

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN ALLIANCE FOR SEX WORK LAW REFORM, MONICA FORRESTER,  
VALERIE SCOTT, LANNA MOON PERRIN, JANE X, ALESSA MASON,  
and TIFFANY ANWAR

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

-and-

ATTORNEY GENERAL OF ONTARIO

Intervener

-and-

AMNESTY INTERNATIONAL CANADIAN SECTION (ENGLISH SPEAKING),  
ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, AWCEP ASIAN  
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BRIDGENORTH WOMEN'S MENTORSHIP & ADVOCACY SERVICES, BRITISH  
COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF  
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AGAINST CHILD TRAFFICKING COALITION, DEFEND DIGNITY, EGALE CANADA  
AND THE ENCHANTÉ NETWORK, EVANGELICAL FELLOWSHIP OF CANADA,  
MIGRANT WORKERS ALLIANCE FOR CANADA, ONTARIO COALITION OF RAPE  
CRISIS CENTRES, SEXUAL HEALTH COALITION, WOMEN'S EQUALITY COALITION,  
and WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)

Interveners

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**FACTUM OF THE INTERVENER VANCOUVER RAPE RELIEF SOCIETY,  
CONCERTATION DES LUTTES CONTRE L'EXPLOITATION SEXUELLE (CLES);  
ABORIGINAL WOMEN'S ACTION NETWORK (AWAN); FORMERLY EXPLOITED  
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INTERVENING AS THE "WOMEN'S EQUALITY COALITION"**

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## I. Overview

1. The Women's Equality Coalition intervenes in this application to argue that the *Charter of Rights and Freedoms* supports the ability of Parliament to use its criminal law power to discourage and deter the purchase of women to satisfy men's sexual demands.<sup>1</sup> The prostitution industry, in Canada and around the world, is sexist, racist, classist and colonialist. It legitimizes male violence against women and other forms of inequality in the pursuit of economic profit.

2. The *Charter* does not compel the Government to accept the Applicants' promotion of prostitution as a solution to the economic difficulties faced by poor women. A legislative model that enhances women's security and equality by criminalizing men who buy sex; recruit women for prostitution, or exploit the profits of those in the sex trade, while immunizing those who sell sex from prosecution, is a legitimate legislative option, and the preferred legislative model for other free and democratic societies with a commitment to sex equality.

3. Section 7 of the *Canadian Charter of Rights and Freedoms* does not protect the right of men to buy sex or to have their sexual demands satisfied. It does not protect a right to pimp, procure or profit from the prostitution of another person. Yet the Applicants seek to create such rights through the smokescreen of the asserted liberty and security interests of women almost entirely immunized from prosecution by the impugned scheme.<sup>2</sup> If the Applicants' arguments are

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<sup>1</sup> Canadian Charter of Rights and Freedoms, Enacted as Schedule B to the *Canada Act, 1982*, 1982, c. 11 (U.K.); *Constitution Act, 1867*, 30 & 31 Vic. c. 3 (U.K.), s. 91(27); [Ref. re s. 193 and 195.1\(1\)\(c\) of the Criminal Code \(Man.\) \[1990\] 1 SCR 1123](#) ["Prostitution Reference"] **Applicant's Book of Authorities (ABA) Tab 45**

<sup>2</sup> Since the passage of the amendments at issue, charges of women under s. 213 under the remaining provisions that apply to those who are purchased have fallen by 97%: *Juristat on Crimes Related to the Sex Trade*, Exhibit A to the Affidavit of Kathy AuCoin, **JAR Vol. II, Tab 85A**, p. 8271. The Women's Equality Coalition does not support punishing women in prostitution for their own exploitation, but limits their submission in this application to the provisions applicable to male buyers, procurers, pimps and profiteers.

accepted, the *Charter* will prevent Parliament from ever criminalizing sex purchase. This amounts to a constitutional right to buy sex, however it is packaged. Given the deeply gendered nature of the prostitution industry and the documented harms to those in it, this would be inconsistent with women's s. 15(1) right to equal protection of the law. Sections 286.1(1) (buying); s. 286.2(1) (pimping) and s. 286.3(1) (procuring) of the *Criminal Code* are constitutional.<sup>3</sup>

## **II. The Intervener Women's Equality Coalition**

4. The Interveners are Indigenous, Francophone and Anglophone women's groups that have decades of experience advocating for the rights and freedoms of women and girls. Based on this experience, the members of the Women's Equality Coalition reject the promotion of the commercial sex trade as the preferred role for poor women. They recognize that prostitution is both a cause and a consequence of women's inequality.

