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## National Post editorial board: Fixing our broken prostitution laws

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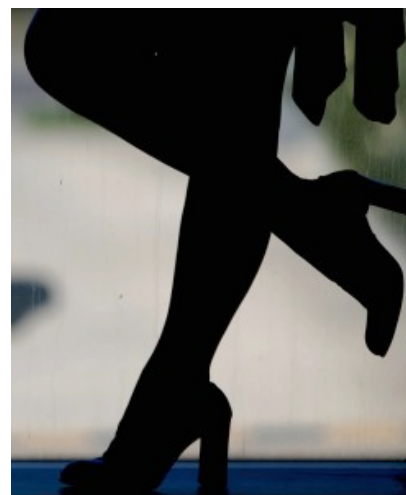
This week, the Ontario Court of Appeal will hear the federal government's appeal of a lower court ruling from last September that had the effect of decriminalizing prostitution in Ontario. The original decision — based on a constitutional challenge brought by Terri-Jean Bedford, a professional dominatrix, and six other sex-trade workers — struck down the Criminal Code sections that made it illegal to solicit clients on the street or in a bar, work as a pimp or operate a brothel. The original judge, Susan Himel of the Ontario Superior Court, argued that these laws had forced prostitutes onto the streets where their work was inherently far more dangerous than it was in bordellos, where there might be bodyguards or other prostitutes to protect them from vicious “johns.”

As long ago as 1985, Ottawa had been warned its prostitution laws were outdated and piecemeal, and were having the effect of increasing the violence suffered by prostitutes. Justice Himel thus concluded that the three anti-prostitution laws were forcing sex-trade workers “to choose between their liberty interest and their right to security of the person.” In other words, it was forcing them to choose between continuing to make a living selling sexual services (which is, in itself, legal in Canada) and being beaten or killed. Justice Himel, having concluded that was a violation of prostitutes' Charter rights, struck down the Crime Code provision that made it illegal to “communicate for the purpose of” prostitution, “live off the avails” or “operate a common bawdy house.”

This is convoluted and backwards logic, but it arrives at a welcome outcome. Justice Himel sought to turn a question of personal freedom into a matter of occupational health and safety. Yet ultimately she made the correct conclusion: Since prostitution is legal, the activities that facilitate it should be legal, too.

That makes the federal Justice department's arguments in this week's appeals court all the more bizarre. In briefs filed with the court, Ottawa asks for reinstatement of the three criminal provisions because prostitution grinds down the souls of those who engage in it. Having failed to convince the lower court that bans on prostitution were justified because prostitution disrupts neighbourhoods and encourages violence against its young practitioners, Ottawa has chosen to argue against the “psychological harm” prostitution causes. This includes the filing of affidavits from “experiential affiants”: people with experience in the sex trade. Their upset at being used as a sexual commodity is apparent, and understandable.

But the federal government's decision to submit affidavits describing the negative emotional consequences of being paid for sex is perplexing, given that it is not seeking to outlaw prostitution altogether. If the practice is as destructive as the affidavits suggest, why isn't the federal government working to outlaw prostitution itself, rather than just secondary activities surrounding it? The emotional agony of many people working in the sex trade is not a trivial issue, and deserves society's attention. But it does nothing to help the federal government's efforts to overturn Justice Himel's ruling that the existing laws place prostitutes, traumatized or



If prostitution is as terrible as the government argues, why is it not trying to ban it altogether? Ian Waldie/Getty Images

otherwise, in unnecessarily severe physical danger.

Prostitution cannot be eradicated — it is not known as the “oldest profession” for nothing. And so long as it cannot be practised in the open, it will largely be controlled by inherently violent people such as pimps and organized criminals.

To make it safer, it must be legalized. Then it would be subject to municipal zoning laws to keep it out of family neighbourhoods and subject to licencing and regulation as a legitimate business. If Ottawa truly cares about stopping the victimization of prostitutes, it will stop fighting the current case and work on making laws governing prostitution more consistent and sensible.

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