

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**TERRI JEAN BEDFORD, AMY LEBOVITCH  
and VALERIE SCOTT**

Applicants

-and-

**ATTORNEY GENERAL OF CANADA**

Respondent

-and-

**ATTORNEY GENERAL OF ONTARIO**

Intervenor

-and-

**THE CHRISTIAN LEGAL FELLOWSHIP, REAL WOMEN OF CANADA  
AND THE CATHOLIC CIVIL RIGHTS LEAGUE**

Intervenors

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*

**FACTUM OF THE CHRISTIAN LEGAL FELLOWSHIP, REAL WOMEN OF CANADA  
AND THE CATHOLIC CIVIL RIGHTS LEAGUE**

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## PART I: OVERVIEW

1. This application involves a constitutional challenge to the remaining criminal laws relating to prostitution (communication, keeping a bawdyhouse and living off the avails). The Intervenors, the Christian Legal Fellowship, the Catholic Civil Rights League and REAL Women of Canada, submit that the impugned laws are not unconstitutional, as alleged, or at all.

2. The Attorneys General of Canada and Ontario have explained why the impugned laws are not unconstitutional from the standpoint of actual harm caused to the prostitutes in particular and to society in general. The Intervenors agree with those submissions. But missing from the entire debate between the parties is the most important and obvious point of all: the laws are a reflection of society's views, soundly rooted in interfaith morality, which is that prostitution is an act that offends the conscience of ordinary Canadian citizens. While Canada has decriminalized prostitution itself, owing in part to the fact that the prior laws imprisoned the victims of prostitution (the prostitutes), that fact alone in no way leads to the inexorable result that the government must remain "hands off" with respect to prostitution in general, and certainly not with respect to activities that tend to legitimize or otherwise make prostitution socially acceptable.

3. In their factum, the Applicants take pains to argue that mere moral assertions cannot sustain a law. They are right, in part. Mere prudish sensibilities cannot be invoked to justify a law that threatens the life, liberty, or security of the person of Canadians. Mere "moral views" with respect to the place of women in the 1950s, or ethnic minorities before that, obviously have evolved today, and Canadian laws must evolve as society evolves.

4. But there are certain core values—values that are so entrenched in society—that can, should, and must be valid objectives underlying the laws. There is such a thing as "right" and "wrong" and the criminal law properly reflects and enforces those views. The Supreme Court of Canada has been clear that there is no requirement that the criminal law only punish those acts that directly "harm" other persons. The Supreme Court has stated that it is legitimate, and entirely constitutional, to punish those acts that society views as being immoral, or inherently wrong, where that moral view is rooted in legitimate and fundamental concepts that are otherwise compatible with *Charter* values. That is the case here.

5. The Intervenors submit that prostitution is immoral. It should be stigmatized. Prostitution victimizes anyone who engages in it. This is not prudish sensibilities: it is a fundamental societal value rooted in other *Charter* values. Prostitution fundamentally demeans the dignity of not just the prostitute, but also her client. It perpetuates a fundamentally offensive and abusive gender imbalance. It exposes women to physical and psychological harm. It harms the community. In short, Canadians have good reason to abhor prostitution and they have every reason and justification to make sure that it is not legitimized in a manner that make Canadian cities look like Amsterdam.

6. The impugned laws are a measured response to a difficult problem. There is a thread between each of the impugned laws that none of the parties thus far have identified. The impugned laws seek to ensure that prostitution is not a legitimate business. The communication provisions are designed to take prostitution off the streets. It may still exist, but nobody should be obliged to be confronted or exposed to it. The bawdy house provisions similarly ensure that there is no permanent establishment where prostitution can take place: there can be no legitimate "place of prostitution" that can be frequented with regularity. The living off the avails provisions

ensure that persons who seek to profit from prostitution as a form of business (who routinely abuse the prostitutes themselves) will go to jail. In short, this country has determined that prostitution can take place (perhaps because it cannot be stopped entirely), but Canada will not confer legitimacy on the practice by allowing it to take place in public.

7. There is not a single right-thinking person in this country who would encourage their daughter to be a prostitute. That is not only because prostitution exposes the prostitute to harm, or because it perpetuates a power disadvantage to women. It is because prostitution is wrong. It is immoral. It offends basic concepts of decency. And those are entirely legitimate, pressing and substantial concerns of the government who has determined that the best way to address the problem is to ensure that it is not legitimized or normalized through ordinary commerce. If the impugned laws are struck down, it will send a signal to the vulnerable in society, particularly the youth, that as a last resort they can always make a living by selling their bodies. Many Canadians, including some members of the Intervenors, would want the government to go further and make prostitution illegal entirely. But the choice that the government made is well within the bounds of acceptability in a free and democratic society, and it is certainly a decision that is well within the constitutional prerogative of the government. The Application should be dismissed, because:

- (a) the impugned laws do not breach the Applicants' section 7 right to security of the person;
- (b) in the alternative, any breach of the Applicants' section 7 rights is in accordance with the principles of fundamental justice or is reasonable and can be demonstrably justified in a free and democratic society; and

- (c) there is no basis to reverse the Supreme Court's decision that section 213(1)(c) of the *Criminal Code* is a reasonable and justifiable limit on the Applicants' freedom of expression.

## PART II: FACTS

### A. The Intervenors

8. On September 22, 2009, the Court of Appeal for Ontario granted leave to the Christian Legal Fellowship, the Catholic Civil Rights League and REAL Women of Canada (together the "Intervenors") to intervene in this proceeding as a friend of the court.

*Bedford v. Canada (A.G.), 2009 ONCA 669.*

9. The Intervenors accept the facts as set out in the factum of the Attorney General of Canada ("Canada"). The Intervenors also rely on the following additional facts.