5. Member organizations of the Women's Equality Coalition provide services, supports and feminist advocacy for women who are attempting to escape prostitution and other forms of male violence. Their members are, and have direct experience with, women in prostitution, including prostituted women incarcerated for attempting to respond to male violence. The women they support do not consider prostitution to be their identity or their career – it is something they resort to when circumstances require it. Factors such as the lack of affordable housing and guaranteed livable income, the state's refusal to recognize the rights of Indigenous mothers to parent their own children, and the lack of an effective state response to male violence against women, all push women into prostitution. Women are also pressured to prostitute by boyfriends and pimps. The

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<sup>3</sup> The Intervener Women's Equality Coalition adopts the submissions of the Respondent that the advertising provision (s. 286.4) is also constitutional.

pervasiveness of these multiple and overlapping inequalities in the commercial sex trade led the Supreme Court to recognize in *Bedford v. Canada* that many of those in prostitution are not there by choice.<sup>4</sup>

6. While the members of the Women’s Equality Coalition reject prostitution as incompatible with the freedom and security of all women, they also recognize the particular harms of prostitution to Indigenous women. Relegating some Indigenous women to brothels, to sexually service settler men, is an act of sexualized colonial violence that replicates many of the institutional harms of jails and residential schools. Indigenous women and girls must be free to live with dignity on their own territories as respected knowledge-keepers, rejecting the colonial notion that they are available for purchase and sexual use by men.<sup>5</sup>

### III. Facts

7. Purchasers of sex in prostitution are almost exclusively men.<sup>6</sup> Men who buy sex do so for their own sexual gratification, as a matter of their own choice, and are free to cease this activity at any time.

8. The people that men purchase for sex are mostly women and girls. They are disproportionately poor, Indigenous and/or racialized. The evidence does not support the attempts of the parties to artificially separate those who are purchased into distinct categories of the

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<sup>4</sup>[\*Canada \(A.G.\) v. Bedford\* 2013 SCC 72](#) at para 86 [*Bedford*] **ABA Tab 1**. [“[W]hile some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so.”]

<sup>5</sup>Affidavit of Cora-Lee McGuire-Cyrette, **JAR, Vol. II Tab 64**, page 6108 paras 3-11; 19-20 [McGuire-Cyrette Affidavit]; Affidavit of Diane Redsky, **JAR, Vol. II Tab 67**, page 6394 paras 26-35 [Redsky Affidavit].

<sup>6</sup>*Juristat on Crimes Related to the Sex Trade, supra*, Chart 3 [All of those charged with purchasing offence from 2015-2019 were men].

voluntarily and involuntarily prostituted, and then dismiss any consideration of those in the “involuntary” category as irrelevant to this application because they are covered by trafficking laws. Whether or not they are trafficked by a third party, those in prostitution are pushed and pulled into the sex trade by a range of vulnerabilities, needs, pressures and inducements of differing degrees, in a societal context of systemic inequality on the basis of sex, race, Indigeneity and age. Many are unable to exit, despite wishing to do so.

9. The extent and characteristics of the sexual exploitation of youth in prostitution are relevant to this appeal. Prostituted girls who remain in the sex trade once they turn 18 bring with them the accumulated trauma of repeated sexual assaults by the adult men who buy and sell them, and who regularly film and photograph that sexual abuse.<sup>7</sup> Women and girls in prostitution are not two separate groups of people; in many cases they are the same people at two different points in time.<sup>8</sup>

10. Indigenous women and girls are pushed into and targeted for prostitution at extremely high rates.<sup>9</sup> Many girls who are prostituted are recruited from the child welfare system, which apprehends Indigenous children from their families and communities. One recent appellate decision found that 70% of the girls in prostitution in Manitoba are Indigenous.<sup>10</sup> Male buyers

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<sup>7</sup>[R. v. Ramsay, 2004 BCSC 756](#) **Women’s Coalition Book of Authorities (WCBA) Tab 19** [provincial court judge purchased Indigenous girls for sex; assaulted them; used judicial position to extort their compliance]; [R. v. Alcorn, 2021 MBCA 101](#) **WCBA Tab 4**, paras. 2-5 [Indigenous girl pimped and used for pornography; given alcohol and drugs; committed suicide]; [R. v. Ackman, 2017 MBCA 78](#) **WCBA Tab 2** [Indigenous girl pimped and used for pornography; committed suicide]; [R. v. Amdurski, 2022 ONSC 1337](#) **WCBA Tab 5** [13 year old girl pimped and prostituted; reported no access to birth control and men refusing to pay]

<sup>8</sup>[Catharine A. MacKinnon, “Trafficking, Prostitution and Inequality” \(2011\) 46 Harv. Civ. Rts. Civ. Lib. L. Rev. 271](#) **WCBA Tab 25**, at fn 21; [R. v. Lalonde, 2013 BCSC 1349](#) **WCBA Tab 16**, at para 9 [43 year old woman murdered by sex buyer had been in prostitution since she was a “young teen”]; [R. v. Hartford, 2022 BCSC 1183](#) **WCBA Tab 14** [Indigenous woman prostituted from age 11 until early 20s]; Redsky Affidavit at para. 45 [age of entry has dropped from 16 to around 13 and as low as age 9; many still in prostitution at 18; buyers pay more for younger girls.]

<sup>9</sup> [R v. Gudmandson 2018 MBPC 31](#) **WCBA Tab 13**; McGuire-Cyrette Affidavit at para 25.

<sup>10</sup> [Alcorn, supra](#) at para. 20.

assault, rape and kill Indigenous women in both indoor prostitution (in-call and out-call) and street prostitution.<sup>11</sup>

#### **IV. Issues**

- a. Section 7 of the *Charter* does not protect a right of men to buy women for sex.
- b. Criminalizing sex purchase enhances, rather than limits, the liberty and security of women.
- c. In the alternative, any collateral infringement of s. 7 accords with the principles of fundamental justice.
- d. The material benefit and procuring offences are constitutional.
- e. Asymmetrical criminalization of sex buyers and pimps furthers the equal protection and benefit of the law for women, consistent with s. 15(1) of the *Charter*.

