multiple venues, some of which defy categorization as “indoor” or “street.”¹⁴

14. Contrary to the analysis of the court below, indoor prostitution is not safe or healthy for women. Prostituted women routinely face acts of physical and sexual violence in all locations from johns and pimps. Women who were prostituted in brothels testified that they heard the screams of other women, and no one intervened. They were

¹² Bedford Cross-examination, **JAR**, Vol. 2, Tab 12, p. 123; Strachan Cross-examination, **JAR**, Vol. 8, Tab 33, pp. 1921-1922 (took her money); L.B. Affidavit, **EB**, Vol. 1, Tab 9, pp. 273-274 (beating, prostitution sole income); K.C. Affidavit, **EB**, Vol. 1, Tab 10, pp. 282-283 (took money, imposed fines, exit fees, beatings, threats to rape sister and kill family); P.M. Affidavit, **EB**, Vol. 1, Tab 11, pp. 297-300 (expected to earn \$1000/day, threats of violence).

¹³ H.C. Affidavit, **EB**, Vol. 1, Tab 8, p. 264-266 (no one responded to screams in brothel; driver/boyfriend beat her if she refused to go in); D.S. Affidavit, **EB**, Vol. 1, Tab 4, p. 193-194 (agency owner coerced women to have sex with him and friends for free); Falle Affidavit, **EB**, Vol. 1, Tab 1, p. 11-13 (drugged and raped by driver she trusted); Bedford Cross-examination, **JAR**, Vol. 2, Tab 12, p. 92 (brothel owner demanded sex.)

¹⁴ Affidavit of Susan Davis, **JAR**, Vol. 5, Tab 22, p. 931; Affidavit of Kara Gillies, **JAR**, Vol. 6, Tab 24, p. 1297; Harris Affidavit, **JAR**, Vol. 7, Tab 27, p. 1574; J.S. Affidavit, **EB**, Vol. 1, Tab 7, p. 246.

assaulted and sexually assaulted; no one intervened. Some women considered street prostitution a better option because they could refuse clients, clients were less likely to be intoxicated or refuse to use a condom, and pimps had less control over them.¹⁵

15. Contrary to the analysis of the court below, physical and sexual violence are not the only relevant harms of prostitution. Prostitution itself is harmful to women. Women in prostitution in all locations endure verbal abuse and humiliation, loss of their children to adoption or state care, physical pain from repeated intercourse, mental trauma, health problems, and homelessness.¹⁶

16. Many prostituted women testified that while they were in prostitution they glamourized it, tried to minimize the violence, and tried to view it as empowering. Some considered enduring violence to be part of their job, or convinced themselves that they could control the johns. Some prostituted women testified that they did not realize that they had been pimped until after exiting prostitution.¹⁷

17. Contrary to the analysis of the court below, the overrepresentation of Aboriginal

¹⁵ Affidavit of Amy Lebovitch, **JAR**, Vol. 2, Tab 13, p. 165 (tied up and raped in brothel, not found for an hour); Davis Affidavit, **JAR**, Vol. 5, Tab 22, p. 936 (assaulted and money stolen indoors); Shaikh Affidavit, **JAR**, Vol. 8, Tab 31, p. 1862 (assaulted indoors); Falle Affidavit, **EB**, Vol. 1, Tab 1, p.10-11 (felt more control on street); D.S. Affidavit, **EB**, Vol. 1, Tab 4, p. 194 (keeping regular agency clients took priority over safety; safety measures did not stop violence); Hodgins Affidavit, **EB**, Vol. 1, Tab 5, pp. 217-218 (repeatedly assaulted by johns in hotel rooms, boyfriend next door only intervened once; choked by regular john); T.D. Affidavit, **EB**, Vol. 1, Tab 6, p. 237 (fewer drugs and more control on street); H.C. Affidavit, **EB**, Vol. 1, Tab 8, pp. 255-256 (could not refuse johns in massage parlour; choked, raped, often heard screams of other women; drugs readily available).

¹⁶ Bedford Cross-examination, **JAR**, Vol. 2, Tab 12, pp. 108-109; P.M. Affidavit, **EB**, Vol. 1, Tab 11, p. 302-303 (verbal abuse, ulcers, harm to children); K.C. Affidavit, **EB**, Vol. 1, Tab 10, p. 285; (traumatic memories) L.B. Affidavit, **EB**, Vol. 1, Tab 9, p.275 (did not see kids for 2 years); J.S. Affidavit, **EB**, Vol. 1, Tab 7, pp. 249, 253 (PTSD, depression, became violent); Hodgins Affidavit, **EB**, Vol. 1, Tab 5, pp. 218-220 (unable to care for son; 4 suicide attempts); T.D. Affidavit, **EB**, Vol. 1, Tab 6, p. 231 (pimp forced her to adopt out 3 kids).

