

## Prostitutes need to find a way to get politicians' attention

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On Friday, the Supreme Court of Canada struck down our prostitution laws, accepting the arguments of prostitutes, who had argued persuasively that the laws violated Section 7 of the Charter of Rights and Freedoms, which says "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."

Prostitutes argue convincingly that by making it illegal for them to do their work, the law forces them into unsafe situations, which is plainly true. If it is illegal to live off the avails of prostitution, or to communicate openly, prostitutes are not able to establish safe conditions of employment, and as a result more of them are beaten and murdered.

"Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes," wrote Chief Justice Beverley McLachlin.

The prostitutes celebrated their victory, but the justices gave Parliament a year to come up with a new law, and it seems unlikely that sex work will really be legalized.

Although prostitution is itself legal, there is strong political opposition to accepting it, and the prime minister seems opposed to accepting a harm-reduction approach to prostitution or drugs.

Two days before the ruling, Benjamin Perrin, the former lawyer from the Prime Minister's Office whose apparently deleted emails mysteriously reappeared recently, wrote an article saying that Canada should write new laws — with criminal sanctions for prostitutes' customers — with the aim of ending prostitution.

Robert Staley, the PMO lawyer who helped the RCMP find Perrin's emails, represented three groups that intervened in the prostitution case, asking the court to uphold the law: The Christian Legal Fellowship, the Catholic Civil Rights League and Real Women of Canada.

Staley argued that Parliament has every right to legislate on matters of morality.

"The Court of Appeal's decision in this case directly challenges parliament's ability to legislate in areas that reflect a shared belief that certain acts are immoral," he wrote.

This unease with the courts is shared by many Conservatives, including Employment Minister Jason Kenney, who said Friday: "My own view is the judiciary should be restrained of the exercise of overturning a democratic consensus."

Harper's first chief of staff, Ian Brodie, wrote a book, *Friends of the Court*, complaining about the way that "privileged interest group litigants," like the prostitutes in this case, are able to advance

policy agendas through the courts that they could not manage through the electoral system.

Same-sex marriage is the best example. The courts opened the door to gay marriages, ruling that banning them was an unconstitutional violation of charter-guaranteed equality rights. Jean Chretien decided not to fight the rulings, and in 2005, MPs voted to legalize same-sex marriage.

The Charter does not give the courts the power to make laws, but it does give them the authority to measure any particular law against a higher law — the Charter — which was democratically adopted by Parliament. If the courts make a Charter ruling that a legislature can't stomach, it can invoke the notwithstanding clause, which allows governments to overrule the courts.

After Friday's decision, Justice Minister Peter MacKay said the government is "exploring all possible options to ensure the criminal law continues to address the significant harms that flow from prostitution to communities, those engaged in prostitution, and vulnerable persons."

It seems unlikely that the government will invoke the notwithstanding clause now, and likely that it will table a law like that in Sweden, where it is illegal to pay for sex but not illegal to sell it.

Advocates of that approach say that it reduces street prostitution, which is so dangerous, and thus protects prostitutes. Prostitutes say it drives them underground, where they are at risk.

I suspect the prostitutes are right, but we will likely get a new law in Canada, prostitutes will keep being killed, the law will be challenged and we will end up back in the Supreme Court several years from now.

Opinion in Canada is divided — with social conservatives and some women's groups opposed to legalization — and prostitutes and some women's groups in favour of it.

Rather than confronting our powerlessness and taking small steps to improve prostitutes' lives, it is easier to defend public morality, blame prostitutes for choosing to lead immoral lives and pretend that it's possible to end prostitution.

Only the courts are forcing politicians to even consider the problem.

Prostitutes, unlike dairy farmers, are not a desirable voter bloc. The people most affected by these laws are not highly paid escorts, but drug-addicted streetwalkers, women leading desperate lives.

They don't vote, which makes them much less interesting to politicians than people who do.

On the other hand, some of them, particularly in Ottawa, likely have MPs for clients.

Perhaps they should file records of their meetings with the Registry of Lobbyists and see if that helps change the nature of the debate.

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