#### **V. Argument**

##### **A. Section 7 of the *Charter* does not protect a right of men to buy sex in prostitution, free from criminal sanction.**

##### **i. Criminalizing men's sex purchase enhances, rather than infringes, the liberty of women.**

11. The Applicants could easily establish that s. 286.1 of the *Criminal Code* infringes the liberty interests of men who buy sex, by subjecting them to criminal punishment with the potential for imprisonment.<sup>12</sup> Yet the Applicants do not make this argument, preferring instead to rely exclusively on the liberty interests of women who sell sex, even though these women are almost entirely immunized from criminal punishment. In so doing, the Applicants leave the men who choose to buy sex invisible and insulated from scrutiny.

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<sup>11</sup>[R. v. Evans, 2012 BCCA 209, WCBA Tab 9](#) [Metis woman murdered by white male sex buyer in her apartment when he could not maintain his erection]; [R. v. Barton, 2019 SCC 3, ABA, Tab 17](#) [Cree woman murdered by white male sex buyer in his hotel room; buyer did not conceal his identity and spent many hours and two nights with victim before killing her]; *Ramsay, supra* [First Nations girls assaulted and sexually assaulted in white male sex buyer's car and outdoors]; [R. v. Pickton, 2010 SCC 32 WCBA Tab 18](#) [Dozens of women, many Indigenous, murdered by white male sex buyer at his farm].

<sup>12</sup> *Criminal Code*, s. 286.1(1)(a), (b) [max. 5 years on indictment and 2 years less a day on summary conviction], Factum of the Applicants, Schedule B.

12. Depriving men of their liberty through the offence of obtaining sexual services for consideration clearly accords with the principles of fundamental justice. Parliament has the ability to use its criminal law power to prohibit prostitution; this was conceded by the applicants in *Bedford*, one of whom is an Applicant to this court.<sup>13</sup> Criminalizing sex purchase is not arbitrary, overbroad, or grossly disproportionate, because the primary objective of the provision is to reduce the demand for prostitution, which produces and reflects a range of gendered and racialized harms to those who are prostituted.<sup>14</sup> The provision criminalizes exactly the behaviour it seeks to deter, consistent with its objective.

13. Criminalizing the male demand for prostitution is a legislative model that has been adopted in other free and democratic societies,<sup>15</sup> particularly those with a strong commitment to sex equality and to combatting the global and local traffic in women. Other countries adopting the “Equality” model include Sweden, Norway, Iceland, Northern Ireland, France, Ireland, and Israel.<sup>16</sup> An Equality model bill was recently introduced in the Spanish Parliament.<sup>17</sup> The criminalization of sex purchase in France was upheld against a constitutional challenge by France’s constitutional court.<sup>18</sup>

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<sup>13</sup> Factum of the Respondents Terri-Jean Bedford, Amy Lebovitch and Valerie Scott, *Bedford*, at para. 1

<sup>14</sup> *Gudmandson, supra*; [R. v. N.S., 2022 ONCA 160, ABA Tab 4](#); [R. v. Mercer, 2017 NSPC 20, Respondent A.G. Canada Book of Authorities \(RBA\) Tab 59](#); *Pour que l’egalite de droit devienne une egalite de fait*, 2007 Culture, Communications et Condition feminine, **WCBA Tab 26**, at p. 76 [Quebec recognizing prostitution as a form of violence against women]

<sup>15</sup> See [R. v. Bissonette, 2022 SCC 23, RBA Tab 21](#), at paras. 98-108 [using international and comparative law in *Charter* analysis]

<sup>16</sup> Factum of the Respondent A.G. Canada, at para. 14.

<sup>17</sup> [XIV Legislatura. Proposición de ley de Grupos Parlamentarios del Congreso. Proposición de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, para prohibir el proxenetismo en todas sus formas. \(122/000224\)](#), Presentado el 19/05/2022 , calificado el 24/05/2022 **WCBA Tab 23**

<sup>18</sup> [Decision no. 2018-761 OPC of 1 February 2019, Médecins du monde association and others WCBA Tab 24](#) [Punishment of clients of persons working as prostitutes]



14. The conclusion that it is consistent with the principles of fundamental justice to criminalize men's sex purchase should not be circumvented by shifting the liberty analysis to the women who are purchased by these men. Satisfying men's sexual demands is not freedom or liberty for women; it is a necessary concession to circumstance, in which men limit women's liberty by paying them to engage in sexual acts women would not otherwise want.<sup>19</sup> The Applicants acknowledge that the primary driver for women in prostitution is that they need the money these men promise to provide, to meet the needs of themselves and their children.<sup>20</sup> In this sense, most prostitution is "survival sex work."

