

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

**MIKHAIL KLOUBAKOV and HICHAM MOUSTAINE**

**APPELLANTS**

and

**HIS MAJESTY THE KING**

**RESPONDENT**

(continued)

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**FACTUM OF THE INTERVENERS**

**VANCOUVER RAPE RELIEF SOCIETY; LA CONCERTATION DES  
LUTTES CONTRE L'EXPLOITATION SEXUELLE (LA CLES);  
ABORIGINAL WOMEN'S ACTION NETWORK (AWAN); FORMERLY  
EXPLOITED VOICES NOW EDUCATING (EVE), LONDON ABUSED  
WOMEN'S CENTRE AND STRENGTH IN SISTERHOOD (SIS),  
INTERVENING AS ("THE WOMEN'S EQUALITY COALITION")**  
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

---

**JANINE BENEDET, K.C.**

Peter A. Allard School of Law  
University of British Columbia  
1822 East Mall  
Vancouver, BC V6T 1Z1

**Janine Benedet, K.C.**

Tel: (604) 822 0637  
Email: [benedet@allard.ubc.ca](mailto:benedet@allard.ubc.ca)

**BARTON THANEY LLP**

2438 Marine Drive, Suite 210 W  
Vancouver, BC V7V 1L2

**Gwendoline Allison**

Tel: (604) 922-9282  
[gwendoline.allison@bartonthaney.com](mailto:gwendoline.allison@bartonthaney.com)

**Counsel for the Intervener,  
The Women's Equality Coalition**

**SUPREME ADVOCACY LLP**

340 Gilmour Street, Suite 100  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel: (613) 695-8855  
Fax: (613) 695-8580  
Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the  
Intervener, The Women's Equality  
Coalition**

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**MIKHAIL KLOUBAKOV and HICHAM MOUSTAINE**

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and

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO,  
ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF  
MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, VANCOUVER  
RAPE RELIEF SOCIETY, LA CONCERTATION DES LUTTES CONTRE  
L'EXPLOITATION SEXUELLE (LA CLES); ABORIGINAL WOMEN'S ACTION  
NETWORK (AWAN); FORMERLY EXPLOITED VOICES NOW EDUCATING  
(EVE), LONDON ABUSED WOMEN'S CENTRE AND STRENGTH IN  
SISTERHOOD (SIS) ("THE WOMEN'S EQUALITY COALITION"), CHRISTIAN  
LEGAL FELLOWSHIP, WOMEN'S LEGAL EDUCATION AND ACTION FUND  
INC., AMNESTY INTERNATIONAL, CANADIAN SECTION (ENGLISH  
SPEAKING), HIV & AIDS LEGAL CLINIC ONTARIO, COALITION DES  
ORGANISMES COMMUNAUTAIRES QUÉBÉCOIS DE LUTTE CONTRE LE SIDA  
AND ACTION CANADA FOR SEXUAL HEALTH AND RIGHTS ("SEXUAL  
HEALTH COALITION"), CANADIAN CIVIL LIBERTIES ASSOCIATION, TIFFANY  
ANWAR, DAVID ASPER CENTRE OF CONSTITUTIONAL RIGHTS, BRITISH  
COLUMBIA CIVIL LIBERTIES ASSOCIATION, ONTARIO COALITION OF RAPE  
CRISIS CENTRES, EVANGELICAL FELLOWSHIP OF CANADA AND  
ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

**INTERVENERS**

**GUNN LAW GROUP**  
11210 - 142 St. NW  
Edmonton, AB T5R 3P1

**Shannon Gunn Emery**  
Tel: (780) 488-4460  
Fax: (780) 488-4783  
Email: semery@gunnlawgroup.ca

**Counsel for the Appellant,  
Mikhail Kloubakov**

**ARIAL LAW**  
510, 5e rue SO, Suite 820  
Calgary, AB T2P 3S2

**Kimberly Arial**  
Tel: (587) 387-2797  
Email: kim@ariallaw.com

**Counsel for the Appellant,  
Hicham Moustaine**

**ALBERTA CROWN PROSECUTION  
SERVICE**  
9833 – 109e rue  
3e étage, Bowker Building  
Edmonton, AB T5K 2E8

**Matthew Griener**  
**Katherine Fraser**  
Tel: (780) 422-5402  
Fax: (780) 422-1106  
Email: matthew.griener@gov.ab.ca

