

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN ALLIANCE FOR SEX WORK LAW REFORM,  
MONICA FORRESTER, VALERIE SCOTT, LANNA MOON PERRIN, JANE X,  
ALESSA MASON AND TIFFANY ANWAR

Applicants

and

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AND ACTION FUND (LEAF)

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APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

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## **PART I - INTRODUCTION**

1. According to the Supreme Court of Canada, the *Canadian Charter of Rights and Freedoms* (**Charter**) is “presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.”<sup>1</sup> Amnesty International, Canada Section (English Speaking) (“**Amnesty International**”) submits that, when considering the constitutional validity of the sex work criminalization provisions of the *Protection of Communities and Exploited Persons Act* (“**PCEPA**”) (the “**Impugned Provisions**”)<sup>2</sup>, this Court ought to interpret the rights to life, liberty, security of the person, and equality under the *Charter* in accordance with binding international human rights treaties.

2. The Impugned Provisions affect sex workers’ safety and their physical and personal autonomy, thereby engaging their right to life, liberty and security of the person under section 7 of the *Charter*, Articles 6 and 9 of the *International Covenant on Civil and Political Rights* (the “**ICCPR**”). The Impugned Provisions also engage section 15(1) of the *Charter*, Article 26 of the ICCPR because they affect sex workers’ rights of equal protection under the law.

## **PART II - SUMMARY OF FACTS**

3. Amnesty International relies upon the facts in the Application Record.

## **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

### **A. Role of International Covenants and Conventions in Canadian Law**

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<sup>1</sup> *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at para 59.) [1987] 1 SCR 313).

<sup>2</sup> Amnesty International will collectively refer to the impugned provisions, but for clarity, they are: s. 213(1), the “stopping traffic provision”; s. 213(1.1) the “public communication provision”; s. 286.1(1) the “purchasing provision”; s. 286.2(1) the “material benefit provision”; s. 286.3(1) procuring sexual services the “procuring provision”; and s. 286.4 advertising the sale of sexual services, the “advertising provision.”

4. The presumption of conformity with international law is a firmly established interpretive principle for the *Charter*<sup>3</sup> and assists the courts in delineating the breadth and scope of *Charter* rights.<sup>4</sup> Given that the *Charter* is a reflection of Canada’s international human rights obligations, including the ICCPR, those obligations “clearly form part of the historical context of a *Charter* right and illuminate the way it was framed.”<sup>5</sup> The Supreme Court of Canada has affirmed that *Charter* rights are to provide, at a minimum, the same level of protection as set out in the ICCPR.<sup>6</sup>

5. Countries that have ratified the ICCPR must protect and maintain basic human rights, and take administrative, judicial and legislative measures to protect these rights and provide an effective remedy.<sup>7</sup> Canada has ratified the ICCPR, making it binding on Canada and triggering the presumption of conformity.<sup>8</sup> The ICCPR ensures protection and dignity while also promoting the enjoyment of civil and political rights within states.<sup>9</sup> Canadian courts, including the Ontario Superior Court of Justice, must therefore interpret the *Charter* in accordance with the guarantees set out in the ICCPR.

6. To assist in interpreting international treaties, the UN publishes “general comments” or “general recommendations” to guide signatory states. Utilizing the United Nations Human Rights

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<sup>3</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 at para 31, citing *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386 at para 65; *India v. Badesha*, 2017 SCC 44, [2017] 2 S.C.R. 127 at para 38; *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, [2015] 1 S.C.R. 245 at para 64; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176 at para 150; *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 S.C.R. 157 at para 23; *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391 at para 70.

<sup>4</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, *supra* note 3 at para 34, citing *Kazemi Estate v. Islamic Republic of Iran*, *supra* note 3 at para 150 & 160.

<sup>5</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, *supra* note 3 at para 9.

<sup>6</sup> *Divito v. Canada (Public Safety and Emergency Preparedness)*, *supra* note 3 at para 25; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, *supra* note 3 at para 65.

