

## **For immediate release**

March 27, 2012

Ottawa, Ontario

## **CANADIANS NEED THE PROTECTION OF THE NOTWITHSTANDING CLAUSE**

The decision yesterday by the Ontario Court of Appeal to legalize brothels, contrary to prostitution law passed by Parliament, indicates that the time has come to apply the Notwithstanding Clause (S.33) of the Charter, to protect Canadians from judges legislating from the bench.

Even though the Court of Appeal acknowledged in paragraph 195 of the decision that bawdy houses are often an integral part of human trafficking syndicates where victims are trained and housed, and then transported elsewhere for the purpose of sexual exploitation, it nonetheless approved them.

In paragraph 307, the Court associated street prostitution with serious criminal conduct, including drug possession, drug trafficking, public intoxication, and organized crime. It is naïve for the Court to assume that these are not also an integral part of the operation of brothels. Experience from every country that legalized brothels have proven this is the case.

The Court did not strike down in its entirety living on the avails, but it did amend the provision, explaining that it was merely clarifying the law (paragraph 273). This amendment however, was in fact a sweeping change. It will be difficult to distinguish a pimp from a bodyguard. Most prostitutes are exploited and brutalized, and are not likely to be in a position to explain this.

The Court further stated that it based its conclusions on the findings of the lower Court judge, Madam Justice Susan Himel, who, the Court of Appeal stated at paragraph 130, ignored expert evidence believing such evidence was not objective. Evidence provided by the advocates for legal brothels may not likely be objective either.

This decision raises concerns similar to those expressed by many provincial premiers, during the Charter debate in November 1982. They were concerned that the Charter would allow judges to legislate from the bench.

Because of this concern, the Notwithstanding Clause (S.33) was added to the Charter to allay these concerns. Under this provision, the federal or provincial legislatures may pass legislation overriding the Supreme Court's decisions for a five year period, at which time the legislation may be renewed.

In retrospect, the premiers were prescient to insist that Section 33 be included in the Charter since it is now obvious the Courts are using the Charter to assume a legislative role.

The Conservative government must appeal this egregious decision of the Ontario Court of Appeal. If the Supreme Court of Canada does not overturn the Court of Appeal decision, it is crucial that the Notwithstanding Clause be applied in this prostitution case, and, as well, as in other cases should the need arise, so that the public not be shut out of the debate on laws directly affecting their lives. It is far preferable that Parliament, which supposedly reflects the public's views, has the final say on legislation, rather than the appointed, unaccountable judiciary.

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