

**In the Supreme Court of Canada**  
(ON APPEAL FROM THE COURT OF APPEAL OF MANITOBA)

IN THE MATTER OF: The Constitutional Questions Act, being Chapter C180, C.C.S.M.;

AND IN THE MATTER OF: a Reference pursuant thereto by the Lieutenant Governor in Council to the Court of Appeal for Manitoba for hearing and consideration of questions relating to The Canadian Charter of Rights and Freedoms, being Part I of The Constitution Act, 1982, and the Criminal Code of Canada, being C-51, and sections 193 and 195.1(1)(c) thereof.

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FACTUM OF THE ATTORNEY GENERAL OF ONTARIO  
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PART I  
STATEMENT OF FACTS

1. As Intervener, the Attorney-General of Ontario takes no position relative to the parties' Statements of Fact.

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PART II  
POINTS IN ISSUE

AND POSITION OF THE ATTORNEY-GENERAL OF ONTARIO

2. By order of the Chief Justice of Canada, the following constitutional questions have been stated:

1. Is Section 193 of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

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2. Is Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

3. Is the combination of the legislative provisions contained in Section 193 and Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

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4. Is Section 193 of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

5. Is Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

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6. Is the combination of the legislative provisions contained in Section 193 and Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

7. If Sections 193 and 195.1(1)(c) of the Criminal Code of Canada or a combination of both or part thereof are inconsistent with either Section 7 or Section 2(b) of the Canadian Charter of Rights and Freedoms, to what extent, if any, can such limits on the rights and freedoms protected by Section 7 or Section 2(b) of the Canadian Charter of Rights and Freedoms be justified under Section 1 of the Canadian Charter of Rights and Freedoms and thereby rendered not inconsistent with the Constitution Act, 1982?

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3. It is the position of the Attorney General of Ontario Intervener that the constitutional questions stated should be answered as follows:

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1. No.
2. No.
3. No.
4. No.
5. No.
6. No.

7. To the extent that Section 193 or 195.1(1)(c) of the Criminal Code of Canada or a combination of both or part thereof contravene either Section 7 or Section 2(b) of the Canadian Charter of Rights and Freedoms any inconsistency which may exist is justified under Section 1 of the Charter.

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PART IIIARGUMENTSECTION 7

Is Section 193 of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

Is Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

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Is the combination of the legislative provisions contained in Section 193 and Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms?

RIGHT TO WORK

4. It is respectfully submitted that neither Section 195.1(1)(c) nor Section 193 of the Criminal Code (alone or in combination) contravene Section 7 of the Charter. Section 7 of the Charter does not protect commerce. It does not extend to encompass the regulation of economic relations.

5. It is respectfully submitted that a prostitute's desire to ply her trade uninhibited in public places has nothing to do with the "basic tenets" of our system of justice. Whatever else Section 7 of the Charter may protect, it does not guarantee an absolute right to work, free from regulation. Section 7 of the Charter does not protect the right to "engage in a lawful occupation". The phrases "liberty" and "security of the person" as found in Section 7 of the Charter relate to one's physical psychological and mental integrity. They do not enshrine a free standing

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right to "transact business whenever one wishes" and, accordingly, do not shield public prostitution from legitimate purposeful government control.

Reference:

Edwards Books and Art Ltd. v. The Queen, [1986] 2 S.C.R. 713 at pp. 785-786

Re BC Motor Vehicle Act, [1985] 2 S.C.R. 486 at p. 496, 503

Re Public Service Employees Relations Act, [1987] 1 S.C.R. 313 at pp. 405, 412, 413

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Regina v. Videoflicks Ltd. et al., (1984) 48 O.R. (2d) 395 at 433 (Ont. C.A.) appeal allowed in part on other grounds. Edwards Books and Art Ltd v. The Queen, supra

Regina v. Quesnel, (1985) 52 C.R. (2d) 338 (Ont. C.A.) at pp. 346-347

Charbonneau et al. v. College of Physicians and Surgeons, (1985) 22 D.L.R. (4h) 303 (Ont.S.C.)

Reference may also be made to:

Paris Adult Theatre v. Slaton 413 U.S. 49 at p. 64 (1973) (U.S.S.C.)

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6. It is respectfully submitted that, even assuming that in some way Section 7 of the Charter impacts on commerce, Sections 195.1(1)(c) and 193 of the Criminal Code simply prohibit prostitution in certain locations. Control of commerce by location cannot be considered a deprivation of "liberty" or "the security of the person". On the contrary, Parliament has a legitimate right to prohibit certain commercial activities in furtherance of public safety, order, health or decency; and in support of the fundamental rights of others. Indeed, in part, that is the purpose of our criminal law.

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Reference:

The Queen v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 at p. 344, 347

Regina v. Videoflicks Ltd., supra, at pp. 46-48

7. In any event, it is not correct to consider prostitution lawful in all its applications. While the Criminal Code does not make it an offence to "engage in prostitution generally" or to be a "common prostitute", the absence of this type of prohibition is of no significance, given the statutory scheme which does exist relative to prostitution, and which properly proscribes and punishes "conduct" not "status". Section 195.1(1)(c) represents one stitch in a net woven by Parliament to prohibit the public manifestations of prostitution in order to support public order. Similarly, Sections 193 and 194 of the Criminal Code prohibit the maintenance and use of common bawdy houses. Section 195 proscribes the procuring and exploitation of prostitutes. It is also a crime to obtain or attempt to obtain the sexual services of a person under 18 years of age. In addition, Part IV of the Criminal Code (sexual offences, public morals and disorderly conduct) contains many provisions which infringe upon prostitution or prostitution related activities. These include offences relative to gross indecency (s. 157), indecent acts (s.169), nudity (s.170), nuisance and disturbance (s.171). In short, while prostitution per se is not proscribed by our criminal law, many activities associated with it are, and, in particular, virtually all its public manifestations. It is respectfully submitted that public prostitution is indeed illegal.

Reference:

Regina v. Smith, unreported, November 4, 1988 Ontario Supreme Court, 1 at pp. 115-120

8. Lastly, it is respectfully submitted that, independent of the issue of whether or not there exists any deprivation of liberty, Sections 195.1 and 193 of the Criminal Code operate from a procedural point of view in a fashion entirely consistent with fundamental principles of justice. It cannot be said in the instant case that either



section causes deprivation in a manner not in accordance with recognized principles of fundamental justice.

