

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

BRADLEY BARTON

Appellant
(Appellant)

-and-

HER MAJESTY THE QUEEN

Respondent
(Respondent)

-and-

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EQUALITY SOCIETY, ABORIGINAL WOMEN'S ACTION NETWORK (AWAN),
FORMERLY EXPLOITED VOICES NOW EDUCATING (EVE), CEASE: CENTRE TO END
ALL SEXUAL EXPLOITATION (CEASE), ASSEMBLY OF FIRST NATIONS, AD
IDEM/CANADIAN MEDIA LAWYERS ASSOCIATION, THE WOMEN OF THE MÉTIS
NATION/LES FEMMES MICHIF OTIPEMISIWAK, NATIONAL INQUIRY INTO MISSING
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Interveners

FACTUM OF THE INTERVENERS

VANCOUVER RAPE RELIEF SOCIETY, LA CONCERTATION DES LUTTES CONTRE L'EXPLOITATION SEXUELLE (LA CLES); ASIAN WOMEN FOR EQUALITY SOCIETY; ABORIGINAL WOMEN'S ACTION NETWORK (AWAN); FORMERLY EXPLOITED VOICES NOW EDUCATING (EVE) AND CEASE: CENTRE TO END ALL SEXUAL EXPLOITATION (CEASE)

(INTERVENING IN COALITION AS "THE WOMEN'S EQUALITY AND LIBERTY COALITION")

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I: OVERVIEW AND STATEMENT OF FACTS

A. The Intervener Coalition

1. This intervention is brought jointly on behalf of six organizations with front-line expertise on men's prostitution/commercial sexual exploitation of women¹ as well as other forms of male violence, including wife battering, incest, sexual assault and sexual harassment: Vancouver Rape Relief Society, La Concertation des Luttes Contre L'Exploitation Sexuelle (La CLES); Asian Women For Equality Society; Aboriginal Women's Action Network (AWAN); Formerly Exploited Voices Now Educating (EVE) and CEASE: Centre To End All Sexual Exploitation (known collectively as the Women's Equality and Liberty Coalition).
2. The members of the Women's Equality and Liberty Coalition are based across Canada, primarily in Quebec, Vancouver and Edmonton, and include Indigenous women, Asian women and survivors of prostitution. The Women's Equality and Liberty Coalition use their decades of frontline experience to advocate for those who seek their services, and to advocate nationally and internationally for judicial and legislative reform.

B. Overview of the Women's Coalition Argument

3. This appeal provides this Honourable Court with the opportunity to reject a series of damaging and discriminatory myths about men's prostitution of women, and of Indigenous women in particular, that have the potential to distort the criminal law and the criminal trial process. The Appellant killed Cindy Gladue, a Métis woman, when, in the course of pursuing his own sexual gratification, he caused such significant damage to her vaginal wall that she bled to death.
4. The facts of this case directly rebut the myths that what is referred to as "indoor prostitution" is safe, and that third parties will provide security to women the sex trade. The fact that Ms Gladue was recruited to a hotel rather than on the street; the presence of security cameras in the hotel; the fact that the Appellant was a returning guest at the hotel

¹ The Intervener Women's Coalition uses the terms "prostitution of women" and "commercial sexual exploitation" interchangeably in this factum.

and registered under his own name; the fact that his prostitution of her was known to other people and not “underground”; or the fact that Ms Gladue had a third party arranging the meeting did not offer her protection from violence or death.²

5. This case also demands rejection of the damaging misrepresentation that women in prostitution enjoy what is being done to them, and that they are engaging in acts of mutual sexual pleasure with the men who buy them, rather than acts done at the direction of and for the gratification of the male buyer. While the Appellant acknowledged that Ms Gladue only agreed to accompany him to his room in exchange for payment, he nonetheless maintained that she enjoyed the manual penetration that ultimately caused her death.³
6. This case also requires the Court to confront directly the sexualized racism and sexualized colonialism that can distort the criminal justice process through the discriminatory myths that Indigenous women invite, enjoy and deserve the harms that men inflict on them, and that construct Indigenous women as available for men’s sexual use. That Ms Gladue may have resorted to accepting money in exchange for sexual access to her body on one or more occasions does not mean that her identity is subsumed in the label of “Native prostitute.” Changing this term to “Indigenous sex worker” is even worse, as it further obscures the violence and exploitation enacted on her in a context of extreme inequality of power, by pretending that this was a business transaction.
7. The Women’s Coalition submits that all of these myths must be rejected and that the legal issues under appeal in this case must be instead be determined in a manner that reflects (i) the extreme risk to women of violence by male buyers, regardless of the location where their commercial sexual exploitation is initiated; (ii) the marked imbalance of power between prostituted women and the men who exploit them; and (iii) the elevated risk of femicide and other violence faced by Indigenous women. This context affects the legal analysis of the issues before this Court, including instructions on motive, the admissibility of evidence of other sexual activity, and the definition of non-consent that applies to proof of sexual assault.

