

**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 -

THE ATTORNEY GENERAL OF CANADA

Respondent

- and -

THE ATTORNEY GENERAL OF ONTARIO

Intervener

- and -

**AMNESTY INTERNATIONAL CANADIAN SECTION (ENGLISH SPEAKING),
ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, AWCEP ASIAN
WOMEN FOR EQUALITY SOCIETY, BLACK LEGAL ACTION CENTRE,
BRIDGENORTH WOMEN'S MENTORSHIP & ADVOCACY SERVICES, BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF
REFUGEE LAWYERS, CANADIAN CIVIL LIBERTIES ASSOCIATION, PARENTS
AGAINST CHILD TRAFFICKING COALITION, DEFEND DIGNITY, EGALE CANADA
AND THE ENCHANTÉ NETWORK, EVANGELICAL FELLOWSHIP OF CANADA,
MIGRANT WORKERS ALLIANCE FOR CANADA, ONTARIO COALITION OF RAPE
CRISIS CENTRES, SEXUAL HEALTH COALITION, WOMEN'S EQUALITY
COALITION, and WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)**

Interveners

**FACTUM OF THE INTERVENER,
THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
(Date of Hearing: October 3-7, 2022)**

August 10, 2022

KASTNER LAM LLP

55 University Avenue, Suite 1800
Toronto, ON M5J 2H7
Tel: 416-655-3044

Emily Lam (LSO #55867P)

elam@kastnerlam.com

Akosua Matthews (LSO #65621V)

amatthews@kastnerlam.com

Ruth Wellen (LSO #79846U)

rwellen@kastnerlam.com

Counsel for the Intervener,
The British Columbia Civil Liberties Association

TO: MCCARTHY TÉTRAULT LLP

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

H. Michael Rosenberg (LSO# 58140U)

Email: mrosenberg@mccarthy.ca

Tel: 416-601-7831

Alana Robert (LSO# 79761P)

Email: alrobert@mccarthy.ca

Tel: 416-601-8022

Holly Kallmeyer (LSO# 79560Q)

Email: hkallmeyer@mccarthy.ca

Tel: 416-601-7937

Lawyers for the Alliance,
Monica Forrester, Valerie Scott, Lanna Moon
Perrin, Jane X, and Alessa Mason

Tara Santini - Permitted to practice law in
Ontario under Part VII of LSO By-Law 4

Suite 312, 1100 rue Jeanne Mance
Montréal, QC H2Z 1L7

Email: tarasantini@videotron.ca

Tel: 438-333-0787

Lawyer for the Alliance

Lockyer Zaduk Zeeh

Suite 103, 30 St. Clair Avenue West
Toronto, ON M4V 3A1

James Lockyer (LSO# 16359A)
Email: jlockyer@lzzdefence.ca
Tel: 416-518-7983

Lawyer for Tiffany Anwar

AND TO: THE ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide St. West
Suite #400
Toronto, ON M5H 1T1

Michael H. Morris (LSO# 34397W)
Email: michael.morris@justice.gc.ca

Gail Sinclair (LSO# 23894M)
Email: gail.sinclair@justice.gc.ca

Joseph Cheng (LSO# 45356W)
Email: joseph.cheng@justice.gc.ca

Andrea Bourke (LSO# 45892K)
Email: andrea.bourke@justice.gc.ca

AND TO: MINISTRY OF THE ATTORNEY GENERAL FOR ONTARIO
Crown Law Office
720 Bay Street, 10th Floor
Toronto, ON M7A 2S9
Tel.: 416-326-4600 / 416-326-4656

Deborah Krick (LSO# 49590A)
Email: Deborah.krick@ontario.ca

Meaghan Cunningham (LSO# 48493K)
Email: Meaghan.cunningham@ontario.ca

Lawyers for the Intervener,
Ministry of the Attorney General for Ontario

AND TO: WOMEN'S LEGAL EDUCATION AND ACTION FUND
180 Dundas Street West, Suite 1420
Toronto, ON M5G 1Z8

Pam Hrick (LSO# 65543L)
Tel: 416-595-7170 x 2002 / pam.h@leaf.ca

Jihyun Rosel Kim (LSO# 70936J)

Tel: 416-595-7170 x 2003 / r.kim@leaf.ca

STOCKWOODS LLP

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

Dragana Rakic (LSO# 73015K)

Tel: 416-593-3496 / draganar@stockwoods.ca

Lawyers for the Intervener,
Women's Legal Education and Action Fund

AND TO: GOLDBLATT PARTNERS LLP

Barristers and Solicitors
20 Dundas Street West
Suite 1039
Toronto, ON M5G 2C2

Adriel Weaver (LSO# 54173P)

Tel: 416-979-6415
aweaver@goldblattpartners.com

Dan Sheppard (LSO# 59074H)

Tel: 416-979-6415
dsheppard@goldblattpartners.com

Lawyers for the Intervener,
Egale Canada and the Enchanté Network

AND TO: YAN MUIRHEAD LLP

1100 – 736 Granville Street
Vancouver, BC V6Z 1G3

Nerissa Yan

Tel: 604-283-8579
nyan@ymlaw.ca

THORSTEINSSONS LLP

27th Floor, Three Bentall Centre
595 Burrard Street
Vancouver, BC V7X 1J2

Jennifer Flood

Tel: 604-689-1261
jflood@thor.ca

Lawyers for the Intervener,
Asian Women for Equality

AND TO: THE BLACK LEGAL ACTION CENTRE
221-720 Spadina Avenue
Toronto, ON M5S 2T9

Nana Yanful (LSO# 66783B)
Tel: 416-597-5831
yanfuln@lao.on.ca

GOLDBLATT PARTNERS
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Saneliso Moyo (LSO# 68844K)
Tel: 416-979-4641
smoyo@goldblattpartners.com

Geetha Philipupillai (LSO# 74741S)
Tel: 416-979-4252
gphilipupillai@goldblattpartners.com

