

## COURT OF QUEBEC

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
Criminal Division

Nos: 500-01-035485-108  
500-01-034231-099

DATE: 26 October 2010

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BY THE HONOURABLE PIERRE E. LABELLE J.C.Q.

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HER MAJESTY THE QUEEN  
Prosecutrix

v.

MYLES TYNES

And

PHILIP LAFFERTY  
Defendants

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JUDGMENT

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## NOTICE

An order pursuant to section 486.4 of the Criminal Code has been issued in the present case, which prohibits the publication, broadcast or transmission of the identity of the alleged victims or any information that could lead to their identification.

## OVERVIEW

[1] The accused are charged separately in multi-count informations concerning, *inter alia*, activities of procurement, living on the avails of prostitution and trafficking in persons. The trial was held during four days.

[2] The Crown based its evidence, essentially, on the testimony of X<sup>1</sup> and Y<sup>2</sup> both females who were under the age of eighteen when they met and worked for the accused as prostitutes.

[3] While the age of both victims is at the heart of this trial, other issues were also raised, namely; the notion of common bawdy-house, whether or not the victims had, prior to meeting the accused, engaged in activities that could be defined as prostitution and, if so, the effect of such a conduct on the trial proper.

[4] In November 2009, Y came to Montreal with some acquaintances from New Brunswick, in the hopes of spending some time in the city and having a good time. Things did not go as planned for her; she was left here stranded with no money and no place to live. She was offered to work as an escort and she accepted.

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<sup>1</sup> X was born on [...] 1992. This fact was not contested.

<sup>2</sup> The initials of this complainant in the information is Y, but I will refer to her as Y in my judgment. She was born on [...] 1992 and it was also not contested.

[5] She was working for the two accused who provided her with an apartment, clothing, a place to work, and relative safety. All she had to do was to remit the wages she was making as an escort to them.

[6] Just before Christmas 2009, Y wanted to go back home, which she did. Unfortunately, things did not go well at home and early in the New Year she decided to come back to Montreal to work again for the accused as an escort. She also convinced a close friend, X, to come to Montreal with her.

[7] X also ended up working as an escort for the accused, under the same rules that Y had to follow. The former did not like the experience of working as an escort, and within a week made arrangements with her mother to get back to New Brunswick. Unbeknownst to her, her mother had contacted the police in Montreal who proceeded to pick her up and they later found Y. Both were met by investigators and later flown to New Brunswick.

[8] The identity of both accused was not contested at trial.

## **THE FACTS**

[9] In the fall of 2009, there was an escort agency named "Hush" that operated in Montreal. Advertisements were placed on the Internet with the descriptions and pictures of the different women who worked as escorts. Clients would call in and ask for a particular escort, either on an out-call or in-call basis. The hourly rate is more expensive for an out-call.

[10] In-calls were usually conducted in motels located on Saint-Jacques Street West<sup>3</sup>. In both situations, the escorts were driven to and from by an employee of the agency. In the summer of 2009, the nephew of Philip Lafferty ran the agency, and Myles Tynes who had recently lost his job, became involved in it, at first on a part-time basis, more specifically as a driver. There were many women working as escorts for the agency at the time.

[11] A dispute within the agency provoked the departure of its owner, but Mr. Tynes stepped in, assumed a greater role in the business and was able to keep the agency afloat. One of the consequences of the dispute was that many of the women who worked simply left. Mr. Tynes was left looking for new recruits.

[12] In November 2009 Y came to Montreal for a weekend with friends from New Brunswick. The plan was to stay in the city for a couple of days and return with her female friend, but she left without her, so Y was stranded with no money and no one to turn to.

[13] She was taken in by acquaintances from New Brunswick, who seemed to be hard-core criminals<sup>4</sup>. Within hours she started to work as an escort for them. Apparently, she did not like her experience and within a few days, was "traded" to Mr. Tynes and Mr. Lafferty. Her pictures were placed on the Internet site of the agency and she was working under the name "Chelsea".

