S.C.C. File No. 33981

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT
(Respondent)

AND:

DOWNTOWN EASTSIDE SEX WORKERS UNITED
AGAINST VIOLENCE SOCIETY and SHERYL KISELBACH

RESPONDENTS
(Appellants)

AND:

THE ATTORNEY GENERAL OF ONTARIO, THE COMMUNITY LEGAL ASSISTANCE SOCIETY, THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, ECOJUSTICE CANADA, THE COALITION OF WEST COST WOMEN'S LEGAL EDUCATION AND ACTION FUND (WEST COAST LEAF), JUSTICE FOR CHILDREN AND YOUTH AND ARCH DISABILITY LAW CENTRE, THE CONSEIL SCOLAIRE FRANCOPHONE DE LA COLOMIBIE-BRITANNIQUE, THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, THE CANADIAN CIVIL LIBERTIES ASSOCIATION, THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS, THE CANADIAN COUNCIL FOR REFUGEES, THE CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC ONTARIO AND POSITIVE LIVING SOCIETY OF BRITISH COLUMBIA

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TABLE OF CONTENTS

PART I: OVERVIEW

1. This appeal is about standing for public interest litigants who propose to prosecute constitutional law claims. The BCCLA proposes that the central consideration in determining whether a "reasonable and effective alternative" to the process initiated by a public interest litigant exists should be whether the proposed litigation will assist the judiciary to fulfil its role in adjudicating the constitutionality of legislation.

2. To address this, the "effective alternative" test should explicitly assess the litigation capacity of the party seeking public interest standing, appraise the efficacy of the legal frame in which the challenge is put, and compare whether a private party who is not before the Court is likely to bring forward, effectively and in a timely way, a case of similar scope and quality. The BCCLA advocates for a balanced consideration of the legal and factual context and requiring the government to demonstrate that the judicial role will likely be fulfilled if the public interest litigant's lawsuit is dismissed.

STATEMENT OF FACTS

3. The judgment under appeal was initiated by two litigants, the Sex Workers United Against Violence Society (SWUAV) and Sheryl Kiselbach. Their capacity to fully and properly present to the Court the law and facts to support their arguments is not in question. Their claims challenge the constitutionality of laws criminalizing aspects of sex work and are, among other things:

   (a) factually complex - emphasizing the accretive effect of the impugned provisions on the lives of those involved in sex work; and

   (b) legally comprehensive – challenging the interlocking components of the criminal law anti-prostitution scheme as a whole.

PART II: POSITION ON APPELLANT'S QUESTION

4. The BCCLA supports the position of the Respondents that the Court of Appeal's order should be upheld and the decision to grant public interest standing to both Respondents sustained. The BCCLA takes no position on whether the

Respondents should be granted private interest standing or on the issue of costs as between the parties.

5. The third branch of the test for public interest standing, namely, whether there is another reasonable and effective way to bring the issue raised before the Court, is the focus of this appeal. The Court of Appeal correctly held that the other branches of the test, identified by this Court in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236, at paragraph 36, are not at issue in this appeal.

6. This factum will advance the argument that the "reasonable and effective alternative" branch of the test for public interest standing should take into consideration:

> (1) the capacity of the public interest litigant to adduce a comprehensive evidentiary foundation to contextualize the constitutional issues and to develop and present focussed legal argument; and
>
> (2) whether a more directly affected individual who is not before the Court is likely to bring forward, effectively, a case with a scope and quality comparable to that proposed by the public interest litigant, and sufficient to permit the Court to fulfil its supervisory role.

7. The argument advanced by the BCCLA would bring the test for public interest standing in line with the test currently adopted by other common law jurisdictions.

PART III: ARGUMENT

The Relationship between Public Interest Standing and the Role of the Judiciary

8. The question of whether there exists another reasonable and effective way to bring an issue before the Court requires an assessment of whether the public interest litigation before the Court can itself facilitate the comprehensive, contextualized and efficient adjudication of the issues in dispute, so as to permit the judiciary to fulfil its role in ensuring the constitutionality of legislation.