### B. The Impugned Laws Reflect Canadian Societal Values

10. Canada is a moral country. That morality is derived, in part, from religious views. As set out below, the overwhelming majority of Canadians identify themselves as being religious. The preamble to the *Canadian Charter of Rights and Freedoms* itself refers to the "supremacy of God", and that is in no way an accident. Canadians have certain religious beliefs, and that is a fact that is to be embraced, not shunned, by the *Charter*. It is a simple fact of life. The *Charter* was drafted by people who held religious views, for the benefit of persons who held religious views. These religious views form the backbone of what can be identified as the "societal values" of Canada.



*Canadian Charter of Rights and Freedoms, Preamble, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.*

11. It is widely accepted that criminal laws are drafted and enforced to protect societal values, and are historically derived from religious values.

*House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, Issue No. 83 (11 May 1982), Joint Application Record ("JAR"), Volume 68, page 20,208.*

*Patrick Devlin, The Enforcement of Morals (London: Oxford University Press, 1965) at 11-13, Intervenors' Book of Authorities, Tab "1".*

*Louis Henkin, "Morals and the Constitution: The Sin of Obscenity" (1963) 63 Colum. L. Rev. 391 at 409, Intervenors' Book of Authorities, Tab "2".*

12. Shared morality is essential to keeping a society bound together. Historically, the law has functioned to uphold that morality in order to protect and preserve society.

*Devlin, supra at 114, Intervenors' Book of Authorities, Tab "1".*

### **1. Canada's Historical Moral and Religious Values**

13. Historically, Canada's prostitution laws have been grounded in morality. Early laws were enacted to reflect a general concern by legislators and society as a whole that girls and young women required protection from immoral sexual activity and the evils of prostitution specifically.

*Affidavit of Lucie Angers, sworn March 20, 2008 ("Angers Affidavit"), page 2, paras. 5-6, JAR, Volume 64, page 18,741.*

*Angers Affidavit, Exhibit "8", JAR, Volume 64, page 18,790.*

*Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution* ("Fraser Committee Report"), Volume 2, JAR, Volume 71, page 20,921.

*Debates of the Senate*, (18 May 1909), JAR, Volume 66, page 19,331.

14. Early legislation focused on instilling the moral views of an almost exclusively Christian society into the law. Following the enactment of the first *Criminal Code* in 1892, legislators formally codified protections for women and girls from immoral sexual activity, exploitation and vice. Title IV, Offences against Religion, Morals and Public Convenience, contained provisions aimed at protecting against illicit sexual activity and general offences against morality.

Angers Affidavit, pages 4-5, paras. 9-14, JAR, Volume 64, pages 18,743-18,745.

Angers Affidavit, Exhibit "9", JAR, Volume 64, pages 18,794-18,813.

Affidavit of Eleanor Maticka-Tyndale, sworn March 29, 2007 ("Maticka-Tyndale Affidavit"), Exhibit "B", JAR, Volume 12, page 3,137.

Reginald W. Bibby, W.E. Hewitt & Wade Clark Roof, "Religion and Identity: the Canadian, American and Brazilian Cases" (1998) 39 *Int. Journal of Comparative Sociology* 237 at 239, *Intervenors' Book of Authorities*, Tab "3".

15. The lawmakers' dual view of the prostitute as both a moral and legal outcast influenced the law and its enforcement throughout the 20<sup>th</sup> century. In 1972, vagrancy offences were repealed and subsequently replaced by the offence of solicitation, which prohibited the solicitation of prostitution in public. These amendments reflected a recognition of the community's disdain for prostitution, and specifically prostitution in public.

Angers Affidavit, page 7, para. 21, JAR, Volume 64, page 18,747.

Fraser Committee Report, Volume 2, JAR, Volume 71, page 20,922.

16. Further amendments in 1985 created the offence of communicating for the purpose of engaging in prostitution in a public place or in any place open to public view. These amendments included, for the first time, a definition of "public place".

**Angers Affidavit, page 9, para. 24, JAR, Volume 64, page 18,748.**

**Fraser Committee Report, Volume 2, JAR, Volume 71, page 20,922.**

17. In 1985, the *Criminal Code* was amended again to address the harm caused to the community by public solicitation of prostitution. The proposed legislation was also aimed at saving youth from being lured into prostitution and the associated risks of violence, drug use, and organized crime. Survey results released by the Special Committee on Pornography and Prostitution (the "Fraser Committee Report") just prior to the enactment of these amendments indicated that 84 per cent of the population found prostitution unacceptable. In addition, 92 per cent of Canadians believed that prostitution should remain illegal.

**Angers Affidavit, pages 13-14, para. 35, JAR, Volume 64, pages 18,752-18,753.**

**Angers Affidavit, Exhibit "21", JAR, Volume 64, pages 18,892-18,894.**

**House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49*, Issue No. 1 (19 September 1985 and 10 October 1985), JAR, Volume 72, page 21,350.**

## **2. Canada as a Moral and Religious Society Today**

18. Religion is an important aspect of modern Canadian society: 92 per cent of Canadians have either had religious groups perform at least one rite, such as a wedding, baptism or funeral, in the past, or expect to turn to a religious group for such a rite in the future. As of 1998, more

than 80 per cent of Canadians asserted a belief in a god. Religion has also been shown to have influenced the political decisions of Canadians: research has consistently shown voting preferences to be invariably associated with religious affiliation, and that this association is at least as strong as, if not stronger than, those between voting and other variables, such as social class or ethnicity.

**Bibby, *supra* at 241, Intervenors' Book of Authorities, Tab "3".**

**Stewart Crysdale & Les Wheatcroft, eds., *Religion in Canadian Society* (Toronto: Macmillan, 1976) at 434, Intervenors' Book of Authorities, Tab "4".**

19. While largely Christian, Canada is no longer exclusively so. As of 2001, more than 75 per cent of Canadians identified as Christian. Islam is the second largest religion in Canada at 2 per cent of the population. Both Hinduism and Judaism were represented by at least 1 per cent of the population respectively. In all, 80 per cent of Canadians identify as belonging to one of these four major religions.

