

VCASE HAILS ONTARIO RULING UPHOLDING VITAL ANTI-PROSTITUTION LAW

Vancouver, BC - On September 18, 2023, Justice Robert Goldstein of the Ontario Superior Court upheld Canada's anti-prostitution law as constitutional —a ruling that the VCASE community and many like-minded organizations immediately hailed as a milestone in their campaigns to protect vulnerable persons from the inherent harm caused by prostitution.

Justice Goldstein's finding of facts in the multi-faceted *Charter* challenge of the *Protection of Communities and Exploited Persons Act* (PCEPA), confirmed the law's statement, expressed in its preamble, that prostitution is inherently exploitative and causes social harm by the objectification of the human body and the commodification of sexual activity. We couldn't agree more that society is harmed when a human being is bought and sold.

The ruling marks a victory for VCASE and many similar groups who have worked diligently for years against activist, legal, and political pressure to completely decriminalize prostitution.

"This is an important step in protecting a much-needed law from those who want to normalize prostitution and all its inherent harms, including human trafficking," said Trisha Baptie, spokesperson for VCASE.

RULING UPHOLDS CANADA'S PALERMO COMMITMENT

Significantly, the ruling also upholds Canada's commitment as a signatory of the Palermo Protocol, an international law to end trafficking. The agreement requires countries to take measures to discourage the demand for paid sex.

Baptie noted the ruling rejects the argument that PCEPA is not *Charter*-compliant. "Justice Goldstein's fact finding also emphatically supports the law's assertion that prostitution is intrinsically exploitative and damaging particularly to marginalized populations especially Indigenous women and women of colour who are overrepresented in prostitution."

VCASE asserts that prostitution is not an individual choice but rather a for-profit system rooted in oppressions of racism, gender inequality, poverty, and colonialism.

PCEPA criminalizes both those who purchase commercialized sexual services and third parties, such as pimps, and brothel owners, who profit from sexual exploitation. At the same time, it provides prostituted persons themselves with immunity from prosecution plus public education and support for those who wish to exit.

PCEPA came into law following a Supreme Court of Canada decision in 2013 which found that the former laws surrounding prostitution violated prostituted person's *Charter* rights to security. In response, Parliament passed PCEPA the following year.

LAW'S AIM IS TO PROTECT VULNERABLE WOMEN AND CHILDREN

Based on the so-called Nordic Model or Equality Model, PCEPA treats prostitution as a form of sexual exploitation that disproportionately impacts women and girls. Its overall objectives are to protect those who sell their own sexual services, protect communities (and especially children) from the harms caused by prostitution, and reduce the demand for prostitution and its incidence.

The federal government has explained that the law prohibits the purchase of sexual services, the exploitation of the prostitution of others, the development of economic interests in the sexual exploitation of others, and the institutionalization of prostitution through commercial enterprises, such as strip clubs, massage parlours, and escort agencies that offer sexual services for sale.

The law also seeks to encourage victims to report incidents of violence to the police and to leave prostitution. Toward that end, when PCEPA was enacted, \$20 million in new funding was dedicated to help individuals exit prostitution.

STATSCAN DATA CONFIRMS PCEPA IS WORKING

VCASE notes that, according to Statistics Canada, the law appears to be working. The agency has reported that between 2015 and 2017, for example, incidents of the new offence—of obtaining sexual services from an adult—increased sharply before declining for two consecutive years. Individuals accused in these incidents were mostly men.

“After the drop in the number of men accused in incidents of stopping or communicating offences prior to the PCEPA, the number of men accused increased once the new legislation was in place (obtaining sexual services from an adult). There was also an increase in men accused in incidents of obtaining sexual services from a minor,” StatsCan reported.

“Most of the men accused of purchasing sexual services were charged. In the courts, over four in five men tried for obtaining services from a minor were found guilty, and this was the case for about one in seven cases of obtaining sexual services from an adult.”

As well, “the number of police-reported incidents related to profiting from the sexual services of others increased after the change in legislation, as procuring and receiving material benefit incidents reached a high point in 2019, almost double what was reported in 2010.”

PCEPA IS CHARTER-COMPLIANT

The Canadian Alliance for Sex Work Law Reform launched a court action seeking to strike down sex-work prohibitions on *Charter* grounds. The coalition targeted six specific *Criminal Code* provisions, which they argued violate sex workers’ *Charter* rights to security, personal autonomy, life, liberty, free expression, free association, and equality.

In his ruling, Justice Goldstein rejected these arguments. [He explained that his “duty” was “solely to determine whether” PCEPA is Charter-compliant. “The Applicants may or may not be right that decriminalization and regulation of sex work are better policy choices,” he wrote. “But that is a decision for Parliament, not this court.”] (I might replace this with this quote, in part cause it fits better with the previous paragraph, and in part because it may be the only part of the decision we don’t want to spotlight: He found that “PCEPA was an explicit response to the Supreme Court’s decision in Bedford (SCC). I find that it is constitutional.” You could leave it at that or list his findings:

- None of the challenged offences violate s. 7 of the *Charter*.
- As conceded by the Attorney General of Canada, the stopping traffic, communications and advertising offences, as well as the communications aspect of the purchasing offences violate s. 2(b) of the *Charter*. They are saved by s.1
- The procuring and material benefit offences do not violate s.2(b) of the *Charter*.