9. The role of the judiciary in maintaining respect for the limits of legislative authority is a central consideration with public interest standing. In *Thorson*, Laskin J. stated that a "telling consideration" was "whether a question of constitutionality should be immunized from judicial review by denying standing to anyone to challenge the impugned statute" and that "it would be strange and, indeed alarming, if there was no way in which a question of alleged excess of legislated power, a matter traditionally within the scope of the judicial process, could be made the subject of adjudication."

> *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138 [*Thorson*], para. 12
> *Nova Scotia Board of Censors v. McNeil*, [1976] 2 S.C.R. 265 [*McNeil*]

10. In *Borowski*, this Court granted public interest standing to an anti-abortion activist seeking a declaration under the *Canadian Bill of Rights* that portions of the *Criminal Code* were invalid and stated the well-known three part test for public interest standing. This "liberal" approach to public interest standing, later applied in *Thorson*, is intended to lend vitality to the role of the judiciary within a constitutional democracy in bridging the gap between the government and society in order to protect the democratic principles underlying the Constitution. This relationship between public interest standing and the role of the judiciary was succinctly set out by Le Dain J. in *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607 [*Finlay*], at paragraph 36.

> *Borowski v. Canada (Minister of Justice)*, [1981] 2 S.C.R. 575 [*Borowski*], para. 56

11. The role of the courts in a constitutional democracy was central to the reasoning in *Canadian Council of Churches*. In that case, this Court noted the importance of granting standing "in those situations where it is necessary to ensure that legislation conforms to the Constitution and the *Charter*". In *Canadian Council of Churches*, this Court cautioned that the third test "should not be interpreted as a mechanistic application of a technical requirement. Rather it must be remembered that the basic purpose for allowing public interest standing is to ensure that legislation is not immunized from challenge." On this approach, the

public interest litigant serves as a catalyst to dialogue between the legislative and judicial branches.

Canadian Council of Churches, *supra*, paras. 32, 36 and 42

The Importance of a Contextual Analysis

12. The relationship between the role of the judiciary and standing is illuminated by the evidentiary requirements of public interest litigation. Laskin CJ, dissenting in *Borowski*, would have denied public interest standing to the anti-abortion activist on the basis that the proposed litigation was abstract and hypothetical. In Laskin CJ's view, the question turned on whether the *lis* before the court was sufficiently alive and concrete to facilitate meaningful adjudication. The presence or absence of a clear concrete factual background on which to decide a case was pivotal in *Canadian Council of Churches*.

See *Borowski*, *supra*, para. 5
Canadian Council of Churches, *supra*, para. 40

13. Laskin CJ's comments in *Borowski* foreshadow the recognition of the "tantamount importance" of an evidentiary context for constitutional adjudication. In *R. v. Seaboyer*, this Court noted that "constitutional questions must be examined in their broader political, social and historical context in order to attempt any kind of meaningful constitutional analysis". This Court went on to hold that a contextual approach is essential if the Court is to answer constitutional questions with confidence and with a full understanding of the role of the legislative provisions.

R. v. Seaboyer; R. v. Gayme, [1991] 2 S.C.R. 577, paras. 140, 204

14. The importance of context in constitutional adjudication was also emphasized by Wilson J., in *Edmonton Journal v. Alberta (Attorney General)*. In particular, Wilson J. noted that the importance of a right or freedom must be assessed within the context of both the case and competing values since rights and freedoms can have different meanings in different contexts. Context enables a Court to focus on the particular aspect of the right or freedom at stake and ensure that the constitutional guarantee is given a full and proper interpretation.

Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326, paras. 12, 13

15. The proper role of public interest litigants must be understood in light of the judicial need for an evidentiary context to fulfil its role in limiting legislative power. The test for public interest standing should involve an appraisal of whether an alternative litigant is likely to emerge who will be effective in allowing the Court to fulfil its mandate for contextual constitutional adjudication.