Lawyers for the Intervener,
The Black Legal Action Centre

AND TO: CANADIAN CIVIL LIBERTIES ASSOCIATION
400 – 124 Merton Street
Toronto, ON M4S 2Z2

Cara Zwibel (LSO# 50936S)
Tel: 416-646-1409
czwibel@ccla.org

AND TO: THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA
130 Albert Street, Suite 1705
Ottawa, ON K1P 5G4

André Schutten (LSO# 60842W)
Tel: 613-297-5172
andre@ARPACanada.ca

Tabitha Ewert (LSO# 74278W)
Tel: 604-220-1258
tabitha@arpacanada.ca

Lawyers for the Intervener,
The Association for Reformed Political Action (ARPA)

Canada

AND TO: JAMIE LIEW (LSO# 53106L)
Barrister & Solicitor
39 Fern Avenue
Ottawa, ON K1Y 3S2

Tel: 613-808-5592
Fax: 1-888-843-3413
jamie@jcyliew.com

EDELMANN & CO.
207 West Hastings Street, Suite 905
Vancouver, BC V6B 1H7

Molly Joeck (514704)
Tel: 604-646-4694
molly@edelmann.ca

Lawyers for the Intervener,
Canadian Association of Refugee Lawyers (CARL)

AND TO: HIV & AIDS LEGAL CLINIC ONTARIO
1400 – 55 University Ave
Toronto, ON M5J 2H7

Robin Nobleman (LSO# 71014P)
noblemar@lao.on.ca

Ryan Peck (LSO# 45497H)
Tel: 416-340-7790 ext. 4043/4047
peckr@lao.on.ca

**COALITION DES ORGANISMES COMMUNAUTAIRES QUEBECOIS DE
LUTTE CONTRE LE SIDA**
1 Sherbrooke Street East
Montreal, QC H2X 3V8

Lea Pelletier-Marcotte (329606-7)
Permitted to practice law in Ontario under
Part VII of LSO By-Law 4

Tel: 514-844-2477 ext. 32
lea.pelletier-marcotte@cocqsida.com

Lawyers for the Interveners,
HIV & AIDS Legal Clinic Ontario, Coalition des Organismes Communautaires
Quebecois de Lutte Contre le Sida, and Action Canada for Sexual Health and Rights
(Sexual Health Coalition)

AND TO: MILLARD & COMPANY LLP
366 Adelaide Street West, Suite 102
Toronto, ON M5V 1R9

Angela Chaisson (LSO# 62131J)
Tel: 416-920-3030
angela@millardco.ca

Marcus McCann (LSO# 68180D)
Tel: 416-920-2504
marcus@millardco.com

Tel: 416-920-3030
Fax: 416-920-2504

Lawyers for the Intervener
Ontario Coalition of Rape Crisis Centres

AND TO: RE-LAW LLP
Barristers & Solicitors
1118 Centre Street, Suite 207
Vaughan, ON L4J 7R9

David Elmaleh (LSO# 62171I)
Tel: 416-398-9839
delmaleh@relawllp.ca

Lawyers for the Interveners, Parents Against Child Trafficking-Markham,
Parents Against Child Trafficking-Richmond Hill, Rising Angels Awareness &
Restorative Care, Men Ending Trafficking Canada, Lifeworthy, The London Anti-
Human Trafficking Coalition, The Council of Women Against Sex Trafficking in
York Region, and Parents Hope – Lifeworthy (Parents Against Child Trafficking
Coalition)

AND TO: MIGRANT WORKERS ALLIANCE FOR CHANGE
720 Spadina Avenue, Unit #223
Toronto, ON M5S 2T9

Vincent Wan Shun Wong (LSO# 65767J)
Tel: 647-354-7371
vwong@yorku.ca

Lawyers for the Intervener,
Migrant Workers Alliance for Change

AND TO: ST. LAWRENCE BARRISTERS LLP
33 Britain Street, 2nd Floor
Toronto, ON M5A 1R7

Alexi N. Wood (LSO# 54683F)
Tel: 647-245-8283
alexi.wood@stlbarristers.ca

Laura MacLean (LSO# 81401A)
Tel: 647-245-3122
laura.maclea@stlbarristers.ca

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

AND TO: SHIBLEY RIGHTON LLP
250 University Avenue, Suite 700
Toronto, ON M5H 3E5

Jacqueline L. King (LSO# 35675A)
Tel: 416-214-5222
Email: jking@shibleyrighton.com

Matilda Lici (LSO# 79621D)
Tel: 416-214-5204
matilda.lici@shibleyrighton.com

Lawyers for the Intervener,
Bridgenorth Women's Mentorship & Advocacy Services

AND TO: MILLER THOMSON LLP
3000, 700 – 9th Avenue SW
Calgary, AB T2P 3V4

Gerald D. Chipeur
Tel: 403-298-2434
gchipeur@millertomson.com

Tory Hibbitt
Tel: 403-298-2405
thibbitt@millertomson.com

Lawyers for the Intervener
Defend Dignity

AND TO: THE ACACIA GROUP
38 Auriga Drive
Ottawa, ON K2E 8A5

John Sikkema (LSO# 67933S)
Tel: 613-221-5895
john@acaciagroup.ca

Lawyers for the Intervener,
Evangelical Fellowship of Canada

AND TO: JANINE BENEDET, QC
Barrister & Solicitor
1822 East Mall
Vancouver, BC V6T 1Z1

Tel: 604-822-0637
benedet@allard.ubc.ca

BARTON THANEY LLP
2438 Marine Drive, Suite 210
Vancouver, BC V7V 1L2

Gwendoline Allison
Tel: 604-922-9282
gwendoline.allison@bartonthaney.com

Lawyers for the Interveners, Vancouver Rape Relief Society, La Concertation Des
Luttres Contre L'exploitation Sexuelle (La CLES); Aboriginal Women's Action
Network (AWAN); Formerly Exploited Voices Now Educating (EVE) And
Solidarity in Sisterhood (SIS) (Women's Equality Coalition)