¹⁷ Falle Affidavit, **EB**, Vol. 1, Tab 1, p. 6; H.C. Affidavit, **EB**, Vol. 1, Tab 8, pp. 263-264; Affidavit of J.S., **EB**, Vol. 1, Tab 7, p. 257; K.C. Affidavit, **EB**, Vol. 1, Tab 10, pp. 283-284; P.M. Affidavit, **EB**, Vol. 1, Tab 11, pp.299-300, 303.

women in prostitution must be central to the analysis of the prostitution laws. This overrepresentation is the legacy of colonial law and policy that has frequently left Aboriginal women dispossessed of their lands, their language and culture, their “status” under law and their children. The effects of residential schools, most notably poverty, addiction and cycles of violence and abuse, contribute to Aboriginal girls being taken into state care or running away to urban areas, where they are vulnerable to recruitment by pimps. Aboriginal women are, as a group, the most disadvantaged people in Canada in terms of poverty and violent victimization.¹⁸ Consigning Aboriginal women to bear the brunt of meeting male demand for prostitution compounds this inequality.¹⁹

18. Contrary to the analysis of the court below, evidence of trafficking is not incidental to the assessment of the constitutionality of the prostitution laws. It is not possible to completely separate trafficking from domestic prostitution. Trafficking into and within Canada is encouraged by the domestic demand for prostitution. There is no evidence on the record that decriminalization of johns decreases the demand for prostitution; there is evidence from many jurisdictions that it increases demand.²⁰

19. The only legal regime described in the record that is designed to reduce the amount of prostitution and trafficking is one that decriminalizes prostituted persons and criminalizes the buying of sex and pimping. This legal regime, pioneered by Sweden,

¹⁸ UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, art. 22 (endorsed by Canada in November 2010); Amnesty International, “Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada” *JAR*, Vol. 7, Tab 29C, p. 1752.

¹⁹ Challenge Report, *JAR* vol. 82, Tab 164, pp. 24920-24921; Melissa Farley, et. al. “Prostitution in Vancouver: Violence and Colonization of First Nations Women”, (2005) 42 J. of Transcult. Psych. 242, *JAR*, vol. 49, Tab 113E, p. 14363.

²⁰ *Factum of the AG Ontario*, Appendix B, ii-iii, viii-xi.

recognizes prostitution as a practice of sex inequality against women and girls.²¹

PART III: POINTS IN ISSUE

20. The intervention by the Women's Coalition addresses two issues:

- a. Do ss. 210, 212(1)(j) and 213(1)(c) of the *Criminal Code* violate s. 7 of the *Charter*?
- b. What principles should apply with respect to remedy?

PART IV: LEGAL ARGUMENT

A. Legal Context: Canada's International Obligations to Suppress Prostitution

21. International human rights instruments that Canada has ratified are relevant and persuasive sources for interpreting *Charter* rights. *Charter* rights should be interpreted in a purposive way that honours Canada's international human rights obligations and that provides protection at least as great as that afforded by international human rights documents which Canada has ratified.²²

22. The UN *Convention on the Elimination of All Forms of Discrimination Against Women*, obligates Canada to "take all appropriate measures, including legislation...to suppress all forms of traffic in women and exploitation of prostitution of women."²³

23. In addition, by ratifying the UN *Convention Against Transnational Organized*

²¹ Affidavit of Janice Raymond, **JAR** Vol. 55, Tab 119, pp. 16061-65; Reasons of Himel J. **AB**, Tab 5 at paras. 206-08.

²² *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at 348, per Dickson C.J.C. (dissenting); *Slaight Communications Inc. v Davidson*, [1989] 1 S.C.R. 1038 at 1056-57; *U.S.A. v. Burns*, [2001] 1 S.C.R. 283 at para. 79-80; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at para. 59-60; *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391 at para. 69, 70, 79.

²³ UN *Convention on the Elimination of All Forms of Discrimination Against Women*, 2-6 UN GA Res. 34/180/1979, ratified by Canada 10 December 1981, esp. Art. 2(f), 5(a), 6.

Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (“the Palermo Protocol”) Canada has committed to take measures “to prevent and combat trafficking in persons, paying particular attention to women and children” and “to protect and assist the victims of such trafficking.” The Palermo Protocol defines trafficking as including “the exploitation of the prostitution of others” through “the abuse of power or of a position of vulnerability.”²⁴ Laws targeting the demand for prostitution are valid measures in support of this obligation.²⁵

24. The constitutional analysis in this appeal must take into account these dual state obligations – to suppress activities in relation to prostitution and to protect those who are prostituted – that aim to protect the security and equality of women and girls.

B. Purpose of the *Code* Provisions: Prostitution is Not Legal in Canada

25. Much of the Respondents’ case rests on the proposition that prostitution is legal in Canada and that, as a result, the Court ought to view with suspicion provisions that criminalize particular methods of engaging in prostitution. The Women’s Coalition submits that this proposition is wrong and that the court below erred in adopting it. As a result, the court below viewed the impugned provisions out of context and identified their purposes too narrowly.

²⁴ UN *Convention Against Transnational Organized Crime*, UN General Assembly Resolution 55/252000, ratified by Canada May 2002; Annex II, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. [“Palermo Protocol”]

²⁵ Palermo Protocol, art. 9, para. 5 “States parties shall adopt or strengthen legislative or other measures. . . to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”; UN Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Addendum to the Report of the UN High Commissioner for Human Rights*, UN Doc. E/2002/68/Add.1, Substantive Session 2002, Agenda item 14(g) at 3, UNESCOR (May 20, 2002).

26. Prostitution has always been criminalized in Canada. The criminal law's focus has shifted from the status offence of being a common prostitute²⁶ to criminalize specific conduct connected with prostitution. Eliminating the status offence was not a decision to legalize prostitution. The status offence was replaced first by the offence of soliciting, and later by communicating in a public place, both of which targeted street prostitution.²⁷ This did not legalize prostitution. Instead, the communicating offence was broad enough to capture all street prostitution and, for the first time, clearly criminalized the actions of the buyer.

27. The bawdy house laws (s. 210) that prohibit brothels and the procuring laws (s. 212) that prohibit parasitic profiting from prostitution and running an escort agency, among other activities, have remained in effect for nearly a century. Prostitution and pimping of persons under the age of eighteen has been targeted with enhanced penalties.²⁸ In 2005, Parliament added provisions to the *Criminal Code* to criminalize the trafficking in persons for sexual exploitation in prostitution.²⁹

28. The three impugned provisions, then, are part of a collection of interconnected offences that, taken together, criminalize virtually all prostitution-related conduct. Characterizing prostitution itself as lawful, when virtually every form of engaging in it is a crime, confuses form and substance.³⁰

29. Relying on this erroneous premise led the court below to further err by limiting

²⁶ *Criminal Code*, R.S.C. 1970, c. C-34, s. 175(1)(c).

²⁷ *Criminal Code*, R.S.C. 1970, c. C-34, s. 195.1(1)(c), S.C. 1972, C. 13, s. 15.

²⁸ *Criminal Code*, R.S.C. 1985, c. C-46, s. 212(4).

²⁹ *Criminal Code*, R.S.C. 1985, c. C-46, s. 279.01.

³⁰ *R. v. Butler* [1992] 1 S.C.R. 452 at 469-470, para. 28; *Rodriguez v. B.C. (A.G.)*, [1993] 3 S.C.R. 519 at 597-598, para. 155.

the purposes of the provisions to simply discouraging nuisance. When the laws as a whole are examined in the context of Canada's *Charter* and international human rights commitments, the purposes of the impugned provisions should be understood to include the broader objectives of discouraging the substantive and multiple harms of prostitution, and of suppressing conduct that is degrading and dehumanizing to women while rejecting the public and commercial normalization of that degradation.³¹

30. The Coalition agrees generally with the Appellant as to the objectives of the challenged laws and submits that, taken as a whole, their objective has always included deterring the practice of prostitution. This is consistent with Canada's domestic and international commitments to combat sex discrimination. While the court below noted the "power imbalance" in prostitution, it failed to identify by and against whom that power is exercised. In social and political terms, prostitution is at once a consequence, a manifestation and a practice of the sexual subordination of women to men in an economically and politically unequal society. In legal terms, prostitution is a consequence, manifestation and practice of sex discrimination compounded by discrimination on the basis of age, Aboriginality, class, race and/or nationality.