Reference:

Jones v. The Queen, [1986] 2 S.C.R. 302 at p.362

Lyons v. The Queen, [1987] 2 S.C.R. 307 at p.327

VOID FOR VAGUENESS

10 9. It is respectfully submitted that historically it has been the approach in Canada, when faced with difficult construction issues, to interpret statutes narrowly in a manner favourable to affected persons.

Reference:

Fawcett Properties Ltd. v. Buckingham County Council, [1961] A.C. 636 at p. 677, 662 (HL)

Regina v. Rao (1984), 46 O.R. 80 at 103, 104 (Ont. C.A.)

20 10. To the extent that a constitutional doctrine of impermissible vagueness exists in Canada under Section 7 of the Charter, it is respectfully submitted that in order to be characterized as "vague" the impugned enactment must fail to give a person of ordinary intelligence, fair notice of the kind of conduct that is criminal. Moreover, if a person's conduct clearly falls within the proscription of the statute, then that person cannot complain of the vagueness of the statute as applied to others. To succeed on the basis of vagueness, a person must show the statute is vague in all its applications; for example, if there were no specified standard of conduct.

Reference:

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Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 486, 102 S.Ct. 1186 at p. 1191 (1982)

Regina v. Morgentaler, Smoling and Scott, (1985), 52 O.R. (2d) 353 at p. 388 (Ont. C.A.); appeal allowed on other grounds, [1988] 1 S.C.R. 30

Regina v. Zundel, (1987) 58 O.R. (2d) 129 at p. 158 (Ont. C.A.)

11. It is respectfully submitted that neither Section 193 nor Section 195.1(1)(c) of the Criminal Code is impermissibly vague in all its applications. On the contrary, both sections are clear and unequivocal. There exists no real difficulty in determining what is proscribed and what is permitted. The phrases "act of indecency", "prostitution", "keeps", "communicate in public place" and "common bawdy house" are not terms of art but phrases of common usage. The operation of the common law in connection with these phrases reflects strength not weakness. With respect to the meaning of these terms, the Attorney General of Ontario supports the submissions of the Attorney General of Alberta Intervener in his Factum in this case at paragraphs 10 to 31. Also Sections 193 and 195.1(1)(c) of the Criminal Code both contain a mental element. The presence of mens rea mitigates against vagueness by requiring an intention to violate that which the Criminal Code prohibits. Accordingly, it obviates any concern that the sections in issue might become a "trap for those who act in good faith". With respect to the issue of mens rea the Attorney General of Ontario supports the submissions of the Attorney General of Canada Intervener as found in his Factum in this case at paragraph 33.

12. It is respectfully submitted that, in all the circumstances, the Manitoba Court of Appeal did not err in finding that sections 193 and 195.1(1)(c) of the Criminal Code do not contravene Section 7 of the Charter.

FREEDOM OF EXPRESSION; SECTION 2(b) OF THE CHARTER

1. Is Section 193 of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

2. Is Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

10 3. Is the combination of the legislative provisions contained in Section 193 and Section 195.1(1)(c) of the Criminal Code of Canada inconsistent with Section 2(b) of the Canadian Charter of Rights and Freedoms?

13. It is respectfully submitted that our Charter was not enacted in a vacuum but, rather, in context. As a constitutional document it has a purpose. The fundamental freedoms it enshrines in turn reflect that purpose. They have character and definition; a past, a present and a future. They are not absolute. And, accordingly, any analysis of  
20 their exact scope and content, must necessarily be determined independent of Section 1.

Reference:

Operation Dismantle Inc. et al. v. The Queen, [1985] 1 S.C.R. 441, p. 489

Regina v. Big M Drug Mart Ltd., supra

Regina v. Oakes, [1986] 1 S.C.R. 103 at p. 134

30 Regina v. Smith, supra at p. 51-76, 143-145

14. With particular reference to freedom of expression, it is respectfully submitted that in the instant case, given the nature of the expression in issue, it is not necessary for this Honourable Court to lay down a definitive statement relative to the scope and contents of Section 2(b) of the Charter.

15. It is respectfully submitted that freedom of expression exists to promote and support human dignity and truth. Section 2(b) of the Charter guarantees expression uttered in furtherance of genuinely held political, social, moral, religious or artistic ideals. Section 2(b) of the Charter protects the uninhibited exchange of ideas and opinions and the factual strata which support them.

Reference:

- 10 RWDS Union et al. v. Dolphin Delivery Ltd., [1986] 2 S.C.R. 573 at p. 583-84, 588
- R. v. Big M Drug Mart Ltd., supra at pp. 336,337, 344-346
- Hunter et al v. Southam Inc., [1984] 2 S.C.R. 145 at p.156
- Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455 at p. 462-463, 467, 468
- 20 Reference Re Alberta Statutes, [1938] S.C.R. 100 at pp. 132-4; 145-146
- Boucher v. The King, [1951] S.C.R. 265 at pp. 288, 290, 326
- Switzman v. Elbling, [1957] S.C.R. 285 at pp. 306-308
- Gay Alliance Toward Equality v. Vancouver Sun, [1979] 2 S.C.R. 435 at pp. 467-69
- 30 A-G of Canada v. Law Society of British Columbia; Labour v. Law Society of British Columbia, [1982] 2 S.C.R. 307 at pp. 354-66
- Reference may also be made to:
- Regina v. Zundel, (1987) 58 O.R. (2d) 129, (Ont. C.A.)
- Regina v. Kopyto, (1987) 62 O.R. (2d) 449
- Regina v. Andrews, unreported judgment, July 29, 1988 (Ont.C.A.)
- 40 Re Ontario Film and Video Appreciation Society and Ontario Board of Censors, (1983), 45 O.R. 80 (Ont.C.A.)

Re Information Retailers Association of Metro Toronto, (1985), 52 O.R. (2d) 449 (Ont. C.A.)

