

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT/RESPONDENT
ON CROSS APPEAL (Appellant)

AND:

TERRI JEAN BEDFORD, AMY LEOVITCH and VALERIE SCOTT

RESPONDENTS/APPELLANTS
ON CROSS APPEAL (Respondents)

AND BETWEEN:

ATTORNEY GENERAL OF ONTARIO

APPELLANT/RESPONDENT
ON CROSS APPEAL (Appellant)

AND:

TERRI JEAN BEDFORD, AMY LEOVITCH and VALERIE SCOTT

RESPONDENTS/APPELLANTS ON CROSS APPEAL
(Respondents)

AND:

ATTORNEY GENERAL OF QUEBEC, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, PIVOT LEGAL SOCIETY, DOWNTOWN EASTSIDE SEX WORKERS UNITED AGAINST VIOLENCE, PROVIDING ALTERNATIVES COUNSELLING EDUCATION (PACE) SOCIETY, SECRETARIAT OF THE JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, EVANGELICAL FELLOWSHIP OF CANADA, CANADIAN HIV/AIDS LEGAL NETWORK, BRITISH COLUMBIA CENTRE FOR EXCELLENCE IN HIV/AIDS, HIV & AIDS LEGAL CLINIC ONTARIO, CANADIAN ASSOCIATION OF SEXUAL ASSAULT CENTRES, NATIVE WOMEN'S ASSOCIATION OF CANADA, CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES, ACTION ONTARIENNE CONTRE LA VIOLENCE FAITE AUX FEMMES, CONCERTATION DES LUTTES CONTRE L'EXPLOITATION SEXUELLE, REGROUPEMENT QUÉBÉCOIS DES CENTRES D'AIDE ET DE LUTTE CONTRE LES AGRESSIONS À CARACTÈRE SEXUEL, VANCOUVER RAPE RELIEF SOCIETY, CHRISTIAN LEGAL FELLOWSHIP, CATHOLIC CIVIL RIGHTS LEAGUES, REAL WOMEN OF CANADA, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, INSTITUT SIMONE DE BEAUVOIR, ASIAN WOMEN FOR EQUALITY SOCIETY operating as ASIAN WOMEN COALITION ENDING PROSTITUTION, and ABORIGINAL LEGAL SERVICES OF TORONTO INC

INTERVENERS

FACTUM OF THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION ("BCCLA")
(pursuant to rules 42 and 55 of the *Rules of the Supreme Court of Canada*)

**BRENT B OLTHUIS
MEGAN VIS-DUNBAR
STEPHANIE McHUGH**

HUNTER LITIGATION CHAMBERS
2100 - 1040 West Georgia Street
Vancouver, BC V6E 4H1
Tel: 604-891-2400
Fax: 604-647-4554
Email: bolthuis@litigationchambers.com

**Counsel for the Intervener, The British
Columbia Civil Liberties Association**

**MICHAEL H MORRIS
GAIL SINCLAIR
NANCY DENNISON**

ATTORNEY GENERAL OF CANADA
#3400 – 130 King Street West
Toronto, ON M5X 1K6
Tel: (416) 973-9704
Fax: (416) 952-4518
Email: michael.morris@justice.gc.ca

Counsel for the Appellant, AG Canada

**JAMIE C KLUKACH
CHRISTINE E BARTLETT-HUGHES
MEGAN STEPHENS**

CROWN LAW OFFICE - CRIMINAL
720 Bay Street, 10th Floor
Toronto, ON M5G 2K1
Tel: (416) 326-4600
Fax: (416) 326-4656
Email: jamie.klukach@ontario.ca

Counsel for the Appellant, AG Ontario

MICHAEL SOBKIN

BARRISTER & SOLICITOR
2 - 90 Boulevard de Lucerne
Gatineau, QC J9H 7K8
Tel.: (819) 778-7794
Fax: (819) 778-1740
Email: msobkin@sympatico.ca

**Agent for the Intervener, The British
Columbia Civil Liberties Association**

CHRISTOPHER M RUPAR

ATTORNEY GENERAL OF CANADA
#1212 – 234 Wellington Street
Ottawa, ON K1A 0H8
Tel: (613) 941-2351
Fax: (613) 954-1920
Email: christopher.rupar@justice.gc.ca

Agent for the Appellant, AG Canada

ROBERT E HOUSTON, QC

BURKE-ROBERTSON
#200 – 441 MacLaren Street
Ottawa, ON K2P 2H3
Tel: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Agent for the Appellant, AG Ontario

ALAN N YOUNG

OSGOODE HALL LAW SCHOOL
4700 Keele Street
Toronto, ON M3J 1P3
Tel: (416) 736-5595
Fax: (416) 736-5736
E-mail: ayoung@osgoode.yorku.ca

**Counsel for the Respondent, Terri Jean
Bedford**

FIONA CAMPBELL

SACK GOLDBLATT MITCHELL LLP
#500 – 30 Metcalfe Street
Ottawa, ON K1P 5L4
Tel: (613) 235-5327
FAX: (613) 235-3041
E-mail: fcampbell@sgmlaw.com

**Agent for the Respondent, Terri Jean
Bedford**

YARON MARZEL/STACEY NICHOLS

MARZEL LAW
#200 – 265 Rimrock Road
Toronto, ON M3J 3C6
Tel: (416) 485-5800, ext 233
Fax: (416) 485-1610
E-mail: marzel@lernermarzel.com

Counsel for the Respondent, Amy Lebovitch

FIONA CAMPBELL

SACK GOLDBLATT MITCHELL LLP
#500 – 30 Metcalfe Street
Ottawa, ON K1P 5L4
Tel: (613) 235-5327
FAX: (613) 235-3041
E-mail: fcampbell@sgmlaw.com

Agent for the Respondent, Amy Lebovitch

**MARLYS A EDWARDH/
DANIEL SHEPPARD**

SACK GOLDBLATT MITCHELL LLP
#1100 – 20 Dundas Street West
Toronto, ON M5G 2G8
Tel: (416) 979-4380
Fax: (416) 979-4430
E-mail: medwardh@sgmlaw.com

Counsel for the Respondent, Valerie Scott

FIONA CAMPBELL

SACK GOLDBLATT MITCHELL LLP
#500 – 30 Metcalfe Street
Ottawa, ON K1P 5L4
Tel: (613) 235-5327
FAX: (613) 235-3041
E-mail: fcampbell@sgmlaw.com

Agent for the Respondent, Valerie Scott

**SYLVAIN LEBOEUF
JULIE DASSYLVA**

PROCUREUR GÉNÉRAL DU QUÉBEC
1200, route de l'Église, 2^e étage
Québec, QC G1V 4M1
Tel: (418) 643-1477, ext 20733
Fax: (418) 644-7030
Email: sleboeuf@justice.gouv.qc.ca

Counsel for the Intervener, AG Quebec

PIERRE LANDRY

NOËL & ASSOCIÉS
111, rue Champlain
Gatineau, QC J8X 3R1
Tel: (819) 771-7393
Fax: (819) 771-5397
Email: p.landry@noelassociés.com