16. The BCCLA proposes a restatement of considerations of which this honourable Court is already mindful. The incremental development of the law proposed by the BCCLA would explicitly hinge the "effective alternative" test on the litigation capacity of the proposed public interest litigant, the quality and breadth of the evidence the litigant proposes to adduce, and the efficacy of the legal frame presented by the litigant to challenge the impugned legislation. The burden should be on the party seeking to restrict access to the courts.

Canadian Council of Churches, *supra*
Chaoulli v. Quebec (Attorney General), 2005 1 S.C.R. 791, para.189

17. The BCCLA proposes a formulation of the "effective alternative" test that would state two related considerations:

(1) the capacity of the public interest litigant to adduce a comprehensive evidentiary foundation to contextualize the constitutional issues and to develop and present focussed legal argument; and

(2) whether a more directly affected individual who is not before the Court is likely to bring forward a case with a scope and quality comparable to that proposed by the public interest litigant, and sufficient to permit the Court to fulfil its supervisory role.

18. Permitting consideration of litigation capacity and the efficacy of the proposed litigation to remain tacit and unstated invites undue emphasis on whether there exist impediments to a private interest suit. A narrow focus on impediments to private interest litigation rests on the determination of public interest standing on hypothetical matters about which there is seldom a factual foundation, such as

whether vulnerable street-level sex trade workers are likely to mount comprehensive challenges to legislation as part of a legal defence to minor criminal charges and whether the Legal Services Society is likely to approve funding for such a challenge. The role of the judiciary in supervising the legislative limits imposed by the constitution should not turn exclusively on such speculative and indecisive considerations.

A Comparative Law Analysis

19. The incremental development to the law on public interest standing proposed by the BCCLA is supported by recent developments in the rules on standing in other common law jurisdictions.

20. The relationship between standing and the role of the judiciary in a democracy in adjudicating the constitutionality of legislation has been eloquently summarized by Aaron Barak, former President of the Supreme Court of Israel, in the following manner:

> [T]he role of the supreme court is not restricted to adjudicating disputes in which parties claim that their personal rights have been violated. I believe that my role as a judge is to bridge the gap between law and society and to protect democracy. It follows that I also favor expanding the rules of standing and releasing them from the requirement of an injury in fact. The Supreme Court of Israel has adopted this approach. Gradually … we have adopted the view that when the claim alleges a major violation of the rule of law (in its broad sense), every person in Israel has legal standing to sue. Fears that the court would be "flooded" with frivolous lawsuits have proven groundless. In practice, it is primarily citizen watchdog groups and human rights organizations that have exploited this provision. I think that, overall, the outcome has been positive.
>
> Aaron Barak, "Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002) 116 Harv. L. Rev. 19 at 108

21. In *Canadian Council of Churches*, the Court viewed the law of standing in the United Kingdom and Australia as significant to the Court's analysis. In that case, the Court found the rules in these other jurisdictions to be more limited than in Canada. In the ensuing years, however, the law of standing in Australia, the UK and other common law jurisdictions has changed substantially to expand the situations in which public interest litigants may be granted standing. Australian and UK law are now consistent with the formulation advocated by the BCCLA.

Canadian Council of Churches, *supra*

22. In the UK, the test for public interest standing, in an application to review the lawfulness of government action, is one of "sufficient interest in the matter to which the application relates". In a number of cases, which will be discussed below, UK courts have held that it was more efficient to grant public interest standing to specialized organizations than to wait for an individual claimant to bring the case.

Supreme Court Act 1981 (U.K.), c. 54, s. 31(3)

23. *R. v. Secretary of State for Foreign Affairs, ex parte World Development Movement*, [1995] 1 W.L.R. 386, held that since the question of standing goes to the court's jurisdiction, standing must be considered in the legal and factual context of the case as a whole. In that case, a "non-partisan pressure group concerned with the misuse of aid money" was granted standing to seek a declaration that a decision by the Secretary of State for Foreign and Commonwealth Affairs to issue a grant was unlawful. Neither the applicant nor its individual members had a direct personal interest in funding under the Overseas Development and Co-operation Act but they were seeking to act in the interest of potential aid recipients overseas.