**ii. Criminalizing men's sex purchase enhances, rather than infringes, women's security of the person.**

15. Section 286.1 does not infringe the security of the person of the male sex buyers to whom it applies. These men are the acknowledged direct source of the harms to women and others in prostitution, both through the cumulative physical and psychological harms of the act of sex purchase itself, and through other related acts, including verbal abuse, racism, sexual assault, assault, and homicide (femicide).<sup>21</sup>

16. The Applicants rely instead on the claim that criminalizing male buyers infringes the security of the person of women in prostitution. Yet when buyers are acknowledged to be the

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<sup>19</sup>Affidavit of Megan Walker, **JAR, Vol. II, TAB 72**, p. 6814 ["Walker Affidavit"] at para. 17.

<sup>20</sup> Factum of the Applicants at para. 38

<sup>21</sup> Redsky Affidavit, paras. 38-44 [detailing verbal abuse and degradation by buyers, including making women act like an animal and beg to be paid, as well as explicitly racist advertising of Indigenous women]; Walker Affidavit at paras. 49-57 [detailing range of dangerous and degrading sexual practices commonly advertised on Canadian prostitution websites and pressure women face to engage in harmful sexual acts].

source of the harm to women's security, it is evident that criminalizing sex purchase advances the security of the person of women by using state power to decrease the amount of prostitution that takes place. This is not a benefit to society properly considered under s. 1, but a benefit to the very same group who is the subject of the s. 7 analysis.

17. Criminalization is a necessary step to decreasing sex purchase; decriminalizing sex purchase normalizes and encourages this activity, which is exactly what the Applicants are seeking politically. That they have not succeeded in advocating for this view of prostitution with Parliament does not mean that the *Charter* compels their view; rather, the rights of women to liberty, security and equality contradict it.

18. The fact that s. 286.1(1) has not entirely eliminated prostitution (and its threat to women's security) within a few years of its enactment, while the Applicants and others have been campaigning against its use, does not give rise to a s. 7 violation.<sup>22</sup> The Applicants describe male buyers as deeply attuned to the nuances of the current criminal law, and yet simultaneously maintain that criminalization of demand does not decrease it.<sup>23</sup> The minority of Canadian men who buy sex can stop this behaviour, just as men can stop assaulting and sexually assaulting women.

19. The Women's Equality Coalition rejects the premise of the Applicants' security of the person argument, which rests on the proposition that it is the responsibility of individual women

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<sup>22</sup> The available data does show a sharp drop in the number of men charged with purchasing in 2018 and 2019 compared to 2016 and 2017. This could reflect enforcement patterns, but it could also signal a change in male behaviour: *Juristat on crimes related to sex trade, supra*.

<sup>23</sup> Factum of the Applicants at paras. 160-161.

to screen men for violence, and that decriminalizing those men who are the source of the violence will make women safer. In fact, the asymmetrical criminal sanction enhances safety by giving women in prostitution the ability to report, or threaten to report, men to the police as being in breach of s. 286.1, without fearing prosecution themselves and without having to demonstrate additional violence. This is the key difference from *Bedford*, where prostitution itself was legal, but the women were criminalized by communicating in a public place. In the current regime, prostitution is illegal *per se*, but the women in prostitution are immunized from prosecution.

20. The idea that women can screen men for the potential for violence may provide comfort to some, but it is illusory. Women are frequently assaulted, sexually assaulted and killed by men with whom they are in intimate relationships and whom they have “screened” for months or years.<sup>24</sup> In prostitution, the presence of security cameras; third parties waiting outside the room; hours of pre-screening, and experience of prior acts of purchase by the same man have all proven insufficient to prevent horrific acts of male violence.<sup>25</sup> Prostitution is no longer legal. Parliament is justified in targeting the source of the danger rather than leaving women to fend for themselves, with screening methods that have repeatedly been demonstrated to be inadequate.

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<sup>24</sup> This is a “notorious fact” of which the court may take judicial notice, given the prevalence of serious violence against women by their male domestic partners: *R. v. Find*, 2001 SCC 32, WCBA Tab 10, at para. 48; Adam Cotter, “Intimate partner violence in Canada, 2018: An Overview” *Juristat* (26 April 2021) [23% of women physically assaulted and 12% sexually assaulted by intimate partner at least once since age 15].

<sup>25</sup> *Barton*, *supra* [36 year old woman was with male buyer on two nights; met his coworker; spent hours with him in public place; killed on second night]; *Evans*, *supra* [28 year old woman in apartment she chose, equipped with security cameras]; *R. v. S.E.B.E.*, 2021 BCPC 257, WCBA Tab 20 [offender raped six complainants in the course of prostitution aged 15 to 40, strangling two of them and causing all physical injury; several complainants had been purchased by the accused on prior occasions; 40 year old victim had developed friendship with him over several months]; *R. v. Francis*, 2018 NSCA 7, WCBA Tab 11 [violent altercation with sex buyer who had supplied woman with drugs and money for sex on many prior occasions]; *R. v. W.E.J.M.*, 2009 ONCA 844, WCBA Tab 21 [assaulted and sexually assaulted 2 women after they told him they were not working and communicated their unwillingness to engage in sexual acts].