Regina v. Smith, supra at pp. 52-66

16. It is respectfully submitted that while Section 2(b) of the Charter should most certainly be given a broad, liberal interpretation, it has its limits. Section 2(b) of the Charter does not extend to protect conduct which seriously undermines public safety, order, health, morals, decency or the fundamental rights and freedoms of others. Simply put, Section 2(b) does not constitutionally immunize expressive conduct which injures others or their property. It does not protect other similar "clearly unlawful conduct". Where Section 2(b) collides with another "very compelling competing value", Section 2(b) will not normally extend to guarantee the supremacy of freedom of expression. There exists a "constitutionally permissible regulated area" which Section 2(b) does not extend to. It is admitted that this "regulated area" may be narrow in its scope. It does, however, exist.

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Reference:

Regina v. Big M Drug Mart Ltd., supra at p. 337

R.W.D.S.U. Union et al. v. Dolphin Delivery Ltd., supra at p. 588

Fraser v. Public Service Staff Relations Board, supra at pp. 467-468

Reference Re Alberta Statutes, supra at p. 133

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Saumes v. City of Quebec, [1953] 2 S.C.R. 299 at p. 329

Reference may also be made to:

Regina v. Zundel, supra at p. 150-151

Regina v. Andrews, supra

Roth v. U.S.A. 77 St.Ct. 1304 at 1307-1310 (1957) (U.S.S.C.)

Rocket et al. v. The Royal Canadian College of Dental Surgeons of Ontario, (1988), 64 O.R. 353 at p. 386-387

Regina v. Smith, supra at pp. 52-76, 105-109, 142-151

17. With reference to the instant case, it is respectfully  
10 submitted that the expressive conduct which Sections 195.1(1)(c) and  
193 direct themselves to has nothing to do with democracy. The  
conduct in question does not further any social, moral, political,  
religious or artistic ideal. Communication for the purpose of  
procuring the services of a prostitute or the running of a bawdy house  
can scarcely be described as involving the exchange of ideas or  
opinions. Moreover, given that the practice of prostitution is itself  
substantially restricted by criminal sanction, it is inconsistent with  
common sense to assert that the conduct prohibited by Sections  
195.1(1)(c) and 193 furthers self-fulfillment. On the contrary, the  
20 conduct in issue generally does very little but fuel the base  
exploitation of often young and generally disadvantaged women. It is  
the antitheses of self-fulfillment.

Reference:

Regina v. Smith, supra p. 142-151

Regina v. McLean; Regina v. Tremayne, (1986), 28 C.C.C. (3d)  
176 at p. 184 (B.C.S.C.)

30 18. Perhaps more importantly, it is respectfully submitted that  
whatever else Section 2(b) may guarantee, it does not extend  
constitutional protection to the type of expressive conduct to which  
Sections 195.1(1)(c) and 193 are directed. This type of expression  
(whether commercial or not) clearly falls beyond the scope of Section  
2(b). It is an example of expression within the "constitutionally  
permissible regulated area". Sexual street solicitation in all its

forms, cumulatively, represents a serious threat to public order, decency and safety. It harms persons and their property, including many of those engaged in the conduct itself. Both Sections 195.1(1)(c) and 193 have as their purpose the maintenance of decency and public order. They direct themselves at public safety issues and are designed to combat the harm to both person and property associated with public prostitution. They promote the rights of other affected individuals. As such they represent "very powerful competing interests" beyond the scope of Section 2(b) of the Charter.

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Reference:

Regina v. Smith, supra pp. 142-151

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19. It is respectfully submitted that having regard to all the circumstances of the instant case, it is not necessary for this Honourable Court to determine the broad issue of whether Section 2(b) of the Charter protects in any way or under any circumstance, "commercial expression". It is respectfully submitted that even if in other innocent circumstances Section 2(b) of the Charter extends to protect in some way "commercial expression", that fact is of no significance in the instant case. Where expressive conduct undermines public safety, order, decency or health; or where it harms others or their property, its commercial nature alone should not immunize it. Again, it is respectfully submitted that, in the instant case, sexual street soliciting is truly harmful and, accordingly, Section 2(b) does not extend to constitutionally protect it, whether one considers it commercial or not.

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Reference:

Regina v. Smith, Smith v. Regina, supra at pp. 76-97

Morgan v. Detroit, 389 F Supp 922 at p. 927 (U.S. Dist.Ct. 1975)

U.S. v. Moses, 339, A 2d 46 at pp. 52-54 (1975) (D.C. Court of Appeals)

State of Connecticut v. Allen, 424 A 2d 651 at p. 654 (1980) (Conn.)

U.S.A. v. Humera, 584 F 2d 1137 (1978)

State of New York v. Smith, 378 NE 2d 1032 (1978)

Commonwealth of Mass. v. King, 372 NE 2d 196 (1977)

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20. In the event that this Honourable Court finds that in some way Section 195.1(1)(c) (or Section 193) of the Criminal Code contravenes Section 2(b) of the Charter, it is respectfully submitted that to the extent that Section 195.1(1)(c) has the effect of restricting expression, such restriction can be characterized as both "trivial" and "insubstantial" or at least "indeterminate". Clearly at best, the expression in issue is entirely commercial in nature. Moreover, Section 195.1(1)(c) read together in its entirety clearly directs itself essentially at conduct rather than pure expression. In this regard, the Attorney General of Ontario supports the submissions of the Attorney General of British Columbia Intervener (paragraphs 7 to 14 of his factum in The Queen v. Stagnitta). Also, the limits Section 195.1(1)(c) places on expression are not comprehensive. They relate simply to place. Sections 195.1(1)(c) and 193 interfere only with the public manifestations of prostitutes. Location control in connection with a commerce has not hereto been considered inconsistent with the Charter. With respect to this, the Attorney General of Ontario supports the submissions of the Attorney General of Canada Intervener as found at paragraphs 7 through 15 of his Factum in this case.

Reference:

R. v. Jones, supra at pp. 299, 314



Rio Hotel Ltd. v. Liquor Licensing Ltd., [1987] 2 S.C.R. 59  
at p. 83

21. In all the circumstances, it is respectfully submitted that the Manitoba Court of Appeal did not err in holding that Sections 195.1(1)(c) and 193 do not contravene Section 2(b) of the Charter either independently or in combination.

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SECTION 1

22. If this Honourable Court is of the view that Sections 195.1(1)(c) and 193 of the Criminal Code violate any section of the Charter, the Attorney General of Ontario respectfully submits that any limit which the Sections in issue may place on constitutionally protected rights and freedoms is demonstrably justified in a free and democratic society.