Agent for the Intervener, AG Quebec

KATRINA PACEY

PIVOT LEGAL LLP
121 Heatley Avenue
Vancouver, BC V6A 3E9
Tel: (604) 255-9700, ext 103
Fax: (604) 255-1552
Email: katrina@pivotlegal.org

Counsel for the Interveners, Pivot Legal Society, Downtown Eastside Sex Workers United Against Violence, and Providing Alternatives Counselling Education (PACE) Society

MICHAEL A FEDER

McCARTHY TÉTRAULT LLP
Suite 1300, 777 Dunsmuir Street
Vancouver, BC V7Y 1K2
Tel: (604) 643-5983
Fax: (604) 622-5614
Email: mfeder@mccarthy.ca

Counsel for the Intervener, Secretariat of the Joint United Nations Programme on HIV/AIDS

**GEORGIALEE A LANG
DONALD HUTCHISON**

EVANGELICAL FELLOWSHIP OF CANADA
130 Albert Street, Suite 1810
Ottawa, ON K1P 5G4
Tel: (613) 233-9868
Fax: (613) 233-0301
Email: glang@georgialeelang.com

Counsel for the Intervener, Evangelical Fellowship of Canada

JEFFREY W BEEDELL

McMILLAN LLP
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2
Tel: (613) 232-7171, ext 122
Fax: (613) 231-3191
Email: jeff.beedell@mcmillan.ca

Agent for the Interveners, Pivot Legal Society, Downtown Eastside Sex Workers United Against Violence, and Providing Alternatives Counselling Education (PACE) Society

PATRICIA J WILSON

OSLER, HOSKIN & HARCOURT LLP
340 Albert Street, Suite 1900
Ottawa, ON K1R 7Y6
Tel: (613) 787-1009
Fax: (613) 235-2867
Email: pwilson@osler.com

Agent for the Intervener, Secretariat of the Joint United Nations Programme on HIV/AIDS

EUGENE MEEHAN QC

SUPREME ADVOCACY LLP
397 Gladstone Avenue
Suite 100
Ottawa, ON K2P 0Y9
Tel: (613) 695-8855, ext 101
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

Agent for the Intervener, Evangelical Fellowship of Canada

**JONATHAN A SHIME
MEGAN SCHWARTZENTRUBER**

COOPER & SANDLER
1900 – 439 University Avenue
Toronto, ON M5G 1Y8
Tel: (416) 585-9191
Fax: (416) 408-2372
Email: jshime@criminal-lawyers.ca

**Counsel for the Interveners, Canadian
HIV/AIDS Legal Network, British
Columbia Centre for Excellence in
HIV/AIDS and HIV & AIDS Legal Clinic
Ontario**

**FAY FARADAY
JANINE BENEDET**

BARRISTERS & SOLICITORS
860 Manning Avenue
Toronto, ON M6G 2W8
Tel: (416) 389-4399
Fax: (647) 776-3147
Email: fay.faraday@faradaylaw.com

**Counsel for the Interveners, Canadian
Association of Sexual Assault Centres,
Native Women's Association of Canada,
Canadian Association of Elizabeth Fry
Societies, Action ontarienne contre la
violence faite aux femmes, Concertation des
lutes contre l'exploitation sexuelle,
Regroupement québécois des centres d'aide
et de lutte contre les agressions à caractère
sexuel and Vancouver Rape Relief Society**

MARIE-FRANCE MAJOR

SUPREME ADVOCACY LLP
397 Gladstone Avenue, Suite 100
Ottawa, ON K2P 0Y9
Tel: (613) 695-8855, ext 102
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

**Agent for the Interveners, Canadian
HIV/AIDS Legal Network, British
Columbia Centre for Excellence in
HIV/AIDS and HIV & AIDS Legal Clinic
Ontario**

NADIA EFFENDI

BORDEN LADNER GERVAIS LLP
100 Queen Street, Suite 1100
Ottawa, ON K1P 1J9
Tel: (613) 237-5160
Fax: (613) 230-8842
Email: neffendi@blg.com

**Agent for the Interveners, Canadian
Association of Sexual Assault Centres,
Native Women's Association of Canada,
Canadian Association of Elizabeth Fry
Societies, Action ontarienne contre la
violence faite aux femmes, Concertation des
lutes contre l'exploitation sexuelle,
Regroupement québécois des centres d'aide
et de lutte contre les agressions à caractère
sexuel and Vancouver Rape Relief Society**

**ROBERT W STALEY
RANJAN K AGARWAL**

BENNETT JONES LLP
Suite 3400, PO 130, One First Canadian Place
Toronto, ON M5X 1A4
Tel: (416) 777-4857
Fax: (647) 863-1716
Email: staleyr@bennettjones.com

**Counsel for the Interveners, Christian Legal
Fellowship, Catholic Civil Rights Leagues
and REAL Women of Canada**

**JOSEPH J ARVAY QC
CHERYL MILNE**

ARVAY FINLAY
1320 – 355 Burrard Street
Vancouver, BC V6C 2G8
Tel: (604) 689-4421
Fax: (888) 575-3281
Email: jarvay@arvayfinlay.com

**Counsel for the Intervener, David Asper
Centre for Constitutional Rights**

WALID HIJAZI

DESROSIERS, JONCAS, MASSICOTTE
AVOCATS
480, boulevard St-Laurent, Bureau 503
Montreal, QC H2Y 3Y7
Tel: (514) 397-9284
Fax: (514) 397-9922
Email: walidhijazi@hotmail.com

**Counsel for the Intervener, Institut Simone
de Beauvoir**

SHERIDAN SCOTT

BENNETT JONES LLP
1900 – 45 O'Connor Street
Ottawa, ON K1P 1A4
Tel: (613) 683-2302
Fax: (613) 683-2323
Email: scotts@bennettjones.com

**Agent for the Interveners, Christian Legal
Fellowship, Catholic Civil Rights Leagues
and REAL Women of Canada**

MARTHA A HEALEY

NORTON ROSE CANADA LLP
45 O'Connor Street
Ottawa, ON K1P 1A4
Tel: (613) 780-8638
Fax: (613) 230-5459
Email: martha.healey@nortonrose.com

**Agent for the Intervener, David Asper
Centre for Constitutional Rights**

FRÉDÉRIC LANGLOIS

DEVEAU, BOURGEOIS, GAGNÉ, HÉBERT
& ASSOCIÉES, sncrl
867, boulevard Saint-René Ouest, Suite 8
Gatineau, QC J8T 7X6
Tel: (819) 243-2616
Fax: (819) 243-2641

**Agent for the Intervener, Institut Simone de
Beauvoir**

GWENDOLINE ALLISON

FOY ALLISON LAW GROUP

207 – 2438 Marine Drive

West Vancouver, BC V7V 1L2

Tel: (604) 922-9282

Fax: (604) 922-9283

Email: gwendoline.allison@foyllison.com

**Counsel for the Intervener, Asian Women
for Equality Society operating as Asian
Women Coalition Ending Prostitution
(AWCEP)**