21. The Applicants’ claim that criminalizing sex purchase makes men more violent because they are “anxious” or “on edge,” is speculative and unsupported by the available data.<sup>26</sup> The available evidence is that since the enactment of s. 286.1, the number of homicides of women in prostitution have decreased significantly.<sup>27</sup> “Outcall” escort prostitution, one of the forms of prostitution that was legal at the time of *Bedford*, was acknowledged to be dangerous; its legality did not make men less violent.<sup>28</sup> Violent men cannot use the *Charter* to hold the criminal law hostage and threaten to be even more violent if they are not allowed to purchase women.

**iii. In the alternative, any infringement of the security of the person caused by s. 286.1(1) accords with the principles of fundamental justice.**

22. Should this court find that the security interests of some women who remain in prostitution are infringed by s. 286.1, the Women’s Equality Coalition submits that any such deprivation accords with the principles of fundamental justice, for the reasons set out above in relation to the right to liberty, and for the following additional reasons.

23. Parliament may criminalize conduct that reflects and embodies pervasive sexism and racism, even where some persons within the class of those affected by the conduct say they are not harmed by it.<sup>29</sup> Asymmetrical criminalization is a recognized method of dealing with activities Parliament wishes to discourage, where one party to the transaction is at risk of exploitation, even

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<sup>26</sup>Factum of the Applicant, at paras. 82, 87.

<sup>27</sup> *Juristat on crimes related to the sex trade, supra* [also noting decline in injuries reported from 29% to 17%].

<sup>28</sup> *Bedford, supra* at para. 63.

<sup>29</sup> [Ref. re Section 293 of the Criminal Code \(Polygamy Reference\) 2011 BCSC 1588, WCBA Tab 22](#) [harms of polygamy justify blanket prohibition even where some witnesses testified to benefits of chosen plural marriage]; [R. v. Barton, 2020 ABQB 774, WCBA Tab 6](#), at para. 57 [broad judicial and parliamentary consensus about exploitation in commercial sex trade].

if that party asserts that they consent to it.<sup>30</sup> This does not make the offence overbroad, because discouraging the behaviour itself is consistent with the objective.

24. The criminalization of men's demand for women's bodies in prostitution is part of Canada's international obligation to prevent and suppress the trafficking in persons.<sup>31</sup> Men usually have no way of knowing if the women they purchase have been trafficked, or are otherwise constrained.<sup>32</sup> The trafficking offences in the *Code* do not address demand at all; if the Applicants' challenge to s. 286.1 succeeds, it will be legal to purchase trafficked women in Canada, as well as women who are not trafficked, but are in prostitution because of factors such as addiction, homelessness, disability, and the trauma of residential schools and other colonial practices.

25. The record in this case, as well as the case law, provides ample evidence that women in prostitution are harmed by repeatedly giving men sexual access to their bodies, as well as through verbal abuse, threats, assault, sexual assault and femicide.<sup>33</sup> Parliament has categorized s. 286.1 as an offence against the person, the same category as assault and sexual assault, indicating that the act of purchase itself is violence.<sup>34</sup> It was an important and positive step for Parliament to decide that the best way to address these pervasive documented harms, which are deeply gendered and racialized, is to seek to deter sex purchase and third parties who encourage, maintain and profit

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<sup>30</sup> *Criminal Code, supra*: Criminal interest rate [s. 347]; extortion [s.346]; distributing obscenity [s. 163].

<sup>31</sup> [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against transnational organized crime](#), ["Palermo Protocol"] G.A. Res. 55/25, 15 November 2000, **WCBA Tab 28**. Art. 9(5) of the *Palermo Protocol* obligates Canada to "discourage the demand that fosters all forms of exploitation of persons especially women and children."

<sup>32</sup> Walker Affidavit at paras 59, 67 [buyers do not know or care if women are trafficked; women will falsely claim to be there by choice]; Redsky Affidavit at para. 38 [pimp controls all communications with buyer and woman "instructed to please the sex purchaser"]

<sup>33</sup> *Barton, supra*; *Pickton, supra*; *Evans, supra*; [R. v. Mercer, 2016 NSPC 48, RBA Tab 59](#); [R. v. Burke, 2022 ONSC 3356, WCBA Tab 7](#).

<sup>34</sup> *Juristat on crimes related to the sex trade, supra*.

from the sex industry.

26. It is not surprising that women who are traumatized by prostitution and/or under the control of pimps find it difficult to speak publicly about these experiences until a considerable time after they have left the sex trade. Even then, many do not wish to be publicly connected with the prostitution industry as they seek to rebuild their lives and parent their children free from male violence. Nonetheless, these women did testify about their experiences in the *Bedford* litigation;<sup>35</sup> they testified before the House and the Senate in support of criminalization of male buyers and pimps in the hearings on Bill C-36,<sup>36</sup> and they testified about the positive effect of the current provisions, and the need to ensure their consistent enforcement, in the recent review of *PCEPA* before the Justice Subcommittee.<sup>37</sup> Front-line workers also testified to their years of experience working with tens of thousands of women harmed by prostitution.<sup>38</sup> The views of those with experience in the sex trade are not and have never been monolithic, and can change over time. Those who assert it is a harmful and discriminatory practice should not be erased from the record in this application.