**Counsel for the Respondent,  
His Majesty the King**

**GOLDBLATT PARTNERS LLP**  
500 - 30 Metcalfe Street  
Ottawa, ON K1P 5L4

**Benjamin Piper**  
Tel: (613) 482-2466  
Fax: (613) 235-3041  
Email: bpiper@goldblattpartners.com

**Agent for Counsel for the Appellant,  
Mikhail Kloubakov**

**GOLDBLATT PARTNERS LLP**  
500 - 30 Metcalfe Street  
Ottawa, ON K1P 5L4

**Benjamin Piper**  
Tel: (613) 482-2466  
Fax: (613) 235-3041  
Email: bpiper@goldblattpartners.com

**Agent for Counsel for the Appellant,  
Hicham Moustaine**

**GOWLING WLG (CANADA) LLP**  
160 Elgin Street, Suite 2600  
Ottawa, ON K1P 1C3

**D. Lynne Watt**  
Tel: (613) 786-8695  
Fax: (613) 788-3509  
Email: lynne.watt@gowlingwlg.com

**Agent for Counsel for the Respondent,  
His Majesty the King**

**ATTORNEY GENERAL OF CANADA**

120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

**John Provart**

**Lindy Rouillard-Labbé**

Tel: ( 647) 256-0784

Fax: (416) 954-8982

Email: john.provart@justice.gc.ca

**Counsel for the Intervener,  
Attorney General of Canada**

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
50 O'Connor Street, Suite 500, room 557  
Ottawa, ON K2P 6L2

**Christopher Rupar**

Tel: (613) 941-2351

Fax: (613) 954-1920

Email: christopher.rupar@justice.gc.ca

**Agent for Counsel for the Intervener,  
Attorney General of Canada**

**ATTORNEY GENERAL OF ONTARIO**

720 Bay Street, 10th floor  
Toronto, ON M7A 2S9

**Deborah Krick**

Tel: (416) 326-4600

Fax: (416) 326-4656

Email: deborah.krick@ontario.ca

**Counsel for the Intervener,  
Attorney General of Ontario**

**PUBLIC PROSECUTION SERVICE  
OF NOVA SCOTIA**

700-1625 Grafton Street  
Halifax, NS B3J 3K5

**Mark A. Scott, K.C.**

**Erica Koresawa**

Tel: (902) 424-2864

Fax: (902) 424-8440

Email: mark.scott@novascotia.ca

**Counsel for the Intervener,  
Attorney General of Nova Scotia**

**GOWLING WLG (CANADA) LLP**

160 Elgin Street, Suite 2600  
Ottawa, ON K1P 1C3

**D. Lynne Watt**

Tel: (613) 786-8695

Fax: (613) 788-3509

Email: lynne.watt@gowlingwlg.com

**Agent for Counsel for the Intervener,  
Attorney General of Nova Scotia**

**DEPARTMENT OF JUSTICE**

Constitutional Law section  
1205 – 405 Broadway  
Winnipeg, MB R3C 3L6

**Charles Murray**

Tel: (204) 330-2268  
Fax: (204) 945-0053  
Email: charles.murray@gov.mb.ca

**Counsel for the Intervener,  
Attorney General of Manitoba**

**ATTORNEY GENERAL OF  
BRITISH COLUMBIA**

Criminal Appeals and Special Prosecutions  
3rd Floor, 940 Blanshard Street  
Victoria, BC V8W 3E6

**Lara Vizsolyi**

Tel: (778) 974-5144  
Fax: (250) 387-4262  
Email: lara.vizsolyi@gov.bc.ca

**Counsel for the Intervener,  
Attorney General of British Columbia**

**CHRISTIAN LEGAL FELLOWSHIP**

285 King Street  
Suite 202  
London, ON N6B 3M6

**Derek B.M. Ross**

**Vivian W.S. Clemence**

**André M. Schutten**

Tel.: (519) 601-4099  
Fax: (519) 601-4098  
Email: execdir@christianlegalfellowship.org

**Counsel for the Intervener,  
Christian Legal Fellowship**

**GOWLING WLG (CANADA) LLP**

160 Elgin Street, Suite 2600  
Ottawa, ON K1P 1C3

**D. Lynne Watt**

Tel: (613) 786-8695  
Fax: (613) 788-3509  
Email: lynne.watt@gowlingwlg.com

**Agent for Counsel for the Intervener,  
Attorney General of Manitoba**

**GOWLING WLG (CANADA) LLP**

160 Elgin Street, Suite 2600  
Ottawa, ON K1P 1C3

**Matthew Estabrooks**

Tel: (613) 786-0211  
Fax: (613) 788-3573  
Email: matthew.estabrooks@gowlingwlg.com

**Agent for Counsel for the Intervener,  
Attorney General of British Columbia**

**SUPREME ADVOCACY LLP**

340 Gilmour Street, Suite 100  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel: (613) 695-8855  
Fax: (613) 695-8580  
Email: mfmajor@supremeadvocacy.ca

**Agent for Counsel for the Intervener,  
Christian Legal Fellowship**

**STOCKWOODS LLP**

Toronto-Dominion Centre North Tower, Box  
140  
77 King Street West, Suite 4130  
Toronto, ON M5K 1H1