24. Rose L.J. considered the following factors significant: the importance of vindicating the rule of law; the importance of the issue raised; the likely absence of any other responsible challenger; the nature of the breach of duty against which relief was sought; and the relative expertise of the applicant. The dominant concern, however, was whether the challenge had merit. In considering merit, the question was whether the applicant could show "some substantial default or abuse", and not whether his personal rights or interests were involved.

R. v. Secretary of State, *supra*, p. 395-6

25. In *R. v. Inspectorate of Pollution and another, ex parte Greenpeace Ltd (No 2)*, [1994] 4 All E.R. 329, Otton J. made the following comments at p. 350, which the BCCLA submits are of particular relevance to the case at bar:

> It seems to me that if I were to deny standing to Greenpeace, those it represents might not have an effective way to bring the issues before the court. There would have to be an application either by an individual employee of BNFL or a near neighbour. In this case it is unlikely that either would be able to command the expertise which is at the disposal of Greenpeace. Consequently, a less well-informed challenge might be mounted which would stretch unnecessarily the court's resources and which would not afford the court the assistance it requires in order to do justice between the parties. Further, if the unsuccessful applicant had the benefit of legal aid it might leave the respondents and BNFL without an effective remedy in costs. Alternatively, the individual (or Greenpeace) might seek to persuade Her Majesty's Attorney General to commence a relator action which (as a matter of policy or practice) he may be reluctant to undertake against a government department. Neither of these courses of action would have the advantage of an application by Greenpeace, who, with its particular experience in environmental matters, its access to experts in the relevant realms of science and technology (not to mention the law), is able to mount a carefully selected, focused, relevant and well-argued challenge. … This responsible approach undoubtedly had the advantage of sparing scarce court resources, ensuring an expedited substantive hearing and an early result.

Otton J. found support for this line of reasoning in *Thorson, supra*, *McNeil, supra*, and *Finlay*, *supra*.

R. v. Inspectorate of Pollution, *supra*, p. 395

26. In *Canadian Council of Churches*, the Court referenced *Gouriet v. Union of Public Office Workers*, [1978] A.C. 435 (H.L.) for its restrictive interpretation of the rules on standing for public interest litigation. However, in *R. v. Inland Commissioners, ex p National Federation of Self-Employed and Small Businesses Ltd.*, [1982] A.C. 617, the House of Lords held that the test for standing set out in *Gouriet* was limited to the private law context, and is only applicable when a private citizen seeks an injunction or declaration that another private citizen's conduct is unlawful.

Canadian Council of Churches, *supra*, paras. 14, 15

27. In Australia, public interest standing can be granted in cases involving injunctions, declarations and judicial review of administrative decisions whenever a litigant has a "special interest in the subject matter". In *Canadian Council of Churches*, this Court cited *Australian Conservation Foundation Inc. v. Commonwealth of Australia* (1980), 28 A.L.R. 257 (H.C.) [*Australian*

Conservation Foundation] for its restrictive interpretation of the "special interest" test.

Canadian Council of Churches, *supra*, paras. 19, 20

28. However, in *Save Bell Park Group v. Kennedy* [2002] Q.S.C. 174, the Supreme Court of Queensland rejected the test for standing as set out in *Australian Conservation Foundation*, noting at paragraph 10 that more "[r]ecent decisions suggest a somewhat broader view is now being taken of what constitutes sufficient standing to support an application for judicial review than might hitherto have been thought to be the case". In particular, the court pointed to the decision of *North Queensland Conservation Council Inc v. The Executive Director, Queensland Parks and Wildlife Service* [2000] Q.S.C. 172, in which Chesterman J. analyzed a number of authorities on standing and stated at paragraph 12:

> The plaintiff should have standing if it can be seen that his connection with the subject matter of the suit is such that it is not an abuse of process. If the plaintiff is not motivated by malice, is not a busy body or crank and the action will not put another citizen to great cost or inconvenience his standing should be sufficient. … If a plaintiff's interest is insufficient the proceedings will be abusive. It is, however, probably easier to identify a proceeding which is an abuse of process than to recognize a 'special interest'. The distinction which must be drawn is between those who seek to prevent an abuse of process and those who seek to abuse the process itself.

