

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

BETWEEN:

**MIKHAIL KLOUBAKOV and HICHAM MOUSTAINE**

APPELLANTS

-and-

**HIS MAJESTY THE KING**

RESPONDENT

-and-

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ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF MANITOBA,  
and ATTORNEY GENERAL OF BRITISH COLUMBIA**

INTERVENERS

-and-

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**FACTUM OF THE JOINT INTERVENERS,  
THE EVANGELICAL FELLOWSHIP OF CANADA AND  
THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA**

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July 8, 2024

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## PART I: OVERVIEW

1. Canada's criminal law is a system of applied public justice that enforces and protects foundational societal norms. *The Protection of Communities and Exploited Persons Act*, SC 2014, c. 25 ("*PCEPA*")<sup>1</sup> purposes to preserve and protect the norms of dignity and equality, as interpreted and applied by Parliament to the pressing and complex issue of prostitution. At the core of *PCEPA* is the normative judgment that the exchange of sexual services for consideration is contrary to these norms, inherently exploitative, unavoidably damaging to individuals and society, and deserving of criminal prohibition. This is fundamentally a normative determination, not a question of fact for a court to decide.<sup>2</sup>
2. The impugned provisions' objectives must be understood in their proper context. This requires considering the purposes of *PCEPA* as a whole, as an exercise of Parliament's criminal law power. It also requires understanding the purpose and scope of the purchasing prohibition, which aims to abolish and suppress prostitution generally, even where persons are said to participate in it voluntarily. The impugned material benefit prohibition (s. 286.2) and procurement prohibition (s. 286.3) are, each in their own way, rationally connected to *PCEPA*'s overall goal of abolishing prostitution to the greatest extent possible. The Court of Appeal for Ontario further recognized that the particular objectives of the purchasing, material benefit, and procurement prohibitions are all connected to the deeper, underlying, criminal law purpose of *PCEPA*: namely, to protect human dignity, equality, and the community.<sup>3</sup>
3. That Parliament has condemned prostitution as inherently exploitative must inform the principles of fundamental justice analysis of the impugned provisions. Parliament may prohibit acts that facilitate, promote, profit from, or establish commercial interests in the commission of unlawful and inherently exploitative acts. It is because prostitution is inherently exploitative that prohibiting the establishment of or participation in commercial enterprises designed to profit from prostitution is justified.

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<sup>1</sup> *Protection of Communities and Exploited Persons Act*, SC 2014, c 25, Preamble [*PCEPA*].

<sup>2</sup> *Canadian Alliance for Sex Work Law Reform v. Attorney General*, 2023 ONSC 5197 at para 40 [*CASWLR*]: "The question of inherent exploitation is not, however, something that this court can decide. It is simply not a legal or factual question. One's view of the question of inherent exploitation appears to be dictated by one's normative perspective. Parliament has chosen a particular normative perspective and it is not for this court to second-guess Parliament in that regard."

<sup>3</sup> *R v NS*, 2022 ONCA 160 at paras 47 and 57-63 (leave to appeal denied) [*NS*]; *R v Gallone*, 2019 ONCA 663 at paras 91-98 [*Gallone*].

4. The Appellants contend that criminalizing prostitution serves no valid objective. They rely on cases in which this Court avoids interpretive approaches to criminal prohibitions that depend on subjective notions of indecency or depravity.<sup>4</sup> But there are no interpretive challenges of that kind here. The impugned provisions do not require courts to apply subjective notions of indecency, morality, exploitation, or dignity. Nor do the impugned provisions require courts to speculate about present-day social standards of propriety. Rather, *PCEPA* delineates, with considerable precision, the kinds of third-party involvement that merit criminal sanction considering *PCEPA*'s objectives.
5. The Appellants further contend that prohibiting prostitution requires proving that it causes harm that seriously impedes the proper functioning of society.<sup>5</sup> While criminal prohibitions need not satisfy the harm principle,<sup>6</sup> every instance of prostitution involves the commodification of sexual activity, which Parliament sees as inextricably linked to social harms and violations of dignity, along with risks to prostituted persons' safety and health.
6. Harm is not a normatively neutral concept. Where courts have tried to avoid subjectivity in interpreting terms such as "indecent" in criminal law, they have looked for the kind of harms that the law is intended to address. But those harms can only be identified as harms by reference to foundational norms for what constitutes a good, well-functioning society.<sup>7</sup> In fashioning criminal law, normative determinations are unavoidable. Parliament has the exclusive jurisdiction to determine what norms to codify using the criminal law. In effect, the Appellants ask this Court to replace Parliament's normative determinations underlying *PCEPA* with their own. Respectfully, this Court is the wrong forum for determining whether to make such a shift.