D LYNNE WATT

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, Suite 2600

Ottawa, ON K1P 1C3

Tel: (613) 786-8695

Fax: (613) 788-3509

Email: lynne.watt@gowlings.com

**Agent for the Intervener, Asian Women for
Equality Society operating as Asian Women
Coalition Ending Prostitution (AWCEP)**

CHRISTA BIG CANOE

EMILY HILL

ABORIGINAL LEGAL SERVICES OF
TORONTO INC

415 Yonge Street, Suite 803

Toronto, ON M5B 2E7

Tel: (416) 408-4041, ext 225

Fax: (416) 408-4268

Email: e_hill@lao.on.ca

**Counsel for the Intervener, Aboriginal
Legal Services of Toronto Inc**

TABLE OF CONTENTS

PART I – OVERVIEW OF THIS INTERVENER’S POSITION	1
PART II – POSITION WITH RESPECT TO THE APPELLANTS’ QUESTIONS	1
PART III – STATEMENT OF ARGUMENT	1
PART IV – SUBMISSIONS ON COSTS.....	10
PART V – ORDER SOUGHT	10
PART VI – TABLE OF AUTHORITIES	11
PART VII – STATUTORY PROVISIONS.....	13
1. <i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act</i> , 1982, being Schedule B to the <i>Canada Act 1982</i> <i>(UK)</i> , 1982, c 11, ss 2 and 7	13
2. <i>Criminal Code</i> , RSC 1985, c C-46, ss 46, 77, 78.1, 150, 161, 172.1, 172.2, 173, 212, 213, 264, 319 and 423.1	13

PART I – OVERVIEW OF THIS INTERVENER’S POSITION

1. The Appellants’ and Respondents’ submissions rely on essentially the same authorities in respect of the threshold “causation” issue to engage security of the person. They starkly disagree on the required degree of causality that flows from those authorities. This intervener respectfully submits that these arguments indicate why clarification from this Court is required on the topic. It is not simply that the parties rely on identical passages to support divergent conclusions on the record. More fundamentally, certain language and concepts employed in the parties’ submissions (and in the reasons of the Court of Appeal) are ill-equipped to capture the nuance and complexity attending the problem of when – and how – state action engages the security of the person interest.

2. With great respect for the reasoning of the Court of Appeal (para 107: AR, vol II at 47-48), it is not because the state action at issue in this case is *legislative* that the causation analysis is further complicated. Rather, the challenge is posed by the unique contours of the security of the person interest. In this connection, phrases such as “indirect”, “incidental”, “limited” and “unanticipated” are unhelpful to the analysis. Properly understood and applied, this Court’s “sufficient causal connection” standard is well-adapted to the task and offers the necessary guidance to trial courts.

3. Concerning the constitutionality of s 213(1)(c) (the “Communicating Provision”), the BCCLA takes the position that, to conduct a properly contextualized s 1 justificatory analysis, it is necessary at the substantive s 2(b) stage to consider fully: (a) the nature of the targeted speech and (b) the purpose it serves for the individual speaker. In this connection, the BCCLA submits that the expression at issue in this case lies at the very core of the values protected by s 2(b) and any infringement is not susceptible to easy justification.

PART II – POSITION WITH RESPECT TO THE APPELLANTS’ QUESTIONS

4. The BCCLA’s submissions address all four of the stated constitutional questions dealing with breach of substantive *Charter* rights (as distinct from the s 1 justificatory analysis).

PART III – STATEMENT OF ARGUMENT

A. Approaches to Causation Are Driven by Context

5. Causation issues routinely vex trial courts in a wide range of legal subject areas. This Court has recently (and repeatedly) addressed each of: (a) whether, for the purposes of s 24(2), evidence is

“obtained in a manner” that infringes or denies a substantive *Charter* right;¹ (b) the test for culpable homicide where there are multiple or intervening causes of death;² (c) the circumstances in which it is appropriate to depart from the default “but for” test in tort law;³ and (d) the application of the remoteness principle to liability for breach of contract.⁴ Clearly, causation is a difficult and context-sensitive matter.

6. Uniting these disparate topics, however, is the Court’s acknowledgment that there is a policy component to every causal assessment. In each instance, the underlying aims of the relevant substantive law serve to guide whether one event is sufficiently proximate to another that it can be identified as legally causative.⁵ The present context is no different. To determine when state action gives rise to a “real or imminent deprivation of ... security of the person” such that the analysis proceeds to the principles of fundamental justice,⁶ it is critically important to keep the purpose of constitutional litigation in mind.

B. Judicial Review of State Action and Section 7 of the *Charter*

7. At risk of stating what is trite, the *Charter* serves “to provide a continuing framework for the legitimate exercise of governmental power and ... for the unrelenting protection of individual rights and liberties.”⁷ It guarantees that interferences with those rights and liberties will not be permitted if they go beyond what can be demonstrably justified in a free and democratic society – all the while

¹ *R v Strachan*, [1988] 2 SCR 980; *R v Goldhart*, [1996] 2 SCR 463; *R v Wittwer*, 2008 SCC 33, [2008] 2 SCR 235.

² *R v Harbottle*, [1993] 3 SCR 306; *R v Nette*, 2001 SCC 78, [2001] 3 SCR 488; *R v Sarrazin*, 2011 SCC 54, [2011] 3 SCR 505; *R v Maybin*, 2012 SCC 24, [2012] 2 SCR 30.

³ *Athey v Leonati*, [1996] 3 SCR 458; *Resurfice Corp v Hanke*, 2007 SCC 7, [2007] 1 SCR 333; *Clements v Clements*, 2012 SCC 32, [2012] 2 SCR 181.

⁴ *Fidler v Sun Life Assurance Co of Canada*, 2006 SCC 30, [2006] 2 SCR 3; *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27 at para 19, [2008] 2 SCR 114; *Honda Canada Inc v Keays*, 2008 SCC 39 at paras 49-60, [2008] 2 SCR 362, Bastarache J.

⁵ See eg: *Wittwer*, *supra*, at para 21 (“[C]ourts have adopted a purposive and generous approach” for whether a statement is tainted by an earlier *Charter* breach); *Harbottle*, *supra*, at 323 (“In order to provide the appropriate distinctions pertaining to causation that must exist for the different homicide offences, it is necessary to examine the sections in their context while taking into account their aim and object”); *Clements*, *supra*, at paras 13, 19, 21, 41, McLachlin CJC (referring to the “goals of tort law”).