29. In South Africa, the factors relevant to whether public interest standing should be granted include: whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court.

> *Lawyers for Human Rights and Other v. Minister of Home Affairs and Other*, (CCT 18/03) [2004] ZACC 12 (S. Afr. Const. Ct.), paras. 16 and 17, citing *Ferreira v. Levin NO and Others; Vryenhoek and Others v. Powell NO and Others* 1996 (1) SA 984 (CC), per O'Regan J.

30. The Constitutional Court of South Africa emphasized that:

> The issue is always whether a person or organization acts genuinely in the public interest. A distinction must however be made between the subjective position of the person or organization claiming to act in the public interest on the one hand, and whether it is, objectively speaking, in the public interest for the particular proceedings to be brought. It is ordinarily not in the public interest for proceedings to be brought in the abstract. But this is not an invariable principle. There may be circumstances in which it will be in the public interest to bring proceedings even if there is no live case. The factors set out by O'Regan J help to determine this question. The list of relevant factors is not closed. I would add that the degree of vulnerability of the people affected, the nature of the right said to be infringed, as well as the consequences of the infringement of the right are also important considerations.
>
> *Lawyers for Human Rights v Minister of Home Affairs*, *supra*, para. 18

31. The BCCLA submits that while the law on standing in the aforementioned countries is generally consistent with the law in Canada, it suggests, most importantly, an incremental development of the existing test under which the assessment of reasonable and effective alternatives would require a consideration of the legal and factual context in which the litigation arises.

PART IV. SUBMISSIONS ON COSTS

32. Costs should not be ordered for or against the BCCLA in this case.

PART V. NATURE OF ORDER SOUGHT

33. The BCCLA seeks the following orders: (a) that the BCCLA be granted the right to make oral submissions at the hearing of this appeal; and (b) that the order of the Court of Appeal made on October 12, 2010 be upheld.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: January 3, 2012

'Jason Gratl and Megan Vis-Dunbar'
Jason Gratl and Megan Vis-Dunbar
Counsel for the BCCLA

PART VI. LIST OF AUTHORITIES

Appendix A
***Canadian Charter of Rights and Freedoms*, ss. 2(b), 2(d), 7, 15, 52**

PART VII. STATUTES AND REGULATIONS

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11	**La Charte canadienne des droits et libertés, Loi constitutionnelle de 1982 (R-U), constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11**
2. Everyone has the following fundamental freedoms: ... b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; ... d) freedom of association.	**2.** Chacun a les libertés fondamentales suivantes: ... b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication; ... d) liberté d'association.
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.	**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
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.	**15.** (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
(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.	(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

Appendix A
***Canadian Charter of Rights and Freedoms*, ss. 2(b), 2(d), 7, 15, 52**

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.	**52.** (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.
(2) The Constitution of Canada includes (*a*) the *Canada Act 1982*, including this Act; (*b*) the Acts and orders referred to in the schedule; and (*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).	(2) La Constitution du Canada comprend : (*a*) la *Loi de 1982 sur le Canada*, y compris la présente loi; (*b*) les textes législatifs et les décrets figurant à l'annexe; (*c*) les modifications des textes législatifs et des décrets mentionnés aux alinéas *a*) ou *b*).
(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.	(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.