**Andrea Gonsalves**

**Alexandra Heine**

**Olivia Eng**

Tel.: (416) 593-3497

Email: andreag@stockwoods.ca

**Counsel for the Intervener,  
Women's Legal Education and Action  
Fund Inc.**

**CAVALLUZZO LLP**

Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, ON M5T 2S6

**Danielle Bisnar**

Tel.: (416) 964-5535

Fax: (416) 964-5895

Email: dbisnar@cavalluzzo.com

**Counsel for the Intervener,  
Amnesty International, Canadian Section  
(English Speaking)**

**BORDEN LADNER GERVAIS LLP**

World Exchange Plaza  
100 Queen Street, suite 1300  
Ottawa, ON K1P 1J9

**Nadia Effendi**

Tel.: (613) 787-3562

FAX: (613) 230-8842

Email: neffendi@blg.com

**Agent for Counsel for the Intervener,  
Women's Legal Education and Action Fund  
Inc.**

**HIV & AIDS LEGAL CLINIC ONTARIO  
(HALCO)**

1400-55 University Venue  
Toronto, ON M5J 2H7

**Robin Nobleman**  
**Geetha Philipupillai**  
**Laurent Trépanier Capistran**

Tel.: (416) 340-7790 Ext: 4043  
FAX: (416) 340-7248  
Email: robin.nobleman@halco.clcj.ca

**Counsel for the Intervener,  
HIV & AIDS Legal Clinic Ontario,  
Coalition des organismes communautaires  
québécois de lutte contre le Sida and Action  
Canada for Sexual Health and Rights  
("Sexual Health Coalition")**

**LAX O'SULLIVAN LISUS  
GOTTLIEB LLP**

145 King Street West  
Suite 2750  
Toronto, ON M5H 1J8

**Jonathan C. Lisus**  
**Zain Naqi**  
**Ronke Akinyemi**

Tel.: (416) 598-1744  
Fax: (416) 598-3730  
Email: jlisus@lolg.ca

**Counsel for the Intervener,  
Canadian Civil Liberties Association**

**GOLDBLATT PARTNERS LLP**

1400-270 Albert Street  
Ottawa, ON K1P 5G8

**Colleen Bauman**

Tel.: (613) 482-2459  
Fax: (613) 235-3041  
Email: cbauman@goldblattpartners.com

**Agent for Counsel for the Intervener, HIV  
& AIDS Legal Clinic Ontario, Coalition des  
organismes communautaires québécois de  
lutte contre le Sida and Action Canada for  
Sexual Health and Rights ("Sexual Health  
Coalition")**

**CONWAY BAXTER WILSON LLP**

400 – 411 Roosevelt Avenue  
Ottawa, ON K2A 3X9

**Abdalla Barqawi**

Tel.: (613) 288-0149  
Fax: (613) 688-0271  
Email: abarqawi@conwaylitigation.ca

**Agent for Counsel for the Intervener,  
Canadian Civil Liberties Association**

**MCCARTHY TÉTRAULT LLP**

Suite 5300, TD Bank Tower  
Toronto, ON M5K 1E6

**H. Michael Rosenberg**

**Alana Robert**

**Holly Kallmeyer**

Tel.: (416) 601-7831

Fax: (416) 868-0673

Email: mrosenberg@mccarthy.ca

alrobert@mccarthy.ca

hkallmeyer@mccarthy.ca

**LOCKYER ZADUK ZEEH**

102 Atlantic Avenue, Suite #100  
Toronto, Ontario M6K 1X9

**James Lockyer**

**Jeffrey Hartman**

Tel.: (416) 613-0416

Fax: (416) 613-8746

Email: jlockyer@lzzdefence.ca

jhartman@Lzzdefence.ca

**Counsel for the Intervener,**

**Tiffany Anwar**

**STOCKWOODS LLP**

TD North Tower  
4130-77 King St W, PO Box 140  
Toronto, ON M5K 1H1

**Gerald Chan**

Tel.: (416) 593-1617

Fax: (416) 593-9345

Email: gerald@stockwoods.ca

**Counsel for the Intervener,  
David Asper Centre of Constitutional  
Rights**

**BORDEN LADNER GERVAIS LLP**

World Exchange Plaza  
100 Queen Street, suite 1300  
Ottawa, ON K1P 1J9

**Nadia Effendi**

Tel.: (613) 787-3562

Fax: (613) 230-8842

Email: neffendi@blg.com

**Agent for Counsel for the Intervener, David  
Asper Centre of Constitutional Rights**

**KASTNER KO LLP**

55 University Avenue, Suite 1800  
Toronto, ON M5J 2H7

**Akosua Matthews**

**Ruthie Wellen**

Tel.: (416) 655-3044

Fax: (416) 981-7453

Email: [amatthews@kastnerko.com](mailto:amatthews@kastnerko.com)