⁶ *R v White*, [1999] 2 SCR 417 at para 38, Iacobucci J; *R v Jarvis*, 2002 SCC 73 at para 66, [2002] 3 SCR 757; *Canadian Foundation for Children, Youth and the Law v Canada (AG)*, 2004 SCC 4 at para 175, [2004] 1 SCR 76 Arbour J (dissenting, but not on this point);

⁷ *Hunter v Southam Inc*, [1984] 2 SCR 145 at 155.

acknowledging that the Constitution is a “living tree” that grows over time to meet the evolving realities of the community it serves.⁸

8. In the context of the *Charter*, s 7 serves as the trunk of that metaphorical tree. It protects “the most basic interests of human beings – life, liberty and security”.⁹ The right to life is of course an indispensable prerequisite to the enjoyment of the remaining guaranteed rights.¹⁰ Beyond this, in part because of the foundational nature of the protected interests, s 7 “gives rise to some of the most difficult issues in *Canadian Charter* litigation.”¹¹ Indeed, of all the substantive *Charter* rights, s 7 has doubtless had the most profound effect on the Canadian legal landscape thus far.¹²

9. It is also highly germane to the causation analysis that s 7 contains its own “internal limit”, in the guise of the principles of fundamental justice. As the Court of Appeal rightly pointed out in the instant case, rejecting *in terrorem* arguments advanced by the Attorneys General:

A finding that legislation limits a claimant’s security of the person does not determine the constitutionality of the legislation, nor affect its operation. That finding only subjects the challenged legislation to a principles of fundamental justice analysis.¹³

10. In other words, a finding of causation in the s 7 setting is not determinative of liability. In this respect, the present context stands apart from all of the other examples cited above. To fulfil the promise of the *Charter* and ensure that state action impacting individuals’ security is not granted immunity from review, the courts must take a more flexible and realistic approach to causation.

⁸ See, eg: *Law Society of Upper Canada v Skapinker*, [1984] 1 SCR 357 at 366; *Reference re Same-Sex Marriage*, 2004 SCC 79 at para 22, [2004] 3 SCR 698; *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 23, [2007] 2 SCR 3, Binnie and LeBel JJ; *R v NS*, 2012 SCC 72 at para 72, LeBel J.

⁹ *Chaoulli v Quebec (AG)*, 2005 SCC 35 at para 193, [2005] 1 SCR 791, Binnie and LeBel JJ (dissenting, but not on this point).

¹⁰ *Gosselin v Quebec (AG)*, 2002 SCC 84 at para 346, [2002] 4 SCR 429, Arbour J (dissenting, but not on this point).

¹¹ *Chaoulli*, *supra*, at para 193, Binnie and LeBel JJ (dissenting, but not on this point).

¹² Among other things, s 7 was the basis for the landmark judgments in: *R v Stinchcombe*, [1991] 3 SCR 326 (constitutionalizing Crown disclosure in criminal proceedings); *Reference re BC Motor Vehicle Act*, [1985] 2 SCR 486 (scotching imprisonment as a penalty for absolute liability offences); *United States v Burns*, 2001 SCC 7, [2001] 1 SCR 283 (requiring the Minister of Justice to seek assurances that the death penalty will not be imposed on persons facing extradition); *Victoria (City of) v Adams*, 2008 BCSC 1363, 299 DLR (4th) 193, var’d 2009 BCCA 563, 313 DLR (4th) 29 (rendering inoperative the prohibition on erecting temporary overnight abodes in City parks); and *Canada (AG) v PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134 (invalidating the Minister of Health’s refusal to grant the Insite facility an exemption from the prohibitions in the *Controlled Drugs and Substances Act*, SC 1996, c 19).

¹³ *Canada (AG) v Bedford*, 2012 ONCA 186 (“ONCA Reasons”) at para 119, 109 OR (3d) 1: AR, vol II, Tab 7 at 53.

11. This Court has employed the phrase “sufficient causal connection” with reference to the threshold for triggering s 7 protection.¹⁴ The Appellants and Respondents take divergent views as to exactly what standard the “sufficient causal connection” prescribes in a context like the present. In the BCCLA’s submission, however, it would be inappropriate to burden the standard with further modifiers. The Court has chosen suitably flexible language in describing the required linkage. And it has done so cognizant of the entire surrounding context, including the scope of the three guaranteed interests and s 7’s central importance to the *Charter*.

C. Modifiers Like “Direct” and “Indirect” Are Unhelpful

12. The parties are agreed that the risks faced by sex workers flow from a complex mix of factors.¹⁵ This does not in itself render the instant case unique: notable s 7 cases such as *Morgentaler*, *Rodriguez*, *Chaoulli*, and *PHS* similarly involved state action – and legislative action at that – which, in concert with non-state factors, led to interferences with security of the person.

13. The Appellants and Respondents in this case are united in saying that it is *indirect* effects of the impugned provisions that bear upon the security of the person analysis.¹⁶ For its part, the BCCLA submits that characterizing state action as “direct” or “indirect” in its interference with security of the person creates an unnecessary and unhelpful distraction.

14. In most cases, whether a given event is described as “direct” or “indirect” will depend on the level of specificity with which it is analyzed. Ultimately, these are descriptors that distort more than they assist. For instance, viewed one way, it might be said:

- that the *Criminal Code* provision in *Morgentaler*, relieving a person from the criminal prohibition on abortion only where prior committee approval was granted, was an indirect cause of the interference with the security of women seeking abortions – the direct cause being internal hospital policies;¹⁷

¹⁴ *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 60, [2000] 2 SCR 307, Bastarache J; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 54, [2002] 1 SCR 3; *Re Application under s. 83.28 of the Criminal Code*, 2004 SCC 42 at paras 75-76, [2004] 2 SCR 248, Iacobucci and Arbour JJ; *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 19, [2010] 1 SCR 44.

¹⁵ Factum of the Attorney General of Canada (“AGC Factum”), *eg*, paras 1, 5, 62, 108; Factum of the Attorney General of Ontario (“AGO Factum”), *eg*, para 99; Factum of the Respondents (“Respondents’ Factum”), *eg*, paras 60, 61, 68.

¹⁶ See, *eg*: AGC Factum, paras 2, 3, 67, 108; AGO Factum, paras 2, 13, 37; Respondents’ Factum, paras 62-63.

¹⁷ Indeed, this was the approach suggested by Justice Beetz in respect of those situations in which the therapeutic abortion committee of the hospital in question was dormant: see *R v Morgentaler*, [1988] 1 SCR 30 at 98-99. While a

- that the prohibition on private health insurance in *Chaoulli* only indirectly interfered with the security of persons within the Quebec health care system – the direct cause being a combination of their own pre-existing medical conditions, those of other Quebecers, and the resulting strain placed on the allocation of scarce resources; or
- that the failure to grant a s 56 exemption in *PHS* involved an indirect interference with the s 7 interests of the injection drug users – the direct cause being attributed to “choice” or some other non-state factor.

Likewise, in the present case, one could assert with justification that the legislation has a *direct* impact: the courts below found that the impugned provisions create an increased risk of harm.

15. This Court has long taught that both purpose and effect are relevant for the purposes of determining *Charter* compliance. To parse effect into notional “direct” and “indirect” constituents is to introduce an unjustified element of subjectivity, which serves only to distract from the analysis.

D. Conclusion: “Sufficient Causal Connection” Is a Workable Standard

16. The BCCLA submits that, while superficially more descriptive than it is normative, the standard repeatedly expressed by this Court – that a “sufficient causal connection” is required – is well-suited to the task of determining when state action has interfered with an individual’s security of the person. It preserves a necessary element of flexibility, and avoids burdening the analysis with constructs that, at best, roughly gauge the interconnectedness of separate events and, at worst, complicate the exercise and serve to distract from its essential purpose.