<sup>7</sup> [International Covenant on Civil and Political Rights](#), 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) at the Preamble [ICCPR].

<sup>8</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, *supra* note 3 at para 39.

<sup>9</sup> [ICCPR](#), *supra* note 7 at the Preamble.



Committee (“UNHRC”) General Comments – the body responsible for monitoring States Parties’ implementation of the ICCPR - to understand the scope of a *Charter* provision is consistent with prior Canadian jurisprudence. These general comments include detailed frameworks for interpreting and protecting human rights by member states.

7. The Supreme Court of Canada has recognized that Canada has an obligation to ensure an effective remedy to victims of violations of rights contained within Article 2 of the ICCPR.<sup>10</sup> In explaining the nature of the state’s obligations for effective remedies in the ICCPR, the Supreme Court of Canada has referenced UNHRC General Comment 31: *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*<sup>11</sup> and noted that the “enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law”<sup>12</sup>

## **B. The Nordic Model of Governing Sex Work**

8. First introduced in Sweden in 1999, the Nordic model, or “end-demand” model,<sup>13</sup> aims to reduce or eliminate sex work by criminalizing the purchase as well as the organization and promotion of sex work, rather than the provision, of sexual services.<sup>14</sup> The primary goal of the Nordic model is not the increased safety of sex workers but rather a focus on discouraging “prostitution”, denouncing and prohibiting the purchase of sex, and encouraging “prostitutes” to

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<sup>10</sup> *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para 119.

<sup>11</sup> [UN Doc CCPR/C/21/Rev.1/Add.13, May 26, 2004.](#)

<sup>12</sup> *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para 119.

<sup>13</sup> Anna-Louise Crago et al, “[Sex Workers’ Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an “End Demand” Criminalization Model: A Five City Study in Canada](#)” (2021) 10:13 *Sex Sci* at 2 [Crago et al], **Joint Application Record [JAR] at 3577.**

<sup>14</sup> Amnesty International “[The Human Cost of ‘Crushing’ The Market: Criminalization of Sex Work in Norway](#)” (2016) at Footnote 1 [AI Norway Report].

leave “prostitution”.<sup>15</sup>

**i. The Nordic model endangers sex workers**

9. By criminalizing sex work and stigmatizing sex workers, end-demand models like the Nordic model endanger sex workers in at least three main ways.<sup>16</sup>

9.1 First, by criminalizing the transaction between sex worker and client, the Nordic model forces sex workers to take risks in order to shield their clients from detection by law enforcement.<sup>17</sup> In Norway, for example, after purchasing sex work was criminalized, street-based sex workers reported that clients were more likely to ask for the sale of sex to occur in the client’s home, a practice “strongly associated with violent incidents against street-based sex workers.”<sup>18</sup> In addition, sex workers reported that they were more likely to conclude negotiations with purchasers more quickly, which impairs sex workers’ ability to “assess risks or screen out potentially dangerous clients.”<sup>19</sup>

9.2 Second, criminalizing sex work through this model interferes with sex workers’ ability to access sexual health care because sex workers fear that they will be stigmatized or that their accessing health care will lead to police involvement.<sup>20</sup>

9.3 Third, the Nordic model constrains sex workers’ ability to report violence to report

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<sup>15</sup> [Protection of Communities and Exploited Persons Act](#) SC 2014, c 25 at Preamble.

<sup>16</sup> These impacts as explained here are based on research conducted by Amnesty International in Norway and the Amnesty International Sex Work Policy.

<sup>17</sup> Amnesty International “[Policy On State Obligations To Respect, Protect And Fulfil The Human Rights Of Sex Workers](#)” (May 2016) at 13 [AI Policy].

<sup>18</sup> [AI Norway Report](#), *supra* note 13 at 63.