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23. It is respectfully admitted that the onus rests on the Crown to establish that any limit in issue is justified under Section 1 of the Charter. The standard of proof under Section 1 is a civil standard, namely proof by preponderance of probability. Where evidence is required in order to prove the constituent elements of a Section 1 inquiry, material including legislative history, statistics, surveys, reports, studies, research papers and testimony may be properly introduced. This type of evidence should be cogent and make clear to the Court the consequences of imposing or not imposing the limit in issue.

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Reference:

R. v. Edward Books and Art Limited, [1986] supra at pp. 768-769

Dorina v. Oakes, supra pp. 138-139

Regina v. Ladouceur, (1987), 59 O.R. (2d) 688 (Ont. C.A.)

Regina v. Seo, (1986), 54 O.R. (2d) 293 (Ont. C.A.) at pp. 302-306

24. In order to establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be established:

- 10 (a) First, the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom". The legislative objective should generally be considered pressing and substantial in a free and democratic society before it can be characterized as sufficiently important to justify Section 1 protection.
- 20 (b) Secondly, once a sufficiently significant objection is recognized, the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves a form of proportionality test. The proportionality test will vary depending on the circumstances of each case, Courts will, however, be required to balance the interest of society with those of individuals and groups. There are three important components to the proportionality test,
- 30 (i) First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.
- (ii) Secondly, the means, even if rationally connected to the objective should impair "as little as possible" the right or freedom in question.
- 40 (iii) Thirdly, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom and the objective which has been identified as of sufficient importance.

Reference:

Regina v. Oakes, supra at pp. 138-139

Section 195.1

25. The objectives sought to be achieved by the enactment of Section 195.1 of the Criminal Code included the curbing of nuisances to uninterested pedestrians and property owners caused by the public behaviour of prostitutes and their customers. The conduct of prostitutes and their clients, while soliciting and negotiating sex on the street was considered by Parliament to be a major problem. Residential neighbourhoods across Canada were being ruined by traffic slowdowns, noise, garbage, confusion and criminal activity which habitually accompany street soliciting such as the possession and trafficking of drugs, violence and pimping. Juvenile prostitution was a matter of great Parliamentary concern as was the effect of street soliciting on innocent children. The deleterious effect on property values and commerce was also considered.

Reference:

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume I page 58-63, 69-70 ("Hansard", September 9, 1985, page 6373-6378, 6384-6385)

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 3 page 460-464, 487; ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", Issue #1, page 1:12-1:16, 1:39")

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 3 page 561 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3, 6")

26. It is respectfully submitted that the legislative objective of Parliament relative to Section 195.1, supported by the existence of

a pressing and substantial problem, was to restrict the blight associated with soliciting for the purposes of prostitution from all public places as defined in Section 195.1(2). It was not the intention of Parliament to deal with residential areas only. Concerns relative to traffic congestion, obstructed sidewalks, shouting, swearing, crude and vulgar language, horn honking, tire squealing, engine noises, blocked doorways, fighting, persistent following of persons, verbal harassment, uninvited personal intrusions, garbage, reduced property values, drugs, juvenile prostitution, and other crimes associated with prostitution, in any public area where it may arise, be it residential, commercial or industrial were considered in formulating the legislation. Section 195.1 represents an attempt at combatting these problems wherever they may arise.

Reference:

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume I, page 180 ("Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs", June 10, 1982, Issue #96, page 96:10)

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A. THE PROBLEM/ THE FACTS

27. It is respectfully submitted that the concerns which caused Parliament to act were pressing and substantial. The following represents a factual outline in support of some of those concerns.

HARASSMENT OF NON-PARTICIPANTS

28. Hundreds of well-organized prostitutes have left the United States where prostitution laws were previously stricter and have chosen to walk the streets of some of Canada's cities. Innocent women both young and old were constantly being propositioned by the customers of prostitutes, in both commercial and residential areas, where prostitution is centered. Women innocently standing on corners have been threatened with violence by prostitutes. Women have been

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assaulted and threatened by pimps. Some innocent but affected women are afraid to walk the streets. Some women refuse to leave their homes at night. Men are also harassed by propositioning prostitutes. Harassment is not limited to sidewalks, prostitutes often stop cars in the middle of the road, in order to solicit uninterested drivers.

Reference:

10 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4 page 628-632, 639, ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 24, 1985, Issue #4, page 4:35-4:39, 4:42")

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 3 page 560-561 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3:5-3:6")

20 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4 page 672-673 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 29, 1985, Issue #5, page 5:9-5:10")

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume I page 182 ("Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs", October 6, 1985, Issue #96, page 96:12")

30 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume I page 148-150, 154 ("Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs", June 8, 1982, Issue #94 page 94:96-94:98, 94:102)

29. Some of the elderly have become prisoners day or night, in their own homes. They are afraid to go outside. One gentleman in Toronto asked someone to move from in front of his house and had his front teeth knocked out. Actions by property owners to remove prostitutes and pimps from their homes have resulted in broken windows, and threats. One homeowner who was engaged in circulating a petition against prostitution in his neighbourhood was threatened with  
40 having both his legs broken. People are being forced to turn their

homes and apartments into fortresses. There is also a great deal of verbal obscene harassment. Employees often require escorts back and forth from their place of employment to their residence when they work or live in areas of high prostitution. Some prostitutes even proposition inside hospitals. Hotels which refuse to cater to prostitutes have had high staff turn-overs due to harassment by pimps and prostitutes.

Reference:

10 Regina v. Smith, supra, Transcript, Volume III Tab 23  
(Evidence of David Fry, October 10, 1986, page 43 line 29 to page 44 line 19)

Regina v. Smith, supra, Transcript, Volume III Tab 21  
(Evidence of Ed Gadzala, October 10, 1986, page 76 line 14 to line 30; page 77 line 6 to line 27; page 78 line 11 to line 27; page 79 line 2 to line 8)

20 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5,  
page 967 ("Elderly Imprisoned by Street Hookers", Vancouver newspaper article, March 3, 1983")

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 3,  
page 564, ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3:9")

30 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
page 632, 635-636, ("Minutes of Proceedings in Evidence of the Legislative Committee on Bill C-49" October 24, 1985, issue #4, page 4:39, 4:42-4:43")

II TRAFFIC CONGESTION

30. In commercial and residential areas where prostitution is on the rise, neighbourhoods have experienced an increase in traffic resulting in frequent screeching tires, honking horns, revving motors, loud stereos, cat calls, street fighting, profanity and bumper to bumper traffic. Often automobiles just circle around and around. A

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twenty-four hour traffic survey was conducted in one affected area in Toronto. It disclosed that at 3:00 a.m. on a Sunday morning, an automobile drove by one particular house every 12 seconds.

Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 23  
(Evidence of David Fry, October 10, 1986, page 40 line 18 to page 41 line 6)

10

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 3 page 560 ("Minutes of Proceedings in Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3:5")

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4 page 752 ("Minutes of Proceedings in Evidence of the Legislative Committee on Bill C-49", October 30, 1985, Issue #6, page 6:30")

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III NOISE

31. The noise is so bad in some areas that residents have had to take steps to muffle street sounds. The sound of prostitutes and their customers haggling over sex is heard at all hours of the day and night. Some residents have had trouble sleeping owing to the noise.

Reference:

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4 page 629 ("Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-49", October 24, 1985, Issue #4, page 4:35-4:36)

30

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 3 page 563-564 ("Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, pages 3:8-3:9)

IV

GARBAGE

32. Residents and merchants in affected areas often spend their mornings picking up fast food litter and contraceptives. A school principal in Toronto conducts a condom patrol of his school yard every

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Monday morning. Prostitutes use trees, alleyways, front lawns, store fronts, and the streets as toilets. Vomit is a frequent sight. There is litter everywhere. One home owner has complained that she has picked as many as twenty used condoms out of her garden at one time. One resident described the parking lot where she parks her car as virtually "carpeted" with used condoms.

Reference:

10 Regina v. Smith, supra, Transcript, Volume III, Tab 24  
(Evidence of James Lockett, October 10, 1986, page 27 line 27 to page 28 line 8)

Regina v. Smith, supra, Transcript, Volume III, Tab 22  
(Evidence of Harold Rubbra, October 10, 1986, page 57 line 25 to page 58 line 17)

20 Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 3, page 561  
("Minutes of Proceedings in Evidence of the Legislative Committee on Bill C-49, October 23, 1985, Issue #3, page 3:6)

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4, pages 630-631  
("Minutes of Proceedings in Evidence of the Legislative Committee" on Bill C-49, October 24, 1985, Issue #4, pages 4:37-4:38)

EFFECT ON PROPERTY VALUES

30 33. Street soliciting by prostitutes causes areas to become very unpleasant environments in which to live. Automobiles, laneways and yards are often used for sex and properties are often littered with contraceptives. There is a great deal of vandalism to buildings in these areas. Some of the poor cannot afford to move. Often these victims are immigrants or refugee families. Those who own homes often cannot sell them. Even in a strong real estate market their homes have gone down in value.



Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 23  
(Evidence of David Fry, October 10, 1986, page 41 lines 10 to  
27, page 42 lines 27 to page 43 line 6, page 43 line 29 to  
page 45 line 20, page 51 line 21 to page 52 line 27)

10 Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4,  
pages 630, 635 ("Minutes of Proceedings and Evidence of the  
Legislative Committee on Bill C-49", October 24, 1985, Issue  
#4, pages 4:37-4:38)

34. Prostitution is new to many of these areas.

Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 21  
(Evidence of Ed Gadzala, October 10, 1986, page 82 lines 23  
to 27)

20 Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4, page  
630 ("Minutes of Proceedings and Evidence of the Legislative  
Committee on Bill C-49, October 24, 1985, Issue #4, page  
4:37)

Case on Appeal, Queen v. Stagnitta, "Exhibits" Volume 4, page  
728 ("Minutes of Proceedings and Evidence of the Legislative  
Committee on Bill C-49, October 30, 1985, Issue #6, page 6:6)

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EFFECT ON COMMERCIAL BUSINESSES

35. The hotel/motel industry in affected areas has been hard hit  
by prostitution and the type of related criminal activity that it  
attracts. In the summer of 1986 tourism was on the rise by 17% in the  
Province of Ontario. Motel owners in affected areas reported that  
their business was down for the same time period. These owners  
attributed this to the presence of street prostitution and its adverse  
affect upon their business. Hotel and motel customers have been  
terrorized by pimps and prostitutes. Staff have been driven to quit  
40 by threats. Owner's insurance has been recently re-adjusted because

affected areas are considered "high risk". Windows have been broken and doors kicked in. Some offices will not permit their women employees to work past 5:00 p.m. and even during daylight hours a male employee must accompany a female to her car.

Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 21  
(Evidence of Ed Gadzala, October 10, 1986, pages 75 line 1 to page 80 line 21)

10

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
pages 629-631 ("Minutes of Proceedings and Evidence of the  
Legislative Committee on Bill C-49", October 24, 1985, Issue  
#4, pages 4:36 to 4:38)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
pages 671 to 674 ("Minutes of Proceedings and Evidence of the  
Legislative Committee on Bill C-49", October 29, 1985, Issue  
#5, pages 5:8 to 5:11)

20

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 1,  
pages 117 to 119 ("Minutes of Proceedings and Evidence of the  
Standing Committee of Justice and Legal Affairs", May 11,  
1985, Issue #83, pages 83:13 to 83:15)

Regina v. Smith, Appendix A, Volume II, Tab 13 ("Working  
Papers on Pornography and Prostitution, Report #9", Prairies,  
"Source of Complaints to Police", page 30, Table 17)

30

Regina v. Smith, supra, Appendix A, Volume II, Tab 14  
("Working Papers on Pornography and Prostitution, Report #8",  
Vancouver, "Business Complaints to Police", page 685, Table  
S.17)

RELATED CRIMINAL ACTIVITY

A. VIOLENCE

36. Increased crime is a common element of areas frequented by prostitutes for the purposes of street soliciting. There are often fights between prostitutes or pimps. Pimps severely beating prostitutes is a common sight. Muggings are common. Break and enters in broad daylight have been reported. There is a great deal of

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vandalism. There are many weapon charges laid in these areas. Sexual assaults of residents have occurred. A 68 year old long-time resident of Vancouver was sexually molested while working in her garden. A blind woman also living in Vancouver was the victim of a savage and brutal sexual assault. Women are particularly vulnerable to these dangers. In Calgary, murders and attempted murders have been connected with prostitution. Many violent crimes are never reported.