## PART II: QUESTIONS IN ISSUE

7. The Evangelical Fellowship of Canada ("the EFC") and the Association for Reformed Political Action Canada ("ARPA") will address the question of how to interpret the objectives of the impugned provision in their proper context, which requires considering:
  - a. The purpose of *PCEPA* as a whole, understood as an exercise of the criminal law power targeting public evils that Parliament seeks to suppress;

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<sup>4</sup> Factum of the Appellants at paras 79-80.

<sup>5</sup> Factum of the Appellants at paras 80-81.

<sup>6</sup> *R. v. Malmo-Levine; R. v. Caine*, 2003 SCC 74 at paras [115-129](#) (per Gonthier and Binnie JJ, for the majority) [*Malmo-Levine*].

<sup>7</sup> *R. v. Labaye*, 2005 SCC 80, at para [30](#) (per McLachlin CJ, for the majority).

- b. The objective of the purchasing prohibition in section 286.1 of the *Criminal Code*, which the impugned provisions refer to and depend on; and
- c. The objectives of the impugned prohibitions (s. 286.2 and 286.3), which condemn certain forms of third-party involvement that exploit or promote prostitution.

### PART III: STATEMENT OF ARGUMENT

#### A. *PCEPA* is a criminal law statute setting out prohibitions with penalties for valid criminal law objectives

8. As an exercise of criminal law power, *PCEPA* prohibits acts that, in Parliament’s judgment, undermine dignity and equality, as well as cause various individual and societal harms. On this basis, the conduct captured by *PCEPA* merits criminal law penalties to suppress, deter, and punish those acts.<sup>8</sup>
9. The “overall objective” of *PCEPA* “is to reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible.”<sup>9</sup> *PCEPA* is based on “Parliament’s conceptualization of prostitution as exploitation rather than nuisance.”<sup>10</sup> In addition to the “exploitation inherent in prostitution”, *PCEPA*’s preamble “recognizes the social harm caused by the objectification of the human body and the commodification of sexual activity”, a public evil present in every instance of prostitution, even where prostituted persons consent to their own exploitation.
10. The Appellants posit that one objective of *PCEPA* is to make prostitution less dangerous and submit that, insofar as the impugned prohibitions allegedly make prostitution more difficult to engage in safely, they violate s. 7 of the *Charter* due to a misalignment between the provisions’ objectives, means, and effects.<sup>11</sup> With respect, this gets things backward.
  - (i) The purposes of *PCEPA*’s prohibitions, not its immunity provision or exceptions to the material benefit prohibition, are preeminent in the *Charter* analysis
11. Parliament sought to denounce and abolish prostitution generally, without causing grossly disproportionate risks to persons who remain in prostitution despite *PCEPA*. Parliament took

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<sup>8</sup> [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 \(Protection of Communities and Exploited Persons Act\)](#), Department of Justice (2014) [**Technical Paper**] Book of Authorities of the EFC & ARPA [BOA] **Tab 5**; *NS* at para 59; *Mahmo-Levine* at para 74 (per Gonthier and Binnie JJ, for the majority).

<sup>9</sup> [Technical Paper](#) at 3, quoted approvingly in [Gallone](#) at para 92.

<sup>10</sup> [Gallone](#) at para 93.

<sup>11</sup> Factum of the Appellants at paras 60-61 and 67.

a nuanced policy approach in recognizing that prostitution will not cease immediately and that prostituted persons are vulnerable and victimized in various ways. Thus, Parliament limited the scope and effects of *PCEPA* prohibitions by permitting prostituted persons to use a limited range of self-protective measures while engaged in illegal activity. But *PCEPA*'s primary objective, as a criminal statute, remains to denounce and abolish prostitution as a public evil "to the greatest extent possible", not to facilitate safer practices for engaging in it.

12. The impugned provisions in this case "denounce and prohibit the exploitation of the prostitution of others by third parties, the development of economic interests in the exploitation of the prostitution of others and the institutionalization of prostitution through commercial enterprises."<sup>12</sup> The question is not whether these provisions capture conduct that might make prostitution safer to engage in, but whether (a) they capture conduct that bears no relation to their objectives as criminal prohibitions (overbreadth) or (b) any detrimental effects they may be shown to cause are grossly disproportionate to their objectives.