31. Over time, recognition of the detrimental impact of prostitution in general, and street prostitution in particular, on vulnerable populations, who are mostly women, and disproportionately Aboriginal, has increased.³² The harms to women of the sex industry have more recently been recognized as harms of degradation, dehumanization and

³¹ *Ref.re ss. 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123 at 1193-1195, per Lamer J. (concurring) ("Prostitution Reference"); *Butler, supra* at 479, para. 49; *R. v. Mara*, [1997] 2 S.C.R. 630 at paras. 34-35

³² Reasons of Himel J. **AB**, Tab 5, at para. 458.

inequality. This does not shift the purpose of the provisions but is instead a permissible shift in emphasis in the goals of deterring prostitution and addressing social nuisance.³³

32. The Court below recognized that the bawdy house provisions legitimately aimed to protect public health and safety but erred by limiting the notion of “public” and “safety” to neighbouring residents.³⁴ Women in prostitution are members of the public and protection of their health and safety is equally vital. Bawdy houses are not safe or healthy places for women. Male violence, trafficking, child sexual abuse and the commercialized sexual exploitation of women’s poverty are threats to public health and safety that are discouraged by the criminalization of bawdy houses.

C. The *Charter* Requires the Asymmetrical Criminalization of Prostitution

33. The Women’s Coalition submits that s. 210(2)(a) and, to the extent that they apply to prostituted persons, ss. 210 and 213, violate the s. 7 liberty and security interests of prostituted women in a manner that is arbitrary, overbroad and inconsistent with principles of substantive equality.

34. The Women’s Coalition further submits that ss. 210, 210(2)(b), 210(2)(c), 212(1)(j) and 213 are constitutional in whole or in part in their application to those who exploit and profit from women’s prostitution. This application is both constitutional and necessary to safeguard women’s *Charter* rights to security and equality.

35. The impugned *Criminal Code* provisions apply to prostituted persons, johns and pimps, who operate in a hierarchy relative to one another in the commercial prostitution

³³ *Butler, supra* at 494-95, paras. 85-86; *R v. B.E.*, 1999 CanLII 3796 (ON C.A.) at paras. 48-49.

³⁴ Reasons of Himel J., **AB** Tab 5, at para. 242.

industry. Although subject to the same *Criminal Code* provisions, it is crucial that the constitutional analysis recognize their differences when measured against the objectives of the legislation to pinpoint the extent to which the laws' application to different actors advances or detracts from *Charter* rights.

1. The Impugned Laws Are Unconstitutional in their Application to Prostituted Women

a. Women's Right to Liberty

36. Sections 210(2)(a), 210(1) and 213 violate women's liberty to the extent that they contain the potential for the imprisonment of prostituted persons.³⁵

b. Women's Security of the Person

37. The Women's Coalition further submits that ss. 210(2)(a), 210(1) and 213(1)(c) in part violate women's security of the person. However, the Coalition reaches this conclusion for reasons that are wholly distinct from the analysis of the court below.

Women's Coalition Disagrees with Analysis of the Court Below

38. Prostituted women experience extraordinary levels of violence. However, the Women's Coalition submits that the challenged laws do not cause or materially contribute to men's violence against women. The danger that women in prostitution face is a function of the actions of men – pimps and buyers – who enforce and demand male sexual access to women's bodies in a commercially exploitative industry. There is no nexus between the laws and this male violence sufficient to establish indirect state responsibility for violating women's security of the person.

³⁵ *Prostitution Reference, supra* at page 1140.

39. The analysis of the court below is erroneously premised on the assumptions that (i) prostitution itself is not a practice that is typically coercive, unequal and harmful; (ii) both prostitution and male violence against women are inevitable rather than practices of sex inequality; and (iii) responsibility for resisting men's violence rests with women themselves, by effectively diverting it on to less privileged women in other locations.

40. The Coalition submits that these assumptions are wrong and, as a result, Himel J. erred in the connections she drew between the impugned laws and the violence women face. Decriminalizing men's purchase and sale of women's bodies does nothing to disrupt or combat male violence against women. Instead, it removes one means for the state to interfere with that violence.