TABLE OF CONTENTS

PART I. OVERVIEW	1
PART II. FACTS	2
PART III. SUBMISSIONS	4
A. Substantive Equality Beyond Section 15 of the Charter	5
B. A Substantive Equality Approach to Section 7 of the Charter	6
i. <i>The impugned provisions deprive sex workers of life, liberty, and security</i>	7
ii. <i>The deprivations are not in accordance with the principles of fundamental justice and cannot be upheld by section 1</i>	8
iii. <i>The Respondent’s section 7 argument is contrary to principles of substantive equality</i> ..	13
PART IV. ORDER REQUESTED	15
SCHEDULE “A” – LIST OF AUTHORITIES	16
SCHEDULE “B” – LIST OF STATUTORY AUTHORITIES	18

PART I. OVERVIEW

1. The British Columbia Civil Liberties Association (“BCCLA”) intervenes in this Application to clarify the substantive equality analysis applicable to s. 7 of the *Canadian Charter of Rights and Freedoms* (the “Charter”). On its motion to intervene, the BCCLA anticipated making submissions on the substantive equality analysis applicable to both s. 15 and s. 7 of the *Charter*. However, the Women’s Legal Education and Action Fund (“LEAF”) submissions provide a comprehensive analysis of s. 15’s substantive equality features. As such, this factum focuses exclusively on s. 7 of the *Charter*.

2. The BCCLA’s core submission is this: in assessing the Applicants’ s. 7 *Charter* claim, it is critical to consider how the barriers faced by the claimants represent a web of interconnected social factors that include gender, race, and disability, among others. Rather than splintering the s. 7 analysis and isolating separate characteristics, the Court should assess s. 7 rights in the context of the “on the ground” experience of sex workers, as affected by the complex intersection of individual identity and circumstance.

3. Substantive equality requires the Court to avoid rigid categorization and to instead give attention to the “full context of the claimant group’s situation”, the “actual impact of the law on that situation”, and the “persistent systemic disadvantages [that] have operated to limit the opportunities available” to the group.¹ Substantive equality considerations support the Applicants’ position that the impugned provisions violate s. 7 and cannot be upheld under s. 1.

¹ *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII) (“*Fraser*”), at [para. 42](#), citing *Withler v. Canada (Attorney General)*, 2011 SCC 12 (CanLII), [2011] 1 SCR 396 (“*Withler*”), at [para. 2](#).

PART II. FACTS

4. The BCCLA accepts and adopts the facts as stated by the Applicants. As part of the substantive equality analysis, the BCCLA relies on the evidence set out below.

5. The Applicants are a diverse group of women that includes current and former sex workers, as well as an applicant who worked as an escort agency operator.² The Applicants' reasons for engaging in sex work are diverse.³ The work locations of individual sex workers are not static and many sex workers engage with third parties for both indoor and outdoor sex work.⁴ The majority of third parties are women.⁵ The only direct evidence from sex workers before the court is the evidence provided through the Applicants.

6. Although sex workers are a diverse group with different intersectional realities, there are systemic trends.⁶ Most sex workers are women, workers from structurally marginalized communities are overrepresented in the industry, and Indigenous women are disproportionately criminalized and represented in street sex work.⁷ Sex workers, as a group, face disproportionate exclusion from other forms of employment⁸ and experience overwhelming social stigma.⁹

² Factum of the Applicants, Lawyers for the Canadian Alliance for Sex Work Law Reform, Monica Forrester, Valerie Scott, Lanna Moon Perrin, Jane X, Alessa Mason, and Tiffany Anwar ("Applicants' Factum"), at paras. 7-14 and associated footnotes 6-27.

³ Applicants' Factum at para. 40 and associated footnotes 135-139.

⁴ Applicants' Factum at para. 36 and associated footnotes 116-119.

⁵ Applicants' Factum at para. 115 and associated footnotes 292-296.

⁶ Applicants' Factum at paras. 34, 36, 42 and associated footnotes 106-113, 116-119, 142-145.

⁷ Exhibit "B" to the Affidavit of Dr. Andrea Krüsi, affirmed July 13, 2021, at p. 18, Joint Application Record ("JAR"), Tab 54B, p. 4788.

⁸ Applicants' Factum at paras. 40 and 42 and associated footnotes 135-139.

⁹ Applicants' Factum at paras. 134-145 and associated footnotes 344-375.

7. The BCCLA relies on and recognizes all harms identified by the Applicants¹⁰ stemming from the *Protection of Communities and Exploited Persons Act* (the “PCEPA”), bringing particular attention to harms which directly engage liberty interests:

- i. Purchasing Provision¹¹ The purchasing provision forces sex workers to work within a criminalized environment of increased police surveillance.¹² This environment shapes the behaviours of both parties, encouraging rushed, unsafe, imprecise discussion of transaction terms in isolated, dangerous spaces.¹³ The purchasing provision prevents sex work from being conducted in safer, indoor locations as sex workers and third parties are at risk of eviction and/or prevented from renting or purchasing indoor space.¹⁴ Police reporting is impaired as sex workers are concerned about exposing themselves, their colleagues, third parties, and domestic partners to police harassment and criminal prosecution.¹⁵
- ii. Material Benefit¹⁶ and Procuring¹⁷ Provisions These provisions prevent sex workers from working with or acting as third-party providers, outside of cooperative arrangements.¹⁸ Services such as advertising, security, drivers, receptionists, and renting/purchasing indoor spaces are available through commercial means, similar to any other labour sector, rendering the exceptions to the material benefit provision

¹⁰ Applicants’ Factum addresses harms comprehensively at paras. 79-159.

¹¹ *Criminal Code*, RSC 1985, c C-46 (“*Criminal Code*”), [s. 286.1\(1\)](#), regarding purchasing sexual services (the “purchasing provision”).