**Canada, Statistics Canada, *2001 Census of Canada, Religion: Canada, Provinces and Territories* (Ottawa: Min. of Supply and Services, 2001), Intervenors' Book of Authorities, Tab "5".**

**Lori G. Beaman & Peter Beyer, eds., *Religion and Diversity in Canada* (Netherlands: Koninklijke Brill, 2008) at 21-25, Intervenors' Book of Authorities, Tab "6".**

20. Though Canada's shared morality is no longer informed by a single set of religious values, through shared beliefs of all of the major religions, its disapproval of prostitution remains intact. All four of Canada's major religions consider prostitution to be immoral. Christianity teaches that expressions of human sexuality should reflect a concern for faithfulness in

relationships, and that the proper place for such expression is marriage. As such, prostitution is considered immoral and dishonourable to both participants and to God. Judaism has consistently viewed prostitution as contemptible to morality. Both Hinduism and Islam recognize the need to protect marriage and the family; prostitution and other extramarital sexual behaviours are condemned as immoral and illicit.

**B.J. Oropeza, "What is Sex? Christians and Erotic Boundaries" in C.K. Robertson, ed., *Religion & Sexuality: Passionate Debates* (New York: Peter Lang Publishing, 2006) at 30-35, *Intervenors' Book of Authorities*, Tab "7".**

**John M. Holland, ed., *Religion & Sexuality: Judaic-Christian Viewpoints in the USA* (San Francisco: The Association of Sexologists, 1981) at 10, 24, 35-37, *Intervenors' Book of Authorities*, Tab "8".**

**Simcha Fishbane, *Deviancy in Early Rabbinic Literature: A Collection of Socio-Anthropologic Essays* (Boston: Brill, 2007) at 85-91, *Intervenors' Book of Authorities*, Tab "9".**

**Arnold M. Rose, "Hindu Values and Indian Social Problems" (1967) 8 *The Sociological Quarterly* 329 at 332, *Book of Authorities*, Tab "10".**

**Bruce Dunne, "Power and Sexuality in the Middle East" (1998) 206 *Middle East Report* 8 at 9, *Book of Authorities*, Tab "11".**

21. The point set out in the preceding paragraph cannot be underemphasized: prostitution is condemned by every major religion held by almost all Canadians. The position advanced by the *Intervenors* is not a fleeting view of a prudish minority.

22. Public prostitution has been consistently viewed as a detrimental and, at times, intolerable form of corruption, both by community members and lawmakers. The Fraser Committee Report found that the exchange of sex for money was considered morally wrong and unacceptable by 62 per cent of Canadians. Generally, people view the sale of sex as immoral, dehumanizing and inherently wrong. Despite numerous studies, Commissions and public discussions on the subject invoked at the behest of persons such as the Applicants, the fact that the communication laws

remain intact is a reflection of the important role played by our modern criminal law in protecting Canada's shared morality.

**Maticka-Tyndale Affidavit, Exhibit "B", JAR, Volume 12, page 3,137.**

**Cross Examination of John Lowman, held May 25-26, 2009, Exhibit "10", JAR, Volume 23, page 6,717.**

**Cross Examination of Frances M. Shaver, held July 7, 2008, Exhibit "1", JAR, Volume 25, page 7,331.**

**House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs*, Issue No. 83 (11 May 1982), JAR, Volume 68, pages 20,104, 20,120.**

**Fraser Committee Report, Volume 1, JAR, Volume 70, page 20,836.**

**Fraser Committee Report, Volume 2, JAR, Volume 71, pages 20,915, 21,031.**

### **C. The Impugned Laws Protect Human Dignity**

23. Prostitution is not viewed as being immoral simply because of prudish sensibilities of the time. To the contrary, these shared values of Canadian society are rooted in the fact that prostitution violates the human dignity of both prostitutes and those who are witnesses to it by encouraging the exploitative treatment of women and by commodifying the human body.

24. The evidence tendered on this application shows that the existence of prostitution encourages gender inequalities and the mistreatment of women. Women who live in areas frequented by prostitutes commonly report feeling violated. Residents, including children and the elderly, report instances of unwanted propositions for sex and sexual harassment by johns frequenting their neighbourhoods. Similarly, women also endure verbal and psychological abuse from those involved in the sex trade. Such behavior works to offend the inherent human dignity of all women involved, resulting in damage to their self-esteem and fear for their psychological

and physical well-being. Where such acts take place in public, society in turn is harmed by requiring citizens to witness it.

**Cross-Examination of Ronald Weitzer, held March 6, 2009 ("Weitzer Cross-Examination"), page 78, q. 264, JAR, Volume 31, page 9,049.**

**Affidavit of Cheryl Parrott, sworn March 26, 2008 ("Parrott Affidavit"), page 16, paras. 37-38, JAR, Volume 39, page 11,200.**

**Affidavit of Valerie Scott, sworn March 28, 2007, Exhibit "N", JAR, Volume 3, page 520.**

**House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs*, Issue No. 83 (11 May 1982), JAR, Volume 68, pages 20,086-20,087.**

**Fraser Committee Report, Volume 2, JAR, Volume 71, page 20,867.**

**House of Commons, *Minutes of Proceedings and Evidence of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness*, Issue No. 19 (31 March 2005), JAR, Volume 84, page 25,615.**

25. The evidence tendered on this application also shows that prostitution destigmatizes and may even encourage the rape, sexual assault or sexual harassment of women who partake in prostitution and, indeed, women in general. The women who fall victim to these associated acts are robbed of their dignity through the objectification of, or loss of control over, their own bodies.

