

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

BETWEEN:

MIKHAIL KLOUBAKOV and HICHAM MOUSTAINÉ

APPELLANTS

and

HIS MAJESTY THE KING

RESPONDENT

(continued)

FACTUM OF THE INTERVENERS

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

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TABLE OF CONTENTS

PART I.	OVERVIEW AND STATEMENT OF FACTS	1
A.	Overview	1
B.	Statement of Facts	2
PART II.	ISSUES ON APPEAL	4
PART III.	ARGUMENT	4
A.	Sections 286.2(1) and 286.3(1) of the <i>Criminal Code</i> do not violate women's liberty and security of the person.	4
i.	Procuring women into prostitution and earning a profit from their prostitution does not enhance women's liberty.	4
ii.	Procuring women for prostitution does not enhance their security of the person.	5
iii.	Materially benefiting (taking money) from women in prostitution does not enhance their security of the person. (s. 286.2(1)).....	6
iv.	The reasoning in <i>PHS Community Services Society</i> is inapplicable to this case.....	8
B.	In the alternative, if s. 7 is infringed, the challenged offences are consistent with the principles of fundamental justice and not overbroad.	9
PART IV.	COSTS	10
PART V.	ORDER SOUGHT	10
PART VII.	TABLE OF AUTHORITIES	11

PART I: OVERVIEW AND STATEMENT OF FACTS

A. Overview

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

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

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

¹ *Criminal Code*, RSC 1985, c. C-46, ss. 286.2, 286.3 ("Criminal Code").

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

³ *Criminal Code*, s. 286.1.

⁴ *Ibid*, ss. 286.5(1), (2).

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

B. Statement of Facts

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

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

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

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

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

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

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

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

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

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

⁸ *Appellants Factum*, at para 6.

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

¹⁰ *Kloubakov ABQB*, at paras [17](#), [44](#), [66–68](#); Evidence of ML, **JAR Vol II**, p. 106/11–18.

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

¹² *Kloubakov ABQB*, at para [19](#); Evidence of CT, **JAR Vol. IV**, pp. 206/11–18, 230/3–12.

¹³ *Kloubakov ABQB*, at paras [9](#), [57](#).

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

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

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

PART II. ISSUES ON APPEAL

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

PART III. ARGUMENT

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

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

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

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

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

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

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

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

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

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

²⁰ Technical Paper, *JAR Vol. III*, pp. 6–7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ *Bedford*.

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

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

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

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

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

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

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

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

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

³¹ *PHS*, at para [21](#).

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

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

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

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

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

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

³² *Bedford*, at para [112](#).

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

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

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

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

PART IV. COSTS

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

PART V. ORDER SOUGHT

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

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



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

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

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

PART VI. TABLE OF AUTHORITIES

Cases	Page(s)	Para(s)
<i>Bedford v. Canada (AG)</i>, 2013 SCC 72	7, 9	17, 19, 25, 28
<i>Canada (Attorney General) v. PHS Community Services Society</i>, 2011 SCC 44	8	22, 23
<i>Canadian Alliance for Sex Work Law Reform v. Attorney General</i>, 2023 ONSC 5197	3, 4, 5, 7	9, 10, 12, 13, 18
<i>R. v. Albashir</i>, 2021 SCC 48	7	17
<i>R. v. Alcorn</i>, 2021 MBCA 101	3	9
<i>R. v. B.M.W.</i>, 2020 BCPC 9	3, 4, 5	9, 10, 13
<i>R. v. Barton</i>, 2019 SCC 33	6	14
<i>R. v. Crosdale</i>, 2018 ONCJ 800	6	15
<i>R. v. Downey</i>, [1992] 2 S.C.R. 10	9	28
<i>R. v. Evans</i>, 2012 BCCA 209	6	14
<i>R. v. Gardner</i>, 2020 ONSC 5954	6	15
<i>R. v. Gray</i>, 2018 NSPC 10	6	14
<i>R. v. Gudmanson</i>, 2018 MBPC 31	3	9
<i>R. v. H-O.</i>, 2022 ONSC 4900	6	15
<i>R. v. Hartford</i>, 2022 BCSC 1183	3	9
<i>R. v. Jean</i>, 2020 ONSC 624	6	15
<i>R. v. Lalonde</i>, 2013 BCSC 1349	3	9
<i>R. v. Moazami</i>, 2014 BCSC 1727	6	15
<i>R. v. N.S.</i>, [2022] SCCA No. 281	6	14
<i>R. v. N.S.</i>, 2022 ONCA 160	6, 7, 10	14, 18, 19, 28, 29
<i>R. v. Taylor</i>, 2023 ONSC 1101	6	14

Secondary Sources			
Catharine MacKinnon, “Trafficking, Prostitution and Inequality” (2011) 46:2 Harv CR-CLL Rev 271		3, 6	9, 14
Convention on the Elimination of All Forms of Discrimination against Women , GA Res 34/180, UN GAOR, 34th Sess, Supp No 46, UN Doc A/34/46 (1979)	Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes , Rés AG 34/180, AGNU, 34e Sess, Supp No 46, NU Doc A/34/46 (1979)	2	3
Debra Haak, “Re(de)fining Prostitution and Sex Work: Conceptual Clarity for Legal Thinking” (2019) 40:1 Windsor Rev Legal Soc Issues 67		2	5
Debra Haak, “The Initial Test of Constitutional Validity: Identifying the Legislative Objectives of Canada’s New Prostitution Laws” (2017), 50:3 UBC L Rev 657		9	26
Prostitution and violence against women and girls - Report of the Special Rapporteur on violence against women and girls, its causes and consequences , UNGAOR, 56th Sess, Supp No 48, UN Doc A/HRC/56/48 (2024)	Prostitution et violence contre les femmes et les filles Rapport de la Rapporteuse spéciale sur la violence contre les femmes et les filles, ses causes et ses conséquences , AGNU, 56e Sess, Supp No 48, Doc NU A/HRC/56/48 (2024)	2	5
United Nations Declaration on the Rights of Indigenous Peoples , GA Res 61/295, UN GAOR, 61st Sess, Supp No 49, UN Doc A/61/49, (2007)	Déclaration des Nations Unies sur les droits des Peuples autochtones , Rés AG 61/295, AGNU, 61e Sess, Supp No 49, Doc NU A/61/49 (2007)	2	3

<i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime</i> , GA Res 55/25, 15 November 2000	<i>Protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants</i> , Rés AG 55/25, 15 novembre 2000	2	3
Robyn Bourgeois, “ Colonial Exploitation: The Canadian State and the Trafficking of Indigenous Women and Girls in Canada ” (2015) 62:6 UCLA L Rev 1426		4	10
Sherene Razack, “Gendering Disposability” (2016), 28:2 CJWL 285		4	10

Legislative and Constitutional Authorities	Section(s)
<i>Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11</i>	7
<i>Charte canadienne des droits et libertés, partie I de la Loi constitutionnelle de 1982, constituant l’annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11</i>	7
<i>Criminal Code</i>, R.S.C., 1985, c. C-46	286.1 , 286.2 , 286.3 , 286.4 , 286.5
<i>Code criminel</i>, L.R.C. (1985) ch. C-46	286.1 , 286.2 , 286.3 , 286.4 , 286.5
Department of Justice Canada, Technical Paper: Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts (Ottawa: Department of Justice Canada, 2014)	