¹² Exhibit “B” to the Reply Affidavit of Katrin Roots, affirmed January 26, 2022, at pp. 5-7, JAR Tab 39B, pp. 2634-2636.

¹³ Applicants’ Factum at paras. 80-85 and associated footnotes 201-217.

¹⁴ Applicants’ Factum at paras. 111-114 and associated footnotes 283-291.

¹⁵ Applicants’ Factum at paras. 146-158.

¹⁶ *Criminal Code*, [s. 286.2\(1\)](#), regarding receiving a material benefit from the purchase of sexual services (the “material benefit provision”).

¹⁷ *Criminal Code*, [s. 286.3\(1\)](#), regarding procuring sexual services (“the “procuring provision”).

¹⁸ Applicants’ Factum at paras. 115-121 and associated footnotes 292-310.

fictional.¹⁹ These provisions force sex workers to take full responsibility for all aspects of sex work in a manner that is both isolating and dangerous.

- iii. Public Communication²⁰ and Stopping Traffic Provisions²¹ These provisions – operating concurrently with the purchasing, material benefit, and procuring provisions – criminalize both clients and sex workers and harm sex workers by impeding the screening of clients through clear, uncompromised, advance communication.²²
- iv. Advertising Provisions²³ These provisions – operating concurrently with the purchasing, material benefit, and procuring provisions – criminalize third parties relied on by sex workers, harming sex workers themselves.²⁴ The prohibition makes advertising less available, impairing sex workers’ ability to attract a broad range of clients and to screen them effectively.²⁵ This arbitrary limitation forces sex workers into more dangerous street work.²⁶

PART III. SUBMISSIONS

8. The BCCLA urges the Court to accept two fundamental propositions: (1) substantive equality rights extend beyond s. 15 of the *Charter* and must be considered in the analysis of the Applicants’ s. 7 claim; and (2) a substantive equality framework supports the Applicants’ position that the impugned provisions violate s. 7 and cannot be upheld under s. 1.

¹⁹ Applicants’ Factum at paras. 119-120 and associated footnotes 305-306.

²⁰ *Criminal Code*, s. 213(1.1), regarding communication for the purpose of offering sexual services in a public place (the “public communication provision”).

²¹ *Criminal Code*, s. 213(1), regarding stopping traffic for the purpose of offering or obtaining sexual services (the “stopping traffic provision”).

²² Applicants’ Factum at paras. 86-103 and associated footnotes 219-261.

²³ *Criminal Code*, s. 286.4, regarding advertising the sale of sexual services (the “advertising provision”).

²⁴ Applicants’ Factum at para. 104 and associated footnotes 263-264.

²⁵ Applicants’ Factum at paras. 104-110 and the evidence cited therein.

²⁶ Applicants’ Factum at para. 107-108 and associated footnotes 273-278.

A. Substantive Equality Beyond Section 15 of the *Charter*

9. Equality rights are not limited to s. 15 of the *Charter*.²⁷ The Supreme Court has recognized that equality is “the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*.”²⁸

10. The Supreme Court has specifically recognized that, when considering s. 7 *Charter* rights and the principles of fundamental justice, “it is important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15.”²⁹ The Court confirmed that, “the rights in s. 7 must be interpreted through the lens of s. 15...to recognize the importance of ensuring that our interpretation of the Constitution responds to the realities and needs of all members of society.”³⁰

11. The right to liberty analysis specifically incorporates the “equality guarantee”. Justice Wilson’s analysis of a woman’s right to choose in *Morgentaler* intrinsically connects equality with liberty:

Our cases long have recognized that the Constitution embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government.... That promise extends to women as well as to men. A woman’s right to make that choice freely is fundamental. Any other result, in our view, would protect inadequately a central part of the sphere of liberty that our law guarantees equally to all.³¹

²⁷ *R. v. Boudreault*, 2018 SCC 58 (CanLII), [2018] 3 SCR 599 (“*Boudreault*”); see [paras. 65-79](#) per Justice Martin, who provided a substantive equality approach to analysing harms under section 12 of the *Charter*.

²⁸ *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46 (“*G. (J.)*”), at [para. 112](#); see also *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 SCR 143, at [p. 185](#).

²⁹ *G. (J.)*, at [para. 115](#).

³⁰ *G. (J.)*, at [para. 115](#).

³¹ *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 (“*Morgentaler*”), at [pp. 170-171](#).

12. The Supreme Court of Canada has evolved its understanding of equality beyond formal equality to substantive equality. Unlike a formal equality analysis, which uses “mirror” comparator groups to assess the impact of a law on a claimant, a substantive equality analysis requires attention to the “full context of the claimant group’s situation”, to the “actual impact of the law on that situation”, and to the “persistent systemic disadvantages [that] have operated to limit the opportunities available” to that group’s members.”³²

13. The BCCLA agrees with and adopts LEAF’s analysis on the essential requirements of a substantive equality analysis. The analysis must account for the full context of the specific claimant’s perspective.³³ It requires acknowledging concurrent, intersectional factors and how these interact with existing discriminatory systems and institutions,³⁴ compounding disadvantage.³⁵ Finally, not all claimants must be affected by the law in the same way.³⁶

B. A Substantive Equality Approach to Section 7 of the Charter

14. Establishing a breach of s. 7 of the *Charter* involves a two-step assessment. First, claimants must prove that the impugned laws deprive them of the right to life, liberty, or security of the person. Second, claimants must show that any such infringements are not in accordance with the principles of fundamental justice.³⁷ Three primary principles of fundamental justice have emerged from the jurisprudence: arbitrariness, overbreadth, and gross disproportionality.³⁸

15. The BCCLA submits that an intersectional analysis is critical to both steps of the test.

³² *Fraser*, at [para. 42](#), citing *Withler*, at [para. 2](#).

³³ LEAF factum, at paras. 6, 15, 19.

³⁴ LEAF factum, at para. 8.

³⁵ LEAF factum, at paras. 6-7, 15.