Reference:

- 10 Regina v. Smith, supra, Transcript, Volume III, Tab 23  
(Evidence of David Fry, October 10, 1986, page 43 line 29 to  
page 44 line 19; page 45 lines 7 to 14)
- Regina v. Smith, supra, Transcript, Volume III, Tab 21  
(Evidence of Ed Gadzala, October 10, 1986, page 77 line 6 to  
27)
- 20 Case on Appeal, "Exhibits" Volume 5, page 976 ("Prostitution  
Plague out of Control say Officials", Niagara Falls newspaper  
article)
- Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5,  
page 978 ("Residents Carry Chains, Knives", Niagara Falls  
newspaper article)
- Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5,  
page 979 ("Police Chiefs Can Aid Prostitution Battle",  
Niagara Falls Review, Editorial, August 4, 1983)
- 30 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume I,  
page 117 ("Minutes of Proceedings and Evidence of the  
Standing Committee on Justice and Legal Affairs", May 11,  
1982, Issue #83, page 83:13)
- Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume I,  
pages 152 to 153 ("Minutes of Proceedings and Evidence of the  
Standing Committee on Justice and Legal Affairs", June 8,  
1982, Issue #94, pages 94:100 to 94:101)
- 40 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
pages 629 to 630 and 636 to 637 ("Minutes of Proceedings and  
Evidence of the Legislative Committee on Bill C-49", October  
24, 1985, Issue #4, pages 4:36 to 4:37 and 4:42 to 4:43)

Regina v. Smith, *supra*, Appendix A, Volume II, Tab 13, ("Working Papers on Pornography and Prostitution, Report 9", Prairies, "Source of Complaints to Police", page 30, Table 17)

10 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 3, page 561 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3:6)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5, page 962 ("Prostitution Fighters Still Wait for Tough Laws", The Standard January 4, 1982)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5, page 966 ("...will force law change" newspaper article, February 22, 1983)

20 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 5, page 983 to 984 ("A Report on Street Prostitution in the City of Niagara Falls", February, 1984, Niagara Falls Regional Police, No. 2)

#### DRUGS

37. Drug dealing is an integral part of street prostitution. There has been a radical increase in drug use in one Toronto neighbourhood with the arrival of public prostitution. Residents often bear witness to glue sniffing, cocaine ingesting and intravenous  
30 drug use. Some pimps use drugs to maintain control over prostitutes. It becomes part of the culture which surrounds street prostitution. Child prostitutes are sometimes literally fed cocaine. Drugs provide child prostitutes with a method of escape. It helps some cope with the realities of their lifestyle. Prostitutes are among the highest users of drugs and alcohol. Of a sample of prostitutes working in Quebec, 33% worked under the influence of alcohol and 47% under the influence of drugs.

Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 22  
(Evidence of Harold Rubbra, October 10, 1986, page 58 lines 1 to 7; page 64 lines 12 to 18)

Regina v. Smith, supra, Transcript, Volume III, Tab 26  
(Evidence of Sergeant Wendy Leaver, October 27, 1986, and October 30, 1986, page 100 line 18 to page 101 line 25)

10 Regina v. Smith, supra, Transcript, Volume III, Tab 20  
(Evidence of Ms. Crombie, January 23, 1987, page 7 line 30 to page 8 line 28; page 12 lines 10 to 18; page 13 lines 27 to 32; page 28 line 24 to page 29 line 12)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
page 629 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 24, 1985, Issue #4, page 4:36)

20 Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 4,  
page 681 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 29, 1985, Issue #5, page 5:18)

Regina v. Smith, supra, Appendix A, Volume II Tab 2 ("Working Papers on Pornography and Prostitution, Report 9", Prairies, "Number of Customers Who Are Drunk or on Drugs", Table 30; "Drug Abuse as a Health Problem with Prostitutes", Table 46)

30 Regina v. Smith, supra, Appendix A, Volume II Tab 4 ("Working Papers on Pornography and Prostitution, Report 11", Quebec "Use of Alcohol and Drugs by Prostitutes" page 121 to 122)

Regina v. Smith, supra, Appendix A, Volume II Tab 5 ("Working Papers on Pornography and Prostitution, Report 12", Atlantic Provinces, page 30)

40 Regina v. Smith, supra, Appendix A, Volume II Tab 3 ("Working Papers on Pornography and Prostitution, Report 10", Ontario, "The Amount and Frequency of Drug Use Among Prostitutes", page 23, Tables 20, 21, 22 and 23)

Regina v. Smith, supra, Appendix A, Volume II Tab 1 ("Working Papers on Pornography and Prostitution", Vancouver, "Percentage of Prostitutes Using Drugs and Alcohol While

Working", page 693, Table S34; "Why Are Drugs Used on the Job?", page 726, Table M39)

Regina v. Smith, supra, Appendix A, Volume II Tab 6 ("The Report of the Committee on Sexual Offences against Children and Youths", "Juvenile Prostitutes Use of Drugs and Alcohol", page 1021 to 1022)

10 JUVENILE PROSTITUTION

38. Children are often recruited into prostitution by the culture that surrounds it. Grade school children between the ages of three and fourteen are exposed to prostitution as a result of the location of their schools in areas frequented by prostitutes. They see sex occurring in cars and in alleyways. They pick up unflattering sexual phrases. Many children, once they are recruited into street prostitution, are watched closely by their pimps. Some of them are as young as 12 and 15 years of age.