13. The objectives of the impugned prohibitions must not be confused or placed in conflict with the objectives of section 286.5 (the immunity provision) or subsections 286.2(4) and (5) (which define the scope of the material benefit prohibition). According to the Court of Appeal for Ontario, such confusion affected the Superior Court of Ontario's reasoning in *R. v. N.S.*<sup>13</sup> With respect, the Appellants' submissions appear to reiterate the same error. Only in the context of the new prohibitions do the exceptions in subsection 286.2(4) or the immunity provision in section 286.5 make sense. If there were no criminal prohibitions, there would be no need to clarify their scope or to grant immunity for prostituted persons. These limiting provisions do not change or undermine either the primary criminal law purpose of *PCEPA* overall or the narrower criminal law purposes of each impugned prohibition.<sup>14</sup>

(ii) The impugned prohibitions are based on Parliament's legitimate normative judgment regarding the inherent nature of prostitution as a public evil

14. This Court has affirmed that Parliament may enact "discrete prohibitions to prevent evils falling within a broad purpose", where "the prohibition is legitimately aimed at some public evil Parliament wishes to suppress".<sup>15</sup> A core function of the criminal law is to preserve

<sup>12</sup> *NS* at para 51, quoting the [Technical Paper](#), BOA Tab 5.

<sup>13</sup> *NS* at paras 116-124.

<sup>14</sup> *NS* at paras 46-47.

<sup>15</sup> *R. v. Hydro-Québec*, [1997] 3 SCR 213 at para 128 (per LaForest J, for the majority).

foundational societal norms.<sup>16</sup> A criminal prohibition is not invalid for being grounded in a moral position, even if it is subject to debate.<sup>17</sup>

15. Nor is a criminal prohibition invalid merely because it applies to acts involving consenting parties or an individual acting alone, such as laws against drug use or possession.<sup>18</sup> In *R. v. Jobidon*, for example, the rule that a person may not consent to the risk of serious bodily harm in a fight was found to deter fighting in general.<sup>19</sup> However, this Court added that, “apart from deterrence, it is most unseemly from a moral point of view” that the law would permit people to consent to serious bodily harm in a fight.<sup>20</sup> In the present case, while suppressing prostitution protects people from being pressured into it, the law also considers even consensual involvement to constitute an individual and societal harm. As the Court of Appeal for Ontario recognized: “Parliament views prostitution as inherently exploitative, even where the person providing the sexual services for consideration made a conscious decision to do so.”<sup>21</sup>
16. Parliament is not alone in its evaluation of prostitution as inherently exploitative. Canada is one among several democratic nations to recently adopt the Nordic model.<sup>22</sup> There is also historic recognition of the inherently problematic nature of prostitution. For example, the United Nations *Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others* (1949) declares that both trafficking and prostitution are “incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”<sup>23</sup> Lamer J. (as he then was) went further in the *Prostitution Reference*, calling prostitution “degrading to women” and “a form of slavery.”<sup>24</sup>

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<sup>16</sup> *Malmo-Levine* at paras 77 and 117-122 (per Gonthier and Binnie JJ, for the majority); *R. v. Butler*, [1992] 1 SCR 452 at 492-494 (per Sopinka J, for the majority) [*Butler*]; *Reference re Firearms Act (Can.)*, 2000 SCC 31 at paras 54-55; Bradley W. Miller, “Morals Laws in an Age of Rights: Hart and Devlin at the Supreme Court of Canada” (2010) 55:1 Am J Juris 79, **BOA Tab 4**.

<sup>17</sup> *Butler* at 493 (per Sopinka J, for the majority); *Reference Re Assisted Human Reproduction Act*, 2010 SCC 61 at paras 1, 4, and 47-48 (per McLachlin CJ).

<sup>18</sup> *Malmo-Levine* at paras 117-118 (per Gonthier and Binnie JJ, for the majority) and paras 285-288 (per Deschamps J, dissenting, but not on this point).

<sup>19</sup> *R. v. Jobidon*, [1991] 2 SCR 714 [*Jobidon*].

<sup>20</sup> *Jobidon* at 764 (per Gonthier J, for the majority).