[rwellen@kastnerko.com](mailto:rwellen@kastnerko.com)

**Counsel for the Intervener,  
British Columbia Civil Liberties  
Association**

**MARCUS MCCANN PROF. CORP.**

2008 - 401 Bay Street  
P.O. Box 80  
Toronto, ON M5H 2Y4

**Marcus McCann**

Tel.: (437) 222-7356

Email: [marcus@marcsmccannlaw.ca](mailto:marcus@marcsmccannlaw.ca)

**Counsel for the Intervener,  
Ontario Coalition of Rape Crisis Centres**

**ACACIA GROUP**

38 Auriga Dr, Suite 200  
Ottawa, ON K2E 8A5

**Garifalia C. Milousis**

**John Sikkema**

Tel.: (613) 221-5895

Email: [lia@acaciagroup.ca](mailto:lia@acaciagroup.ca)

**Counsel for the Intervener,  
Evangelical Fellowship of Canada and  
Association for Reformed Political Action  
(ARPA) Canada**

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## PART I: OVERVIEW AND STATEMENT OF FACTS

### A. Overview

1. The Women’s Equality Coalition intervenes in this appeal to reject the Appellants’ contention that, in a legal context in which sex purchase has been recognized as illegal and harmful *per se*, third parties who aid and abet this activity by placing women in harm’s way or who profit from keeping them there, have a constitutional right to do so. The Coalition also intervenes to reject the Appellants’ promotion of prostitution as a solution to women’s economic inequality. The Coalition particularly rejects the cruel logic that the overrepresentation of the most marginalized women, including Indigenous women, in the prostitution industry, is akin to an employment equity program, rather than a reflection of profound sexism and sexualized colonialism.

2. Sections 286.2 and 286.3 of the *Criminal Code*<sup>1</sup> target the actions of those who seek to facilitate and financially profit from men’s sex purchase, thereby creating and perpetuating the harms of prostitution. Procurers and pimps target vulnerable girls and women, endangering their liberty and security as well as contributing to their inequality. To elevate these predatory behaviours into a constitutional right to profit from the exploitation of others, in the name of women’s safety, ignores the fact that it is the very industry the Appellants perpetuate that is the source of the harm. Those harms include the harms of prostitution itself as well as the additional violence and abuse that is endemic in the commercial sex trade.<sup>2</sup> The exceptions to these offences, properly understood, provide ample scope for third party arrangements, while recognizing the heightened risk of exploitation whenever a financial stake is involved.

3. Prostitution is no longer legal in Canada. Since 2014, it has been a criminal offence to purchase sexual services.<sup>3</sup> Women (and others) are immunized from associated criminal punishment for selling their own sexual services.<sup>4</sup> This statutory framework reflects an

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<sup>1</sup> *Criminal Code*, RSC 1985, c. C-46, ss. 286.2, 286.3 (“*Criminal Code*”).

<sup>2</sup> Department of Justice Canada, [Technical Paper: Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts](#) (Ottawa: Department of Justice Canada, 2014), Appellants’ Record (JAR) Vol III, p. 6–7 (“*Technical Paper*”).

<sup>3</sup> *Criminal Code*, s. 286.1.

<sup>4</sup> *Ibid*, ss. 286.5(1), (2).

understanding of prostitution as a practice of sex/gender inequality that is contrary to human rights and that exploits racism, poverty, disability, youth and the effects of the colonization of Indigenous women and girls. This legislative approach, which recognizes prostitution itself as harmful to the women engaged in it, and to society as a whole, is consistent with both the *Canadian Charter of Rights and Freedoms* and Canada's international commitments.<sup>5</sup>

## **B. Statement of Facts**

4. The Women's Equality Coalition accepts the statement of facts of the Respondent and submits that the following facts are also relevant to this appeal.

5. The Women's Equality Coalition rejects the terms "sex worker" and "sex work" and asks this Honourable Court to avoid this terminology. These are not legal terms used anywhere in the *Criminal Code*, they are inconsistent with the understanding of prostitution in the *PCEPA* amendments, and they pre-judge the issues in this case.<sup>6</sup> Many women who have been exploited in the sex trade, including members of the Intervener Coalition, reject these terms as a misguided attempt to euphemize a situation of inequality and violence.<sup>7</sup> For example, it is deeply concerning to imply that it is the "job" of Indigenous women to sexually service settler men, or that girls recruited by pimps from state care are "working" in the sex industry because they are now 18.

6. The Appellants were part of a sex trafficking operation that moved young women from Quebec to Alberta to sexually service male clients, and should not be described as "drivers" for an

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<sup>5</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, GA Res 55/25, 15 November 2000 at art 9(5); *Convention on the Elimination of All Forms of Discrimination against Women*, GA Res 34/180, UN GAOR, 34th Sess, Supp No 46, UN Doc A/34/46 (1979) at art 6; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (2007) at art 22(2).