**Affidavit of JoAnn McCartney, sworn March 17 2008 ("McCartney Affidavit"), page 6, para. 16, JAR, Volume 35, page 10,058.**

**Affidavit of Richard Poulin, sworn April 4, 2008 ("Poulin Affidavit"), page 20, para. 53, JAR, Volume 40, page 11,398.**

**House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs*, Issue No. 83 (11 May 1982), JAR, Volume 68, pages 20,086-20,087.**

**House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49*, Issue No. 4 (24 October 1985), JAR, Volume 72, pages 21,509-21,512.**

**House of Commons, *Minutes of Proceedings and Evidence of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness*, Issue No. 12 (15 March 2005), JAR, Volume 83, page 25,348.**

26. Prostitutes are often subjected to physical and psychological exploitation, the effect of which may be to lower self esteem, contributing to a sense that one has been robbed of her dignity. Sixty-eight per cent of prostitutes across nine countries showed signs of Post Traumatic Stress Disorder.

**McCartney Affidavit, page 7, para. 20, JAR, Volume 35, page 10,059.**

**Affidavit of Dr. Melissa Farley, sworn May 1, 2008, pages 18, 24, paras. 32-34, 55, JAR, Volume 49, pages 14,238, 14,244.**

**Weitzer Cross-Examination , Exhibit "6", JAR, Volume 32, page 9,280.**

27. Prostitution offends the dignity of all women in society by creating a culture of sexual commodification wherein women are objectified as mere bodies that may be bought, sold, or traded. As a result, the basic principles of human dignity are eroded, including autonomy, self-worth and equality.

**Affidavit of Libby Davies, sworn April 3, 2007 ("Davies Affidavit"), Exhibit "F", JAR, Volume 9, page 2,437.**

**Affidavit of Michelle Holm, sworn April 4, 2008, page 8, para. 14, JAR, Volume 35, page 10,244.**

**Poulin Affidavit, page 55, para. 136, JAR, Volume 40, page 11,433.**

**Poulin Affidavit, Exhibit "C", JAR, Volume 42, page 12,294.**

**Affidavit of Kathleen Quinn, sworn March, 2008 ("Quinn Affidavit"), page 12, para. 30, JAR, Volume 38, page 10,936.**



Affidavit of Renna Weinberg, sworn March 20, 2008, pages 5-6, para. 9, JAR, Volume 37, pages 10,870-10,871.

**D. The Impugned Laws Prevent Prostitution in the Public Realm**

28. Although prostitution has been generally linked to a wide range of adverse effects on society, prostitution in the public domain particularly leads to insurmountable adverse effects on the moral and social fabric of affected neighborhoods. Those engaged in prostitution, and those indirectly linked to the sex trade, disrupt the peaceful enjoyment of not only the public environment but, at times, of private space as well. In many Canadian cities, prostitution is associated with a host of problems extending beyond sex acts in public (*e.g.*, discarded condoms, drug paraphernalia), and is attributed to creating a sense of fear among local residents.

Weitzer Cross-Examination, Exhibits "2", "4", JAR, Volume 32, pages 9,183, 9,209.

Parrott Affidavit, Exhibit "D", JAR, Volume 39, page 11,237.

House of Commons, *Minutes of Proceedings and Evidence of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness*, Issue No. 19 (31 March 2005), JAR Volume 84, page 25,615.

Cross-Examination of Jim Morrissey, held July 29, 2008 ("Morrissey Cross-Examination"), Exhibit "1", JAR, Volume 34, page 9,896.

Quinn Affidavit, page 3, para. 8, JAR, Volume 38, page 10,927.

29. In addition to street prostitution constituting an unacceptable nuisance, it presents a further danger to society by exposing affected neighbourhoods to physical danger and discomfort. These dangers disproportionately affect youth and the elderly, who are society's most vulnerable members. Female residents complain not only of fear but of daily harassment that comes with being a woman in an area frequented by those involved in or associated with

prostitution. Citizens also complain of the stress associated with constant infringements on their own lifestyle and value systems.

**Davies Affidavit, Exhibit "F", JAR, Volume 9, pages 2,438-2,439.**

**Weitzer Cross-Examination, Exhibit "1", JAR, Volume 32, page 9,184.**

**Morrissey Cross-Examination, Exhibit "2", JAR, Volume 34, page 9,894.**

**Parrott Affidavit of Cheryl Parrott, page 17, paras. 38-39, JAR, Volume 39, pages 11,200-11,201.**

**Affidavit of Donna Cowan, sworn April 2, 2008, page 4, para. 7, JAR, Volume 39, page 11,337.**

***Report of the Standing Committee on Justice and the Solicitor General concerning the three-year review of section 213 of the Criminal Code, JAR, Volume 78, pages 23,426-23,427.***

30. In addition to the dangers posed by the introduction of vice and the constant traffic of drug dealers, pimps, johns and prostitutes, street prostitution also provides a dangerous role model for children who experience it as a daily reality of home and school life.

**Quinn Affidavit, pages 3-4, paras. 9-10, JAR, Volume 38, pages 10,927-10,928.**

**Parrott Affidavit, page 8, para. 17, JAR, Volume 39, page 11,192.**

**Parrott Affidavit, Exhibit "D", JAR, Volume 39, page 11,236.**

***House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, Issue No. 84 (13 May 1982), JAR, Volume 68, pages 20,193-20,194.***

31. The current regime of laws used to combat public prostitution remains an important tool for law enforcement to protect citizens from these negative effects and to attempt to restore order to neighborhoods viewed by residents as being "under siege". The harm posed by the dangers associated with public prostitution requires the continued enforcement of existing laws. These

laws are crucial to limiting or eradicating the adverse impact of prostitution, and are currently the only effective mechanism through which to accomplish that goal.