**B. Criminalizing pimping and recruiting through the material benefit offence (s. 286.2) and the procuring offence (s. 286.3) enhances, rather than infringes, the liberty and security of women.**

27. The Supreme Court of Canada in *Bedford* agreed that the offence of living on the avails of

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<sup>35</sup> [Bedford v. Canada \(A.G.\) 2010 ONSC 4264](#), **ABA Tab 3**, at para 87.

<sup>36</sup> Bill C-36, Consideration in Committee (Standing Committee on Justice and Human Rights), **JAR, vol. II Tabs 111-131**; Senate Committee on Legal and Constitutional Affairs, **JAR, vol. II, Tabs 147-148**.

<sup>37</sup> [Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act, Report of the Standing Committee on Justice and Human Rights June 2022, 44th Parliament, 1st Session](#) (testimony of T. Baptie, A. Stevenson, A. Heinz), **WCBA Tab 27**

<sup>38</sup> Redsky Affidavit; *supra*; MacGuire-Cyrette Affidavit, *supra*; Walker Affidavit, *supra*.

prostitution had a valid objective, namely to target the exploitation of women in prostitution by pimps.<sup>39</sup> It found the offence unconstitutional because it was overbroad, in a context in which the Court considered prostitution to be a legal activity.<sup>40</sup>

28. Parliament has responded by (i) making prostitution illegal and (ii) enacting a carefully drafted offence that incorporates the specific exceptions identified in *Bedford*. It provides ample scope for legitimate, non-parasitic arrangements for those remaining in prostitution notwithstanding its illegality. The provision enhances, rather than diminishes, the security of women in prostitution. The Supreme Court recently signaled the importance of the material benefit offence for ensuring that “parasitic and exploitative pimps” are not given “practical criminal immunity.”<sup>41</sup>

29. Third parties can cause grave harm to women in prostitution, using various forms of economic and psychological pressure, false promises and emotional manipulation to get women to enter and remain in the sex trade. The case law is replete with horrific accounts of young women who agree to enter prostitution at the suggestion of a man who promises safety and money, and who find that their pimp keeps their earnings; expects them to service 15-20 clients per night with no security other than a phone; and controls their advertising, determining who they will meet and for what sexual acts.<sup>42</sup> While some of these accounts can be parsed to find other criminal offences,

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<sup>39</sup> *Bedford*, *supra* at para.137; see also [R. v. Downey](#), [1992] 2 S.C.R. 10, **WCBA Tab 8**

<sup>40</sup> *Bedford*, *supra* at para. 140.

<sup>41</sup> [R. v. Albashir](#), 2021 SCC 48, **WCBA Tab 3**, at para 56.

<sup>42</sup> See, e.g. [R. v. Gardner](#), 2020 ONSC 5954, **WCBA Tab 12** [entered at 21; controlled by pimp/boyfriend]; [R. v. Lopez](#), 2018 ONSC 4749, **RBA Tab 54** [pimping an inherently exploitative activity that preys on vulnerable and disadvantaged women]; [R. v. Musara](#), 2022 ONSC 2835, **WCBA Tab 17** [pimp gave 18 year old long gloves to hide evidence of self-harm]; [R. v. Crosdale](#), 2018 ONCJ 800, **RBA Tab 49** [pimp told 19 year old to tattoo his name on her arm; 15-20 buyers per night; took over the online postings and kept all the money]; [R. v. Jean](#), 2020 ONSC

the collective harms of pimping and procuring go beyond these other offences and can be criminalized in their own right.<sup>43</sup>

**C. Criminalizing men’s purchase of sex, as well as pimping and procuring, advances the equality rights of women and girls and is consistent with s. 15(1) of the *Charter*.**

30. The practice of prostitution is one of men using economic advantage and power to extract from (mostly) women their physical participation in sexual acts with and for the exclusive sexual gratification of men, for the money women need to support themselves and their children.<sup>44</sup> The sexism inherent in prostitution is highlighted by the Applicants, who promote prostitution as a source of income for poor women with children. The well-documented psychological and physical harms men cause to women in prostitution flow directly from this gendered power imbalance and men’s learned entitlement to women’s bodies. Prostitution’s existence, which is predatory, has a disproportionate impact on women and perpetuates their historical disadvantage.

31. Prostitution is also racist. Asian women are overrepresented in massage parlours, while Indigenous women are overrepresented both in prostitution generally, and at the street level.<sup>45</sup> The Applicants do not explain why Indigenous and Asian women supposedly “choose” prostitution more than White women; implying this reflects their suitability for the task is itself racist. Keeping Indigenous women desperately poor; taking away their children; and forcing them off their lands so they end up as urban refugees with little recourse but to sell access to their bodies to settler

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[624, WCBA Tab 15](#) [18 and 19 year old young women; could not sleep if they did not make quota]; [R. v. Gray, 2018 NSPC 10, RBA Tab 52](#) [20 years old; serviced 20 men per day; contracted HIV].

<sup>43</sup> *Albashir, supra; Downey, supra*.

<sup>44</sup> See, e.g. the definition of “commercial sexual services” in the [New Zealand Prostitution Reform Act, 2003, WCBA Tab 1](#)

<sup>45</sup> E.g., the AESHA cohort surveyed in the report of Dr. Andrea Krusi dated July 13, 2021 comprised 38% Indigenous women and 24% racialized women. Krusi report, p. 14, [JAR Tab 54](#), p. 4784



men,<sup>46</sup> are acts of sexualized colonialism and racism.

