

Editorial: Sex-trade ruling should be obeyed

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The Ontario court decision striking down some of the laws around prostitution is a welcome injection of logic into a discussion characterized mostly by emotion and misinformation.

The issue before Ontario Superior Court Justice Susan Himel was straightforward. Prostitution itself is legal in Canada. But Parliament has criminalized most aspects of the sex trade. Three sex workers argued that three of those laws served mainly to increase the risks for workers and violated the constitutional right to safety and security.

For example, the law makes it illegal to operate a bawdy house -- basically anywhere indoors where prostitution takes place. That forces people working in what is a legal trade to operate on the streets.

But research -- including federal government reports -- has found that violence is significantly reduced in indoor settings where clients can be screened and help is available. Similarly, Criminal Code provisions against communicating in a public place for the purposes of prostitution drive workers into dark, deserted and dangerous neighbourhoods and encourage snap judgments about potential clients.

The court's decision was based on the evidence presented by all the parties to the case. It established that the laws did increase the danger for the workers, who are mainly women.

But that is not necessarily grounds for declaring the provisions unconstitutional. The challenge to the laws also had to show that they were arbitrary, broader than required to achieve their purpose and that their harmful effects were "grossly disproportionate" to the benefits gained by enforcing the laws.

After hearing the evidence -- including studies showing an increase in murders of sex trade workers after the ban on communication for the purposes of prostitution was introduced -- the court concluded the challenge had met those tests.

Himel, after hearing from dozens of witnesses, reviewing years of research and studying laws around the world, reached the conclusion that the three laws resulted in greater risks for those in what Parliament has decided is a legal trade.

And that they delivered no offsetting benefit to communities or individuals.

Sadly, the intrusion of reason was short-lived. Federal Justice Minister Rob Nicholson announced the government would appeal the ruling out of concern for the "safety" of sex-trade workers.

That's bizarre. The evidence demonstrated that the laws resulted in beatings, robberies and murders. They increased the danger that thousands of people face in their work. They did not deliver any protection for society or individuals.

Yet the government will fight to maintain the deadly status quo, no matter what the facts are.

It was a grim irony that the Ontario ruling came on the same day the B.C. government launched an inquiry into the Pickton murders and Vancouver's missing women. Many of his victims were in the street sex trade. Had the law not forced them into danger and the shadows, Pickton might never have succeeded in his years of bloody crime.

The Ontario judgment was not about whether prostitution was or should be legal. Parliament has decided that it is.

The court was asked to rule whether related laws put people's lives at risk without achieving any positive benefits.

They do. It's shameful that the federal government is fighting to perpetuate bad laws.

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