² Transcript of Proceedings, p. 1094/22-26; 1101/9-17; 1118/29-36; 1121/4-7.

³ Transcript of Proceedings, p. 1128/24-25.

C. Statement of Facts

8. The Intervener Women's Coalition accepts generally the Respondent's Statement of Facts and submits that the following facts are of particular significance to this appeal.
9. The Appellant testified that he paid Cindy Gladue nothing on the night of her death for the sexual acts he performed on her, despite promising her sixty dollars. He paid the man who recruited Ms Gladue five dollars when that man questioned whether multiple men would be involved.⁴
10. The Appellant offered his male co-worker Kevin Atkins a "piece" of Ms Gladue, despite the Appellant's earlier claim to her male companion that the Appellant would be the only man to use her sexually that night. The co-worker declined, but did not interfere with the Appellant.⁵
11. According to the toxicology evidence, Ms Gladue was highly intoxicated at the time of her death, with a blood alcohol level of .340. This level of intoxication would have affected her mental abilities, pain tolerance and physical coordination and may have left her in a state of stupor.⁶ While a tolerant drinker might display fewer outward symptoms than an average or novice drinker, at this blood alcohol level they would still be impaired.⁷
12. Ms Gladue was much smaller than the Appellant – about 8 inches shorter than him, and half his weight.⁸
13. The Appellant testified that Ms Gladue's consent on the first night was to "everything, sex" and that he believed she had consented to the same thing on the second night: "she knows what she was coming for." The Appellant also acknowledged in his evidence that

⁴ Evidence of Bradley Barton TOP, pp 1128/38-39; 1209/27-40; 1210/1-24; 1118/29-36.

⁵ Evidence of Kevin Atkins TOP pp 145/29; 150/35-40; 151/1-5.

⁶ Evidence of Dr Graham Jones, TOP pp 587-98.

⁷ Evidence of Dr Graham Jones, TOP pp 597-98; 603, 32.

⁸ Evidence of Bradley Barton TOP; 1109, 17-24.

the manual penetration he performed on Ms Gladue was more forceful, more invasive and lasted longer than on the prior night that he had been with her.⁹

PART II: POINTS IN ISSUE

With respect to the issues raised by the parties in this appeal, the Women's Equality and Liberty Coalition submits:

14. Juries should not be instructed on lack of motive in cases of sexual violence and femicide in the context of prostitution;
15. A section 276 *voir dire* is required for the admission of evidence of other sexual activity in a homicide trial where the underlying unlawful act is a sexual assault; and
16. A correct instruction on the elements of unlawful act manslaughter, where the predicate act is sexual assault, must include an understanding of non-consent that reflects the gross imbalances of power in acts of commercial sexual exploitation.

PART III: ARGUMENT

A. Motive

17. The Women's Coalition submits that instructions to the jury on motive in charges of homicide in the context of prostitution must be consistent with the extremely high rates of homicide and other violence inflicted by male buyers, and the over-representation of Indigenous women in the population of women who are commercially sexually exploited and murdered in Canada.
18. Unless there is a proved absence of motive, or affirmative evidence of motive that is relevant to an issue in dispute, the trial judge is not required to instruct the jury on the issue of motive.¹⁰ Motive was not an element of any of the offences with which the accused was charged. While any instruction on motive in this case was discretionary, it needed to be based on the evidence and free of any discriminatory inferences.

⁹ Evidence of Bradley Barton TOP 1103, 26-30; 1121, 9-12; 1267, 28-39.