Reference:

20 Regina v. Smith, supra, Transcript, Volume III, Tab 24 (Evidence of James Lockett, October 10, 1986, page 28 line 4 to page 29 line 13)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 3, pages 579 to 580 ("Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49", October 23, 1985, Issue #3, page 3:24 to 3:25)

30 Regina v. Smith, supra, Appendix A, Volume II, Tab 8 ("Working Papers on Pornography and Prostitution: Juveniles and Prostitution, Report 9", Prairies, page 41, Table 19; page 45, Table 25)

Regina v. Smith, supra, Appendix A, Volume II, Tab 9 ("Working Papers on Pornography and Prostitution: Juveniles and Prostitution, Report 10", Ontario, pages 6 to 7, Table 1)

40 Regina v. Smith, supra, Appendix A, Volume II, Tab 10 ("Working Papers on Pornography and Prostitution: Juveniles and Prostitution, Report 11", Quebec, page 118)

Regina v. Smith, supra, Appendix A, Volume II, Tab 11  
("Working Papers on Pornography and Prostitution: Juveniles  
and Prostitution, Report 12", Atlantic Provinces, page 17 and  
27)

Case on Appeal, Queen v. Stagnitta, "Exhibits", Volume 2,  
pages 346 to 349 ("Report of the Special Committee on  
Pornography and Prostitution: Pornography and Prostitution in  
Canada, Volume 2")

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39. Pimps employ an elaborate scheme to procure young girls into prostitution. The recruitment process involves meeting young girls on the street, showering them with love, offering them room and board, and finally causing them to become addicted to drugs. After a while they are forced to earn their keep through prostitution. The pimp is assisted by male associates and several of the girls who are already working for him. Young girls are most desirable to pimps as they bring in the most money and are the easiest to control.

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Reference:

Regina v. Smith, supra, Transcript, Volume III, Tab 25  
(Evidence of Constable James Hodgson, October 27, 1986, page  
8, line 9 to page 23 line 20)

Regina v. Smith, supra, Transcript, Volume III, Tab 26  
(Evidence of Sergeant Wendy Leaver, October 27, 1986, and  
October 30, 1986, page 93 line 26 to page 112 line 25)

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40. By way of conclusion, it is respectfully submitted that Section 195.1 of the Criminal Code was enacted in response to pressing and substantial concerns arising from the problems associated with street soliciting, including nuisance to innocent bystanders, traffic congestion, noise, garbage, reduced property values, violence, drugs and other related criminal activity and juvenile prostitution.

B. PROPORTIONALITY TEST

41. Again, it is conceded that by invoking Section 1 the Crown is obliged to show that the means chosen to achieve the permissible objective are reasonable and demonstrably justified in a free and democratic society. There must be a proportionality between the effect of the measures responsible for limiting the Charter right and the objective identified as of sufficient importance to justify the infringement. The more serious the deleterious effects of a measure the more important the objective must be. The test has three separate components.

Reference may be made to:

Regina v. Oakes, supra, at pp. 138-139

I THE FIRST COMPONENT/RATIONAL CONNECTION

42. It is respectfully submitted that the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based upon irrational considerations, in short, they must be rationally connected to the objective.

Reference:

Regina v. Oakes, supra, at pp. 138-139

43. It is respectfully submitted that the scheme set out in s.195.1 of the Criminal Code is rationally connected to its purpose of providing protection to citizens, businesses and children from the nuisances and related criminal activities associated with public prostitution. Section 195.1 achieves the desired objective.

44. With the proclamation of s.195.1 there has been a radical decrease in the nuisances and related criminal activities associated



with street soliciting. Presently in Toronto, there is only 30% of the number of prostitutes on the streets than were there prior to the legislation's enactment. Customers have diminished by 50%. Residential streets in areas of high street prostitution are quieter and there is less traffic. Assaults and prostitution related complaints are also down. Prostitutes have disappeared from certain hitherto overrun areas.

Reference:

10 Regina v. Smith, supra, Transcript, Volume III, Tab 22  
(Evidence of Harold Rubbra, October 10, 1986, page 60, lines 22 to 30)

Regina v. Smith, supra, Transcript, Volume III, Tab 27  
(Evidence of Sgt. Brier, January 9, 1987, page 27 line 20 to page 29 line 6; page 29 line 27 to page 31 line 21)

20 Regina v. Smith, supra, Transcript, Volume III, Tab 25  
(Evidence of Constable James Hodgson, October 27, 1986, page 8, line 9 to page 23 line 20)

Regina v. Smith, supra, Transcript, Volume III, Tab 26  
(Evidence of Sergeant Wendy Leaver, October 27, 1986, December 19, 1986, page 93 line 26 to page 112 line 25)

THE SECOND COMPONENT/THE LIMIT SHOULD IMPAIR THE RIGHT AS LITTLE AS POSSIBLE

30 45. It is respectfully submitted that to comply with the second component of the proportionality test, the means chosen to achieve the object should impair "as little as possible" the right or freedom in issue. This Honourable Court has recognized that courts, however, should not substitute a judicial opinion for a legislative one in respect of where to draw the precise line as to what constitutes a reasonable limit. It is not the role of the courts to revise legislation that is constitutionally valid, to pass on the validity of schemes which are not directly before it or to consider what

legislation might be more desirable. The relevance of alternate legislation and means should be limited to the issue of whether the chosen scheme meets the requirements of Section 1. Parliament must be allowed adequate scope to address in a practical way the pressing and substantial objectives facing it. The weighing of competing political pressures is a matter for Parliament not the Court. The ultimate issue is: is the limit reasonable?

Reference:

10 Regina v. Big M Drug Mart, supra pp. 352-353

Regina v. Oakes, supra at pp. 138-139

Edwards Books v. The Queen, supra p. 783

PREVIOUS LEGISLATION

20 46. It is respectfully submitted that previous legislation dealing with soliciting has been interpreted by this Honourable Court so as to require "pressing and persistent conduct". This rendered previous soliciting sections of the Criminal Code virtually unenforceable. The problems associated with soliciting for the purposes of prostitution flourished.

reference may be made to:

Hutt v. Regina, [1978] 2 S.C.R. 475; 38 C.C.C. (2d) 418 (S.C.C.)

30 AG BC v. Couillard, (1984), 14 C.C.C. (3d) 169 at pp.170-1

R v. Whitter; R v. Galjot, (1982.), [1981] 2 S.C.R. 606 at 612

Regina v. McLean; Tremayne, supra p.179

ALTERNATIVE LEGISLATIVE SOLUTIONSINJUNCTIONS

47. It is respectfully submitted that injunctions launched by Provincial Attorney Generals and Municipal Governments have failed to cope with problems associated with street soliciting. In any event, street prostitution is a criminal law matter. It should from a constitutional perspective be dealt with by criminal legislation.