41. The evidence did not establish that indoor prostitution is safe or harmless. There is ample evidence that johns and pimps regularly inflict violence, including homicide, on prostituted women, in a variety of locations and that the most disadvantaged women are at greatest risk.³⁶ There is also ample evidence of many harms of indoor prostitution apart from physical violence, including evidence that trafficking and child prostitution are facilitated by indoor venues.³⁷

42. The evidence did not support the conclusion that women in street prostitution move indoors when brothels are legalized.³⁸ Women in Canada are presently much less likely to be charged and convicted for brothel prostitution than for street prostitution, but

³⁶ *Supra* at paras. 14, 15; *Factum of the Appellant AG Ontario*, Appendix B, v-viii; Appeal Book, Tab 5, Reasons of Himel J., **AB** Tab 5 at para. 116; *R. v. Evans*, 2009 BCSC 1615.

³⁷ *Factum of the Appellant AG Canada*, at para. 27

³⁸ Pratt Affidavit, Ex. "C", **Suppl. JAR**, Vol. 2, TAB 178, pp. 26926, 26934 and 26950-1; Reasons of Himel J. **AB** Tab 5 at paras. 189 and 196; *Factum of the Attorney General of Ontario*, Appendix B, i and ii.

women remain on the street.³⁹

43. The finding of the court below that the security of women in street prostitution is violated by the communicating law because it decreases the time women have to “screen” johns for violence should be rejected. This conclusion revives the long-discredited notion that women can and should be responsible for preventing male violence. Any man can be violent and women cannot predict when a man will turn violent. The notion that security of the person is dependent on the possibility of a few more seconds to check for visible weapons or the odor of alcohol is illusory.

44. The conclusion that the communicating law materially contributes to the displacement of street prostitutes into “unsafe” areas should be rejected. The evidence was overwhelming that there are no safe areas of street prostitution. All prostitution transactions are ultimately concluded in private, where the violence occurs. Women are targeted for male violence not because of their location, but because of their inequality. Women with the least relative privilege in terms of class, disability, Aboriginality or race are more likely to endure and less able to refuse the most vulnerable and brutalizing kinds of prostitution, whether indoor or outdoor.⁴⁰

Women’s Coalition’s Analysis of Breach of Security of the Person

45. The Women’s Coalition submits that the laws that criminalize pimps and johns, who cause harm to women, do not violate prostituted women’s security of the person.

46. The Women’s Coalition submits that the communicating and bawdy house laws,

³⁹ Reasons of Himel J., **AB**, Tab 5 at para. 93

⁴⁰ *R. v. Pickton*, 2009 BCCA 300 at para. 29.

in their application to prostituted women, undermine women's security of the person. By criminalizing prostituted women, the state punishes women for their own sexual exploitation. Convictions leave women with a criminal record, making it more difficult for them to find sources of income other than prostitution, which threatens their security of the person. The failure of the state to alleviate women's poverty is a major cause of their prostitution.⁴¹ The state must not consign women to prostitution in perpetuity through their criminalization.

c. Violations are Inconsistent with Principles of Fundamental Justice

47. The Women's Coalition submits that these violations of women's liberty and security of the person are inconsistent with the principles of fundamental justice.

48. First, the impugned laws' application to prostituted women is arbitrary⁴² and overbroad.⁴³ Section 210(2)(a) aims to protect women from being sexually exploited through institutionalized prostitution. Section 213(1)(c) aims to protect women from the harms of street prostitution. However, when applied against prostituted women, the laws' effect is directly counter to these purposes. It is also overbroad because the laws condemn exploiter and exploited equally and punish women for enduring degradation, exploitation and abuse by johns, owners or pimps. It is illogical and irrational to criminalize women in order to protect them from male violence and sexual exploitation.

49. Second, the impugned provisions fail to comply with constitutional principles of

⁴¹ Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defence of Feminist Abolitionism* (2010) 158 U. Pa. L. Rev. 1729 at 1736-39.

⁴² *Abarquez v. Ontario* (2009) 95 O.R.(3d) 414 (C.A.) at para. 47, leave to appeal refused [2009] S.C.C.A. No. 297.

⁴³ *R. v. Clay*, [2003] 3 S.C.R. 735, per Gonthier and Binnie JJ. at paras. 37-38.

substantive equality. The right to equality is a fundamental constitutional principle that should inform the meaning of the principles of fundamental justice.⁴⁴ The criminalization of prostituted women and youth for their inequality offends the principles of fundamental justice. The court below erred by treating as “incidental” to the analysis the stark inequalities of age, sex, Aboriginality, nationality and class that construct the supply of bodies to be prostituted.