<sup>6</sup> See Debra Haak, "[Re\(de\)fining Prostitution and Sex Work: Conceptual Clarity for Legal Thinking](#)" (2019) 40:1 Windsor Rev Legal Soc Issues 67 at 107–10.

<sup>7</sup> *Prostitution and violence against women and girls - Report of the Special Rapporteur on violence against women and girls, its causes and consequences*, UNGAOR, 56th Sess, Supp No 48, UN Doc A/HRC/56/48 (2024), at 2–3.

“escort agency.”<sup>8</sup> The women did not hire the Appellants to act as their drivers or their bodyguards.<sup>9</sup> They did not have any control over how much of the money they received was paid to the Appellants.<sup>10</sup> The male buyers negotiated the sexual acts to be performed and the price with the traffickers, to whom the women gave all of their money.<sup>11</sup> When money was given back to them, it was often to pay for goods and services that increased their saleability to men, such as tanning, clothes and aesthetics.<sup>12</sup>

7. The witnesses in this case all described entering prostitution because they needed money.<sup>13</sup> The fact that they were able to use some of that money to pay for goods and services that are the basic human right of every individual, such as food, shelter and education, does not make prostitution itself into a beneficial activity.

8. There is no evidence that any third parties in commercial operations tried to dissuade women from entering prostitution or offered them exit services. Any assistance they provided was premised on the profit they would receive from those women remaining in prostitution.

9. The situation of children and youth in prostitution is relevant to this appeal. Third parties target vulnerable youth, including Indigenous girls in state care, for recruitment into prostitution.<sup>14</sup> The fact that these youth may remain in prostitution once they turn 18 does not erase the harms they experienced as sexually exploited youth; rather, it compounds them.<sup>15</sup> One of the victims in this case was targeted by her procurer at age 17 and entered prostitution when she turned 18. Where knowledge as to the girl’s age cannot be proven, ss. 286.2 and 286.3 can be used as included offences against those who pimp and procure girls.

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<sup>8</sup> *Appellants Factum*, at para 6.

<sup>9</sup> *R. c. Kloubakov*, [2021 ABQB 817](#) at para 46 [*“Kloubakov ABQB”*]; Cross-Examination of ML, **JAR Vol. IX**, p. 145/9–20.

<sup>10</sup> *Kloubakov ABQB*, at paras 17, 44, 66–68; Evidence of ML, **JAR Vol II**, p. 106/11–18.

<sup>11</sup> Evidence of ML, **JAR Vol. IV**, pp. 52/17–31, 55/9–30.

<sup>12</sup> *Kloubakov ABQB*, at para 19; Evidence of CT, **JAR Vol. IV**, pp. 206/11–18, 230/3–12.

<sup>13</sup> *Kloubakov ABQB*, at paras 9, 57.

<sup>14</sup> *Canadian Alliance for Sex Work Reform (CASWLR) v. Attorney General*, [2023 ONSC 5197](#) at para 191 (*“CASWLR”*); *R. v. Alcorn*, [2021 MBCA 101](#) at para 20; *R. v. Gudmanson*, [2018 MBPC 31](#) at para 37; *R. v. B.M.W.*, [2020 BCPC 9](#) at para 86.

<sup>15</sup> Catharine MacKinnon, *“Trafficking, Prostitution and Inequality”* (2011) 46:2 Harv CR-CLL Rev 271 at 296–299; See, e.g. *R. v. Gudmandson*, [2018 MBPC 31](#) at paras 34–35; *R. v. Lalonde*, [2013 BCSC 1349](#) at para 9; *R. v. Hartford*, [2022 BCSC 1183](#) at 6–8.

10. The situation of Indigenous women is relevant to this appeal. Indigenous women are over-represented in prostitution.<sup>16</sup> This is not because they choose prostitution more than White women. It is a reflection of the sexualized racism and colonialism that has forcibly disconnected Indigenous women from their lands, their language and culture, their children and their own bodies.<sup>17</sup> Consigning Indigenous women to brothels or escort agencies merely privatizes the institutional abuse of residential schools, child welfare systems, and jails, rather than supporting Indigenous women to reclaim their Indigenous legal orders and *Charter*-protected rights.

## **PART II. ISSUES ON APPEAL**

- A. Sections 286.2(1) and 286.3(1) of the *Criminal Code* do not violate, but rather enhance, women’s security of the person as protected by s. 7 of the *Charter*.
- B. In the alternative, s. 286.2(1) and 286.3(1), interpreted together with ss. 286.2(4) and (5), are not overbroad and are consistent with the principles of fundamental justice.