32. Parliament's use of the criminal law to target those who construct, maintain and benefit from prostitution (procurers, pimps and buyers) is a justified rectification of sexist and racist discrimination.<sup>47</sup> The impact of these laws is borne by men. The Applicants, by choosing not to argue that s.15(1) infringes men's equality rights, recognize that (a) men have no constitutional right to purchase sex and (b) the differential treatment men receive from the law is not discriminatory.<sup>48</sup> This Court should not permit men to use the equality guarantees offered to women, especially those who are Indigenous or otherwise racialized, disabled or poor, to perpetuate the harm those men cause.

## VI. Relief Sought

Consistent with its role as intervener, the Women's Equality Coalition seeks no relief in its own right. The Women's Equality Coalition agrees to bear its own costs and asks that no order for costs be made against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Signed at Vancouver this 9<sup>th</sup> day of August, 2022



\_\_\_\_\_  
Janine Benedet, Q.C.  
Counsel for the Intervener Women's Equality Coalition



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Gwendoline Allison

<sup>46</sup> Cross-examination of Chris Atchinson, **JAR Tab 51**, pp. 4429-4430, qq. 803-813, 820-825

<sup>47</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, **ABA Tab 30**, para. 54

<sup>48</sup> *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, **ABA Tab 42**, paras. 26-28, 62-87

## SCHEDULE A: LIST OF AUTHORITIES

	CASES
1.	<a href="#"><i>Bedford v. Canada (A.G.)</i> 2010 ONSC 4264</a>
2.	<a href="#"><i>Canada (A.G.) v. Bedford</i> 2013 SCC 72</a>
3.	<a href="#"><i>Eldridge v. British Columbia (Attorney General)</i>, [1997] 3 S.C.R. 624</a>
4.	<a href="#"><i>Law v. Canada (Minister of Employment and Immigration)</i>, [1999] 1 S.C.R. 497</a>
5.	<a href="#"><i>R. v. Ackman</i>, 2017 MBCA 78</a>
6.	<a href="#"><i>R. v. Albashir</i>, 2021 SCC 48</a>
7.	<a href="#"><i>R. v. Alcorn</i>, 2021 MBCA 101</a>
8.	<i>R. v. Amdurski</i> , 2022 ONSC 1337
9.	<a href="#"><i>R. v. Barton</i>, 2019 SCC 3</a>
10.	<a href="#"><i>R. v. Barton</i>, 2020 ABQB 774</a>
11.	<a href="#"><i>R. v. Bissonette</i>, 2022 SCC 23</a>
12.	<a href="#"><i>R. v. Burke</i>, 2022 ONSC 3356</a>
13.	<a href="#"><i>R. v. Crosdale</i>, 2018 ONCJ 800</a>
14.	<a href="#"><i>R. v. Downey</i>, [1992] 2 S.C.R. 10</a>
15.	<a href="#"><i>R. v. Evans</i>, 2012 BCCA 209</a>
16.	<a href="#"><i>R. v. Find</i>, 2001 SCC 32</a>
17.	<a href="#"><i>R. v. Francis</i>, 2018 NSCA 7</a>
18.	<a href="#"><i>R. v. Gardner</i>, 2020 ONSC 5954</a>
19.	<a href="#"><i>R. v. Gray</i>, 2018 NSPC 10</a>
20.	<a href="#"><i>R. v. Gudmandson</i>, 2018 MBPC 31</a>

21.	<a href="#">R. v. Hartford, 2022 BCSC 1183</a>
22.	<a href="#">R. v. Jean, 2020 ONSC 624</a>
23.	<a href="#">R. v. Lalonde, 2013 BC,SC 1349</a>
24.	<a href="#">R. v. Lopez, 2018 ONSC 4749</a>
25.	<a href="#">R. v. Mercer, 2017 NSPC 20</a>
26.	<a href="#">R. v. Mercer, 2016 NSPC 48</a>
27.	<a href="#">R. v. Musara, 2022 ONSC 2835</a>
28.	<a href="#">R. v. N.S., 2022 ONCA 160</a>
29.	<a href="#">R. v. Pickton, 2010 SCC 32</a>
30.	<a href="#">R.v. Ramsay, 2004 BCSC 756; [2004] BCJ No. 1165 (SC)</a>
31.	<a href="#">R. v. S.E.B.E., 2021 BCPC 257</a>
32.	<a href="#">R. v. W.E.J.M., 2009 ONCA 844</a>
33.	<a href="#">Ref. re s. 193 and 195.1(1)(c) of the Criminal Code (Man.), [1990] 1 SCR 1123</a>
34.	<a href="#">Ref. re Section 293 of the Criminal Code (Polygamy Reference), 2011 BCSC 1588</a>
	OTHER AUTHORITIES
35.	<a href="#">XIV Legislatura, Proposición de ley de Grupos Parlamentarios del Congreso. Proposición de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, para prohibir el proxenetismo en todas sus formas. (122/000224), Presentado el 19/05/2022 , calificado el 24/05/2022</a>
36.	<a href="#">Decision no. 2018-761 QPC of 1 February 2019, Médecins du monde association and others</a>
37.	<a href="#">Catharine A. MacKinnon, “Trafficking, Prostitution and Inequality” (2011) 46 Harv. Civ. Rts. Civ. Lib. L. Rev. 271</a>

38.	<a href="#"><u>Pour que l'égalité de droit devienne une égalité de fait</u></a> , 2007 Culture, Communications et Condition féminine
39.	<a href="#"><u>Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act, Report of the Standing Committee on Justice and Human Rights June 2022, 44th Parliament, 1st Session</u></a>
40.	<a href="#"><u>Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against transnational organized crime</u></a> . G.A. Res. 55/25, 15 November 2000.