***Criminal Code*, R.S.C. 1985, c. C-46**	**Code criminel, L.R.C. 1985, c. C-46**
Keeping common bawdy-house **210.** (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.	Tenue d'une maison de débauche **210.** (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque tient une maison de débauche.
Landlord, inmate, etc. (2) Every one who (*a*) is an inmate of a common bawdy-house, (*b*) is found, without lawful excuse, in a common bawdy-house, or (*c*) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.	Propriétaire, habitant, etc. (2) Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, selon le cas : *a*) habite une maison de débauche; *b*) est trouvé, sans excuse légitime, dans une maison de débauche; *c*) en qualité de propriétaire, locateur, occupant, locataire, agent ou ayant autrement la charge ou le contrôle d'un local, permet sciemment que ce local ou une partie du local soit loué ou employé aux fins de maison de débauche.
Notice of conviction to be served on owner (3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.	Le propriétaire doit être avisé de la déclaration de culpabilité (3) Lorsqu'une personne est déclarée coupable d'une infraction visée au paragraphe (1), le tribunal fait signifier un avis de la déclaration de culpabilité au propriétaire ou locateur du lieu à l'égard duquel la personne est déclarée coupable, ou à son agent, et l'avis doit contenir une déclaration portant qu'il est signifié selon le présent article.
Duty of landlord on notice (4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence. R.S., c. C-34, s. 193.	Devoir du propriétaire sur réception de l'avis (4) Lorsqu'une personne à laquelle un avis est signifié en vertu du paragraphe (3) n'exerce pas immédiatement tout droit qu'elle peut avoir de résilier la location ou de mettre fin au droit d'occupation que possède la personne ainsi déclarée coupable, et que, par la suite, un individu est déclaré coupable d'une infraction visée au paragraphe (1) à l'égard du même local, la personne à qui l'avis a été signifié est censée avoir commis une infraction visée au paragraphe (1), à moins qu'elle ne prouve qu'elle a pris toutes les mesures raisonnables pour empêcher le renouvellement de l'infraction. S.R., ch. C-34, art. 193.

Transporting person to bawdy-house

211. Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 194.

Transport de personnes à des maisons de débauche

211. Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, sciemment, mène ou transporte ou offre de mener ou de transporter une autre personne à une maison de débauche, ou dirige ou offre de diriger une autre personne vers une maison de débauche.

S.R., ch. C-34, art. 194.

Procuring

212. (1) Every one who

(*a*) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(*b*) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,

(*c*) knowingly conceals a person in a common bawdy-house,

(*d*) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(*e*) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(*f*) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,

(*g*) procures a person to enter or leave Canada, for the purpose of prostitution,

(*h*) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(*i*) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

(*j*) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Proxénétisme

212. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans quiconque, selon le cas :

a) induit, tente d'induire ou sollicite une personne à avoir des rapports sexuels illicites avec une autre personne, soit au Canada, soit à l'étranger;

b) attire ou entraîne une personne qui n'est pas prostituée vers une maison de débauche aux fins de rapports sexuels illicites ou de prostitution;

c) sciemment cache une personne dans une maison de débauche;

d) induit ou tente d'induire une personne à se prostituer, soit au Canada, soit à l'étranger;

e) induit ou tente d'induire une personne à abandonner son lieu ordinaire de résidence au Canada, lorsque ce lieu n'est pas une maison de débauche, avec l'intention de lui faire habiter une maison de débauche ou pour qu'elle fréquente une maison de débauche, au Canada ou à l'étranger;

f) à l'arrivée d'une personne au Canada, la dirige ou la fait diriger vers une maison de débauche, l'y amène ou l'y fait conduire;

g) induit une personne à venir au Canada ou à quitter le Canada pour se livrer à la prostitution;

h) aux fins de lucre, exerce un contrôle, une direction ou une influence sur les mouvements d'une personne de façon à démontrer qu'il l'aide, l'encourage ou la force à s'adonner ou à se livrer à la prostitution avec une personne en particulier ou d'une manière générale;

i) applique ou administre, ou fait prendre, à une personne, toute drogue, liqueur enivrante, matière ou chose, avec l'intention de la stupéfier ou de la subjuguer de manière à permettre à quelqu'un d'avoir avec elle des rapports sexuels illicites;

j) vit entièrement ou en partie des produits de la prostitution d'une autre personne.