¹⁰ [R. v. Lewis, \[1979\] 2 S.C.R. 821.](#)

19. In choosing to instruct the jury on the defence theory of evidence supporting a lack of motive, the trial judge erred. Characterizing the accused as apparently lacking in motive falls into the error of treating the male buyer in prostitution as presumptively harmless. This myth should have been rejected. Instead, the jury was incorrectly told that if they concluded there was no motive, this was an “important fact” for them to consider.¹¹
20. As the Court of Appeal in this case recognized, it is indisputable that women in prostitution and Indigenous women are subjected to male violence at very high rates.¹² Indigenous women are targeted for prostitution because of the combined effects of sexism and colonialism.¹³ This Court and other courts have recognized that for women in prostitution, the source of the violence they experience is mostly from male sex buyers and pimps.¹⁴
21. Men’s sexual violence against women is committed in order to dominate and control women’s bodies for the purpose of male sexual gratification.¹⁵ For Indigenous women, this domination is inextricably linked to colonization.¹⁶ Since 2014, Canadian criminal law has recognized that the purchase of sex is inherently violent, by classifying the offence of obtaining sexual services as an offence against the person, rather than a morals or nuisance offence.¹⁷ Prostitution is itself violent, and the infliction of further and additional violent acts on women in prostitution is commonplace. The motive to do harm to the woman in question comes from the fact that she is female, Indigenous, and labeled a “prostitute.”
22. The fact that the Appellant did not hide his identity, and let others know that he was with Ms Gladue on the night of her death, was not probative on the question of his intent to

¹¹ Transcript of Proceedings (Charge to the Jury) at p 147/2-5.

¹² [R. v. Barton, 2017 ABCA 216](#) at para 81 (“Reasons of the Court of Appeal”); [R. v. Mercer, 2017 NSPC 20](#) at paras 37-44.

¹³ Sherene Razack, “Gendering Disposability” (2016), 28 Canadian Journal of Women & the Law 285 at p. 292.

¹⁴ [Bedford v. Canada \(AG\), 2013 SCC 72](#) at para 89; [R. v. Downey, \[1992\] 2 S.C.R. 10](#) at para 41; [R v Pickton, \[2010\] 2 S.C.R. 198, 2010 SCC 32](#) at para 15; [R. v. Mercer, 2017 NSPC 3](#) at paras 6-9.; [R. v. Mercer, 2017 NSPC 20](#) at paras 37-44.

¹⁵ [R. v. McCraw, \[1991\] 3 S.C.R. 72](#) at paras 28-30.

¹⁶ Sarah Deer, “Toward an Indigenous Jurisprudence of Rape” (2004), 14 Kan. J.L. & Pub. Pol’y 121 at pp. 129-131.

¹⁷ *Criminal Code*, R.S.C. 1985, c. C-46, s. 286.1

cause bodily harm. It is now well-recognized that only a minority of sexual assaults are committed by men who are strangers to their victims.¹⁸

23. The jury should not have been directed that they could consider this evidence as going to a lack of motive, based on defence submissions that reflected myths and stereotypes about sexual violence. Instead, those submissions should have been counterbalanced by an instruction that (a) motive was not a requirement in law; and (b) sexual violence, including violence that endangers life or causes death, may be committed for the purpose of sexual gratification through using a woman in an “objectifying or dehumanizing manner.”¹⁹

B. Evidence of Other Sexual Activity

24. The Women’s Coalition submits that the screening procedure for evidence of other sexual activity in s. 276 of the *Criminal Code* applies in a homicide trial where the predicate unlawful act is one that is covered by s. 276, such as sexual assault. Evidence that the victim was engaged in prostitution is highly prejudicial and should not be admitted without consideration of whether there is significant probative value to the evidence, and only with a careful limiting instruction to the jury.

25. The Women’s Coalition agrees, for the reasons given by the Court of Appeal, that section 276 applies to a charge of murder or unlawful act manslaughter where conviction is predicated on proof of sexual assault.²⁰ While section 276 operates to protect witnesses from unnecessary invasions of their privacy and dignity, its most important purpose is to prevent irrelevant evidence from distorting the trial through the invocation of discredited and stereotypical reasoning.²¹ Where the case involves allegations of prostitution, this danger is heightened.²²

¹⁸ Don Stuart, “Sexual Assault: Substantive Issues Before and After Bill C-49” (1992-93), 35 Crim L.Q. 241 at p. 243.

¹⁹ [Reasons of the Court of Appeal](#), *supra*, para 81.

²⁰ [Reasons of the Court of Appeal](#), *supra*, paras 96-103.

²¹ [R. v. Darrach](#), [2000] 2 S.C.R. 443 at paras 445, 469; [R. v. Seaboyer](#), [1991] 2 S.C.R. 577 at para 616.