<sup>19</sup> Amnesty International, “[Explanatory Note On Amnesty International’s Policy On State Obligations To Respect, Protect And Fulfil The Human Rights of Sex Workers](#)” (May 2016) at 12 [AI Explanatory Note].

<sup>20</sup> *Ibid.*

violence for fear of prosecution or even deportation. As Amnesty International reported in 2016, following the adoption of the Nordic model, Oslo police used sex workers' reports of violence as a means of identifying and deporting sex workers who were irregular migrants, prioritizing their removal from the country rather than an investigation into the violent incident which gave rise to the report.<sup>21</sup> As a result, nearly all sex workers interviewed reported that they would only consider reporting a violent incident to the police as a last resort, "often only in extreme circumstances where there was an immediate threat to their life."<sup>22</sup>

10. A Canadian study made similar findings; a high proportion of sex workers reported experiencing police harassment, including being carded, followed, detained or held against their will without arrest by police, related to police efforts to crack down on the sex trade.<sup>23</sup> Sex workers who reported experiencing police harassment in the previous year were five times more likely to say they were unable to call 911 if they or another sex worker were in a safety emergency, due to fear of police detection.<sup>24</sup>

## ii. Decriminalization as an alternative legal approach

11. After New Zealand decriminalized sex work through the *Prostitution Reform Act*,<sup>25</sup> the New Zealand Ministry of Justice Prostitution Law Review Committee reported "increased confidence, well-being and a sense of validation among sex workers," resulting in a "positive spin-off in many areas, such as improvement of employment conditions, and the ability to ensure that

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<sup>21</sup> [AI Norway Report](#), *supra* note 13 at 45.

<sup>22</sup> *Ibid* at 9.

<sup>23</sup> [Crago et al.](#), *supra* note 13 at 7.

<sup>24</sup> *Ibid*.

<sup>25</sup> [AI Explanatory Note](#), *supra* note 19 at 22.

safer sex practices remain standard throughout the industry.”<sup>26</sup> As opposed to the loss of bargaining power reported under the Nordic model, sex workers in New Zealand “also reported that they were more able to refuse particular clients and practices and to negotiate safer sex.”<sup>27</sup> Likewise, 70% of sex workers interviewed reported feeling more likely to report incidents of violence to the police following the decriminalization of sex work.<sup>28</sup>

### **C. The Impugned Provisions Engage the Right to Liberty and Security of the Person**

#### **i. The Right to Liberty**

12. Section 7 of the *Charter* protects against government actions that infringe or limit a person’s life, liberty and/or security of the person.<sup>29</sup> Canadian courts have held that, while this right does not guarantee that a law will never interfere with a person’s life, liberty, or security, it must be done in accordance with the principles of fundamental justice.<sup>30</sup> The principles of fundamental justice hold that the law must not be arbitrary, overbroad, or grossly disproportionate compared to the law’s purpose.<sup>31</sup>

13. The liberty interest protected by s 7 of the *Charter* recognizes both the protection of persons in a physical sense,<sup>32</sup> and a sphere of personal autonomy involving “inherently private choices that go to the core of what it means to enjoy individual dignity and independence.”<sup>33</sup>

14. Article 9 of the ICCPR recognizes the right to liberty. UNHRC General Comment 35

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<sup>26</sup>*Ibid.*

<sup>27</sup>*Ibid.*

<sup>28</sup>*Ibid.*

<sup>29</sup> *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 at para 15.

<sup>30</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331 at para 80.

<sup>31</sup> *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101 at para 123.

<sup>32</sup> *Fleming v. Ontario*, 2019 SCC 45, [2019] 3 S.C.R. 519 at para 65.