17. The “sufficient causal connection” standard bears something of a superficial resemblance to the “material contribution of risk” approach discussed in this Court’s negligence jurisprudence.¹⁸ Although the analogy is not perfect – most obviously because “sufficient causal connection” represents the norm rather than an exception in the *Charter* context – there is commonality in that both are sensitive to impacts on the *risk of harm*. Properly understood, “sufficient causal connection” requires courts of first instance to determine whether state action has materially contributed to a risk of harm (even if its increment cannot be mathematically quantified).

hospital may itself be subject to the *Charter* (*Eldridge v British Columbia (AG)*, [1997] 3 SCR 624), the point here is that it would not have been the *Criminal Code* provision but, at most, a hospital policy that was subjected to s 7 review.

¹⁸ *Clements, supra*, at paras 14, 15. See also: *Bedford v Canada (AG)*, 2010 ONSC 4264 (“ONSC Reasons”) at paras 286, 102 OR (3d) 321: AR, vol I, Tab 3 at 79.

18. There is nothing to indicate that the “sufficient causal connection” standard has encountered difficulties in application. While the BCCLA prefers this Court’s straightforward and flexible articulation of the standard, it submits that the courts below adopted the same approach in substance.¹⁹ Himel J at first instance expressed little difficulty in comprehending “sufficient causal connection”, and applying it in the context of a voluminous and contentious record.²⁰ For its part, the Court of Appeal rightly drew a parallel from this Court’s recent judgment in *PHS*.²¹ These circumstances illustrate that the “sufficient causal connection” standard provides adequate guidance to trial courts. Colloquially, since it is not “broken”, it does not need to be “fixed”.

19. The findings in this case are that the impugned provisions expose sex workers to increased risk of harm by preventing them “from taking precautions, some extremely rudimentary, that can decrease the risk of violence towards them.”²² The Court of Appeal found no error in this conclusion and indeed – persuaded that “findings of social or legislative fact are not accorded the strong appellate deference given to adjudicative fact-finding”²³ – came independently to the same conclusion.²⁴

20. In this last regard, the BCCLA submits with respect that the Court of Appeal was incorrect in holding that less deference is owing to the judge of first instance where the record is composed largely or entirely of legislative facts. The interests of finality are the same, regardless of whether the facts at question are characterized as legislative or adjudicative, as is the appellate role of correcting error. Absent an error in principle or misapprehension of the record, the BCCLA submits that appellate courts should not subject causation findings to the scrutiny of a *de novo* assessment.²⁵

21. In summary, the application judge engaged in a careful and nuanced analysis of whether the impugned provisions had a sufficient causal connection to “a real or imminent deprivation ... of security of the person” by increasing the risk of harm to sex workers. She found such a connection

¹⁹ See, eg: ONSC Reasons at paras 360-62, ONCA Reasons at paras 112, 117: AR, vol I, Tab 3 at 98-99 and vol II, Tab 7 at 50-53.

²⁰ ONSC Reasons at paras 285-92: AR, vol I, Tab 3 at 79-82.

²¹ ONCA Reasons at paras 114-16: AR, vol II, Tab 7 at 51-52.

²² ONSC Reasons at para 361: AR, vol I, Tab 3 at 98-99.

²³ ONCA Reasons at para 127: AR, vol II, Tab 7 at 56-57.

²⁴ ONCA Reasons at paras 132-42: AR, vol II, Tab 7 at 59-63.

²⁵ See, eg: *Federation of Law Societies of Canada v Canada (AG)*, 2013 BCCA 147 at paras 55-60, Hinkson JA.

to be present, and committed no errors in coming to that conclusion. This is not a case that should stall at the threshold stage: security of the person is clearly engaged.

E. Paragraph 213(1)(c) Seriously Interferes with Freedom of Expression

22. It is inappropriate in a case like the present to proceed immediately to a s 1 analysis:

[T]he level of constitutional protection to which expression will be entitled varies with the nature of the expression. More specifically, the protection afforded freedom of expression is related to the relationship between the expression and the fundamental values this Court has identified as being the “core” values underlying s. 2(b).²⁶

23. Insofar as the courts below and the Respondents have predominantly characterised the expression at stake as communication safeguarding bodily integrity, the BCCLA therefore submits that the expression at stake is broader and also engages matters of consent, dignity and health.²⁷

24. The fundamental or core values underlying s 2(b) include protection of individual autonomy and self-development. Free speech also protects “human dignity and the right to think and reflect freely on one’s circumstances and condition.”²⁸ State action that jeopardizes core s 2(b) values is subjected to a “searching degree of scrutiny”.²⁹

25. Squarely within this core lies expression connected with the protection of individual autonomy and human dignity. This includes expression related to the assurance of one’s physical integrity, health, safety, dignity and – where the conditions so demand – one’s life. This form of expression reflects aspects of s 7 of the *Charter*, demonstrating that *Charter* rights reflect and inform each other in their separate spheres of application.

26. Certain forms of expression are fundamental to dignity and survival, as well as health and safety. Canadian law recognizes the importance of concepts such as express consent to sex, and

²⁶ *Canadian Broadcasting Corp v New Brunswick (AG)*, [1996] 3 SCR 480 at para 63.

²⁷ ONSC Reasons, paras 462, 471: AR, vol I, Tab 3 at 120, 122-23; Respondents’ Factum, para 32 (noting also role in informing sexual consent).

²⁸ *RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 at para 32, [2002] 1 SCR 156.

²⁹ *Canadian Broadcasting Corp, supra*, at para 63.

consent to medical treatment.³⁰ It not generally consonant with the norms of a free and democratic society for state action to impinge on this fundamental species of expression.

27. In the context of sexual activity, this form of protected speech includes: negotiation of condom use; assessment of a potential partner's sexual desires and preferences; assessment of a potential sexual partner's propensity for violence; assessment of a potential sexual partner's level of soberness; the proposed location for a sexual encounter; and ensuring consent prior to engaging in sexual activity. This expression has a clear bodily integrity component, but it also encompasses sex-related consent, health, safety and survival. It is the kind of speech in which adults engage in many different locations across Canada including bars and restaurants, theatres and parks, streets and cars.

28. Also lying at the core of s 2(b) is expression critical to one's employment and through that one's identity, emotional health and sense of self-worth. Conditions of work, including the duration and location of work, and personal or health concerns impact the personal lives of workers outside of their working hours. "Expression on these issues contributes to self-understanding, as well as to the ability to influence one's working and non-working life."³¹

29. The addition of a potential commercial element does not alter the nature or function of the expression for s 2(b) purposes. The Communicating Provision, however, restricts such speech when it is conducted "in a public place or in any place open to public view". The communication may not even take the form of a private conversation in a vehicle or secluded area of a park if it is for the purposes of engaging in the sex-trade.³² It also results in the absurd circumstance that it may be legal to engage in sex in a car or secluded area, and yet not be legal to *communicate* within that same place about the same activity if payment is involved.³³

³⁰ See, eg, *R v JA*, 2011 SCC 28 at para 1, [2011] 2 SCR 440: "It is a fundamental principle of Canadian law that a person is entitled to refuse sexual contact"; and *Ciarlariello v Schachter*, [1993] 2 SCR 119 at 135: "Everyone has the right to decide what is to be done to one's own body."