²² [Seaboyer](#), *supra*, at para 690 per L’Heureux-Dube J. (dissenting); [R. v. Nepinak](#), 2010 BCSC 1677.

26. While responding to evidence introduced by the Crown may be one reason to permit the introduction of evidence of other sexual activity,²³ this does not mean that the evidence is inevitably admissible, or that the s. 276 process serves no purpose. Highlighting the prejudicial inferences that may flow from the evidence will shape both the extent to which the evidence is admissible and the terms of the mandatory limiting instruction given to the jury.²⁴
27. For example, the evidence that Ms Gladue was also commercially sexually exploited by the Appellant on the previous night had limited probative value. The only issue on which it could have had some relevance was the Appellant's submission that the internal damage to her vaginal wall was caused over two occasions instead of one, which in turn might have had some relevance to his intent.
28. The evidence was not probative of the defence of honest but mistaken belief in consent.²⁵ Under the current formulation of the defence, there must be an air of reality that the accused had an honestly held belief that the complainant had communicated her affirmative consent to the specific sexual acts committed on her body, and that the accused had taken reasonable steps, in the circumstances known to him at the time, to ascertain her consent.²⁶ The fact that a woman in prostitution accepts money in exchange for sexual access to her body on a prior night could do no more than give the male buyer a belief that she would consent, not a belief that she was consenting, on another occasion.²⁷
29. Such evidence is also highly prejudicial, invoking racist stereotypes of the drunken Aboriginal woman who is up for anything, and who gives a man unrestricted access to her body to get money for more alcohol or drugs. The myths that a "prostitute cannot be raped", or that women of "low morals" are more likely to lie, have distorted the criminal

²³ [R. v. R.V., 2018 ONCA 547](#) at paras 36-37.

²⁴ *Criminal Code*, *supra*, s. 276.4.

²⁵ *Criminal Code*, *supra*, s. 273.2

²⁶ [Reasons of the Court of Appeal](#), at para 140, citing [R. v. Flaviano, 2013 ABCA 219](#), *aff'd* [2014 SCC 14](#); [R. v. Cornejo \(2003\), 68 O.R. \(3d\) 117 \(C.A.\)](#).

²⁷ [R. v. Park, \[1995\] 2 S.C.R. 836](#) at para 44 (per L'Heureux-Dube J.).

trial process in the past,²⁸ and juries need to be specifically warned against them if evidence of previous interactions are to be admitted.

30. Any evidence of a prostituted woman's alleged activities with other men is completely irrelevant, and is the kind of reputation evidence rendered inadmissible by s. 277. In this case, Ms Gladue should not have been labeled a prostitute, nor should she have been labeled with any other sanitized version of that status (sex worker, sex trade worker, etc.).
31. There is a high risk of degrading and racist assumptions about Indigenous women who are prostituted. Sexualized colonialism has falsely constructed Indigenous women as prostitutes.²⁹ The Coalition submits that jury instructions in the area of sexual assault must not erase the gendered and racialized nature of both sexual assault and commercial sexual exploitation.
32. The opening jury instruction suggested by the Court of Appeal attempted to mitigate some of these discriminatory inferences by telling the jury not to have any preconceived notions of who could or could not be a victim or perpetrator of sexual assault.³⁰ Unfortunately, this wording could mislead the jury into thinking that sexual violence is random or equally distributed across the population. It is an incontrovertible fact that in Canada, an Indigenous woman is much more likely to be a victim of sexual violence than a non-Indigenous man. The reverse is true for those that perpetrate sexual violence.³¹ Erasing sexism, colonialism and racism from consideration leads to distortions rather than objectivity.³²

C. Unlawful Act Manslaughter

33. The Women's Coalition submits that both the judicial definition of non-consent in the context of sexual assault, and the *Criminal Code* definition of consent as "voluntary agreement," must be understood in the context of the extreme imbalance of power in

²⁸ [R. v. Moulton, 1979 ABCA 324](#).

²⁹ Cherry Smiley, "A Long Road Behind Us, a Long Road Ahead: Towards an Indigenous Feminist National Inquiry" (2016), 28 Can J. Women & L. 308 at pp. 309-310.

³⁰ [Reasons of the Court of Appeal](#), *supra*, at para 162.

³¹ [R. v. Osolin, \[1993\] 4 S.C.R. 595](#) at paras 165-66 (per Cory J.).