<sup>33</sup> *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, [2017] 2 S.C.R. 456 at para 49.

states that deprivation of liberty relates to confinement,<sup>34</sup> which includes police detention. While the ICCPR recognizes that “the right to liberty is not absolute”, deprivations must not be carried out arbitrarily.<sup>35</sup> General Comment 35 also explains that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary.<sup>36</sup> Article 17 of the ICCPR protects an individual’s right to privacy, stating that no one shall be subjected to arbitrary or unlawful interference with their privacy.<sup>37</sup> Further, General Comment on Article 17 states that the “concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the [Covenant] and should be ... reasonable in the particular circumstances”.<sup>38</sup>

15. By arbitrarily interfering with consensual and private sexual acts between adults, the Impugned Provisions violate the rights guaranteed by Article 9 of the ICCPR and engage the s 7 liberty rights.

## **ii. The Right to Security of the Person**

16. Section 7 of the *Charter* also includes the right to security of the person, which is engaged when the state interferes “with an individual’s physical or psychological integrity, including any state action that causes physical or serious psychological suffering.”<sup>39</sup> The court in *Canada (Attorney General) v. Bedford* notably ruled that security of the person was engaged when the state

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<sup>34</sup> United Nations Human Rights Committee, [General Comment No. 35 Article 9 \(Liberty and Security of The Person\)](#), 112th Session, adopted 7-31 October 2014, UN Doc CCPR/C/GC35 at paras 5-6 [UNHRC GC 35].

<sup>35</sup> *Ibid* at para 10.

<sup>36</sup> *Ibid* at para 17.

<sup>37</sup> United Nations Human Rights Committee, [General Comment No. 16: Article 17 \(Right to Privacy\), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation](#), 32nd Session, adopted on 8 April 1988, at para 2.

<sup>38</sup> *Ibid* at para 4.

<sup>39</sup> *Canada (Attorney General) v. Bedford*, *supra* note 31 at para 64.

enacted legislation that increased the risk of harm to sex workers.<sup>40</sup>

17. Similarly, under Article 9 of the ICCPR, the right to security of the person” includes freedom from injury to the body and mind, and encompasses mental and physical integrity.<sup>41</sup> This right obliges state actors to “protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors”<sup>42</sup> and to “respond appropriately to patterns of violence against categories of victims,” including violence against women and violence against persons on the basis of their sexual orientation or gender identity.<sup>43</sup>

(i) *End-demand laws infringe the Security of the Person*

18. End-demand laws like the PCEPA infringe on the right to security of the person in at least five ways.

18.1 First, research indicates that end-demand laws often do not achieve their desired aim/objective of ending demand and are counterproductive as they lead to violence against sex workers.<sup>44</sup>

18.2 Second, as outlined above, end-demand laws like PCEPA result in increased risk of harm to sex workers because they are less likely to access health care and police services.

18.3 Third, PCEPA captures a broad range of actions and personnel related to sex work, thereby severely constraining sex workers’ ability to hire personnel for

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<sup>40</sup> *Ibid* at paras 59-60.

<sup>41</sup> [UNHRC GC 35](#), *supra* note 34 at para 3.

<sup>42</sup> *Ibid* at para 9.

<sup>43</sup> *Ibid*.

<sup>44</sup> [Crago et al](#), *supra* note 13 at 3.

administrative and security tasks.<sup>45</sup> These constraints have an isolating effect, which creates dangerous circumstances for sex workers who are unable to hire individuals to support them in doing their work safely. This, therefore, has a demonstrative impact on their safety and personal autonomy.

18.4 Fourth, clients, security, managers, or sex workers who work together and share expenses are usually the people who help sex workers escape from violent encounters. Yet, under end-demand laws, these individuals “risk being criminalized for their involvement in the sex industry should they call 911.”<sup>46</sup> This reduces the likelihood of them calling 911. In turn, violence against sex workers is more likely to go undetected and unmitigated.<sup>47</sup>

18.5 Fifth, criminalizing the sale of sex also fosters a hostile relationship between police and sex workers. To reduce criminal activity in a community, police often remove sex workers from the public view, thereby pushing them into spaces that lack detection and opportunity for intervention.<sup>48</sup> Sex workers who experienced these negative interactions with the police within the previous 12 months are five times more likely to experience reduced access to police protection when in danger.<sup>49</sup>

19. Since the PCEPA’s enactment research indicates that, sex workers have faced increased

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<sup>45</sup> *R. v. Anwar*, 2020 ONCJ 103 at para 169.