Living on the avails of prostitution of person under eighteen	Proxénétisme
(2) Despite paragraph (1)(*j*), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of two years.	(2) Par dérogation à l'alinéa (1)*j*), quiconque vit entièrement ou en partie des produits de la prostitution d'une autre personne âgée de moins de dix-huit ans est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans, la peine minimale étant de deux ans.
Aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years	Infraction grave — vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans
(2.1) Notwithstanding paragraph (1)(*j*) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who (*a*) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally, and (*b*) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.	(2.1) Par dérogation à l'alinéa (1)*j*) et au paragraphe (2), est coupable d'un acte criminel et passible d'un emprisonnement minimal de cinq ans et maximal de quatorze ans quiconque vit entièrement ou en partie des produits de la prostitution d'une autre personne âgée de moins de dix-huit ans si, à la fois : *a*) aux fins de profit, il l'aide, l'encourage ou la force à s'adonner ou à se livrer à la prostitution avec une personne en particulier ou d'une manière générale, ou lui conseille de le faire; *b*) il use de violence envers elle, l'intimide ou la contraint, ou tente ou menace de le faire.
Presumption	Présomption
(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(*j*) and subsections (2) and (2.1).	(3) Pour l'application de l'alinéa (1)*j*) et des paragraphes (2) et (2.1), la preuve qu'une personne vit ou se trouve habituellement en compagnie d'un prostitué ou vit dans une maison de débauche constitue, sauf preuve contraire, la preuve qu'elle vit des produits de la prostitution.
Offence — prostitution of person under eighteen	Infraction — prostitution d'une personne âgée de moins de dix-huit ans
(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.	(4) Quiconque, en quelque endroit que ce soit, obtient, moyennant rétribution, les services sexuels d'une personne âgée de moins de dix-huit ans ou communique avec quiconque en vue d'obtenir, moyennant rétribution, de tels services est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans, la peine minimale étant de six mois.
(5) [Repealed, 1999, c. 5, s. 8]	(5) [Abrogé, 1999, ch. 5, art. 8]
R.S., 1985, c. C-46, s. 212; R.S., 1985, c. 19 (3rd Supp.), s. 9; 1997, c. 16, s. 2; 1999, c. 5, s. 8; 2005, c. 32, s. 10.1.	L.R. (1985), ch. C-46, art. 212; L.R. (1985), ch. 19 (3^{e} suppl.), art. 9; 1997, ch. 16, art. 2; 1999, ch. 5, art. 8; 2005, ch. 32, art. 10.1.

Offence in relation to prostitution	Infraction se rattachant à la prostitution
213. (1) Every person who in a public place or in any place open to public view (*a*) stops or attempts to stop any motor vehicle, (*b*) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or (*c*) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.	**213.** (1) Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, dans un endroit soit public soit situé à la vue du public et dans le but de se livrer à la prostitution ou de retenir les services sexuels d'une personne qui s'y livre : *a*) soit arrête ou tente d'arrêter un véhicule à moteur; *b*) soit gêne la circulation des piétons ou des véhicules, ou l'entrée ou la sortie d'un lieu contigu à cet endroit; *c*) soit arrête ou tente d'arrêter une personne ou, de quelque manière que ce soit, communique ou tente de communiquer avec elle.
Definition of "public place"	Définition de « endroit public »
(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.	(2) Au présent article, *« endroit public »* s'entend notamment de tout lieu auquel le public a accès de droit ou sur invitation, expresse ou implicite; y est assimilé tout véhicule à moteur situé dans un endroit soit public soit situé à la vue du public.
R.S., 1985, c. C-46, s. 213; R.S., 1985, c. 51 (1st Supp.), s. 1.	L.R. (1985), ch. C-46, art. 213; L.R. (1985), ch. 51 (1er suppl.), art. 1.

Supreme Court Act 1981 (U.K.)

Chapter 54

31 Application for judicial review

(3)No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.