[14] The working days of Y usually began around 6 o'clock in the evening up until the time that there were no more clients, around 10 o'clock. At the start the money made

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<sup>3</sup> The Chablis and the Colibri are establishments that were used by the escort agency.

<sup>4</sup> They did not testify before me, but they were referred to as the 'Gosselin' brothers.

was split evenly between Y and the agency. But after a few days it was decided that she would give all of her money to the agency in exchange for what could be described as room and board. She got a room in an apartment controlled by the accused and she shared it with other girls who worked for the agency.

[15] This situation went on until Christmas of 2009 when, feeling homesick, Y decided to go back to her family in New Brunswick. While she said that she would be back later to work for the agency after the holidays, she was having second thoughts.

[16] It would appear that the family reunion did not go as planned and Y was, again, fleeing the supervision of her grandparents who were looking over her. Sometime after the beginning of January 2010, she was in a hotel room, in Fredericton, with a friend, X, and her brother-in-law. They stayed in the room at least three days, consuming drugs and engaging in some sexual activities. It seems to have ended in a dispute about what was charged to the room and who was going to pay for it.

[17] Y decided to go back to Montreal and resume working for the agency and convinced her friend X to accompany her. This decision was the result of some planning on the part of Y and X, because text messages were exchanged between them and the accused in Montreal, the content of some of the messages were rather graphic and can support the conclusion that both knew that they were going to work as escorts.

[18] Arrangements were made to get the girls back to Montreal, Mr. Lafferty paid for the bus tickets and he went to the station to pick them up when they arrived from New Brunswick. Neither girl told their families about their plan and the fact that they had left

for Montreal, but X had second thoughts about the whole affair. In the bus taking her to Montreal, she started to send text messages to her mother.

[19] X and Y were taken to the apartment in Lachine and the rules of the trade were explained to X. Also a photograph of her was taken to be put on the Internet site of the agency, X was working under the name "Summer". When asked about her age, she said she was 18. It must be noted that Mr. Lafferty engaged in sexual relations with Y during both periods. A large variety of drugs were given to the complainants by both accused during their stay.

[20] After their arrival, the complainants did not work right away; there was a delay of three days before they started. From the start, X did not like to work as an escort and she said so. She also kept contact with her mother in New Brunswick. She, in turn, was in contact with the Montreal Police department, trying to get her daughter out of this situation.

[21] After a few days, Mr. Tynes found out that X was not 18 as she had mentioned to him upon her arrival in Montreal, but rather 17 and he offered to get false identification for X. While the versions differ on this issue and on the issue of the steps that were taken to verify her age, it is clear that X did not work as an escort afterwards. She mentioned that she wanted to leave and a day or two later she was dropped off at a Metro station, where she believed that she was going to meet her brother, who was stationed near Montreal at that time. The mother of X, with the help of the Montreal Police department, arranged this meeting and police officers picked her up as soon as Mr. Lafferty dropped her off.

[22] Y was found by police sometime later and along with X was sent back to New Brunswick after they had given statements to the investigators. Mr. Lafferty was arrested and charged, while Mr. Tynes turned himself in a few days after the story of Y and X made headlines.

## **ANALYSIS**

[23] Before analysing the evidence, I need to deal with preliminary issues raised during the trial.

### **1. Should two counts be modified?**

[24] The Court raised the issue of the validity of Count 22 in the information laid against Mr. Tynes and count 19 in the information of Mr. Lafferty. They are drafted in the same manner, except for the dates, and in my opinion disclose no offence. For greater clarity I will reproduce count 22 regarding Mr. Tynes:

*" Between November 15 2009 and January 18 2010 in Montreal recruits, transports, transfers or exercises control, direction or influence over the movements, for the purpose of exploiting them or facilitating their exploitation, is guilty of an indictable offence, provided by section 279.01 (1) b) of the Criminal Code."*

[25] Crown counsel said that it was a clerical error and that there was no prejudice in allowing an amendment to include the names of the two complainants. Both counsel in defence stated that at this late date, such a modification should not be allowed.