³⁶ LEAF factum, at para. 21.

³⁷ *Boudreault*, at [para. 186](#).

³⁸ *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331 (“*Carter*”), at [para. 72](#).

i. The impugned provisions deprive sex workers of life, liberty, and security

16. The impugned provisions infringe each element of the s. 7 right: life, liberty, and security of the person. A liberty infringement exists where the state has invaded “the irreducible sphere of personal autonomy wherein individuals may make inherently private choices”.³⁹ The impugned provisions affect personal autonomy so fundamentally that “by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.”⁴⁰

17. The collective effect of the impugned provisions, as confirmed in evidence, is to: (1) impede the ability of sex workers to establish the essential terms of the exchange and the necessary conditions to consent by preventing screening, negotiating, and communicating with prospective clients;⁴¹ (2) force sex workers to work in isolation;⁴² (3) discourage sex workers from seeking assistance from law enforcement, including impeding reporting of victimization to police;⁴³ (4) discourage conditions essential for sex workers to work indoors;⁴⁴ and (5) expose sex workers to a criminalized environment, including police harassment and risk of criminal prosecution.⁴⁵ This not only presents obstacles to implementing safety measures for sex workers, as recognized in *Bedford*,⁴⁶ but these safety infringements directly engage sex workers’ liberty interests.

18. Under a substantive equality analysis, the Court must consider the unique impact of the above harms on sex workers. The infringement of autonomy is not only evident but also perpetuates the marginalization of sex workers, contrary to the norm of substantive equality. Some

³⁹ *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844 (“*Godbout*”), at [para. 66](#) (La Forest J.).

⁴⁰ *Godbout*, at [para. 66](#); *R. v. Malmö-Levine*; *R. v. Caine*, 2003 SCC 74 (CanLII), [2003] 3 SCR 571, at [para. 85](#).

⁴¹ Applicants’ Factum at paras. 86-94 and associated footnotes 218-238.

⁴² Applicants’ Factum at paras. 122-129 and associated footnotes 311-327.

⁴³ Applicants’ Factum at paras. 146-158 and associated footnotes 376-386.

⁴⁴ Applicants’ Factum at paras. 111-114 and associated footnotes 284-291.

⁴⁵ Applicants’ Factum at paras. 146-158 and associated footnotes 376-386.

⁴⁶ *Bedford v. Canada*, 2010 ONSC 4264 (CanLII), at [para. 421](#).

examples of this more pernicious harm for marginalized sex workers include further barriers to accessing advertising;⁴⁷ exclusion from safer indoor spaces;⁴⁸ increased vulnerability to police harassment and criminalization, diminishing the likelihood of reporting violence to police;⁴⁹ and elevated risk of violence.⁵⁰

ii. The deprivations are not in accordance with the principles of fundamental justice and cannot be upheld by section 1

19. The BCCLA adopts the Applicants' submissions regarding arbitrariness, overbreadth, and gross disproportionality. Further, in assessing whether the s. 7 violations are in accordance with the principles of fundamental justice, the BCCLA submits that substantive equality principles must inform the analysis.

20. Scholars have argued that substantive equality ought to itself be considered a principle of fundamental justice.⁵¹ While courts have not explicitly recognized such a principle to date, they have affirmed that the principles of fundamental justice analysis considers the impact of the impugned provisions on the specific claimant group, having regard for their particular experiences,

⁴⁷ Applicants' Factum at paras. 105-107(a) and the evidence cited therein.

⁴⁸ Applicants' Factum at paras. 107(a), 108, 113, 117(b), and 129 and the evidence cited therein.

⁴⁹ Applicants' Factum at paras. 121, 149, and 155 and associated footnotes 307-310, 387-389, and 402-403.

⁵⁰ Applicants' Factum at paras. 127-128 and associated footnotes 320-322.

⁵¹ See [Suzy Flader, *Fundamental Rights for All: Toward Equality as a Principle of Fundamental Justice under Section 7 of the Charter*, 2020 25 *Appeal: Review of Current Law and Law Reform* 43, 2020 CanLIIDocs 1668](#); [Kerry A Froc, *Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice*, 2011 42-3 *Ottawa Law Review* 411, 2011 CanLIIDocs 76](#).

identities, and contexts.⁵² Even if the laws are found to be arbitrary, overbroad, or grossly disproportionate with respect to a single person, a s. 7 violation will nonetheless be made out.⁵³

(i) PCEPA's Objectives

21. While it is not for this court to challenge the appropriateness of the PCEPA's objectives at the first stage of the s. 7 analysis, the objectives must be properly characterized, having regard to the text, context, and scheme of the legislation.⁵⁴

22. The court must be cautious not to endorse statements of purpose that effectively predetermine the outcome of the s. 7 analysis."⁵⁵ The articulation of the objectives should focus on the ends of the legislation, rather than its means.⁵⁶

23. In enacting the PCEPA, the government intended to discourage participation in the sexual services industry, prohibit the exploitative practices and relationships of third parties associated with the sexual services industry, and protect the safety of sex workers by enabling their access to the safety-enhancing measures identified in *Bedford*.⁵⁷ These objectives were rooted in "protecting communities, human dignity, and equality."⁵⁸

24. The government asserts that the practices criminalized by the PCEPA are inherently exploitative, and that embedded in the scheme of the legislation is the notion that all sex workers

⁵² *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII), [2011] 3 SCR 134 ("PHS"), at [para. 131](#); *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII), [2013] 3 SCR 1101 ("*Bedford*"), at [paras. 134-135](#), [142](#), [154-158](#); *Carter*, at [para. 85](#); *Boudreault*, at [paras. 47](#), [49-55](#), [60-61](#) (While *Boudreault* considered "gross disproportionality" as part of the test for a breach of s. 12 of the *Charter*, Justice Martin's analysis can be applied to the principles of fundamental justice test under s. 7, which also considers gross disproportionality).