## **PART III. ARGUMENT**

- A. Sections 286.2(1) and 286.3(1) of the *Criminal Code* do not violate women’s liberty and security of the person.**
  - i. Procuring women into prostitution and earning a profit from their prostitution does not enhance women’s liberty.**

11. The Appellants do not argue that the challenged offences violate their own rights to liberty, even though the potential for imprisonment clearly triggers s. 7. Rather, they rely on the liberty and security rights of women who are not criminalized by these provisions. The Appellants cannot argue that their own criminalization imperils the s. 7 rights of women; they were part of an operation that exploited and harmed women. Their argument is based on the claim that the criminalization of some other third parties may put the liberty or security of some other women at risk. The Women’s Equality Coalition rejects this tenuous argument.

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<sup>16</sup> *CASWLR*, at paras [161](#), [163](#), [182](#), [183](#), [185](#), [191](#), [219](#); *R v. B.M.W.*, [2020 BCPC 9](#) at para [86](#).

<sup>17</sup> Sherene Razack, “Gendering Disposability” (2016), 28:2 *CJWL* 285 at 292, 294 [BOA, Tab 1]; Robyn Bourgeois, “[Colonial Exploitation: The Canadian State and the Trafficking of Indigenous Women and Girls in Canada](#)” (2015) 62:6 *UCLA L Rev* 1426 at 1444–5, 1429–30.

12. Facilitating men's sexual access to women's bodies for money is not an expression of women's liberty. Most women who end up in prostitution do so because they need money. The fact that they are promised more money for sexual access to their bodies than they can get from other sources does not turn prostitution into a pay equity program. Rather, it is a reflection of women's subordinate status. In fact, many women in prostitution end up with little of the money they are promised, especially when third parties are involved.<sup>18</sup> Liberty for women means not having to resort to prostitution to pay the rent, pursue education, or provide for their children.

13. The Appellants' construction of prostitution as an expression of women's liberty is contrary to the equality rights of all women, and to those of Indigenous women in particular. The intergenerational effects of residential schools and the apprehension of Indigenous children from their families, including widespread sexual and physical abuse, and forced disconnection from culture, lands and communities, have funnelled Indigenous girls and women into the commercial sex trade in disproportionate numbers.<sup>19</sup> To assert that commercial brothels are an expression of Indigenous women's liberty is to further entrench these harms and normalize the targeting of Indigenous women by relabelling exploitation as their own "choice."

**ii. Procuring women for prostitution does not enhance their security of the person.**

14. Section 286.3(1) criminalizes encouraging another person to enter into prostitution or doing one of a number of actions for the purpose of assisting a male sex buyer to purchase sexual services from that person. Bringing more women into the commercial sex trade and enhancing the ability of men to purchase them does not further women's security of the person. Encouraging women to enter prostitution imperils, rather than enhances, their safety.<sup>20</sup> Facilitating male buyers' access to these women also imperils, rather than enhances women's security; buyers cause harm to women by purchasing sexual access to their bodies, as recognized by s. 286.1. These harms include psychological trauma, dehumanization, verbal abuse, disease, physical and sexual assault, and

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<sup>18</sup> *CASWLR*, at paras [191](#), [203–204](#), [219](#); Evidence of ML, *JAR Vol. IV*, p. 105/1–30.

<sup>19</sup> *CASWLR*, at paras [161](#), [163](#), [182](#), [183](#), [185](#), [191](#), [219](#); *R v. B.M.W.*, [2020 BCPC 9](#) at para [86](#).

<sup>20</sup> Technical Paper, *JAR Vol. III*, pp. 6–7.

death.<sup>21</sup> The *Criminal Code* recognizes this by classifying the purchasing, procuring and material benefit offences as offences against the person, rather than nuisance or morals offences.<sup>22</sup>

15. Third parties cause grave harm to women in prostitution, using various forms of economic and physical pressure, false promises and emotional manipulation to get women to enter and remain in the sex trade. The case law provides many examples of young women who agree to enter prostitution at the behest of a man who promises money, affection and protection, and who find that the procurer or his associates: expects them to serve as many as 20 men per night; encourages them to tattoo his name or symbol on their bodies; exposes them to infection; threatens to tell their family that they are involved in the sex trade; and controls the advertising of their sexual services, determining which male buyers they will meet and what sexual acts they will perform.<sup>23</sup> While some of these cases involve the commission of other criminal offences, the collective harms of pimping and procuring go beyond these other offences and can be criminalized in their own right, in the context of a legislative approach in which sex purchase is itself illegal.

**iii. Materially benefiting (taking money) from women in prostitution does not enhance their security of the person. (s. 286.2(1))**

16. The Appellants argue that the security of the person of women in prostitution is infringed by excluding commercial prostitution operators from providing services that might enhance the safety of those in prostitution. This argument proceeds from the faulty premise that prostitution

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<sup>21</sup> See, e.g. *R. v. Barton*, [2019 SCC 33](#) [Cree woman murdered by white male sex buyer in his hotel room]; *R. v. Evans*, [2012 BCCA 209](#) [Metis woman murdered by white male sex buyer]; *R. v. Gray*, [2018 NSPC 10](#) [serviced 20 men per day; contracted HIV]; *R. v. Taylor*, [2023 ONSC 1101](#) [pimp sent woman back to buyer who anally raped her; another buyer had his dog lick her body]; MacKinnon, *supra* note 15 at [282–3](#).