2. The Impugned Laws are Constitutional as Applied to Exploiters of Prostituted Women

50. This appeal does not engage any asserted rights of johns and pimps. The laws criminalizing the purchase of women in prostitution and profiting from prostitution can only be found unconstitutional if they violate prostituted women’s rights to security of the person, contrary to principles of fundamental justice. The Coalition submits that these laws advance women’s *Charter* rights to security of the person and equality.

51. The bawdy house laws in s. 210 suppress the conduct of various actors who profit from the commercialization of the sale of women’s bodies. This is consistent with Canada’s international human rights obligations and the objective of protecting women’s security of the person.

52. To the extent that s. 212(1)(j) criminalizes the parasitic exploitation of prostituted women by those who have an economic interest in their continued prostitution, this provision enhances women’s security. The living on the avails offence is part of a series

⁴⁴ *Andrews v. Law Society of B.C.*, [1989] 1 S.C.R. 143 at paras. 33, 52; *New Brunswick (Minister of Health and Community Services v. G.(J.)*, [1999] 3 S.C.R. 46 at para 112, *R. v. Darrach*, [2000] 2 S.C.R. 443 at para. 31; *R. v. Mills* [1999] 3 S.C.R. 668 at paras. 61-64; Patricia Hughes, “Recognizing Substantive Equality as a Foundational Constitutional Principle” (1999) 22 Dalhousie L.J. 5 at pp. 27-38.

of provisions that target the incentives for coercion inherent in profiteering from the prostitution of others. There is ample evidence that these profiteers, whether they are labelled pimps, boyfriends, drivers or bodyguards, regularly coerce women into prostitution and cause them harm.⁴⁵

53. Finally, to the extent that s. 213(1)(c) applies to communication by johns, pimps or others who seek to exploit women through street prostitution, it equally serves the purpose of suppressing the public exploitation of women through prostitution, and protects women's security of the person.

54. The Women's Coalition further submits that were there to be an *absence* of laws constraining these behaviours, this would itself constitute a breach of women's s. 7 rights because it would represent an abdication by the state of its obligations to suppress the exploitation of women through prostitution, and a failure to ensure that the criminal law creates equal conditions of security for women and men.

D. Principles on Remedy: Avoiding an Overbroad Remedy

55. A Court must only decide what is necessary to resolve a constitutional challenge. A declaration of invalidity must be narrowly tailored to what is required to bring a law into constitutional conformity. Such an approach is necessary in order to ensure that a constitutional remedy does not inappropriately pre-empt or curtail Parliament's consideration of legislative options in response to a declaration of invalidity.⁴⁶

⁴⁵ *R. v. Grilo* (1991) 2 O.R.(3d) 514 (C.A.) per Arbour J.A. at pp. 521-522, paras. 25-27; *R. v. Downey*, [1992] 2 S.C.R. 10 at 32-34, paras. 41-46, per Cory J.; *R. v. Nelson*, [2007] O.J. No. 3810 (C.A.) at para. 5; *R. v. Rose*, 1997 CanLII 2231 (ON C.A.) at paras. 8-12.

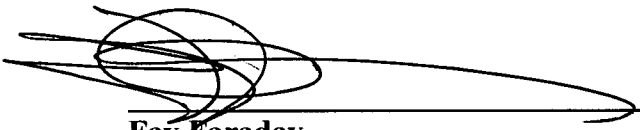
⁴⁶ *Schachter v. Canada*, [1992] 2 S.C.R. 679 per Lamer C.J. at p. 696, paras. 29, 30; *R. v. Sharpe*, [2001] 1 S.C.R. 45 per McLachlin C.J. at paras. 113 and 114.

56. The Women's Coalition submits that such caution is particularly apt in the present situation where the impugned laws target the conduct of numerous differently situated actors but the *Charter* rights of only one group are at issue.

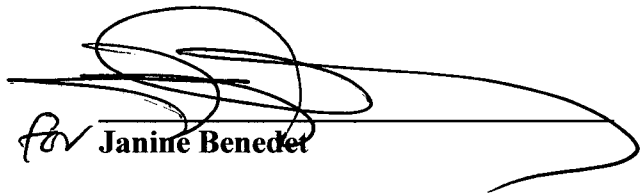
57. The regime sought by the Respondents delivers the most benefit of the law to those least marginalized in prostitution and leaves unaddressed the inequalities which create the supply and demand for women's bodies. It legalizes male sexual access to all adult prostitutes no matter how coerced, destitute, or ill, and legalizes those who profit from the sale of others' bodies. The remedy granted by the court below, for the reasons it gives, effectively enshrines a constitutional right to men's prostitution of women: it prohibits Parliament from criminalizing demand both on the street and in brothels.