<sup>46</sup> *Crago et al*, *supra* note 13 at 9.

<sup>47</sup> *Ibid* at 7-8; *AI Policy*, *supra* note 17 at 12.

<sup>48</sup> *Crago et al*, *supra* note 13 at 7.

<sup>49</sup> *Ibid*.

targeted violence, stigmatization, and discrimination.<sup>50</sup> The right to security of the person is therefore undermined. The impugned laws fail to protect sex workers from violence, in a manner that is inconsistent with Canada's obligation to appropriately respond to patterns of violence. Instead, the provisions exacerbate the violence sex workers face, contrary to the right to security of the person.

(ii) *Security of the Person Infringed Through Impacts to Right to Health*

20. The interdependence, interrelatedness, and indivisibility of human rights is recognized in a wide range of international instruments.<sup>51</sup> The right to health, including sexual and reproductive health, is indivisible from other rights; it is intimately linked to rights underpinning the physical and mental integrity of individuals and their autonomy, such as the right to security of the person.<sup>52</sup> The Impugned Provisions limit sex workers' ability to enjoy the right to health and, therefore, further engage security of the person interests.

21. The 2010 Report of the Special Rapporteur on the right to health ("**Special Rapporteur Report**") argued that decriminalization is necessary to address the violations of the right to health sex workers experience because of criminalization. It noted that by failing to legally recognize the sex work sector, the right to health is engaged through the failure to provide safe working

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<sup>50</sup> Exhibit B of the Affidavit of Dr. Cecelia Benoit, affirmed 27 January 2022 at 17 [Benoit Affidavit], Joint Application Record, Tab 43, p 3085 [JAR].

<sup>51</sup> [Vienna Declaration and Programme of Action](#), *UN World Conference on Human Rights*, UN Doc A/CONF.157/23 (25 June 1993) at para 5; Human Rights Council, [Resolution adopted by the General Assembly](#), 60th Sess, Res 60/251, UN Doc A/RES/60/251 (15 March 2006) at Preamble; United Nations Human Rights Council, [Institution-building of the United Nations Human Rights Council](#), Res 5/1, UN Doc A/HRC/RES/5/1 (18 June 2007) at Preamble; UNGA, [World Summit Outcome](#), 60th Sess, Res 60/1, UN Doc A/RES/60/1 (24 October 2005) at para 13; United Nations General Assembly, [Convention on the Rights of Persons with Disabilities: resolution adopted by the General Assembly](#), 61st Sess, Res 61/106, UN Doc A/RES/61/106 (24 January 2007).

<sup>52</sup> Committee on Economic, Social and Cultural Rights, [General comment No. 22 \(2016\) on the right to sexual and reproductive health \(article 12 of the International Covenant on Economic, Social and Cultural Rights\)](#), UN Doc E/C.12/GC/22 at para 10 [CESCR GC 22].



conditions and restriction of access to legal remedies for occupational health issues.<sup>53</sup>

22. Several UN bodies and organizations, including the Global Commission on HIV and the Law as well as the World Health Organization, have advocated for the decriminalization of all aspects of sex work as an essential step in advancing positive health outcomes.<sup>54</sup> There have been clear links between the criminalization of sex work (in all its forms) and the disproportionate impact it has on the health and well-being of sex workers. It is our submission that the PCEPA impedes the ability to negotiate consent to sexual activity, and access health and social services.<sup>55</sup> As a result, sex workers are at a higher risk of HIV, STIs, and other health risks.<sup>56</sup> These increased health risks produce physical and psychological harm and violate the right to security of the person in a manner that is arbitrary and disproportionate.