<sup>22</sup> *R. v. N.S.*, [2022 ONCA 160](#) at para [55](#) (“N.S.”), leave to appeal refused, [\[2022\] SCCA No. 281](#).

<sup>23</sup> See, e.g. *R. v. Jean*, [2020 ONSC 624](#) [18 and 19-year-old women could not sleep if they did not reach quota]; *R. v. Moazami*, [2014 BCSC 1727](#) [pimp abused pet dog to coerce compliance]; *R. v. Gardner*, [2020 ONSC 5954](#) [entered at 21; controlled by pimp/boyfriend]; *R. v. Crosdale*, [2018 ONCJ 800](#) [pimp had 19-year-old tattoo his name on her arm; 15-20 buyers per night; controlled advertising; kept all the money]; *R. v. H-O.*, [2022 ONSC 4900](#) [pimp required women to tattoo their face with his nickname].

itself is harmless and a beneficial way for women, including Indigenous women, to close the gender pay gap.

17. The 2014 *PCEPA* amendments to the *Criminal Code* recognize prostitution as an exploitative practice that is to be denounced and discouraged. The *Charter* does not protect the right to make money, much less the right to make money off the exploitation of others. This Court has recognized the importance of the material benefit offence for ensuring that “parasitic and exploitative pimps” are not given “practical criminal immunity.”<sup>24</sup> It has also recognized that most people in prostitution are not there by choice.<sup>25</sup>

18. Anyone who makes money from someone else’s prostitution has an incentive to keep that person in prostitution. Parliament is entitled to discourage this activity as part of legislation that explicitly identifies decreasing the sex trade, and encouraging exit from it, as legislative objectives.<sup>26</sup>

19. This Court has recognized, however, that a blanket prohibition on “living on the avails,” strictly interpreted, may also restrict women in prostitution from familial relationships that have an economic element, and from obtaining goods and services on the open market, including those that might mitigate some of the risks of the sex trade.<sup>27</sup> For this reason, s. 286.2(4) contains exceptions to permit these activities. Women in prostitution can enter into non-exploitative personal relationships that have an element of financial dependence; they can collaborate with others in the sex trade and share expenses; they can purchase goods and services from providers who make those services generally available to the public (e.g. drivers) and can access services not available to the general public so long as the person receiving the funds did not recruit them into prostitution and is not running a prostitution business (e.g. a landlord who knows the tenant is paying the rent through prostitution).<sup>28</sup> This is ample scope for financial arrangements that may offer some benefits, particularly in a context in which prostitution is now illegal *per se*, and the overarching legislative objective is to discourage demand.

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<sup>24</sup> *R. v. Albashir*, [2021 SCC 48](#) at para 56.

<sup>25</sup> *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) at para 86 [“*Bedford*”].

<sup>26</sup> *N.S.*, at paras [21–22](#), [128](#); *R c. Kloubakov*, [2023 ABCA 287](#) at para [54](#); *CASWLR*, at para [40](#).

<sup>27</sup> *Bedford*.

<sup>28</sup> *Criminal Code*, s. [286.2\(4\)](#); *N.S.*, at paras [25](#), [77](#), [79](#), [123](#).

20. The unavailability of the exceptions where the accused provides a woman with alcohol or drugs to facilitate her prostitution, protects, rather than limits, women's security. The Coalition rejects an interpretation of s. 7 that recognizes a right to give women prescription painkillers so they may continue to endure prostitution.<sup>29</sup>

21. The Appellants' security of the person arguments focus not on the activities outlawed by the challenged offences, but on other potentially risk-reducing activities that a person might engage in while committing those offences. None of those activities (booking appointments, keeping watch, driving, providing condoms, etc.) are criminalized, and all can be done without violating the offences at issue.

**iv. The reasoning in *PHS Community Services Society* is inapplicable to this case.**

22. The Appellants rely on *PHS Community Services Society v. Canada*, where the s. 7 rights of injection drug users engaged in an illegal activity were violated by the federal government's decision not to renew an exemption from prosecution for a supervised injection site operated by a non-profit entity.<sup>30</sup> The Intervener Coalition rejects this analogy.

23. The injection site in *PHS* was not a commercial business making a profit from drug users.<sup>31</sup> It did not charge a fee for drug traffickers to access vulnerable drug users to inject them with toxic drugs, or operate for the purpose of facilitating that access. The operators of such a business, were it to exist, could certainly be criminalized without infringing the *Charter*, and would not be able to use the *Charter* rights of drug users as a shield, merely because they also used some of that money to supply clean needles or naloxone kits to revive those who overdosed.