## SCHEDULE B: RELEVANT STATUTES

*Canadian Charter of Rights and Freedoms, Enacted as Schedule B to the Canada Act, 1982, 1982, c. 11 (U.K.); Constitution Act, 1867, 30 & 31 Vic. c. 3 (U.K.), s. 91(27)*

### **Life, liberty and security of person**

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

\* \* \*

### **Equality before and under law and equal protection and benefit of law**

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

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

### **Obscene materials**

163 (1) Every person commits an offence who makes, prints, publishes, distributes, circulates or has in their possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or any other obscene thing.

\* \* \*

### **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 a fine of not more than \$5,000 or to imprisonment for a term of not more than two years less a day, or to both, and to 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).

### **Material benefit from sexual services**

**286.2 (1)** Every person who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or
- (b) an offence punishable on summary conviction.

### **Material benefit from sexual services provided by person under 18 years**

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(2), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

### **Presumption**

(3) For the purposes of subsections (1) and (2), evidence that a person lives with or is habitually in the company of a person who offers or provides sexual services for consideration is, in the absence of evidence to the contrary, proof that the person received a financial or other material benefit from those services.

### **Exception**

(4) Subject to subsection (5), subsections (1) and (2) do not apply to a person who receives the benefit

- (a) in the context of a legitimate living arrangement with the person from whose sexual services the benefit is derived;
- (b) as a result of a legal or moral obligation of the person from whose sexual services the benefit is derived;
- (c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or
- (d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services

the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

### **No exception**

- (5) Subsection (4) does not apply to a person who commits an offence under subsection (1) or (2) if that person
- (a) used, threatened to use or attempted to use violence, intimidation or coercion in relation to the person from whose sexual services the benefit is derived;
  - (b) abused a position of trust, power or authority in relation to the person from whose sexual services the benefit is derived;
  - (c) provided a drug, alcohol or any other intoxicating substance to the person from whose sexual services the benefit is derived for the purpose of aiding or abetting that person to offer or provide sexual services for consideration;
  - (d) engaged in conduct, in relation to any person, that would constitute an offence under section 286.3; Or
  - (e) received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

### **Aggravating factor**

- (6) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that that person received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

### **Procuring**

**286.3 (1)** Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

### **Procuring — person under 18 years**

- (2) Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence



over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years.

### **Advertising sexual services**

**286.4** Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction.

### **Immunity — material benefit and advertising**

**286.5 (1)** No person shall be prosecuted for

- (a) an offence under section 286.2 if the benefit is derived from the provision of their own sexual services; or
- (b) an offence under section 286.4 in relation to the advertisement of their own sexual services.

### **Immunity — aiding, abetting, etc.**

(2) No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services.

\* \* \*

### **Extortion**

**346 (1)** Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

### **Extortion**

Every person who commits extortion is guilty of an indictable offence and liable

- (a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence

is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

- (i) in the case of a first offence, five years, and
- (ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### **Subsequent offences**

In determining, for the purpose of paragraph (1.1)(a), whether a convicted person has committed a second or 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 this section;
- (b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or
- (c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1 or 344 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### **Sequence of convictions only**

For the purposes of subsection (1.2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

### **Saving**

(2) A threat to institute civil proceedings is not a threat for the purposes of this section.

\* \* \*

## **Criminal Interest Rate**

### **Criminal interest rate**

**347 (1)** Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

(a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) guilty of an offence punishable on summary conviction and liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than two years less a day, or to both.

## **Prostitution Reform Act 2003 (New Zealand)**

**commercial sexual services** means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)

Court file no. CV-21-00659594-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE  
BETWEEN:

**CANADIAN ALLIANCE FOR SEX WORK  
LAW REFORM, MONICA FORRESTER,  
VALERIE SCOTT, LANNA MOON PERRIN,  
JANE X, ALESSA MASON AND TIFFANY  
ANWAR**

*Applicants*

and

**ATTORNEY GENERAL OF CANADA**

*Respondent*

and

**VANCOUVER RAPE RELIEF SOCIETY,  
CONCERTATION DES LUTTES CONTRE  
L'EXPLOITATION SEXUELLE (CLES);  
ABORIGINAL WOMEN'S ACTION  
NETWORK (AWAN); FORMERLY  
EXPLOITED VOICES NOW EDUCATING  
(EVE) AND SOLIDARITY IN SISTERHOOD  
(SIS) INTERVENING AS THE "WOMEN'S  
EQUALITY COALITION"**

*Intervener*

**FACTUM OF THE WOMEN'S EQUALITY  
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