⁵³ *Bedford*, at [para. 123](#).

⁵⁴ *R. v. Moriarity*, 2015 SCC 55 (CanLII), [2015] 3 SCR 485 ("*Moriarity*"), at [paras. 31-32](#).

⁵⁵ *Moriarity*, at [para. 32](#).

⁵⁶ *Moriarity*, at [para. 27](#).

⁵⁷ *R. v. N.S.*, 2022 ONCA 160 (CanLII) ("*N.S.*"), at [para. 59](#).

⁵⁸ *Ibid.*

are “victims”.⁵⁹ This is a problematic and unsupported assertion that should receive no deference from this court when it considers the objectives of the PCEPA.

25. In accepting the stated objectives of the PCEPA as appropriate, the court is not required to go as far as to unquestioningly affirm the government’s beliefs upon which the objectives are based, or the means for their achievement. Rather, the court ought to consider the evidence before it, which supports the proposition that the exploitation faced by sex workers is not “inherent” and is in fact worsened by government decisions which have caused sex workers to experience criminalization, stigma, and lack of access to safety measures.⁶⁰

(ii) Principles of Fundamental Justice

26. Having regard to the principles of substantive equality, the impugned provisions are both overbroad and grossly disproportionate. Accordingly, the deprivations of the Applicants’ liberty interests do not accord with the principles of fundamental justice and therefore violate s. 7.

27. The impugned provisions are overbroad in that they capture conduct that bears no connection to the PCEPA’s objectives of preventing the exploitation of sex workers while facilitating their access to safety measures.

28. While the legislation purports to confront exploitation, it effectively criminalizes all third-party commercial relationships, regardless of whether there is actual exploitation present and

⁵⁹ Technical Paper, Bill C-36, Tabled by the Minister of Justice before the Standing Committee on Justice and Human Rights, Evidence, 41-2, No. 32 (7 July 2014) (“Technical Paper”) at p. 3, JAR p. 11149; *N.S.*, at [paras. 49, 55, 131](#); Factum of the Intervenor, The Attorney General of Ontario (“AGO Factum”), at paras. 132, 142-143.

⁶⁰ Applicants’ Factum at paras. 140-145.

without consideration for the safety-enhancing benefits the relationships provide for sex workers. In *Bedford*, the living on the avails provision was determined to be overbroad on this very basis.⁶¹

29. The harmful effects of the overbroad provisions are disproportionately experienced by the most vulnerable sex workers, who have the greatest need for the safety measures provided by third parties.⁶² The PCEPA prohibits these measures without justification.

30. The assessment of gross disproportionality involves an examination of the impacts of the impugned provisions on the claimant group, to determine whether they are “out of sync” with the PCEPA’s objectives.⁶³

31. The gross disproportionality analysis must consider the intersectional harms faced by the most vulnerable sex workers, including those who are Indigenous, trans, non-binary, racialized, living with disabilities, and/or living in poverty. This highly contextual approach has been undertaken by courts within the s. 7 context and stands to be formally recognized and adopted in this proceeding by virtue of the importance of substantive equality to these issues.

32. While Parliament intended for the PCEPA to decrease the demand for sex work, it did so with the aim of protecting vulnerable populations, including sex workers themselves. A purposeful decision was made for the provision of sex work to remain a lawful practice, with safety-enhancing measures available to sex workers.⁶⁴

33. Accordingly, any provision that results in avoidable harm to sex workers, given the PCEPA’s objective, is “out of sync” with the legislation. The purposes of the PCEPA can and must

⁶¹ *Bedford*, at [para. 142](#).

⁶² Applicants’ Factum at para. 105 and footnotes 266-268.

⁶³ *Bedford*, at [paras. 120-122](#).

⁶⁴ Technical Paper, p. 9-1, JAR 11155-57.

be achieved in a manner that does not disproportionately punish an already marginalized population within the group that the PCEPA purports to protect. This conclusion is reinforced by the fact that the laws in question do not further any other competing objective, such as reducing the demand for sex work or confronting exploitation.⁶⁵

(iii) Section 1

34. Policy comes into play at the s. 1 stage, where the government has the onus of justifying the *Charter* breaches.⁶⁶ To be upheld, the impugned provisions must meet the requirements set out in *R. v. Oakes* of a pressing and substantial objective, a rational connection, minimal impairment, and proportional effects.⁶⁷

35. A substantive equality approach at this stage requires the Court to undertake a nuanced consideration of whether the proposed laws address a pressing and substantial objective and are proportional, having regard to the lived experiences of those whom the laws affect.

36. The Attorney General of Canada characterizes the pressing and substantial objective in this matter as “the protection of vulnerable populations and society”.⁶⁸ The government’s assertion that the PCEPA is necessary to achieve this objective is paternalistic and inconsistent with the evidence before the Court. Accordingly, the s. 1 test fails on the proportionality analysis and the laws cannot be upheld.

37. The impugned provisions are not rationally connected to their objective, having regard to their measured impact. The PCEPA causes unjustified, demonstrated harm to sex workers, and has

⁶⁵ Applicants’ Factum at paras. 160-163 and footnotes 420-430.

⁶⁶ *Bedford*, at [para. 125](#).

⁶⁷ *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103, at [para. 70](#).

⁶⁸ Factum of the Respondent, The Attorney General of Canada (“AGC Factum”), at para. 183.

not reduced the demand for sexual services, minimized exploitation, or facilitated sex workers' access to safety measures.