24. Women are not addicted to prostitution. They may be dependent on prostitution because they are poor, but there are many ways to give women the money they need without requiring that they provide sexual services to men. The men who buy women for sexual gratification are not akin to drugs. These men are people who choose to demand sexual services from women who need money, and whose demand has been criminalized in order to reduce it. In the context of prostitution

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<sup>29</sup> *R. c. Kloubakov*, [2023 ABCA 287](#) at paras [72–75](#).

<sup>30</sup> *Canada (Attorney General) v. PHS Community Services Society*, [2011 SCC 44](#) ("*PHS*").

<sup>31</sup> *PHS*, at para [21](#).

as understood in *PCEPA*, demand reduction is the meaning of “harm reduction,” because it is the act of purchasing sexual access that is the source of the harm.

**B. In the alternative, if s. 7 is infringed, the challenged offences are consistent with the principles of fundamental justice and not overbroad.**

25. In the alternative, the Intervener Coalition submits that any incidental infringement of women’s security of the person that flows from the challenged offences accords with the principles of fundamental justice. The Appellants have failed to demonstrate that the offences at issue, properly interpreted, limit women’s security in a way that bears no rational connection to their objectives.<sup>32</sup>

26. The overarching objective of these offences, together with the purchasing and advertising offences, are to reduce or eliminate prostitution in Canada to the greatest extent possible. These amendments reflect the large body of evidence that indicates that prostitution undermines dignity and equality and that its significant risks cannot be eliminated.<sup>33</sup> The *PCEPA* objectives do not concede, as the Appellants claim, that prostitution is inevitable, any more than the *Criminal Code* concedes that murder or sexual assault is inevitable. Rather, the objectives find the harms of prostitution to be inherent and inevitable to the activity itself.<sup>34</sup>

27. In arguing that the challenged offences are overbroad, the Appellants approach the exceptions from the wrong end. In a context in which sex purchase is illegal, all third party recruiting and profiting facilitates and/or benefits from illegal activity, and all of it is harmful. The exceptions permit some of this activity to occur notwithstanding the potential for harm in order to permit the possibility of relationships that may also offer some benefits. These exceptions need to be limited in scope.

28. The challenged offences, properly interpreted, are not overbroad. They respond to the concerns of the dissenting justices in *Downey* that those in prostitution not be cut off from genuine

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<sup>32</sup> *Bedford*, at para [112](#).

<sup>33</sup> [Technical Paper, JAR Vol. III](#), pp. 6–7.

<sup>34</sup> Debra Haak, “[The Initial Test of Constitutional Validity: Identifying the Legislative Objectives of Canada’s New Prostitution Laws](#)” (2017), 50:3 UBC L Rev 657 at 678, 684, 694.

personal relationships, while recognizing that pimps may hide behind the label of “boyfriend.”<sup>35</sup> They also respond to the concerns expressed in *Bedford* that women in prostitution not be precluded from hiring a security guard or a driver. The exceptions to the challenged offences permit this, while also recognizing that pimps and traffickers may hide behind labels such as “manager” or “driver,” and that, rather than protecting women, “drivers” can be a constant threat, acting as surveillance for pimps. The exceptions allow women to purchase goods and services available to the public and rent accommodation with money derived from prostitution. Women can also act cooperatively to help one another and can receive unlimited assistance from those who do not have a financial stake in their continued exploitation, such as non-profit groups and charities.<sup>36</sup>

29. What the offences do not permit, and what is at the heart of the Appellants’ case, is procuring and receiving material benefits in the context of a commercial prostitution business.<sup>37</sup> In a context in which sex purchase is illegal, it would defeat the purpose of the legislation to permit such businesses, let alone to elevate their operation into a constitutionally-protected right.


#### **PART IV. COSTS**

30. The Women’s Equality Coalition does not seek costs and asks not to have costs ordered against it.

#### **PART V. ORDER SOUGHT**

31. As an Intervener, the Women’s Equality Coalition makes no submissions as to the outcome of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of July, 2024.

  
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 Janine Benedet, K.C.  
 Gwendoline Allison  
 Counsel for the Intervener,  
 Women’s Equality Coalition

<sup>35</sup> *Criminal Code*, s. [286.2\(4\)](#); *R. v. Downey*, [1992] SCR 10 at paras 40, 45, 47; Evidence of Detective Lieutenant Monchamp, JAR Vol. VI, p. 70/16–34.

<sup>36</sup> *N.S.*, at paras [74](#), [79](#), [80](#).

<sup>37</sup> *Criminal Code*, s. [286.2\(5\)\(e\)](#); *N.S.*, at paras [51](#), [54](#); *Appellants Factum*, at paras 65, 94.

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