<sup>21</sup> *NS* at para 131.

<sup>22</sup> *CASWLR* at para 475.

<sup>23</sup> *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, UN General Assembly resolution 317 (IV) of 2 December 1949, in force 25 July 1951, **BOA Tab 2** [*Convention*]. Canada is not a signatory.

<sup>24</sup> *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 SCR 1123 at 1193-1194 (per Lamer J).

17. However, the Appellants contend that *PCEPA* is based on a subjective, moralistic agenda capturing voluntary transactions and consenting parties, and is therefore constitutionally illegitimate.<sup>25</sup> This raises the question of the Court’s role in reviewing the nature and legitimacy of the moral objectives underlying criminal prohibitions.

(iii) *PCEPA* is concerned with foundational social norms and the various personal and societal consequences of violating those norms

18. Public morality is a legitimate concern of the criminal law, insofar as it involves not “mere ‘conventional standards of morality’ but [...] societal values beyond the simply prurient or prudish.”<sup>26</sup> It may even include protecting “vulnerable groups from self-inflicted harms.”<sup>27</sup> This Court has rejected the notion that “Parliament does not have the right to legislate on the basis of some fundamental conception of morality for the purposes of safeguarding the values which are integral to a free and democratic society.”<sup>28</sup>

19. Parliament has reasonably concluded that prostitution is not merely an issue of private choices between consenting adults that is of no concern to the government.<sup>29</sup> Rather, prostitution raises fundamental questions of dignity and equality, and it is inextricably linked with such consequential issues as abuse, coercion, manipulation, assault, trafficking, physical and emotional trauma, harmful beliefs and attitudes about sex and gender, inequality, and more.<sup>30</sup> Parliament considers prostitution-related harms to be a feature of prostitution, not merely a coincidental effect that can be avoided by adopting a different policy model. Such policy determinations are entitled to deference.<sup>31</sup>

20. While individual acts within the system of prostitution may involve consenting parties, these acts cannot be considered in isolation, as they have a nexus with our understanding of human dignity and exploitation of the human person. “[T]he notions of moral corruption and harm to society are not distinct [...] but are inextricably linked. It is moral corruption of a certain kind which leads to the detrimental effect on society.”<sup>32</sup> Prostitution “normaliz[es] the treatment of

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<sup>25</sup> Factum of the Appellants at para 100.

<sup>26</sup> *Malmo-Levine* at para 77 (per Gonthier and Binnie JJ, for the majority).

<sup>27</sup> *Malmo-Levine* at para 77 (per Gonthier and Binnie JJ, for the majority).

<sup>28</sup> *Butler* at 492-493 (per Sopinka J, for the majority).

<sup>29</sup> *Technical Paper*, **BOA Tab 5**; *NS* at para 21.

<sup>30</sup> *Technical Paper* at 3-4, **BOA Tab 5**.

<sup>31</sup> *CASWLR* at para 40.

<sup>32</sup> *Butler* at 494 (per Sopinka J, for the majority).

primarily women’s bodies as commodities” and “send[s] the message that sexual acts can be bought by those with money and power.”<sup>33</sup>

21. Parliament has determined that the damaging side effects of prostitution are unavoidable due to the exploitative nature of prostitution itself. *PCEPA* sees prostitution as a grave social ill in itself, with inseparable ties to related public evils. Parliament cannot then be expected to enact a policy that artificially attempts to separate prostitution itself from prostitution-related ills in an effort to condone the former while mitigating the latter.

**B. The impugned prohibitions in sections 286.2 and 286.3, understood in relation to the purchasing offence, do not violate the principles of fundamental justice**

22. Since Parliament determined that prostitution is inherently exploitative, it was rational for Parliament to also prohibit promoting, facilitating, profiteering from, commercially establishing, or exposing children to prostitution. The Court of Appeal for Ontario made it clear that the objectives of sections 286.2 and 286.3 are closely linked to and complement the objective of the purchasing provision.<sup>34</sup> It is therefore necessary to first properly interpret the purpose of the purchasing prohibition (s. 286.1).