³¹ *RWDSU*, *supra*, at paras 33, 34.

³² Compare the definitions of "public place" in *Criminal Code*, ss 213(2) (broad) and 319(1) and (7) (narrow, and also providing for "private conversations"). See also: *Reference re ss 193 and 195.1(1)(c) of the Criminal Code (Man)*, [1990] 1 SCR 1123 ("*Prostitution Reference*") at 1214, Wilson J.

³³ Compare *Criminal Code*, ss 150, 173 and 213(1), (2).

30. The Communicating Provision is unique among the *Criminal Code* provisions in targeting the expression of a specific group.³⁴ Other communicating provisions within the *Criminal Code* relate to activities not associated with a specific group – and crimes of a significantly different nature.³⁵ By contrast, the Communicating Provision targets communication referable to a specific lawful occupation, sex work – and by so doing targets sex-workers and their clients.

31. The record establishes that clients of the sex-trade are drawn from all walks of life, but most sex-workers are women, and all prostitution carries “significant social stigma”.³⁶ The Communicating Provision has a predominant impact on the street sex-trade. Street sex-workers “are largely the most vulnerable” sex-workers, suffer the highest risk of homicide and violence, include many First Nations women, women who are addicted to drugs and/or alcohol, and most survival sex-workers, are the most marginalized and vulnerable of all sex-workers.³⁷ An inescapable element of the restriction in this case is that it affects those who face the greatest peril to their health, safety and dignity; and those who have suffered from historic stigma and marginalization within the scope of s 15 of the *Charter*.

32. As the record demonstrates, the expression impacted by s 213(1)(c) plays a vital role in reducing this vulnerability and victimization.³⁸ It helps alleviate power imbalances between sex workers and their clients. It also enables sex workers to ensure that their work is conducted on terms of consent, in a pre-negotiated safe location and manner, taking into consideration personal health and safety protections.

33. To the extent that the restriction on expression signals that a sex-worker is not entitled to discuss these fundamental matters of health, safety and dignity in public before she engages in a sexual activity with a client, the restrictions signal that she is “less than” – less deserving of the right to weigh the elements of the encounter and assess her potential partner, the recognition and assertion

³⁴ Other prohibitions applicable to a specific class arise as a result of judicial order on account of prior criminal activity: see, eg, *Criminal Code*, s 161 (order of non-communication with children applicable to certain sex offenders).

³⁵ See *Criminal Code*: ss 46(2)(b) (treason); 77(g) and 78.1(3) (endangerment of an aircraft, etc); 172.1, 172.2 and 212(4) (sex offences involving children); 264(2)(b) and 423.1(2)(d) (criminal harassment); and 318-19 (hate speech).

³⁶ ONSC Reasons at paras 90, 116(d) and 119: AR, vol I, Tab 3 at 30, 35-36.

³⁷ ONSC Reasons, paras 90, 94, 121, 304-05, 312, 316-37, 458: AR, vol I, Tab 3 at 30-31, 36, 85, 87, 120. See also ONCA Reasons, paras 355-56: AR, vol II, Tab 7 at 141-42, McPherson JA (dissenting in part).

³⁸ See eg ONSC Reasons, paras 128, 331, 421: AR, vol I, Tab 3 at 38, 93, 111 - 112.

of her dignity, the ability to inform her own working conditions, and the right to exercise consent. This exacerbates the stigma historically associated with sex work and contributes to the circumstances that make sex workers vulnerable to violence. It further sends the message, more usually associated with hate crimes, that sex workers “are not to be given equal standing in society, and are not human beings equally deserving of concern, respect and consideration.” The harms caused by that message “run directly counter to the values of a free and democratic society”.³⁹

34. The expression at issue serves to assure the physical integrity, health, safety and dignity of vulnerable individuals, and advances their individual autonomy. The ability of street workers to communicate terms of consent and to screen potential clients in a public setting is essential to their most basic health and safety needs, as well as their ability to control conditions of work that extend into their personal lives. The expression captured by s. 213(1)(c) lies at the very core of s. 2(b) of the *Charter* and warrants a high level of protection from infringement. The criminalization of speech aimed at reducing the vulnerabilities and victimization of street level sex workers represents an unreasonable limit on the freedom of expression of these individuals.

PART IV – SUBMISSIONS ON COSTS

35. The BCCLA does not seek costs and asks that no costs be ordered against it.

PART V – ORDER SOUGHT

36. The BCCLA seeks permission to present oral argument not exceeding ten minutes at the hearing of this appeal.


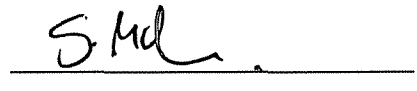
ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Vancouver in the Province of British Columbia this 28th day of May, 2013.

SIGNED BY:



Brent B Olthuis


for Megan Vis-Dunbar

Stephanie L McHugh

Counsel for the Intervener, the British Columbia Civil Liberties Association

³⁹ *R v Keegstra*, [1990] 3 SCR 697 at 756, Dickson CJC. See also *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at para 74; ONSC Reasons, paras. 116(b), 125(b): AR, vol I, Tab 3 at 35, 37.

PART VI – TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph(s)</u>
<i>Athey v Leonati</i> , [1996] 3 SCR 458	5
<i>Blencoe v British Columbia (Human Rights Commission)</i> , 2000 SCC 44, [2000] 2 SCR 307	11
<i>Canada (AG) v PHS Community Services Society</i> , 2011 SCC 44, [2011] 3 SCR 134	8, 12, 14, 18
<i>Canada (Prime Minister) v Khadr</i> , 2010 SCC 3, [2010] 1 SCR 44	11
<i>Canadian Broadcasting Corp v New Brunswick (AG)</i> , [1996] 3 SCR 480	22, 24
<i>Canadian Foundation for Children, Youth and the Law v Canada (AG)</i> , 2004 SCC 4, [2004] 1 SCR 76	6
<i>Canadian Western Bank v Alberta</i> , 2007 SCC 22, [2007] 2 SCR 3	7
<i>Chaoulli v Quebec (AG)</i> , 2005 SCC 35, [2005] 1 SCR 791	8, 12, 14
<i>Ciarlariello v Schachter</i> , [1993] 2 SCR 119	26
<i>Clements v Clements</i> , 2012 SCC 32, [2012] 2 SCR 181	5, 6, 17
<i>Eldridge v British Columbia (AG)</i> , [1997] 3 SCR 624	14
<i>Federation of Law Societies of Canada v Canada (AG)</i> , 2013 BCCA 147	20
<i>Fidler v Sun Life Assurance Co of Canada</i> , 2006 SCC 30, [2006] 2 SCR 3	5
<i>Gosselin v Quebec (AG)</i> , 2002 SCC 84, [2002] 4 SCR 429	8
<i>Honda Canada Inc v Keays</i> , 2008 SCC 39, [2008] 2 SCR 362	5
<i>Hunter v Southam Inc</i> , [1984] 2 SCR 145	7
<i>Law Society of Upper Canada v Skapinker</i> , [1984] 1 SCR 357	7
<i>Mustapha v Culligan of Canada Ltd</i> , 2008 SCC 27, [2008] 2 SCR 114	5
<i>R v JA</i> , 2011 SCC 28, [2011] 2 SCR 440	26
<i>R v Goldhart</i> , [1996] 2 SCR 463	5
<i>R v Harbottle</i> , [1993] 3 SCR 306	5, 6
<i>R v Jarvis</i> , 2002 SCC 73, [2002] 3 SCR 757	6
<i>R v Keegstra</i> , [1990] 3 SCR 697	33
<i>R v Maybin</i> , 2012 SCC 24, [2012] 2 SCR 30	5
<i>R v Morgentaler</i> , [1988] 1 SCR 30	12, 14
<i>R v Nette</i> , 2001 SCC 78, [2001] 3 SCR 488	5
<i>R v NS</i> , 2012 SCC 72	7
<i>R v Sarrazin</i> , 2011 SCC 54, [2011] 3 SCR 505	5
<i>R v Stinchcombe</i> , [1991] 3 SCR 326	8