**Joseph Fletcher, "Sex Offenses: An Ethical View" (1960) 25 Law & Contemp. Probs. 244 at 256, Intervenors' Book of Authorities, Tab "12".**

**Affidavit of Gene A. Bowers, sworn April 10, 2008, pages 9, 19, paras. 25, 50, JAR, Volume 35, pages 10293, 10,303.**

**Affidavit of Detective Randy Cowan, sworn March 28, 2008, pages 11-13, paras. 25-28, JAR, Volume 35, pages 10,272-10,274.**

**Parrott Affidavit, page 24, para. 60, JAR, Volume 39, page 11,208.**

**Angers Affidavit, page 17, para. 40, JAR, Volume 64, page 18,756.**

**House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49*, Issue No. 4 (24 October 1985), JAR, Volume 72, page 21,508.**

### PART III: ISSUES AND LAW

32. The Intervenors accept that the issues in dispute in this application are as set out by Canada in its factum:

- (a) Whether sections 210, 212(1)(j) and 213(1)(c) of the *Criminal Code* (the "Laws") deprive the Applicants of the right to liberty or security of the person.
- (b) If the Laws deprive the Applicants of the right to liberty or security of the person, whether the deprivation has occurred in accordance with the principles of fundamental justice.
- (c) If the Laws violate section 7 of the *Charter*, whether such breach is reasonable and can be demonstrably justified in a free and democratic society.

- (d) Whether there is any basis to reverse the Supreme Court's decision that section 213(1)(c) of the *Criminal Code* is a reasonable and justifiable limit on the Applicants' freedom of expression.

**A. The Laws do not infringe the Applicants' security of the person.**

33. The Intervenors accept that the Laws are capable of infringing the Applicants' liberty. The Intervenors adopt the argument by Canada that the Laws do not infringe the Applicants' security of the person.

34. The Intervenors submit that much of the "new evidence" adduced by the Applicants to displace the *Prostitution Reference* actually speaks only to the issue of whether the Laws infringe their life, liberty, or security of the person, which is a point which is conceded by Canada and categorically acknowledged by the Supreme Court itself in the *Prostitution Reference*.

*Reference re Sections 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123 at 1193-94, paras. 94-95, Lamer J., Joint Book of Authorities ("JBA"), Volume 6, Tab 125 [*Prostitution Reference*].

**B. The Applicants have failed to demonstrate that the alleged deprivation of their liberty or security of the person interest is not in accordance with the principles of fundamental justice.**

35. The Applicants have identified four relevant principles of fundamental justice: arbitrariness; overbreadth; disproportionality; and the rule of law. The Applicants have failed to demonstrate that their alleged deprivation of liberty or security of the person is not in accordance with these principles. The Intervenors rely on the argument of Canada with respect to the rule of law.

**1. The Laws are not arbitrary, overbroad or grossly disproportionate.**

36. The principles against arbitrariness, overbreadth and gross disproportionality all require an analysis of the challenged law's objective.

*R. v. Heywood*, [1994] 3 S.C.R. 761 at 792-93, JBA, Volume 4, Tab 63.

*R. v. Marmo-Levine*, [2003] 3 S.C.R. 571 at 645, paras. 142-43, JBA, Volume 4, Tab 78.

*Chaoulli v. Quebec*, [2005] 1 S.C.R. 791 at 853, para. 134, per Binnie, Lebel JJ., and at 895, para. 233, per Major J. and McLachlin C.J.C. [*Chaoulli*], JBA, Volume 1, Tab 10.

37. In addition to the objectives identified by Canada, as established by the evidence detailed above, an additional purpose of the Laws is to safeguard Canadians' values on the basis of a fundamental conception of morality. The Laws prohibit conduct that attacks the dignity of the victims of prostitution and defines acts that are inappropriate in public. The state has a duty and legitimate interest in enforcing these prohibitions to protect values that are integral to a free and democratic society.

38. The Laws are connected and proportionate to these objectives, each of which is a legitimate state interest. As such, the Laws are not arbitrary, overbroad or disproportionate, and any breach of the Applicants' liberty is in accordance with the principles of fundamental justice.

(a) **The purpose of the Laws includes safeguarding Canadians' values on the basis of a fundamental conception of morality.**

(i) **Fundamental conceptions of morality are a legitimate purpose.**

39. Parliament has the right and constitutional prerogative to legislate on the basis of "fundamental conceptions" of morality for the purposes of safeguarding the values that are integral to a free and democratic society.

*R. v. Butler*, [1992] 1 S.C.R. 452 at 493, paras. 82-83, JBA, Volume 3, Tab 39.

*R. v. Labaye*, [2005] 3 S.C.R. 728 at 769, paras. 103-04, per Bastarache, LeBel JJ., JBA, Volume 4, Tab 73.

40. Morality is recognized as a legitimate public purpose of criminal law. If the conduct at issue causes harm or presents a significant risk of harm to individuals or society in a way that undermines or threatens to undermine a value reflected in Canadian law, and the harm is incompatible with the proper functioning of society, it is criminally indecent and may be limited by the state.

*Malmo-Levine, supra* at 619, para. 74, JBA, Volume 4, Tab 78.

*Labaye, supra* at 757, para. 74, per Bastarache, LeBel JJ., JBA, Volume 4, Tab 73.

41. The notions of moral corruption and harm to society are inextricably linked. Moral corruption of a certain kind leads to the detrimental effect on society.

*Labaye, supra* at 771, para. 109, per Bastarache, LeBel JJ., JBA, Volume 4, Tab 73.

*Butler, supra* at 494, para. 87, JBA, Volume 3, Tab 39.