38. The laws are also not minimally impairing. The same objective can be achieved through enforcement under the existing *Criminal Code* provisions addressing human trafficking and sexual assault without impairing sex workers' s. 7 interests. On balance, the deleterious effects of the laws outweigh their salutary effects.

iii. The Respondent's section 7 argument is contrary to principles of substantive equality

39. The BCCLA wishes to address the following Respondent arguments, which are at odds with a substantive equality analysis of s. 7: (1) that the illegality of the purchase of sex precludes a finding of a s. 7 breach;⁶⁹ (2) that the harms and stigmas experienced by sex workers are corollary effects of criminalization and inherent to the commercial sex trade⁷⁰; and (3) that s. 7 does not protect the right to choose sex work as an occupation.⁷¹

40. The Respondent's argument that the illegality of the purchase of sex precludes a finding of a s. 7 *Charter* breach ignores that a s. 7 breach may result from others' exposure to criminal sanction.⁷² The evidence demonstrates that the purchasing provision also exposes sex workers to criminalization.⁷³ A substantive equality approach requires assessing the *total* impact of the law, including examining unintended, indirect or asymmetric effects.

⁶⁹ AGC Factum at paras. 102-104; AGO Factum at paras. 77-82.

⁷⁰ AGC Factum at paras. 104-106, AGO Factum at paras. 41-50 and 108-112.

⁷¹ AGC Factum at paras. 107-111; AGO Factum at paras. 113, 123, and 126.

⁷² *PHS* at [paras. 91-92](#); see also: *R. v. Smith*, 2015 SCC 34 (CanLII), [2015] 2 SCR 602 at [paras. 14-29](#), *Morgentaler* at [p. 56](#), and *Carter* at [paras. 54-56](#).

⁷³ See BCCLA submission at para. 7(i).

41. In reply to the Respondent’s argument that the illegality of the purchase of sex precludes a finding of a s. 7 *Charter* breach, the BCCLA submits that a substantive equality approach necessitates seeking to understand the actual impact of the law, including examining unintended, indirect, and/or asymmetric effects. This also requires assessing the *total* impact of the law, not individual provisions in isolation.

42. Regarding the Respondent’s argument that harms are corollary to the effects of criminalization and inherent to sex work, the BCCLA notes similar submissions were advanced by the Appellants in *PHS*, where they argued that the risks of death and disease were “attributable to the use of the substance themselves, not the law”.⁷⁴ The Supreme Court rejected this argument.⁷⁵ The BCCLA submitted then (and repeats) that such arguments are akin to stating that the risks of pregnancy are attributable to the foetus – or, more callously, attributable to the use of back-alley abortionists – not to a law that denies access to abortion.⁷⁶

43. The Respondent’s arguments are based on the belief that a sex worker can ultimately avoid harm by not being a sex worker. Such a theory of causation seems to preclude a s. 7 breach where there is any contributing cause of harm extrinsic to the challenged state action and suffices to exonerate government action of any contributory harm. This is both at odds with jurisprudence that shows it is enough that the impugned law or government action contributes harm and a substantive equality analysis which requires consideration of the actual impact of the law.⁷⁷ At its core, the Respondent's focus on choice over impact is predicated on a formal equality approach, which assumes an “autonomous, self-interested and self-determined” individual, whereas

⁷⁴ *PHS*, at [para. 99](#).

⁷⁵ *PHS*, at [para. 106](#).

⁷⁶ *Morgentaler*, at [pp. 32-33 and 73](#).

⁷⁷ *Fraser*, at [paras. 86-90](#).

substantive equality examines available choices, recognizing that all human choice is fettered by circumstance.⁷⁸

44. The Respondent's arguments that s. 7 does not protect the right to choose sex work as an occupation are a mischaracterization of the liberty interests at stake. The impugned provisions interfere with sex workers' agency to make decisions about the conditions under which they work. In the context of sex work, these choices are inextricably linked to bodily autonomy. Such decisions are of "fundamental personal importance" directly engaging liberty interests.⁷⁹

PART IV. ORDER REQUESTED

45. The BCCLA takes no position on the outcome of this Application but asks that it be determined in accordance with the submissions set out in this factum.

46. The BCCLA does not seek costs and requests that costs not be ordered for or against it.

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



KASTNER LAM LLP

55 University Avenue, Suite 1800

Toronto, ON M5J 2H7

Tel: 416-655-3044

Emily Lam (LSO #55867P)

elam@kastnerlam.com

Akosua Matthews (LSO #65621V)

amatthews@kastnerlam.com

Ruth Wellen (LSO #79846U)

rwellen@kastnerlam.com

Counsel for the Intervener,
The British Columbia Civil Liberties Association

⁷⁸ *Fraser*, at [para. 88](#).

⁷⁹ *Victoria (City) v. Adams*, 2009 BCCA 563 (CanLII), at [para 109-110](#).

SCHEDULE “A” – LIST OF AUTHORITIES

1. [Fraser v. Canada \(Attorney General\), 2020 SCC 28 \(CanLII\)](#)
2. [Withler v. Canada \(Attorney General\), 2011 SCC 12 \(CanLII\), \[2011\] 1 SCR 396](#)
3. [R. v. Boudreault, 2018 SCC 58 \(CanLII\), \[2018\] 3 SCR 599](#)
4. [New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\), 1999 CanLII 653 \(SCC\), \[1999\] 3 SCR 46](#)
5. [Andrews v. Law Society of British Columbia, 1989 CanLII 2 \(SCC\), \[1989\] 1 SCR 143](#)
6. [R. v. Morgentaler, 1988 CanLII 90 \(SCC\), \[1988\] 1 SCR 30](#)
7. [Carter v. Canada \(Attorney General\), 2015 SCC 5 \(CanLII\), \[2015\] 1 SCR 331](#)
8. [Godbout v. Longueuil \(City\), 1997 CanLII 335 \(SCC\), \[1997\] 3 SCR 844](#)
9. [R. v. Malmo-Levine; R. v. Caine, 2003 SCC 74 \(CanLII\), \[2003\] 3 SCR 571](#)
10. [Bedford v. Canada, 2010 ONSC 4264 \(CanLII\)](#)
11. [Suzy Flader, Fundamental Rights for All: Toward Equality as a Principle of Fundamental Justice under Section 7 of the Charter, 2020 25 Appeal: Review of Current Law and Law Reform 43, 2020 CanLIIDocs 1668](#)
12. [Kerry A Froc, Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice, 2011 42-3 Ottawa Law Review 411, 2011 CanLIIDocs 76](#)
13. [Canada \(Attorney General\) v. PHS Community Services Society, 2011 SCC 44 \(CanLII\), \[2011\] 3 SCR 134](#)
14. [Canada \(Attorney General\) v. Bedford, 2013 SCC 72 \(CanLII\), \[2013\] 3 SCR 1101](#)
15. [R. v. Moriarity, 2015 SCC 55 \(CanLII\), \[2015\] 3 SCR 485](#)
16. [R. v. N.S., 2022 ONCA 160 \(CanLII\)](#)
17. [R. v. Oakes, 1986 CanLII 46 \(SCC\), \[1986\] 1 SCR 103](#)