58. The continued criminalization of those who purchase and profit from women's bodies serves to advance women's security and equality, consistent with Canada's international commitments and the *Charter*. No one, particularly under conditions of systemic sex inequality, has a constitutional right to buy and sell women's bodies for sexual purposes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF MAY 2011.



Fay Faraday

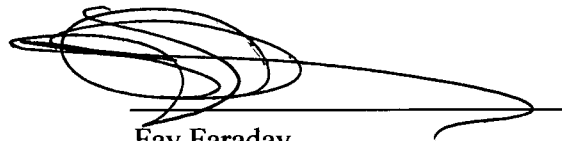


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CERTIFICATE OF COUNSEL

I, Fay Faraday, counsel for the Interveners Canadian Association of Sexual Assault Centres, Native Women's Association of Canada, Canadian Association of Elizabeth Fry Societies, Action Ontarienne contre la Violence Faite aux Femmes, la Concertation des Luttres contre l'Exploitation Sexuelle, Le Regroupement Québécois des Centres d'Aides et de Lutte contre les Agressions à Caractère Sexuel and Vancouver Rape Relief Society ("Women's Coalition for the Abolition of Prostitution") certify that approximately 30 minutes are required for the Interveners' argument.



Fay Faraday

SCHEDULE A: LIST OF AUTHORITIES

CASE LAW

Case name	Cited at paras.
1. <i>Abarquez v. Ontario</i> (2009) 95 O.R.(3d) 414 (C.A.), leave to appeal refused [2009] S.C.C.A. No. 297	48
2. <i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	49
3. <i>Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia</i> , [2007] 2 S.C.R. 391	21
4. <i>New Brunswick (Minister of Health and Community Services v. G.(J.))</i> , [1999] 3 S.C.R. 46	49
5. <i>R. v. B.E.</i> , 1999 CanLII 3796 (ON C.A.)	31
6. <i>R. v. Butler</i> , [1992] 1 S.C.R. 452	28, 29, 31
7. <i>R. v. Darrach</i> , [2000] 2 S.C.R. 443	49
8. <i>R. v. Downey</i> , [1992] 2 S.C.R. 10	52
9. <i>R. v. Evans</i> , 2009 BCSC 1615	41
10. <i>R. v. Grilo</i> (1991), 2 O.R.(3d) 514 (C.A.)	52
11. <i>R. v. Mara</i> , [1997] 2 S.C.R. 630	29
12. <i>R. v. Mills</i> , [1999] 3 S.C.R. 668	49
13. <i>R. v. Nelson</i> , [2007] O.J. No. 3810 (C.A.)	52
14. <i>R. v. Pickton</i> , 2009 BCCA 300	44
15. <i>R. v. Rose</i> , 1997 CanLII 2231 (ON C.A.)	52
16. <i>R. v. Sharpe</i> , [2001] 1 S.C.R. 45	55
17. <i>Ref. re Sections 193 and 195.1(1)(c) of the Criminal Code</i> , [1990] 1 S.C.R. 1123	29, 36
18. <i>Reference re Public Service Employee Relations Act (Alta.)</i> , [1987] 1 S.C.R. 313	21
19. <i>Rodriguez v. B.C. (A.G.)</i> , [1993] 3 S.C.R. 519	28
20. <i>Schachter v. Canada</i> , [1992] 2 S.C.R. 679	55

21.	<i>Slaight Communications Inc. v Davidson</i> , [1989] 1 S.C.R. 1038	21
22.	<i>Suresh v. Canada (Minister of Citizenship and Immigration)</i> , [2002] 1 S.C.R. 3	21
23.	<i>U.S.A. v. Burns</i> , [2001] 1 S.C.R. 283	21