Reference:

10 AG British Columbia v. Couillard, (1984), 14 C.C.C. (3d) 169 (B.C.S.C.)

Westendorp v. The Queen, (1983), [1983] 1 S.C.R. 43

Regina v. Smith, supra p. 214

REDLIGHT OR COMBAT ZONES

48. It is respectfully submitted that redlight or combat zones do not represent an alternative method of achieving Parliament's objective. Elsewhere redlight zones have not proven effective. Studies have shown that prostitution cannot be limited to specifically designated areas. These studies have also shown that within combat or redlight zones incidences of crime and nuisances associated with prostitution, substantially increase. In any event, combat or redlight zones as an alternative are not rationally connected to Parliament's objective. Parliament's stated objective was to curb nuisance associated with street prostitution in all public places. The creation of redlight zones would have the effect, at best, of simply limiting the pressing social problems to one particular area.

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30 This was not what Parliament intended. It is respectfully submitted that redlight or combat zones do not represent a reasonably less restricted alternative. They do not work. And even if they did they would not achieve the desired objective. Similarly, the restriction of street soliciting away from schools, public institutions and

residential areas will also not achieve Parliament's objective which was the reduction of street soliciting from all public areas.

Reference:

Boles, Tatro, "Legal and Extra Legal Methods of Controlling Female Prostitution", (1978) 2 INTJ of Comp. and App Crim. Law 1 at pp. 7-10

Yan Dorf, "Prostitution as a Legal Activity, The German Experience" (1979) 5 Pol Analysis 417 at p. 424

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GOVERNMENT LICENCING OF PROSTITUTES AND BAWDY HOUSES

49. It is respectfully submitted that government run bawdy houses do not represent a less restrictive alternative. It is illegal to keep a bawdy house and, in any event, this solution is not rationally connected to Parliament's objective.

Reference:

Boles, Tatro, "Legal and Extra Legal Methods of Controlling Female Prostitution", (1978) 2 INTJ of Comp. and App Crim. Law 1 at pp. 7-10

20

Yan Dorf, "Prostitution as a Legal Activity, The German Experience" (1979) 5 Pol Analysis 417 at p. 424

SECTION 195.1

50. It is respectfully submitted that there exist no quick or easy solutions to the problems of street prostitution. Parliament was faced with a number of difficult choices, multiple interests, a spectrum of views, and several policy options. It was their job to arrive at a compromise of interests in formulating the law. Faced with a difficult choice, and only after much consultation and consideration, Parliament choose to enact Section 195.1 to deal with what was clearly viewed as substantial social problem. Section 195.1 of the Criminal Code achieves Parliament's objective with as little impairment to individuals rights as is possible.

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THE THIRD COMPONENT/PURPOSE AND OBTRUSIVENESS

51. It is respectfully submitted that the proportionality test requires the Court to weigh the purpose of the infringing legislation against the obtrusiveness of the means selected.

Reference:

Regina v. Oakes, supra pp. 138-139

10 52. It is respectfully submitted that a number of jurisdictions in free and democratic societies have used criminal sanctions to curtail the nuisance of soliciting associated with prostitution. Given Parliament's objective the means chosen in Canada is, comparatively speaking, no more obtrusive than ones used in the United States and in Britain.

Reference:

(i) United States of America:

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U.S.A. v. Herriera, 584 F. 2d 1137 (1978)

State of New York v. Smith, 378 N.E. 2d 1032 (1978)

Commonwealth of Mass. v. King, supra

State v. Allen, supra

Morgan v. Detroit, 389 F Supp 922 (USPC 1975)

30

U.S.A. v. Moses, supra

(ii) Britain:

Prostitution Street Offences Act 1959, 7 & 8 Eliz 2 c.57 as amended Criminal Justice Act 1962 s.71

Horton v. Mead [1911-3] ALL E.R. 954

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Weisz v. Monanan [1962] 1 ALL E.R. 664

53. It is respectfully submitted that in determining "obtrusiveness", regard may properly be had to the fact that our criminal law has been used regularly to curtail other abuses of speech.

Reference:

R. v. Zundel, supra

Regard may be had to the following sections of the Criminal Code:

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conspiracy: s.423, s.424, s.425  
 threatening: s.381.1, s.17, s.305, s.381(1)(b),  
 s.243.4(1)  
 counselling: s.422, s.22(1)  
 hate propaganda: s.281.1  
 incitement of hate: s.281.2  
 libel: s.260, s.261, s.262  
 spreading false news: s.177  
 public mischief: s.128  
 personating a police officer: s.119  
 perjury: s.120

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54. It is respectfully submitted that in determining obtrusiveness, regard may also be had to the fact that the conduct in issue is strictly commercial in nature.

55. By way of conclusion, it is respectfully submitted that when one weighs the serious social nuisance caused by prostitution and the valid and real objective of Parliament in enacting Section 195.1, against what at best can be considered a limited interference with commercial conduct, the scales of justice clearly tip substantially in favour of the propriety of Section 195.1. It is respectfully submitted that Section 195.1 is not unduly obtrusive.

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Reference:

R.W.D.U. v. Dolphin Delivery, supra

56. It is respectfully submitted that Section 195.1(1)(c) meets the proportionality test. The section is demonstrably justified in a free and democratic society. Accordingly, if Section 195.1 breaches Charter rights or freedoms, it is saved by Section 1.

Section 193

10 57. It is respectfully submitted that while enacted quite some time ago, Section 193 of the Criminal Code directs itself at many of the same significant concerns which motivated the passing of Section 195.1. These problems, of course, manifest themselves in part, in connection with public prostitution in all its forms. Section 193 is carefully designed to achieve its objective and is rationally connected to it. To the extent that there exists any impairment of a right guaranteed by the Charter, Section 193 impairs that right as little as possible. There also exists "proportionality" between the effect of Section 193 and its objective.

PART IV

ORDER REQUESTED

57. It is respectfully requested that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by,



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MICHAEL BERNSTEIN  
Of Counsel for the Intervener for the  
Attorney General of Ontario

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Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 486, 102 S.Ct. 1186 (1982)

Regina v. Morgentaler, Smoling and Scott, (1985), 52 O.R. (2d) 353 (Ont. C.A.); appeal allowed on other grounds, [1988] 1 S.C.R. 30

- Regina v. Zundel, (1987) 58 O.R. (2d) (Ont. C.A.)
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