#### **D. The Impugned Provisions Engage the Right to Life**

23. To establish whether there is a violation of the right to life under the *Charter*, the claimant must demonstrate a sufficient causal connection between the impugned government action or law, and the limit on the right to life.<sup>57</sup> Canadian case law suggests that this right is engaged where the law or state action imposes an increased risk of death on a person, either directly or indirectly.<sup>58</sup>

24. International law similarly recognizes the right to life, with Article 6 of the ICCPR stating every human being has the inherent right to life. *General Comment No. 36* on Article 6 of the

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<sup>53</sup> Human Rights Council, [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), by Anand Grover, 14th Sess, adopted 27 April 2010, UN Doc A/HRC/14/20 at paras 43-45.

<sup>54</sup> Chi Adanna Mgbako, “[The Mainstreaming of Sex Workers' Rights as Human Rights](#)” (2020) 43 Harv J L & Gender 92 at 122.

<sup>55</sup> Factum of the Applicants, at para 83.

<sup>56</sup> Benoit Affadavit, at 11, 13-14, JAR Tab 43 at p 3079, 3081, 3082; Affidavit of Danielle Cooley, affirmed 9 July 2021 at para 27, JAR 2245.

<sup>57</sup> *Canada (Attorney General) v. Bedford*, *supra* note 31 at para 75.

<sup>58</sup> *Carter v. Canada (Attorney General)*, *supra* note 30 at para 62.

ICCPR (“GC No. 36”) holds that the right to life is not to be interpreted narrowly.<sup>59</sup> Under the ICCPR, the right to life “extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life”, and concerns the entitlement to enjoy a life with dignity<sup>60</sup> Therefore, State parties may violate the right to life even if a situation does not result in loss of life.<sup>61</sup>

25. The Human Rights Committee’s General Comment on Article 6 states that the duty to protect life requires states to take measures to protect individuals in situations of vulnerability who are at risk because of specific threats or pre-existing patterns of violence. This includes victims of domestic and gender-based violence, as well as members of visible minorities, Indigenous peoples, and members of the LGBTQI community,<sup>62</sup> groups that are overrepresented among sex workers.<sup>63</sup>

26. As explained in the preceding section, the impugned provisions expose sex workers to an increased risk of violence by leading to dangerous working conditions and reducing access to mechanisms that keep sex workers safe, and restrict access to health, generating a tangible risk to the lives of sex workers. The impugned provisions, therefore, may have foreseeably negative impacts on the right to life.

### **E. The Impugned Provisions Engage the Right to Equality**

27. Section 15(1) of the *Charter* holds that every individual has the right to equal protection and to be free from discrimination, in particular based on race, national or ethnic origin, colour,

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<sup>59</sup> United Nations Human Rights Committee, [General Comment No. 36 Article 6: Right to Life](#), 124th Sess, adopted 8 October–2 November 2018, UN Doc CCPR/C/GC/36 at para 3 [UNHRC GC 36].

<sup>60</sup> *Ibid* at paras 3, 7.

<sup>61</sup> *Ibid* at para 7.

<sup>62</sup> *Ibid* at para 23.

<sup>63</sup> Exhibit B of the Affidavit of Dr. Andrea Krusi, affirmed 13 July 2021 [Krusi Affidavit], at 13-14, 16, 19, JAR 4783, 4784, 4786, 4789; Exhibit B of Reply Affidavit of Dr. Cecelia Benoit, affirmed 27 January 2022 [Benoit Reply Affidavit] at 17, JAR 3121.

religion, sex, age, or mental or physical disability. The purpose of this provision is to promote a society in which all individuals can be assured that they are equally deserving of concern, respect, and consideration.<sup>64</sup> This section requires the government to act without discrimination when making laws or decisions.<sup>65</sup> Section 15 is violated if a law, on its face or in impact, creates a discriminatory distinction based on an enumerated or analogous ground.<sup>66</sup>