- None of the challenged provisions violate s. 2(d) of the *Charter*.
- None of the challenged provisions violate s. 15 of the *Charter*. (par.10)

‘NO CONSTITUTIONAL RIGHT TO ENGAGE IN SEX WORK’

Along with his specific rejection of all aspects of the applicants’ *Charter* challenge, the judge also observed “there is no constitutional right to engage in sex work.” Furthermore, he said the applicants’ evidence, “especially the expert evidence, betrays a basic misunderstanding and misreading of the challenged offences.” (par. 11)

He also said that prostituted persons “should understand that PCEPA, properly interpreted, does not prohibit them from accessing safety measures, working in association with each other, and accessing the services of non-exploitive third parties” and “seek police assistance without fear that they will be charged for selling their sexual services, receiving a material benefit from the own sexual services, communicating with customers in relation to their own sexual services, or advertising in relation to their own sexual services.” (par. 11)

We applaud Justice Goldstein for noting that the key feature of the Nordic Model is that it prohibits the purchase of sex but does not penalize the seller. “The theory of the model is that prostitution is a harmful activity,” he wrote. “It is highly gendered. Male customers of generally higher wealth, status, and power exploit (mostly) female sellers of lower status, wealth, and power. The intent of the Nordic Model is to reduce the demand for sex work. Bill C-36 as introduced (and ultimately passed) prohibits the purchase of sex but immunizes those who sell their own sexual services. Non-exploitive third parties also do not attract criminal liability.” (par. 35)

We were also gratified to see that Justice Goldstein recognized that the coalition of groups seeking to overturn the law “consistently downplayed the phenomenon of exploitation, and consistently extrapolated from qualitative studies with limited numbers of selected sex workers. They continued to filter their experiences and their conclusions through the normative lens of sex-work as regular work. These problems detract from the weight that I can give to their evidence.” (par. 129)

A CLEAR LINK BETWEEN HUMAN TRAFFICKING AND PROSTITUTION

In a vitally important section of his ruling, the learned judge rejected the applicants’ “factual claim that majority of sex workers do not engage in sex work through coercion or trafficking.” Furthermore, he found that “there is a clear link between sex work and human trafficking. In fact, there is a considerable body of evidence that many sex workers are manipulated or coerced into sex work or trafficked while in it.” (par. 179)

He explained, “I do not agree” that those opposing the effort to overturn PCEPA “have [incorrectly] conflated sex work and human trafficking. What the evidence shows is that there is a very strong link between sex work and human trafficking. (par. viii)

The judge also found that, “There is also evidence that exploiters and traffickers specifically target youth in foster care, group home, and correctional facilities” and that “... that exploiters and traffickers target those with pre-existing vulnerabilities” including poverty, mental-health or cognitive challenges, and substance-abuse challenges. (par. 183)

Furthermore, he found that, “A significant number of women and girls lured or coerced into sex work are Indigenous or from other vulnerable racialized or sexual minorities.” (par. 191)

And, contrary to the applicants’ claim, Justice Goldstein said, “there is no evidence that PCEPA has led to an upsurge in the levels of violence associated with sex work.” (par. viii)

SEX INDUSTRY NEEDS TO BE CHALLENGED

VCASE believes that the above are extremely important findings and support the conclusions that VCASE itself has reached in its research of the subject. Supporters of the so-called “sex industry” should be reminded of these findings when they attempt to normalize prostitution.

Importantly, the judge also noted that other “free and democratic societies” have adopted laws similar to PCEPA. “Each country has modified the model to suit local circumstances, but the salient feature of the model that appears to have been universally adopted is the ban on the purchase of sex by customers and immunity from prosecution of sex workers.” (par. 475)

As well, he stated that, “International institutions have also endorsed the Nordic Model. The European Parliament endorsed the Nordic Model in February 2014. In April 2014, the Council of Europe Recommended that member and observer states consider adopting the Nordic Model (Canada is an observer state of the Council of Europe). The United Nations Committee on the Elimination of discrimination against Women has also endorsed the Nordic Model. Canada is not an outlier in this regard.” (par. 476)

PCEPA IS ‘RATIONALLY CONNECTED TO THE OBJECTIVE’

Furthermore, Justice Goldstein said that “Other free and democratic societies have adopted means to discourage sex work that are like the means chosen by Parliament, at least in respect of the purchasing offence. That is a significant factor that this court can consider when evaluating, in the Canadian context, whether the objectives are pressing and substantial and the whether the means chosen are rationally connected to the objective.” (par. 477)

He concluded: “Overall, I find that Parliament’s response to a pressing and substantial concern is a carefully crafted legislative scheme that prohibits the most exploitive aspects of the sex trade while immunizing sex workers from prosecution. The offences minimally impair the Charter rights of sex workers. The offences also permit sex workers to take safety measures. The communications offence, stopping traffic offence, and the communications aspect of the purchasing offence are constitutionally compliant.” (par. 501)

VCASE applauds this significant ruling but recognizes that more work needs to be done. If Canada wants to retain its status as a leader in passing the Equality Model of law, we call on our government to ensure enforcement of PCEPA throughout every jurisdiction in Canada, as well as to provide public education and robust services for those wishing to exit prostitution.