42. Parliament enforces this social morality by enacting statutory norms in legislation, such as the *Criminal Code*. Morality is conveyed by means of provisions that demand that each individual case be assessed in light of its specific context and circumstances to gauge Canadians' tolerance for the acts in question. Harm is thus linked to a concept of social morality. There is also harm where what is acceptable to the community in terms of public morals is compromised.

*Labaye, supra* at 771, para. 109, per Bastarache, LeBel JJ., JBA, Volume 4, Tab 73.

43. The purpose of the Laws is not to legislate on the basis of a "particular", fleeting, or prudish conception of morality, but rather on the basis of *fundamental* conceptions, which are integral to promoting and protecting our values in Canadian society. The social prohibitions on murder and rape are fundamental values that do not change over time, and are thus codified in the criminal law as *fundamental* concepts of morality. In the same way, the disapproval of soliciting prostitution, keeping a bawdy house or pimping because of the social and physical harms these acts cause society are fundamental conceptions, and thus underlie the objectives of the Laws.

*R. v. Jones*, (1921), 62 D.L.R. 413 at 414 (Alta. C.A.), JBA, Volume 4, Tab 67.

*R. v. Mercier* (1908), 13 C.C.C. 475 at 485 (Yuk. Terr. Ct.), JBA, Volume 4, Tab 83.

44. The Applicants appear to concede that the objective of the Laws is to prevent harm or nuisance, either to prostitutes themselves or the surrounding community. Although the Applicants reject the view that this objective can include the prevention of social harm or

immorality, the Supreme Court has been clear that indecent criminal behaviour (which includes the acts that the Laws prohibit) can give rise to antisocial behaviour "as if we live in a society without moral values".

*R. v. Mara*, [1997] 2 S.C.R. 630 at 645, para. 34, JBA, Volume 4, Tab 81.

45. The Applicants' argument that legal moralism has been rejected by the courts is simply wrong. While the Supreme Court in *Labaye* adopted a harm-based analysis, it also made clear that social values *do* have a role to play in the analysis. To ground a finding that acts are indecent, the harm must be shown to be related to a *fundamental value* reflected in our society's Constitution or similar fundamental laws, which constitutes society's formal recognition that harm of the sort envisaged may be incompatible with its proper functioning.

*Labaye*, *supra* at 743, para. 33, JBA, Volume 4, Tab 73.

46. The principles of fundamental justice, which underlie both the *Charter* and Canada's legal framework, are informed by Canada's international human rights obligations. The *Convention on the Elimination of All Forms of Discrimination Against Women*, to which Canada is a signatory, states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at 38, para. 60, JBA, Volume 6, Tab 133.

*Convention on the Elimination of All Forms of Discrimination Against Women*, GA Res. 34/180, UN GAOR, 34<sup>th</sup> Sess., Supp. No. 46, UN Doc. A/34/46 (1979) 193 [CEDAW].



47. The *CEDAW* is a formal recognition of Canada's values on the issue of prostitution. Canadians oppose prostitution, and the trafficking and exploitation of women involved in prostitution. That moral prohibition is reflected in the Laws, which seek to prohibit the most egregious activities arising from the sex trade.

48. As set out by Canada in its factum (paragraphs 38 to 67) and as established by the evidence, the conduct the Laws prohibit cause significant harm or risk of harm to Canadians, including physical violence, drug trafficking, organized crime and human trafficking. These harms undermine Canadians' fundamental morals and values, as they corrupt society and encourage a cycle of violence, which is detrimental to the proper functioning of society. The objective of the Impugned Section is, amongst other things, to safeguard those values on the basis of a fundamental conception of morality.

(ii) **Dignity is an underlying value of the *Charter*.**

49. The notion of dignity finds expression in almost every right and freedom guaranteed in the *Charter*. Dignity is not an independent right, but has been viewed as finding expression in rights, such as equality, privacy or protection from state compulsion. It is better described as an underlying value.

*R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 166, para 288, Wilson J., JBA, Volume 4, Tab 86.

*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 at 353-54, paras 77-79 [Blencoe], JBA, Volume 1, Tab 3.

50. Dignity has been held to be a tool to help determine the nature of the principles of fundamental justice. The *Charter's* values are centered on the integrity and dignity of the human

person, which encompass, as an essential attribute and are predicated upon, the moral responsibility of all Canadians. The enhancement of human dignity and integrity are legitimate state concerns.

*Labaye, supra* at 747, para. 46, JBA, Volume 4, Tab 73.

*R. v. Daviault*, [1994] 3 S.C.R. 63 at 118, para. 105, per Sopinka J., *Intervenors' Book of Authorities*, Tab "13".

*Mussani v. College of Physicians & Surgeons (Ontario)* (2004), 74 O.R. (3d) 1 (C.A.) at 23, para. 71 [*Mussani*], JBA, Volume 2, Tab 23.

51. The courts have recognized that one of the purposes of the Laws is to prevent exploitation of women and children. A person's sense of human dignity and belonging to the community at large is closely linked to the concern and respect accorded to the groups to which she belongs. Sexual exploitation, which has the effect of portraying women as objects for sexual use or abuse is humiliating and degrading, and is necessarily an attack on a person's dignity and integrity.

*Prostitution Reference* at 1193-94, paras. 94-95, per Lamer J., JBA, Volume 6, Tab 125.

*R. v. Keegstra*, [1990] 3 S.C.R. 697 at 746, para. 65, JBA, Volume 4, Tab 69.

**(iii) The public nature of an act determines its social acceptance.**

52. The public or private nature of the impugned conduct in question is a relevant factor, both in applying the *Criminal Code* indecency and prostitution offences and in considering the limits on *Charter* rights.

*Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31, para. 78 [GVTA], *Intervenors' Book of Authorities*, Tab "14".