18. [*R. v. Smith*, 2015 SCC 34 \(CanLII\), \[2015\] 2 SCR 602](#)
19. [*Victoria \(City\) v. Adams*, 2009 BCCA 563 \(CanLII\)](#)

SCHEDULE “B” – LIST OF STATUTORY AUTHORITIES

Criminal Code, RSC 1985, c C-46

[s. 213\(1\)](#), [s. 213\(1.1\)](#), [s. 286.1\(1\)](#), [s. 286.2\(1\)](#), [s. 286.3\(1\)](#), [s. 286.4](#)

[...]

Stopping or impeding traffic

213 (1) Everyone is guilty of an offence punishable on summary conviction who, in a public place or in any place open to public view, for the purpose of offering, providing or obtaining sexual services for consideration,

- (a) stops or attempts to stop any motor vehicle; or
- (b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place.
- (c) [Repealed, 2014, c. 25, s. 15]

Communicating to provide sexual services for consideration

(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person — for the purpose of offering or providing sexual services for consideration — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre.

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.

R.S., 1985, c. C-46, s. 213 R.S., 1985, c. 51 (1st Supp.), s. 1 2014, c. 25, s. 15

[...]

Obtaining sexual services for consideration

286.1 (1) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of,

(i) in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a school or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present,

(A) for a first offence, a fine of \$2,000, and

(B) for each subsequent offence, a fine of \$4,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000; or

(b) an offence punishable on summary conviction and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years less a day, or to both, and to a minimum punishment of,

(i) in the case referred to in subparagraph (a)(i),

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$500, and

(B) for each subsequent offence, a fine of \$1,000.

Obtaining sexual services for consideration from person under 18 years

(2) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person under the age of 18 years is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of

(a) for a first offence, six months; and

(b) for each subsequent offence, one year.

Subsequent offences

(3) In determining, for the purpose of subsection (2), whether a convicted person has committed a subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under that subsection; or
- (b) an offence under [subsection 212\(4\)](#) of this Act, as it read from time to time before the day on which this subsection comes into force.

Sequence of convictions only

(4) In determining, for the purposes of this section, whether a convicted person has committed a subsequent offence, the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences, whether any offence occurred before or after any conviction or whether offences were prosecuted by indictment or by way of summary conviction proceedings.

Definitions of place and public place

(5) For the purposes of this section, **place** and **public place** have the same meaning as in [subsection 197\(1\)](#).

2014, c. 25, s. 20 2019, c. 25, s. 108

Material benefit from sexual services

286.2 (1) Every person who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under [subsection 286.1\(1\)](#), is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or
- (b) an offence punishable on summary conviction.

Material benefit from sexual services provided by person under 18 years

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under [subsection 286.1\(2\)](#), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

Presumption

(3) For the purposes of subsections (1) and (2), evidence that a person lives with or is habitually in the company of a person who offers or provides sexual services for consideration is, in the absence of evidence to the contrary, proof that the person received a financial or other material benefit from those services.

Exception

(4) Subject to subsection (5), subsections (1) and (2) do not apply to a person who receives the benefit

(a) in the context of a legitimate living arrangement with the person from whose sexual services the benefit is derived;

(b) as a result of a legal or moral obligation of the person from whose sexual services the benefit is derived;

(c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or

(d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

No exception

(5) Subsection (4) does not apply to a person who commits an offence under subsection (1) or (2) if that person

(a) used, threatened to use or attempted to use violence, intimidation or coercion in relation to the person from whose sexual services the benefit is derived;

(b) abused a position of trust, power or authority in relation to the person from whose sexual services the benefit is derived;

(c) provided a drug, alcohol or any other intoxicating substance to the person from whose sexual services the benefit is derived for the purpose of aiding or abetting that person to offer or provide sexual services for consideration;

(d) engaged in conduct, in relation to any person, that would constitute an offence under [section 286.3](#); or

(e) received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

Aggravating factor

(6) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that that person received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

2014, c. 25, s. 20 2019, c. 25, s. 109

Procuring

286.3 (1) Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under [subsection 286.1\(1\)](#), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Procuring — person under 18 years

(2) Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under [subsection 286.1\(2\)](#), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years.

2014, c. 25, s. 20

Advertising sexual services

286.4 Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) an offence punishable on summary conviction.

2014, c. 25, s. 20 2019, c. 25, s. 110

[...]

PART I

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

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.

[...]

Legal Rights

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.

[...]

Equality Rights

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

**CANADIAN ALLIANCE FOR SEX WORK LAW -and-
REFORM et al.**

(Applicants)

THE ATTORNEY GENERAL OF CANADA

(Respondent)

Court File No.: CV-21-00659594-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**FACTUM OF THE INTERVENER, THE BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION**

KASTNER LAM LLP

55 University Avenue, Suite 1800
Toronto, ON M5J 2H7
Tel: 416-655-3044

Emily Lam (LSO #55867P)

elam@kastnerlam.com

Akosua Matthews (LSO #65621V)

amatthews@kastnerlam.com

Ruth Wellen (LSO #79846U)

rwellen@kastnerlam.com

Counsel for the Intervener,
The British Columbia Civil Liberties Association