SECONDARY SOURCES

Source name	Cited at paras.
24. <i>Criminal Code</i> , R.S.C. 1970, c. C-34, ss. 175(1)(c), 195.1(1)(c), S.C. 1972, C. 13, s. 15.	26
25. <i>Criminal Code</i> , R.S.C. 1985, c. C-46, ss. 212(4), 279.01	27
26. Michelle Madden Dempsey, Sex Trafficking and Criminalization: In Defence of Feminist Abolitionism (2010) 158 U. Pa. L. Rev. 1729 at 1736-39	46
27. Melissa Farley, et. al. "Prostitution in Vancouver: Violence and Colonization of First Nations Women", (2005) 42 J. of Transcult. Psych. 242, <u>Joint Application Record</u> , vol. 49, Tab 113E	17
28. Patricia Hughes, "Recognizing Substantive Equality as a Foundational Constitutional Principle" (1999) 22 Dalhousie L.J. 5	49
29. <i>Report of the Special Committee on Pornography and Prostitution in Canada</i> , Vol. 2 (Fraser Report, 1985), <u>Joint Application Record</u> , vol. 71, Tab 154B	8, 9, 10
30. Report of the Standing Committee on Justice and Human Rights, <i>The Challenge of Change: A Study of Canada's Criminal Prostitution Laws</i> (Challenge Report, 2006), <u>Joint Application Record</u> , vol. 82, Tab 164	8, 9, 10, 17
31. <i>UN Convention Against Transnational Organized Crime</i> , UN General Assembly Resolution 55/252000, ratified by Canada May 2002, Annex II, <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</i>	23
32. <i>UN Convention on the Elimination of All Forms of Discrimination Against Women</i> , 2-6 UN General Assembly Resolution 34/180/1979, ratified by Canada 10 December 1981, esp. Articles 2(f), 5(a) and 6	22
33. UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, art. 22	17
34. UN Economic and Social Council, <i>Recommended Principles and Guidelines on Human Rights and Human Trafficking, Addendum to the Report of the UN High Commissioner for Human Rights</i> , UN Doc. E/2002/68/Add.1, Substantive Session 2002, Agenda item 14(g) at 3, UNESCOR (May20,2002)	23

SCHEDULE B: STATUTES AND REGULATIONS

- 1. *Canadian Charter of Rights and Freedoms*, sections 1 and 7**
- 2. *Criminal Code of Canada*, R.S.C. 1985, c. C-46, sections 210, 212, 213, 279.01**
- 3. *Criminal Code of Canada*, R.S.C. 1970, c. C-34, s. 175(1)(c)**
- 4. *Criminal Code Amendment Act*, S.C. 1972, C. 13, s. 15**

Canadian Charter of Rights and Freedoms, sections 1 and 7

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

2. *Criminal Code of Canada*, R.S.C. 1985, c. C-46, sections 210, 212, 213, 279.01

Keeping common bawdy-house

210. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Landlord, inmate, etc.

(2) Every one who

(a) is an inmate of a common bawdy-house,

(b) is found, without lawful excuse, in a common bawdy-house, or

(c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house,

is guilty of an offence punishable on summary conviction.

Notice of conviction to be served on owner

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

Duty of landlord on notice

(4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

Procuring

212. (1) Every one who

(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,

(c) knowingly conceals a person in a common bawdy-house,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

(j) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Living on the avails of prostitution of person under eighteen

(2) Despite paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of two years.

Aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years

(2.1) Notwithstanding paragraph (1)(j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who

(a) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally, and

(b) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.

Presumption

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

Offence — prostitution of person under eighteen

(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.

Offence in relation to prostitution

213. (1) Every person who in a public place or in any place open to public view

(a) stops or attempts to stop any motor vehicle,

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or

(c) 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 summary conviction.

Definition of “public place”

(2) In this section, “public place” includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

Trafficking in persons

279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case.

Consent

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

2005, c. 43, s. 3.

Trafficking of a person under the age of eighteen years

279.011 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

Consent

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Material benefit

279.02 Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1) or 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

3. *Criminal Code of Canada*, R.S.C. 1970, c. C-34, s. 175(1)(c)

175. (1) Every one commits vagrancy who

(c) Prostitute or night walker — being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself;

(2) Punishment — Every one who commits vagrancy is guilty of an offence punishable on summary conviction.

4. *Criminal Code Amendment Act, S.C. 1972, C. 13, s. 15*

195.1 Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

Court File Nos. C52799 and C52814

TERRI JEAN BEDFORD, AMY LEBOVITCH, VALERIE SCOTT Respondents in Appeal	- and - THE ATTORNEY GENERAL OF CANADA Appellant	- and - THE ATTORNEY GENERAL OF ONTARIO Appellant
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**ONTARIO
COURT OF APPEAL**

Proceedings commenced at TORONTO

**FACTUM OF THE INTERVENER WOMEN'S
COALITION**

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