<i>R v Strachan</i> , [1988] 2 SCR 980	5
<i>R v White</i> , [1999] 2 SCR 417	6
<i>R v Wittwer</i> , 2008 SCC 33, [2008] 2 SCR 235	5, 6
<i>Re Application under s. 83.28 of the Criminal Code</i> , 2004 SCC 42, [2004] 2 SCR 248	11
<i>Reference re BC Motor Vehicle Act</i> , [1985] 2 SCR 486	8
<i>Reference re Same-Sex Marriage</i> , 2004 SCC 79, [2004] 3 SCR 698	7
<i>Reference re ss 193 and 195.1(1)(c) of the Criminal Code (Man)</i> , [1990] 1 SCR 1123	29
<i>Resurfice Corp v Hanke</i> , 2007 SCC 7, [2007] 1 SCR 333	5
<i>Rodriguez v British Columbia (AG)</i> , [1993] 3 SCR 519	12
<i>RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.</i> , 2002 SCC 8, [2002] 1 SCR 156	24, 28
<i>Saskatchewan (Human Rights Commission) v Whatcott</i> , 2013 SCC 11	33
<i>Suresh v Canada (Minister of Citizenship and Immigration)</i> , 2002 SCC 1, [2002] 1 SCR 3	11
<i>United States v Burns</i> , 2001 SCC 7, [2001] 1 SCR 283	8
<i>Victoria (City of) v Adams</i> , 2008 BCSC 1363, 299 DLR (4th) 193, var'd 2009 BCCA 563, 313 DLR (4th) 29	8

PART VII – CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

[...]

FUNDAMENTAL FREEDOMS

Fundamental freedoms

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;

[...]

LEGAL RIGHTS

Life, liberty and security of the person

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.

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

[...]

LIBERTÉS FONDAMENTALES

Libertés fondamentales

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;

[...]

GARANTIES JURIDIQUES

Vie, liberté et sécurité

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.

Criminal Code, RSC 1985, c C-46

PART II

OFFENCES AGAINST PUBLIC ORDER

TREASON AND OTHER OFFENCES AGAINST THE
QUEEN'S AUTHORITY AND PERSON

[...]

Treason

46. (2) Every one commits treason who, in Canada,

[...]

Code criminel, LRC 1985, c C-46

PARTIE II

INFRACTIONS CONTRE L'ORDRE
PUBLIC

TRAHISON ET AUTRES INFRACTIONS CONTRE
L'AUTORITÉ ET LA PERSONNE DE LA REINE

[...]

Trahison

46. (2) Commet une trahison quiconque, au Canada, selon le cas :

[...]

(b) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;

[...]

OFFENCES AGAINST AIR OR MARITIME SAFETY

Endangering safety of aircraft or airport

77. Every one who

[...]

(g) endangers the safety of an aircraft in flight by communicating to any other person any information that the person knows to be false,

is guilty of an indictable offence and liable to imprisonment for life.

[...]

False communication

78.1 (3) Every one who communicates information that endangers the safe navigation of a ship, knowing the information to be false, is guilty of an indictable offence and liable to imprisonment for life.

[...]

b) sans autorisation légitime, communique à un agent d'un État étranger, ou met à la disposition d'un tel agent, des renseignements d'ordre militaire ou scientifique ou tout croquis, plan, modèle, article, note ou document de nature militaire ou scientifique alors qu'il sait ou devrait savoir que cet État peut s'en servir à des fins préjudiciables à la sécurité ou à la défense du Canada;

[...]

INFRACTIONS PORTANT ATTEINTE À LA SÉCURITÉ AÉRIENNE OU MARITIME

Atteinte à la sécurité des aéronefs ou des aéroports

77. Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque, selon le cas :

[...]

g) porte atteinte à la sécurité d'un aéronef en vol en communiquant à une autre personne des renseignements qu'il sait être faux.

[...]

Communication de faux renseignements

78.1 (3) Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque porte atteinte à la navigation sécuritaire d'un navire en communiquant des renseignements qu'il sait être faux.

[...]

PART V
SEXUAL OFFENCES, PUBLIC MORALS
AND DISORDERLY CONDUCT

[...]

SEXUAL OFFENCES

Definitions

150. In this Part,

[...]

“public place” includes any place to which the public have access as of right or by invitation, express or implied;

[...]

Order of prohibition

161. (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

[...]

(c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; [...]

PARTIE V
INFRACTIONS D'ORDRE SEXUEL,
ACTES CONTRAIRES AUX BONNES
MŒURS, INCONDUITE

[...]

INFRACTIONS D'ORDRE SEXUEL

Définitions

150. Les définitions qui suivent s'appliquent à la présente partie.

[...]

« endroit public » Tout lieu auquel le public a accès de droit ou sur invitation, expresse ou implicite.

[...]

Ordonnance d'interdiction

161. (1) Dans le cas où un contrevenant est déclaré coupable, ou absous en vertu de l'article 730 aux conditions prévues dans une ordonnance de probation, d'une infraction mentionnée au paragraphe (1.1) à l'égard d'une personne âgée de moins de seize ans, le tribunal qui lui inflige une peine ou ordonne son absolution, en plus de toute autre peine ou de toute autre condition de l'ordonnance d'absolution applicables en l'espèce, sous réserve des conditions ou exemptions qu'il indique, peut interdire au contrevenant :

[...]

c) d'avoir des contacts — notamment communiquer par quelque moyen que ce soit — avec une personne âgée de moins de seize ans, à moins de le faire sous la supervision d'une personne que le tribunal estime convenir en l'occurrence; [...]

OFFENCES TENDING TO CORRUPT MORALS

[...]

Luring a child

172.1. (1) Every person commits an offence who, by a means of telecommunication, communicates with

(a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to that person;

(b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

[...]