³² [R. v. R.D.S., \[1997\] 3 S.C.R. 484](#) at paras 46-47.

prostitution as it occurred in this case, which vitiated any apparent consent. Where the purported consent of those in prostitution is extracted in conditions of extreme inequality on the basis of sex, race and class, there is no voluntary agreement and it is incorrect to try and measure non-consent by asking whether the complainant “wanted the sexual activity to take place.”³³

34. Amendments to the *Criminal Code* in 2014 created the new offence of offering consideration for sexual services. This offence is classified as an offence against the person. Proof of non-consent is not required.³⁴ The purchase of sexual services is an unlawful act that is objectively dangerous to the person who is bought. This predicate offence provides a clear path to conviction for manslaughter in any subsequent case with similar facts. This did not apply to the Appellant and the Crown must prove a sexual assault was committed. However, the element of non-consent in sexual assault should not be interpreted in a way that undermines the objectives of the new legislation, which reflect an understanding of prostitution as commercial sexual exploitation.³⁵
35. The definition of non-consent set out in *Ewanchuk*, that the complainant does not in her own mind want the sexual touching to take place,³⁶ is not applicable in the context of commercial sexual exploitation. The sexual acts in prostitution are not wanted by the woman and are not done for her sexual gratification. The woman complies with the male demand because she wants and needs the money and is willing to endure the sexual activity to get it; compliance is not consent. The more marginalized the woman, the more the male buyer will demand that she endure. Prostitution is not mutually consensual sexual activity.
36. The Women’s Equality and Liberty Coalition emphatically rejects the claim that consent to sexual activity can be bought. The Appellant’s argument that there was no unlawful act is based on the premise that consent can be purchased. Yet the Appellant did not pay Ms Gladue anything for the extensive sexual activity that he engaged in on the night of her death. If the payment is the only reason she submitted to the sexual activity, and she was

³³ *Criminal Code*, s 273.1; [R. v. Ewanchuk, \[1999\] 1 S.C.R. 330](#).

³⁴ *Criminal Code*, s. 286.1

³⁵ Preamble, *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25.

³⁶ [Ewanchuk](#), *supra*, at para 29.

not paid, this is not “consent,” even on the Appellant’s thin and decontextualized approach to this term.³⁷

37. The *Criminal Code* recognizes that an imbalance of power may vitiate voluntary consent. In particular, s. 273.1(2)(c) states that no consent is obtained where the accused “induces the complainant to engage in the activity by abusing a position of trust, power or authority.”³⁸ The Appellant was a large, strong man with financial resources; Ms Gladue was a small, slight Indigenous woman who was very intoxicated and likely impoverished, given that she was willing to accept much less money than she originally asked for. The fact that she returned on the second night was evidence of her desperation and vulnerability, not of her consent.

PART IV: ORDER REQUESTED

38. The Women’s Equality and Liberty Coalition makes no submissions as to the outcome of the appeal or any remedy that this Honourable Court might issue.

39. The Women’s Equality and Liberty Coalition does not seek costs and asks not to have costs ordered against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th DAY OF SEPTEMBER 2018.

JANINE BENEDET
Co-counsel for the intervener The
Women’s Equality and Liberty Coalition

GWENDOLINE ALLISON
Co-counsel for the intervener The
Women’s Equality and Liberty Coalition

³⁷ [R. v. Gartner, 2003 SKPC 178.](#)

³⁸ *Criminal Code, supra*, s. 273.1(2)(c)

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PART VI: STATUTORY PROVISIONS

Criminal Code, R.S.C. 1985, c. C-46

Meaning of “consent”

273.1 (1) Subject to subsection (2) and subsection 265(3), “consent” means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

Where no consent obtained

(2) No consent is obtained, for the purposes of sections 271, 272 and 273, where

- (a)** the agreement is expressed by the words or conduct of a person other than the complainant;
- (b)** the complainant is incapable of consenting to the activity;
- (c)** the complainant induces the complainant to engage in the activity by abusing a position of trust, power or authority;
- (d)** the complainant expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Subsection (2) not limiting

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

Where belief in consent not a defence

273.2 It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject matter of the charge, where

- (a)** the accused’s belief arose from the accused’s

(i) self-induced intoxication, or

(ii) recklessness or wilful blindness; or

(b) the accused did not take reasonable steps, in the circumstances known to him at the time, to ascertain that the complainant was consenting.

Evidence of complainant's sexual activity

276 (1) In proceedings in respect of an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

(a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or

(b) is less worthy of belief.

