

# Editorial: Prostitution ruling right to push for safer law

EDMONTON JOURNAL MARCH 28, 2012 6:41 AM

In 1983, the Fraser Committee reached the obvious conclusion that prostitution law in Canada "is at odds with itself."

Just as it is now, prostitution was legal then, but most means by which a prostitute could conduct business were illegal.

In 2010, the decision of an Ontario Superior Court judge served to eliminate that long-standing and politically motivated contradiction when she declared unconstitutional three key antiprostitution laws: prohibitions against the keeping of a bawdy house, living off the avails of prostitution and communicating for the purposes of prostitution.

"These laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the person as protected under the Canadian Charter of Rights and Freedoms," wrote Justice Susan Himel.

In so ruling, she sided with three former sex workers against the governments of Ontario and Canada. That case was appealed to the Supreme Court of Ontario, which rendered its landmark decision Monday.

Almost 30 years after the Fraser Committee was struck to study a proliferation of street prostitution in Canada in the 1980s, Ontario's highest court struck down the law banning brothels, amended the avails law to zero in on "circumstances of exploitation," and reinforced the illegality of communicating in public for the purposes of prostitution.

Though the ruling might offend the morals of a majority, this is a progressive, compassionate decision that will in time provide safeguards for a marginalized, minority segment of Canadian society. It will have no other immediate effect but to provoke debate, however, since the judgment was stayed for 30 days to allow an appeal and the ruling on bawdy houses was suspended for a year to facilitate a redrafting of the federal law.

For now then, prostitution law remains at odds with itself, which is how Canadian governments have preferred and been allowed to leave it.

Should this case be appealed to the Supreme Court of Canada by the Ontario and federal governments, and that is a safe bet, politicians will hand the hottest potato in the land to nine justices and in all likelihood be happy to surrender control of the confounding age-old issue.

In the wake of the Ontario decision, the debate as always is fuelled, complicated and enriched by factors including religious beliefs, personal autonomy and individual morality, as well as issues of community standards and public safety.

The moral principle involved in allowing the lawful sale of sex is indeed provocative. But the status quo is equally scandalous, in that the law allows people to consider themselves prostitutes but affords them no reasonable means of protection or support in that profession.

It was the latter point that prompted the constitutional challenge by former sex workers and set Ontario on the current trailblazing path. They argued that they were unable to pursue their profession in a safe, indoor environment. They were prohibited from hiring bodyguards who would be earning money from the trade, thereby living off the avails, though not in an exploitive manner. And they were unable to reach a verbal contract on the street - where a measure of safety is provided by the public - before conducting the agreed upon physical act in private.

Moving the commercial transaction off the street and into a private brothel - as the Ontario decision would have it - satisfies the customer and the sex worker and takes them out of view of a community that prefers not to watch. However, that community may well prefer the trade not exist at all and some people will no doubt advise lawmakers to seize upon this watershed moment and criminalize all aspects of prostitution.

Wildrose party Leader Danielle Smith has in the past taken a more pragmatic approach and advocated for a legalized red light district in Calgary. Its establishment would allow for professional standards with regard to security, cleanliness and discretion, though it likely would not guarantee same. Alberta Conservatives chose to leverage Smith's beliefs on the topic into an election campaign attack on Wildrose morality.

That easy demonization of prostitution is among the myriad reasons why the past 30 years has seen governments back away and the plight of sex workers worsen in this country. The Ontario court decision offers a rare opportunity for government to make a definitive and progressive stand.

If it happens, and it really should, Canadian politicians who have straddled the fence by way of contradictory laws would be regulating one of the oldest professions in the world, a development that might position them at odds with their own morality. Though that would be regrettable for them, the unworkable status quo seems unsatisfactory and unfair for many more Canadians.

© Copyright (c) The Edmonton Journal