(i) The objective of the purchasing prohibition, at face value, is to denounce and suppress the purchase of sexual services because it undermines dignity and equality, regardless of the degree of agency or coercion involved in a particular transaction

23. This Court directed in *Bedford* and *Carter* that the objective of a particular prohibition, for the purposes of the s. 7 analysis, must be “taken at face value” and “confined to measures directly targeted by the law”.<sup>35</sup> The purchasing prohibition (s. 286.1), taken at face value, has as its objective the suppression of demand for prostitution in general. Thus *PCEPA* “makes prostitution itself an illegal practice; every time prostitution takes place, regardless of venue, an offence is committed.”<sup>36</sup> The objective is plainly to prohibit *all* instances of prostitution, *regardless* of whether there is any discernible coercion from a purchaser or third party.

24. The “face value” approach—focused on the text of the provision and its immediate legal effect—yields a result that is consistent with what the statutory context and legislative history tell us about this provision’s objective. The Justice Minister called prostitution “inherently

<sup>33</sup> [Technical Paper](#) at 4, **BOA Tab 5**.

<sup>34</sup> *NS* at paras [59](#), [121](#), and [152](#).

<sup>35</sup> *Carter v. Canada (AG)*, 2015 SCC 5 at para [89](#); *Canada (AG) v. Bedford*, 2013 SCC 72 at para [125](#) [*Bedford*].

<sup>36</sup> [Technical Paper](#) at 4 **BOA Tab 5** (emphasis added).



degrading and dangerous”.<sup>37</sup> *PCEPA*’s preamble describes prostitution as a threat to dignity and equality, and as inherently exploitative.<sup>38</sup>

25. To exploit someone is to take unfair advantage of them for selfish gain.<sup>39</sup> It does not necessarily entail coercion or lack of consent. Alternatively, the incentive of offering payment—together with the complex web of personal and societal factors that influence a person’s decision to provide sexual services for consideration—arguably constitutes a form of economic coercion that is distinct from the use of force or threats. However one explains the inherently exploitative nature of prostitution, the legislative background of *PCEPA* makes clear that it is not a finding of fact that can be overturned by a court. Rather, it is a foundational normative determination on which the policy choices embedded in *PCEPA* are founded.

26. The means chosen—prohibiting all purchasing or communicating for the sake of purchasing—corresponds directly to the objective of suppressing the demand for prostitution generally. The immunity provision does not alter the objective of the purchasing prohibition or the impugned prohibitions, but it is relevant for the gross disproportionality analysis, since its effect is to relieve prostituted persons of the additional burden of criminal prosecution and punishment.

(ii) The impugned provisions (s. 286.2 and s. 286.3), understood in relation to *PCEPA* and the purchasing offence, do not violate the principles of fundamental justice

27. The material benefit and procuring prohibitions (ss. 286.2(1) and 286.3 respectively) were directly in issue in *R. v. N.S.*, and the Court of Appeal for Ontario outlined the objective of each provision.<sup>40</sup> These prohibitions are plainly not concerned only with non-consensual instances of promoting, profiteering from, or commercially establishing the exchange of sexual services for consideration. Even where it occurs consensually, the commodification and commercialization of the exchange of sexual services “encourages an activity that Parliament considers inherently exploitative.”<sup>41</sup>

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<sup>37</sup> Quoted in *NS* at paras 49 and 131.

<sup>38</sup> *PCEPA*, Preamble.

<sup>39</sup> See *Paperback Oxford English Dictionary*, **BOA Tab 3**, exploit: “make use of a person or situation in an unfair way, so as to benefit yourself”; And see *Black’s Law Dictionary, 9th Ed*, Bryan A. Gardner (ed.) (Thomson Reuters: 2009), **BOA Tab 1** at 660, exploitation: “The act of taking advantage of something; esp. the act of taking unjust advantage of another for one’s own benefit”; and at 1498, “sexual exploitation: the use of a person, esp. a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emotional injury”.

<sup>40</sup> *NS* at paras 65-78 (material benefit) and 121 (procuring).

<sup>41</sup> *NS* at para 121.