(2) In proceedings in respect of an offence referred to in subsection (1), no evidence shall be adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 276.1 and 276.2, that the evidence

(a) is of specific instances of sexual activity;

(b) is relevant to an issue at trial; and

(c) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

Factors that judge must consider

(3) In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

- (a) the interests of justice, including the right of the accused to make a full answer and defence;
- (b) society's interest in encouraging the reporting of sexual assault offences;
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (d) the need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (f) the potential prejudice to the complainant's personal dignity and right of privacy;
- (g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (h) any other factor that the judge, provincial court judge or justice considers relevant.

Application for hearing

276.1 (1) Application may be made to the judge, provincial court judge or justice by or on behalf of the accused for a hearing under section 276.2 to determine whether evidence is admissible under subsection 276(2).

(2) An application referred to in subsection (1) must be made in writing and set out

- (a) detailed particulars of the evidence that the accused seeks to adduce, and
- (b) the relevance of that evidence to an issue at trial,

and a copy of the application must be given to the prosecutor and to the clerk of the court.

Jury and public excluded

(3) The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.

Judge may decide to hold hearing

(4) Where the judge, provincial court judge or justice is satisfied

(a) that the application was made in accordance with subsection (2),

(b) that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or such shorter interval as the judge, provincial court judge or justice may allow where the interests of justice so require, and

(c) that the evidence sought to be adduced is capable of being admissible under subsection 276(2),

the judge, provincial court judge or justice shall grant the application and hold a hearing under section 276.2 to determine whether the evidence is admissible under subsection 276(2).

Jury and public excluded

276.2 (1) At a hearing to determine whether evidence is admissible under subsection 276(2), the jury and the public shall be excluded.

Complainant not compellable

(2) The complainant is not a compellable witness at the hearing.

Judge's determination and reasons

(3) At the conclusion of the hearing, the judge, provincial court judge or justice shall determine whether the evidence, or any part thereof, is admissible under subsection 276(2) and shall provide reasons for that determination, and

(a) where not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;

(b) the reasons must state the factors referred to in subsection 276(3) that affected the determination; and

(c) where all or any part of the evidence is to be admitted, the reasons must state the manner in which that evidence is expected to be relevant to an issue at trial.

Record of reasons

(4) The reasons provided under subsection (3) shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.

Judge to instruct jury re use of evidence

276.4 Where evidence is admitted at trial pursuant to a determination made under section 276.2, the judge shall instruct the jury as to the uses that the jury may and may not make of that evidence.

Appeal

276.5 For the purposes of sections 675 and 676, a determination made under section 276.2 shall be deemed to be a question of law.

Reputation evidence

277 In proceedings in respect of an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

* * *

Part VIII – Offences Against the Person and Reputation

Commodification of Sexual Activity

Obtaining sexual services for consideration

286.1 (1) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of,

(i) in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a school or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present,

(A) for a first offence, a fine of \$2,000, and

(B) for each subsequent offence, a fine of \$4,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months and a minimum punishment of,

(i) in the case referred to in subparagraph (a)(i),

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$500, and

(B) for each subsequent offence, a fine of \$1,000.

Obtaining sexual services for consideration from person under 18 years

(2) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person under the age of 18 years is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of

(a) for a first offence, six months; and

(b) for each subsequent offence, one year.

Subsequent offences

(3) In determining, for the purpose of subsection (2), whether a convicted person has committed a subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under that subsection; or

(b) an offence under subsection 212(4) of this Act, as it read from time to time before the day on which this subsection comes into force.

Sequence of convictions only

(4) In determining, for the purposes of this section, whether a convicted person has committed a subsequent offence, the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences, whether any offence occurred before or after any conviction or whether offences were prosecuted by indictment or by way of summary conviction proceedings.

Definitions of *place* and *public place*

(5) For the purposes of this section, *place* and *public place* have the same meaning as in subsection 197(1).

Protection of Communities and Exploited Persons Act, S.C. 2014, c.25

Preamble

Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it;

Whereas the Parliament of Canada recognizes the social harm caused by the objectification of the human body and the commodification of sexual activity;

Whereas it is important to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children;

Whereas it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution;

Whereas it is important to continue to denounce and prohibit the procurement of persons for the purpose of prostitution and the development of economic interests in the exploitation of the prostitution of others as well as the commercialization and institutionalization of prostitution;

Whereas the Parliament of Canada wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution;

And whereas the Parliament of Canada is committed to protecting communities from the harms associated with prostitution;