

CONSTITUTIONAL CHALLENGE OF CANADA'S PROSTITUTION LAWS

In late March of this year, the Toronto based group, Sex Professionals of Canada (SPOC, <http://spoc.ca/>) announced plans to launch a constitutional challenge in the Ontario Superior Court of Justice of the three remaining anti-prostitution laws in the *Criminal Code*. Adult prostitution currently remains a legal activity in Canada; however, sections 210, 212 and 213 still make it a criminal offence to own or operate a "common bawdy house", live on the avails of prostitution, or communicate in public for the purpose of prostitution.

The thrust of SPOC's challenge is that these sections violate the right to life, liberty and security of the person of its members, as guaranteed under section 7 of the *Charter*. SPOC plans to argue that the three laws serve to endanger women in the prostitution industry by not allowing sex-trade workers to conduct business in a safe environment; citing the increasing number of sex-trade workers murdered and missing in Canada over the last 20 years. The group states that the on-going Robert Picton trial is clear evidence that these outdated laws prevent the type of common organization and safe business practices that would lessen or prevent the dangers currently faced by those in the sex-trade industry, such as being able to conduct a legal business out of the safety of their own homes. Robert Picton is currently on trial for the murder of 26 women, most of whom were prostitutes in the Vancouver area.

Project Kare will also represent another example of an active police investigation into the disappearance of more than 80 members of the sex-trade industry in Edmonton. Valerie Scott, executive director of SPOC, told CBC News on March 21, 2007 that "since [the communication provision] became law on Dec. 21, 1985, there have been between 400 and 500 sex workers either confirmed murdered or missing in Canada. That's an astronomical amount of women gone missing and this is really a direct result of the law". SPOC will argue that both the bawdy house and solicitation provisions, force women to work alone rather than in pairs or in a group, and make rushed safety assessments regarding potential clients on the street.

<http://www.cbc.ca/canada/story/2007/03/21/sexworkers-challenge.html#skip300x250>

SPOC's challenge will also find support in the recent Parliamentary Report of the Subcommittee on Solicitation Laws released in December of 2006. The purpose of the Subcommittee's investigation was to review the solicitation laws for the purpose improving "the safety of sex-trade workers and communities overall, and to recommend changes that will reduce the exploitation of and violence against sex-trade workers." The Report also noted a direct correlation between the introduction of the three laws and the rise of violent incidents experienced by sex-trade workers; and further anticipated that such incidents were still largely underreported by victims, given the stigma associated with the industry and

threat of criminal charges. The Committee determined that the status quo created by the existing laws was “unacceptable”, and the laws are “unequally applied”, largely charging the female sex worker rather than the client or pimp.

Some commentators, such as Colby Cosh, a columnist for the National Post, have already stated that SPOC will win its challenge because quite simply, the group is in the right.

Look past the archaic, euphemistic language in the Code. What does it mean to ban "bawdy-houses"? It means whores cannot organize a brothel where they can look out for one another and combine resources to buy medical care, security or insurance. What does the proscription against "living on the avails" mean? That a prostitute must work alone, shielded from the eyes of the law, unable to get bank credit or regularize her tax status or, hell, buy an RRSP if she wants one. What do the rules against "communicating" for the purposes of prostitution mean? It means most hookers have to do business through the window of a car, which gives them seconds to size up their customers, or over the phone, which hardly lets them do so at all.

<http://www.canada.com/nationalpost/columnists/story.html?id=6a687cfa-21d3-48d0-be0e-b2b8857d934ba>

Cosh goes on to parallel SPOC's argument with the constitutional challenge to the public Healthcare system in the *Chaoulli* decision of 2005. In that case the Supreme Court of Canada determined that it was unconstitutional to ban private medical treatment and insurance; the majority of the Court specifically finding that a section 7 right to life, liberty and security of the person included a safeguard of the right to private medical services. That decision represented a new and far-reaching interpretation of the protections afforded by section 7.

<http://scc.lexum.umontreal.ca/en/2005/2005scc35/2005scc35.html>

It is highly arguable that SPOC's challenge in pointing to the conclusive dangers faced by those in the industry, will provide compelling evidence that the personal safety of the individual as guaranteed under section 7, should include the right to carry out a *legal* business on private premises and work in a co-operative trade. It would appear the time is ripe for the proposed challenge and the Court's decision will be something to watch for in the months ahead.