28. The Appellants contend that the impugned provisions—and *PCEPA* as a whole—make prostitution less safe for providers to engage in, thus violating their security interest under s. 7 of the *Charter*.<sup>42</sup> But even if s. 7 is engaged in this way, it is not violated, because the impugned prohibitions’ objective is *not* to make prostitution safer, but to denounce and suppress profiting from or promoting the prostitution of others, including by developing commercial interests in the exploitation of others.<sup>43</sup>
29. A person who knowingly participates in a commercial enterprise designed to profit from the prostitution of others—even if he personally does not coerce or manipulate anyone into prostitution—would still be *exploiting* the prostitution of others. This alone would lead to the development of economic interests in the prostitution of others and undermine *PCEPA*’s objective of abolishing prostitution to the greatest extent possible, including by preventing its commercialization and institutionalization. The offence is therefore not overbroad.
30. Article 1 of the *Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others* states:

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.<sup>44</sup>

The *Convention*, like *PCEPA*, adopts the position that the absence of consent is not a necessary precondition of exploitation (i.e., “Exploits [...] even with the consent”).<sup>45</sup>

31. The limited exceptions (in s. 286.2(4)) to the material benefit prohibition, along with the exceptions to the exceptions (s. 286.2(5)), clarify the prohibition’s scope by excluding forms of third-party material benefit that Parliament did not consider to be exploitative or to merit criminal sanction.<sup>46</sup> The Appellants use the secondary, safety-related objective of *PCEPA* to alter the s. 7 analysis by saying that the effects of the prohibitions conflict with the objective

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<sup>42</sup> Factum of the Appellants at paras 4 and 30-35.

<sup>43</sup> *NS* at para 122.

<sup>44</sup> *Convention* at art 1, **BOA Tab 2** (emphasis added).

<sup>45</sup> *Supra* footnote 39.

<sup>46</sup> *NS* at para 77.

of safety. But “the s. 7 analysis turns on the purpose of the particular provision that is impugned.”<sup>47</sup> The focus must remain on the objective of the impugned *prohibitions*.

32. While the exceptions in s. 286.2(4) may, like the immunity provision, compromise the objective of abolishing prostitution, Parliament is not constitutionally required to pursue this objective maximally, at all costs. But limiting the *scope* of the material benefit offence or granting immunity to prostituted persons does not change the prohibitions’ objectives.
33. The fact that Parliament chose to narrow the scope of the application of the material benefit prohibition (s. 286.2(1)) does not contradict the provision’s main objective. On the contrary, Parliament has taken a nuanced and careful view of the issues at play, recognizing legitimate circumstances in which the normative balancing warrants restraint in its prosecution.
34. The EFC and ARPA respectfully submit that Parliament’s objectives in *PCEPA* are clear and valid uses of its criminal law power. Parliament is entitled to advance the normative position that prostitution is a “public evil” that ought to be “abolish[ed ...] to the greatest extent possible”.<sup>48</sup> In evaluating the constitutionality of the impugned provisions, this Court should be guided by the objectives arising from the prohibitions, rather than the exceptions outlined in *PCEPA*, with special reference to the purchasing prohibition as the lynchpin for the framework. Understood as a whole, taking into account Parliament’s clearly stated objectives, neither of the impugned provisions are contrary to the principles of fundamental justice.

#### **PART IV: SUBMISSIONS ON COSTS**

35. The EFC and ARPA do not seek costs and ask that no costs be ordered against them.

#### **PART V: ORDER**

36. The EFC and ARPA take no position on the outcome of this appeal.

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




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**Garifalia C. Milousis | John Sikkema**  
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<sup>47</sup> [NS](#) at para 46 (emphasis in original), citing [Bedford](#).

<sup>48</sup> [Technical Paper](#) at 3, quoted approvingly in [Gallone](#) at para 92.