DISORDERLY CONDUCT

Agreement or arrangement – sexual offence against child

172.2. (1) Every person commits an offence who, by a means of telecommunication, agrees with a person, or makes an arrangement with a person, to commit an offence

(a) under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to

INFRACTIONS TENDANT À CORROMPRE LES MŒURS

[...]

Leurre

172.1. (1) Commet une infraction quiconque communique par un moyen de télécommunication avec :

a) une personne âgée de moins de dix-huit ans ou qu'il croit telle, en vue de faciliter la perpétration à son égard d'une infraction visée au paragraphe 153(1), aux articles 155, 163.1, 170 ou 171 ou aux paragraphes 212(1), (2), (2.1) ou (4);

b) une personne âgée de moins de seize ans ou qu'il croit telle, en vue de faciliter la perpétration à son égard d'une infraction visée aux articles 151 ou 152, aux paragraphes 160(3) ou 173(2) ou aux articles 271, 272, 273 ou 280;

c) une personne âgée de moins de quatorze ans ou qu'il croit telle, en vue de faciliter la perpétration à son égard d'une infraction visée à l'article 281.

[...]

INCONDUITE

Entente ou arrangement – infraction d'ordre sexuel à l'égard d'un enfant

172.2. (1) Commet une infraction quiconque, par un moyen de télécommunication, s'entend avec une personne, ou fait un arrangement avec elle, pour perpétrer :

a) soit une infraction visée au paragraphe 153(1), aux articles 155, 163.1, 170 ou 171 ou aux paragraphes

another person who is, or who the accused believes is, under the age of 18 years;

(b) under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to another person who is, or who the accused believes is, under the age of 16 years; or

(c) under section 281 with respect to another person who is, or who the accused believes is, under the age of 14 years.

[...]

Indecent acts

173. (1) Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months.

[...]

212(1), (2), (2.1) ou (4) à l'égard d'un tiers âgé de moins de dix-huit ans ou qu'il croit tel;

b) soit une infraction visée aux articles 151 ou 152, aux paragraphes 160(3) ou 173(2) ou aux articles 271, 272, 273 ou 280 à l'égard d'un tiers âgé de moins de seize ans ou qu'il croit tel;

c) soit une infraction visée à l'article 281 à l'égard d'un tiers âgé de moins de quatorze ans ou qu'il croit tel.

[...]

Actions indécentes

173. (1) Quiconque volontairement commet une action indécente soit dans un endroit public en présence d'une ou de plusieurs personnes, soit dans un endroit quelconque avec l'intention d'ainsi insulter ou offenser quelqu'un, est coupable :

a) soit d'un acte criminel passible d'un emprisonnement maximal de deux ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de six mois.

[...]

PART VII
DISORDERLY HOUSES, GAMING AND
BETTING

[...]

PROCURING

[...]

Offence – prostitution of person under eighteen

212. (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.

OFFENCE IN RELATION TO PROSTITUTION

Offence in relation to 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

PARTIE VII
MAISONS DE DÉSORDRE, JEUX ET
PARIS

[...]

ENTREMETTEURS

[...]

Infraction – prostitution d'une personne âgée de moins de dix-huit ans

212. (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.

INFRACTIONS SE RATTACHANT À LA
PROSTITUTION

Infraction se rattachant à la prostitution

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

person

communiquer avec elle.

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.

Definition of "public place"

(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.

Définition de « endroit public »

(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.

[...]

[...]

PART VIII
OFFENCES AGAINST THE PERSON AND
REPUTATION

PARTIE VIII
INFRACTIONS CONTRE LA PERSONNE
ET LA RÉPUTATION

[...]

[...]

MOTOR VEHICLES, VESSELS AND AIRCRAFT

VÉHICULES À MOTEUR, BATEAUX ET AÉRONEFS

[...]

[...]

Criminal harassment

264. (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Harcèlement criminel

264. (1) Il est interdit, sauf autorisation légitime, d'agir à l'égard d'une personne sachant qu'elle se sent harcelée ou sans se soucier de ce qu'elle se sente harcelée si l'acte en question a pour effet de lui faire raisonnablement craindre — compte tenu du contexte — pour sa sécurité ou celle d'une de ses connaissances.

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

Actes interdits

(2) Constitue un acte interdit aux termes du paragraphe (1), le fait, selon le cas, de :

[...]

[...]

(b) repeatedly communicating with,

b) communiquer de façon répétée,

either directly or indirectly, the other person or anyone known to them;

[...]

HATE PROPAGANDA

[...]

Public incitement of hatred

319. (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

[...]

Definitions

(7) In this section,

[...]

“public place” includes any place to which the public have access as of right or by invitation, express or implied;

[...]

même indirectement, avec cette personne ou une de ses connaissances;

[...]

PROPAGANDE HAINEUSE

[...]

Incitation publique à la haine

319. (1) Quiconque, par la communication de déclarations en un endroit public, incite à la haine contre un groupe identifiable, lorsqu'une telle incitation est susceptible d'entraîner une violation de la paix, est coupable :

a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

[...]

Définitions

(7) Les définitions qui suivent s'appliquent au présent article.

[...]

« endroit public » Tout lieu auquel le public a accès de droit ou sur invitation, expresse ou tacite.

[...]

PART X
FRAUDULENT TRANSACTIONS
RELATING TO CONTRACTS AND TRADE

[...]

BREACH OF CONTRACT, INTIMIDATION AND
DISCRIMINATION AGAINST TRADE UNIONISTS

[...]

*Intimidation of a justice system participant or a
journalist*

423.1 (1) No person shall, without lawful
authority, engage in conduct referred to in
subsection (2) with the intent to provoke a state
of fear in

(a) a group of persons or the general
public in order to impede the
administration of criminal justice;

(b) a justice system participant in order
to impede him or her in the
performance of his or her duties; or

(c) a journalist in order to impede him
or her in the transmission to the public
of information in relation to a criminal
organization.

Definitions

(2) The conduct referred to in subsection
(1) consists of

[...]

(d) repeatedly communicating with,
either directly or indirectly, a justice
system participant or a journalist or
anyone known to either of them[.]

PARTIE X
OPÉRATIONS FRAUDULEUSES EN
MATIÈRE DE CONTRATS ET DE
COMMERCE

[...]

VIOLATION DE CONTRAT, INTIMIDATION ET
DISTINCTION INJUSTE ENVERS LES SYNDIQUÉS

[...]

*Intimidation d'une personne associée au système
judiciaire ou d'un journaliste*

432.1 (1) Il est interdit, sauf autorisation
légitime, de commettre un acte visé au
paragraphe (2) dans l'intention de provoquer la
peur :

a) soit chez un groupe de personnes ou
le grand public en vue de nuire à
l'administration de la justice pénale;

b) soit chez une personne associée au
système judiciaire en vue de lui nuire
dans l'exercice de ses attributions;

c) soit chez un journaliste en vue de lui
nuire dans la diffusion d'information
relative à une organisation criminelle.

Actes interdits

(2) Constitue un acte interdit aux termes du
paragraphe (1) le fait, selon le cas :

[...]

d) de communiquer de façon répétée,
même indirectement, avec une telle
personne ou une de ses connaissances[.]