

# The right not to be 'harmed'

Wednesday September 29th, 2010

Barbara Kay, National Post · Wednesday, Sept. 29, 2010

Responding to a Charter challenge mounted by three prostitutes, the Ontario Superior Court has struck down the prostitution law that has up to now criminalized communicating for the purpose of prostitution, living off the avails of same and keeping a common bawdy house. The litigants, who thought they would be lucky to have one aspect of the law struck down, were surprised and jubilant to see all three facets felled at once.

Ontario Superior Court Judge Susan Himel cited the Robert Pickton murders as proof that the dangers to sex workers outweighed any harm done to society, and they seem to have been a strong motivation for her decision.

Pimping, obstructing traffic and child prostitution remain illegal, but apparently just about everything else goes. Prostitutes will now be free to advertise their wares, rent secure space and pre- screen their clients. In her 131- page ruling Justice Himel said that "by increasing the risk of harm to street prostitutes, the communicating law is simply too high a price to pay for the alleviation of social nuisance."

It's always about that little four- letter word. Harm. The challenge will doubtless go up to the Supreme Court of Canada. And I am pretty sure I know what way it will go. We've already seen in a previous ruling how superficially the court deals with the subject of "harm" when it comes to our social fabric. After a seven- year legal battle for legitimacy by a Montreal sex club owner, a Supreme Court of Canada ruling in December 2005, legalized most sex clubs for profit, the court affirming that community standards of decency -- i.e. "harm" done to the community -- were irrelevant beside the right of kinky risk- takers and voyeurs to find legitimate venues for their hobby.

There were two dissenters to that ruling. Justices Michel Bastarache and Louis LeBel warned of more transgressive "rights" -- polygamy, bestiality -- waiting their turn for special pleading with now- justifiable hope. This dissenting minority wrote: "We are convinced that this new approach strips of all relevance the social values that the Canadian community as a whole believes should be protected," and "introduces a concept of tolerance that does not seem to be justifiable according to any principle whatsoever."

The swingers decision put us on the slippery slope this new ruling is halfway down. I can't imagine that the SCC will find for the community when it comes to reviewing yesterday's decision. I do believe that we have just seen the curtain rising on a legal drama that will end with prostitution being legalized on the same grounds as the swingers won their right to normalize their pathetic pathology.

Many libertarians will applaud the legalization of prostitution, which is in theory a victimless crime. The reality is that high- end prostitutes already know how to look after themselves, while low- end prostitutes are usually just trying to get from one drug fix to another. They will have little interest in pre- screening their johns, because they are desperate women. Does anyone really believe that they are going to spend money on an "office," advertise their services, keep accounts, submit to regular health testing and pay taxes on their income? Dream on. Does anyone really believe that pimps will then become vacuum- cleaner salesmen?

The danger to prostitutes will continue, because the kind of men who frequent prostitutes and the kind of men who control them don't have a lot of respect for them on the whole. Nor should they. Being a prostitute is a shameful, indecent activity, and any sex worker who demands respect as a matter of course is fooling herself. She is not respectable. Politically correct people will say she is, but she isn't. The danger will continue, the pimps will still control the desperate girls and society as a whole will think less of itself. And all because nobody really takes a good look at the word "harm" and asks themselves what a healthy society looks like, and what kind of newly designated "normal" behaviours, stamped kosher by the courts, bring harm to that healthy body.

-----

## SECTIONS STRUCK DOWN

The decision by Ontario Superior Court Justice Susan Himel struck down three sections of the Criminal Code relating to adult prostitution as being unconstitutional. The court challenge was not about sections that prohibit obtaining sexual services from a person under the age of 18 or living off the avails of someone under 18.

## THE CRIMINAL CODE SECTIONS DECLARED UNCONSTITUTIONAL

S. 210(1) Every one who (a) is an inmate of a common bawdy house (b) is found, without lawful excuse in a common bawdy house, or as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy house is guilty of an offence punishable on summary conviction

S. 212(1) (j) Everyone who lives wholly or in part on the avails of prostitution of another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years.

S. 213(1) Every person who is in a public place or in any place open to public view, stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

National Post

Barbara Kay - Columnist