28. Article 26 of the ICCPR similarly recognizes that people are equal before the law and are entitled without discrimination to the equal protection of the law.<sup>67</sup> While Article 26 lists race, colour, sex, language, religion, political or other opinion, national or social origin, property, or birth as examples of prohibited grounds of discrimination, the list is non-exhaustive. Under the UNHRC General Comment No. 18: Non-discrimination, the term “discrimination” includes all distinctions, exclusions or restrictions that are based on any ground, which has the purpose or effect of “nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.<sup>68</sup> For example, the Human Rights Committee has identified socio-economic status as a prohibited ground of discrimination.<sup>69</sup>

29. The Committee on Economic, Social and Cultural Rights’ General Comment No. 22 (2016) notes that individuals belonging to particular groups may be disproportionately affected by intersectional discrimination, and that States parties should take measures to protect persons in the

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<sup>64</sup> *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483 at para 15.

<sup>65</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para 73.

<sup>66</sup> *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para 27.

<sup>67</sup> *ICCPR*, *supra* note 7 at Article 26.

<sup>68</sup> United Nations Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 37th Sess, adopted on 10 Nov 1989, CCPR/C/21/Rev.1/Add.1 at para 7.

<sup>69</sup> United Nations Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No 2324/2013*, CCPR/C/116/D/2324/2013; United Nations Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No 2425/2014*, CCPR/C/119/D/2425/2014.

sex industry against discrimination.<sup>70</sup> Sex workers in Canada have experienced intersecting forms of discrimination based on gender, occupational status, Indigeneity and race.<sup>71</sup> Evidence suggests that both cisgender and transgender women comprise the majority of sex workers.<sup>72</sup> Women already make up the majority of those living in poverty, have less access to employment opportunities and economic resources, and often bear the primary burden of family and community caretaking.<sup>73</sup> Racialized and Indigenous women, who are disproportionately represented among sex workers, face multiple and intersecting forums of discrimination.<sup>74</sup> Criminalization and police harassment can, therefore, generate further inequality for these groups.<sup>75</sup>

30. The impugned provisions work collectively to create an integrated system that criminalizes activities related to sex work and prohibits actions that sex workers take to manage their safety. This criminalization of sex work imposes a presumption of illegality, creating a systemic bias towards sex workers.<sup>76</sup> This compounds society's view of sex work as amoral and sex workers as irresponsible criminals who are themselves to blame for any harm they may incur in the course of their work.<sup>77</sup> The impugned provisions have the effect of perpetuating stereotypes that sex workers lack agency and capacity. This is harmful, exacerbates discrimination, and does not reflect the lived experiences of sex workers.<sup>78</sup>

31. Amnesty International has reported that violence against sex workers is “often a

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<sup>70</sup> [CESCR GC 22](#), *supra* note 52 at paras 30, 32.

<sup>71</sup> Factum of the Applicants, at para 228.

<sup>72</sup> *Ibid* at para 232; Krusi Affidavit at 13, 15, JAR 4783, 4785; Benoit Affidavit at 21, JAR 3089.

<sup>73</sup> [AI Policy](#), *supra* note 17 at 11; [Crago et al](#), *supra* note 13 at 12.

<sup>74</sup> Krusi Affidavit at 13-14, 16, 19, JAR 4783-4784, 4786, 4789; Benoit Reply Affidavit at 17, JAR 3121; [AI Policy](#), *supra* note 17 at 6.

<sup>75</sup> [Crago et al](#), *supra* note 13 at 12.

<sup>76</sup> [AI Policy](#), *supra* note 17 at para 9.

<sup>77</sup> *Ibid*.