## PART VI: AUTHORITIES

## Caselaw

No.	Authority	Paragraph/Page Reference
1	<a href="#"><i>Canada (Attorney General) v. Bedford</i></a> , 2013 SCC 72	Para <a href="#">125</a>
2	<a href="#"><i>Canadian Alliance for Sex Work Law Reform v. Attorney General</i></a> , 2023 ONSC 5197	Paras <a href="#">40</a> , <a href="#">475</a>
3	<a href="#"><i>Carter v. Canada (Attorney General)</i></a> , 2015 SCC 5	Para <a href="#">89</a>
4	<a href="#"><i>Reference Re. Assisted Human Reproduction Act</i></a> , 2010 SCC 61	Paras <a href="#">1</a> , <a href="#">4</a> , <a href="#">47</a> , <a href="#">48</a>
5	<a href="#"><i>Reference re Firearms Act (Can.)</i></a> , 2000 SCC 31	Paras <a href="#">54</a> , <a href="#">55</a>
6	<a href="#"><i>Reference re ss. 193 and 195.1(1)(c) of the Criminal Code</i></a> , [1990] 1 SCR 1123	Pages <a href="#">1193</a> , <a href="#">1194</a>
7	<a href="#"><i>R. v. Butler</i></a> , [1992] 1 SCR 452	Pages <a href="#">492</a> , <a href="#">493</a> , <a href="#">494</a>
8	<a href="#"><i>R. v. Gallone</i></a> , 2019 ONCA 663	Paras <a href="#">91</a> , <a href="#">92</a> , <a href="#">93</a> , <a href="#">94</a> , <a href="#">95</a> , <a href="#">96</a> , <a href="#">97</a> , <a href="#">98</a>
9	<a href="#"><i>R. v. Hydro-Québec</i></a> , [1997] 3 SCR 213	Para <a href="#">128</a>
10	<a href="#"><i>R. v. Jobidon</i></a> , [1991] 2 SCR 714	Page <a href="#">764</a>
11	<a href="#"><i>R. v. Labaye</i></a> , 2005 SCC 80	Para <a href="#">30</a>
12	<a href="#"><i>R. v. Malmö-Levine</i></a> , 2003 SCC 74	Paras <a href="#">74</a> , <a href="#">77</a> , <a href="#">115</a> , <a href="#">116</a> , <a href="#">117</a> , <a href="#">118</a> , <a href="#">119</a> , <a href="#">120</a> , <a href="#">121</a> , <a href="#">122</a> , <a href="#">123</a> , <a href="#">124</a> , <a href="#">125</a> , <a href="#">126</a> , <a href="#">127</a> , <a href="#">128</a> , <a href="#">129</a>
13	<a href="#"><i>R. v. N.S.</i></a> , 2022 ONCA 160	Paras <a href="#">21</a> , <a href="#">46</a> , <a href="#">47</a> , <a href="#">49</a> , <a href="#">51</a> , <a href="#">57</a> , <a href="#">58</a> , <a href="#">59</a> , <a href="#">60</a> , <a href="#">61</a> , <a href="#">62</a> , <a href="#">63</a> , <a href="#">65</a> , <a href="#">66</a> , <a href="#">67</a> , <a href="#">68</a> , <a href="#">69</a> , <a href="#">70</a> , <a href="#">71</a> , <a href="#">72</a> , <a href="#">73</a> , <a href="#">74</a> , <a href="#">75</a> , <a href="#">76</a> , <a href="#">77</a> , <a href="#">78</a> , <a href="#">116</a> , <a href="#">117</a> , <a href="#">118</a> , <a href="#">119</a> , <a href="#">120</a> , <a href="#">121</a> , <a href="#">122</a> , <a href="#">123</a> , <a href="#">124</a> , <a href="#">131</a> , <a href="#">152</a>

## Statutes

No.	Statute	Section
1	<a href="#"><i>Canadian Charter of Rights and Freedoms</i></a> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the Canada Act 1982 (UK), 1982, c 11.	7
2	<a href="#"><i>Criminal Code</i></a> , RSC 1985, c C-46	s. 286.1 s. 286.2 s. 286.3 s. 286.5
3	<a href="#"><i>Protection of Communities and Exploited Persons Act</i></a> , S.C. 2014, c. 25.	Preamble

## Secondary/Other

No.	Source	Pinpoint
1	<i>Black's Law Dictionary, 9th Ed</i> , Bryan A Gardner (ed) (Thomson Reuters: 2009)	Pages 660, 1498
2	<a href="#"><i>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</i></a> , United Nations General Assembly resolution 317 (IV) of 2 December 1949, in force 25 July 1951	Article 1
3	<i>Paperback Oxford English Dictionary, 7th Ed</i> , (Oxford University Press: 2012)	
4	Miller, Bradley W. "Morals Laws in an Age of Rights: Hart and Devlin at the Supreme Court of Canada" (2010) 55:1 Am J Juris 79	
5	<a href="#"><u>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 (Protection of Communities and Exploited Persons)</u></a> , Department of Justice (2014)	Pages 3, 4

**MIKHAIL KLOUBAKOV and HICHAM MOUSTAINE**

APPELLANTS

**HIS MAJESTY THE KING**

RESPONDENT

SCC File Number: 41017

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**SUPREME COURT OF CANADA**

PROCEEDING COMMENCED AT CALGARY

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**FACTUM OF THE JOINT INTERVENERS,  
THE EVANGELICAL FELLOWSHIP OF CANADA AND  
THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA)  
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