*Labaye, supra* at 746, para. 42-43, JBA, Volume 4, Tab 73.

*R. v. Tremblay*, [1993] 2 S.C.R. 932 at 960, para. 40, JBA, Volume 5, Tab 116.

*Prostitution Reference, supra* at 1134-35, paras. 2-3, and at 1211, para. 128 per Wilson J., JBA, Volume 6, Tab 125.

53. In addressing the legislative objective underlying the *Criminal Code* communication offences, the Supreme Court has held that the prohibition's primary purpose is to address the harm caused by the *public* aspect of communicating for the purpose of soliciting prostitution.

*Prostitution Reference* at 1134-35, paras. 2-3 and at 1211, para. 128 per Wilson J., JBA, Volume 6, Tab 125.

54. In respect of the other *Criminal Code* offences related to criminally indecent behaviour, the Supreme Court has similarly held that the public/private distinction is a relevant factor. The community's toleration for certain conduct varies with the place in which the acts take place. To take some obvious examples, there is nothing illegal about being nude in private, yet there are prohibitions against nudity in public. Hate speech in private is legal; hate speech in public is criminal.

*Tremblay, supra* at 960, para. 40, JBA, Volume 5, Tab 116.

*Labaye, supra* at 746, para. 42-43, JBA, Volume 4, Tab 73.

*GVTA, supra*, para. 78, *Intervenors' Book of Authorities*, Tab "14".

*Criminal Code*, R.S.C. 1985, c. C.46, ss. 174, 319.

55. So too, one of the objectives of the Laws is to prohibit otherwise indecent behaviour in public. Though the Applicants attempt to characterize this constitutional challenge as an attempt to "privatize" the sex trade or take it off the street, there is ample evidence on this application that there is already a clear divide between "street" and "off-street" prostitution (as set out by Canada at paragraphs 30 to 37 of its factum) and the decriminalization of the sex trade in the manner proposed by the Applicants does not shield the community from its adverse effects (as set out by Canada at paragraphs 107 to 133 of its factum).

56. Though the decriminalization of the bawdy house and pimping offence prohibitions may move some prostitution indoors, the ancillary effects continue to have a direct and harmful effect on neighbourhoods and communities (as set out by Canada at paragraphs 66 and 67 of its factum). Moreover, the reality is that a permanent place of establishment in the form of a brothel or bawdy house *is* a very public place.

**(b) The Laws are not arbitrary.**

57. To be arbitrary, a law must lack a real connection on its facts to the purpose of the law.

*Chaoulli, supra* at 853, para. 134, per Binnie, Lebel JJ. and 895, para. 233, per Major J. and McLachlin C.J.C., JBA, Volume 1, Tab 10.

58. The prohibition on certain activities related to prostitution is a rational means of safeguarding Canadians' values on the basis of a fundamental conception of morality. As of 1985, the majority of Canadians had a fundamental conception that prostitution is immoral and unacceptable. To reflect that disapprobation, the government has chosen to prohibit the most

heinous of activities associated with prostitution. That fundamental conception continues to this day.

59. The Applicants argue that the Laws are inherently contradictory and, as such, arbitrary: the communication provision is intended to take prostitution out of the public view, but prostitutes cannot do so if bawdy houses and pimping are unlawful. The evidence demonstrates that this is manifestly not the case: 80 percent of prostitutes perform their services through indoor prostitution, forms of which include call-girl services, advertising in newspapers, and do so successfully without bawdy houses and pimps. Moreover, prostitution, whether it is practised in the streets or in private, has public effects. Bawdy houses can create direct and harmful effects to the people living in the surrounding neighbourhood. There is no evidence that the crimes associated with prostitution, such as physical violence, drug trafficking, organized crime or human trafficking, are in any way eradicated by decriminalizing bawdy houses or pimping.

**Cross-Examination of Elliott Leyton, held May 21, 2009, page 36, q. 174, JAR, Volume 10, page 2,743.**

**Cross-Examination of Elanor Maticka-Tyndale, held November 19, 2008, page 91, q. 378, JAR, Volume 12, page 3,276.**

60. In the absence of any reduction in the social harms that prostitution causes, the Laws are the most rational means of expressing Canadians' view that prostitution is immoral and unacceptable.

(c) **The Laws are not overbroad or grossly disproportionate.**

61. The standard of gross disproportionality is high: the court must be satisfied that the prohibition is *grossly* disproportionate to its objective, such that Canadians would find such prohibition abhorrent or intolerable.

*Malmo-Levine, supra* at 650, para. 159, JBA, Volume 4, Tab 78.

62. For purposes of determining proportionality, the fact that a value has the status of an international human right, either in customary international law or under a treaty to which Canada is a party, should generally be indicative of a high degree of importance attached to that objective.

*Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1057, Interveners' Book of Authorities, Tab "15".

63. Canadians clearly abhor prostitution and its related offences: when the legislation was passed, the overwhelming majority of Canadians held the view that prostitution was unacceptable and immoral, and should be illegal. The Applicants have adduced no evidence to the contrary. Today, Canadians continue to be a moral and religious society. The four major religions, of which 80 per cent of Canadians self-identify with, prohibit prostitution. Canadians' views on prostitution are affirmed by Canada's accession to the *CEDAW*.

64. Given that Canadians find prostitution and the harms that flow from prostitution unacceptable, immoral and an attack on the dignity of prostitution's victims and society, there is no basis to conclude that a prohibition on activities aimed at curtailing prostitution is

disproportionate, never mind grossly disproportionate, to the objective of promoting fundamental morals and values, and the dignity of all Canadians.

**C. Any breach of section 7 is reasonably and demonstrably justified.**

65. In the event that the Court finds that the Applicants' section 7 rights have been breached, these breaches are a reasonable limit on the Applicants' rights. The Laws are sufficiently important, and the means are reasonably and demonstrably justified.