<sup>78</sup> Factum of the Applicants at paras 134-138.

manifestation of the stigma and discrimination directed towards sex workers and is exacerbated by their criminalized status.”<sup>79</sup> As explained above, criminalization leads to police harassment of sex workers, which makes sex workers less likely to call 911 if they or another sex worker are in a safety emergency, allowing perpetrators of violence to operate with impunity.<sup>80</sup> Criminalization further exacerbates the disadvantages already experienced by racialized and Indigenous individuals, as well as cisgender and transgender women.<sup>81</sup> As a result, the impugned provisions deprive sex workers of equal and effective protection against violence and equal protection under Canadian law.

### **PART III - CONCLUSION**

32. The Supreme Court of Canada has affirmed that the *Charter* is “presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified. The criminalization of sex work has demonstrated negative impacts on the liberty and safety of sex workers, while also creating discriminatory impacts that are not consistent with Articles 6, 9, and 26 of the ICCPR.

### **PART IV - COSTS**

33. Amnesty International seeks no costs and asks that no costs order be made against it.

### **PART V - ORDER REQUESTED**

34. Amnesty International takes no position on the outcome of the appeal.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10 day of August, 2022.

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<sup>79</sup> [AI Policy](#), *supra* note 17 at para 9 at 12.

<sup>80</sup> [Crago et al](#), *supra* note 13 at 7 at 2.

<sup>81</sup> Benoit Affidavit, at 12, JAR Tab 43 at p 3080; Krusi Affidavit at 12, 20, JAR 4782, 4790.



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## SCHEDULE “A”

### LIST OF AUTHORITIES

Cases	Title	Pinpoints
1	<a href="#"><u>Reference Re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313</u></a>	59
2	<a href="#"><u>Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32</u></a>	9, 31, 34, 39
3	<a href="#"><u>Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54, [2017] 2 S.C.R. 386</u></a>	65
4	<a href="#"><u>India v. Badesha, 2017 SCC 44, [2017] 2 S.C.R. 127</u></a>	38
5	<a href="#"><u>Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245</u></a>	64
6	<a href="#"><u>Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176</u></a>	150, 150 & 160
7	<a href="#"><u>Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2013] 3 S.C.R. 157</u></a>	23, 25
8	<a href="#"><u>Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27, [2007] 2 S.C.R. 391</u></a>	70
9	<a href="#"><u>Nevsun Resources Ltd. v. Araya, 2020 SCC 5</u></a>	119
10	<a href="#"><u>Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486</u></a>	15
11	<a href="#"><u>Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331</u></a>	62, 80
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14	<a href="#"><u>Association of Justice Counsel v. Canada (Attorney General), 2017 SCC 55, [2017] 2 S.C.R. 456</u></a>	49
15	<a href="#"><u>R. v. Anwar, 2020 ONCJ 103</u></a>	169
16	<a href="#"><u>R. v. Kapp, 2008 SCC 41, [2008] 2 S.C.R. 483</u></a>	15
17	<a href="#"><u>Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624</u></a>	73
18	<a href="#"><u>Fraser v. Canada (Attorney General), 2020 SCC 28</u></a>	27

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Crago, Anna-Louise et al, “[Sex Workers’ Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an “End Demand” Criminalization Model: A Five City Study in Canada](#)” (2021) 10:13 *Sco Sci*.

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## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### ***Protection of Communities and Exploited Persons Act (S.C. 2014, c. 25)***

##### **Preamble**

Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it;

Whereas the Parliament of Canada recognizes the social harm caused by the objectification of the human body and the commodification of sexual activity;

Whereas it is important to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children;

Whereas it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution;

Whereas it is important to continue to denounce and prohibit the procurement of persons for the purpose of prostitution and the development of economic interests in the exploitation of the prostitution of others as well as the commercialization and institutionalization of prostitution;

Whereas the Parliament of Canada wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution;

And whereas the Parliament of Canada is committed to protecting communities from the harms associated with prostitution;

CANADIAN ALLIANCE FOR SEX WORK LAW REFORM et al.  
Applicants

-and-

THE ATTORNEY GENERAL OF CANADA  
Respondent

Court File No. 21-00659594-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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