*R. v. Oakes*, [1986] 1 S.C.R. 103 at 138-9, *Intervenors' Book of Authorities*, Tab "16".

**1. The Laws further a pressing and substantial objective.**

66. As set out above, the purpose of the Laws is, amongst other things, to safeguard Canadians' values on the basis of a fundamental conception of morality. Among other things, the Laws prohibit conduct that attacks the dignity of the victims of prostitution and defines acts that are inappropriate in public. The courts have accepted this objective as sufficiently important.

Morality: *Butler, supra* at 493, paras. 82-83, JBA, Volume 3, Tab 39; *Labaye, supra* at 769, para. 104, per Bastarache, LeBel JJ., JBA, Volume 4, Tab 73; and *Malmo-Levine, supra* at 619, para. 74, JBA, Volume 4, Tab 78.

Dignity: *Morgentaler, supra* at 166, para 288, per Wilson J., JBA, Volume 4, Tab 86; *Blencoe, supra* at 353-54, paras 77-79, JBA, Volume 1, Tab 3; *Mussani, supra* at 23, para. 71, JBA, Volume 2, Tab 23.

Public/Private: *GVTA, supra*, para. 78, *Intervenors' Book of Authorities*, Tab "14"; *Labaye, supra* at 746, para. 42-43, JBA, Volume 4, Tab 73; *Tremblay, supra* at 960, para. 40, JBA, Volume 5, Tab 116; *Prostitution Reference, supra* at 1134-35, paras. 2-3, and at 1211, para. 128 per Wilson J., JBA, Volume 6, Tab 125.

**2. There is a rational connection between the Laws and their purpose.**

67. The Intervenors rely on the arguments in paragraphs 57 to 60 above in support of the argument that there is a rational connection between the Laws and their purpose.

**3. The Laws minimally impair the Applicants' rights.**

68. The Intervenors adopt the arguments as set out in Canada's factum (at paragraphs 283 to 305 and paragraph 311) that the Laws impair the Applicants' section 7 rights as little as possible.

**4. There is proportionality between the Laws purpose and effects.**

69. The salutary effects of the Laws outweigh any deleterious effects to the Applicants' section 7 rights.

*Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 889, para. 99, Intervenors' Book of Authorities, Tab "17".

*J.T.I. MacDonald Corp. v. Canada (A.G.)*, [2007] 2 S.C.R. 610 at 632, para. 46, JBA, Volume 1, Tab 9.

70. The combined effect of the Laws is that the most harmful, degrading and morally-wrong aspects of prostitution are prohibited in Canada. By prohibiting these activities, the government is not only working to eradicate prostitution and its ancillary effects (such as physical violence, drug trafficking, organized crime and human trafficking), but is also reflecting Canadians' fundamental values.

71. The Laws do not prohibit prostitution itself, and there is no prohibition on the Applicants continuing to ply their trade. Though the Laws do prohibit some activities that might enhance



the business activities of prostitutes, there is insufficient evidence on this application that decriminalizing these activities will make prostitution safer or eradicate its most harmful effects.

**D. Any breach of section 2(b) is reasonably and demonstrably justified.**

72. The Intervenors rely on Canada's arguments at paragraphs 313 to 322 that the *Prostitution Reference* is binding on this Court, and there is no evidentiary or legal basis to disobey the principles of *stare decisis* in this application.

73. In the event the Court undertakes an analysis of whether the alleged impairment of the Applicants' section 2(b) rights are reasonably and demonstrably justified, the Intervenors rely on paragraphs 65 to 71 above.

**PART IV: ORDER REQUESTED**

74. The Intervenors respectfully request an order dismissing the application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October 2009.**



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Lawyers for the Christian Legal Fellowship,  
REAL Women of Canada and the Catholic  
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## SCHEDULE "A"

### Jurisprudence

*Bedford v. Canada (A.G.)*, 2009 ONCA 669

*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307

*Chaoulli v. Quebec*, [2005] 1 S.C.R. 791

*Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835

*Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31

*J.T.I. MacDonald Corp. v. Canada (A.G.)*, [2007] 2 S.C.R. 610

*Mussani v. College of Physicians & Surgeons (Ontario)* (2004), 74 O.R. (3d) 1 (C.A.)

*R. v. Butler*, [1992] 1 S.C.R. 452

*R. v. Daviault*, [1994] 3 S.C.R. 63

*R. v. Heywood*, [1994] 3 S.C.R. 761

*R. v. Jones*, (1921), 62 D.L.R. 413 (Alta. C.A.)

*R. v. Labaye*, [2005] 3 S.C.R. 728

*R. v. Malmö-Levine*, [2003] 3 S.C.R. 571

*R. v. Mara*, [1997] 2 S.C.R. 630

*R. v. Mercier* (1908), 13 C.C.C. 475 (Yuk. Terr. Ct.)

*R. v. Morgentaler*, [1988] 1 S.C.R. 30

*R. v. Oakes*, [1986] 1 S.C.R. 103

*R. v. Tremblay*, [1993] 2 S.C.R. 932

*Reference re Sections 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123

*Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038

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## SCHEDULE "B"

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.*

### **Rights and freedoms in Canada**

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.

### **Fundamental freedoms**

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication....

### **Life, liberty and security of person**

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.

### ***Criminal Code, R.S.C. 1986, c. C.45***

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.

212. (1) Every one who

...

(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).

...

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

...

(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.

***Convention on the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, UN GAOR, 34<sup>th</sup> Sess., Supp. No. 46, UN Doc. A/34/46 (1979) 193.***

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

TERRI JEAN BEDFORD and others  
Applicants

-and-  
ATTORNEY GENERAL OF CANADA  
Respondent

Court File No. 07-CV-329807 PD1

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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