[26] It is a well established principle that a particular count of an information may be modified<sup>5</sup>, in a timely fashion, if the proposed change does not cause prejudice to the

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<sup>5</sup> Section 601 of the Criminal Code.

accused and does not have the effect of creating a new offence<sup>6</sup>. In the present case, these counts charge no offence, but rather, it is a recitation of the elements of the offence as they are found in the Criminal code.<sup>7</sup> As it stands, I cannot modify what does not exist. Therefore, the request to modify counts 22 in the information regarding Mr. Tynes and 19 in the information regarding Mr. Lafferty is denied.

## 2. The notion of common-bawdy house.

[27] Can a motel room, rented for several hours, for the purposes of engaging in acts of prostitution, be a common-bawdy house?

[28] The definition of such place can be found at section 197 (1) of the Criminal Code and it reads:

"197. (1) Definitions – In this part...

"Common bawdy-house" means a place that is

(a) kept or occupied, or

(b) resorted to one or more persons

for the purpose of prostitution or the practice of acts of indecency;"

[29] Several decisions have already looked at this issue, and most come to the same conclusion, that when occupied, even for limited periods of time, for the purpose of prostitution, a hotel room falls within the definition of a common bawdy-house<sup>8</sup>. As the Court of Appeal of Ontario decided in *Pierce*<sup>9</sup>:

*"In my opinion, any defined space is capable of being a common bawdy-house if there is localization of a number of acts of prostitution*

<sup>6</sup> *Elliot v. R.* [1978] 2 S.C.R. 393; *R. v. Daoust* [2004] S.C.J. No.7; *Morozuk v. R.* [1986] 1 S.C.R. 31

<sup>7</sup> Section 279.01

<sup>8</sup> *R. v. Worthington* (1972) 10 C.C.C. (2d) 311;

<sup>9</sup> *R. v. Pierce*, 66 C.C.C. (2d) 388

*within its specified boundaries. This does not mean that acts of prostitution must take place in every nook and cranny of the defined place for it to be held to be a common bawdy-house although it obviously must take place within a reasonably substantial portion of the defined place. Hotels or floors of hotels have been held to be a common bawdy-house although there has not been proof that every room in the hotel or on the particular floor has been used for acts of prostitution: R. v. Wong (B.C.C.A.) released February 7, 1980 [summarized 4 W.C.B. 257]; R. v. McLellan (1980), 55 C.C.C. (2d) 543 at p. 544. By definition "place" does not have to be covered or enclosed, and it can be used temporarily whether or not any person has an exclusive right of user with respect to it. In the instant case the information reasonably informed the accused of the offence alleged against them so far as the identification of the "place" where the offence was committed was concerned."<sup>10</sup>*

[30] I come to the conclusion that a hotel room, even if rented for several hours at a time, for the sole purpose of committing acts of prostitution becomes a common bawdy-house.

### **3. The notion of "living on the avails of prostitution".**

[31] In their arguments, both defendants stated that for a conviction to be entered on this type of charge there needed to be evidence of a "parasitic relationship with a prostitute". While this may be true in cases where an accused person actually lives with a prostitute,<sup>11</sup> it is different where the relationship is of a more commercial nature. In *Barrow*<sup>12</sup>, Justice Rosenberg, for the Court of Appeal of Ontario makes an interesting study of the different cases regarding the notion of "living on the avails of prostitution"<sup>13</sup>.

[32] He states:

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<sup>10</sup> Supra note 9, at page 393

<sup>11</sup> *R. c. Grilo* 64 C.C.C. (3d) 53; *R.c. Bramwell* 86 C.C.C. (3d) 418

<sup>12</sup> *R. v. Barrow* 155 C.C.C. (3d) 362.

<sup>13</sup> Supra, note 12, at paragraphs 18 to 32.

*"The appellant submits that she should not be convicted of the living on avails offence because her relationship with the escorts was supportive rather than exploitive. She provided services that allowed the women to remain off the streets in relative safety. No escort was forced to take a particular job, nor perform any particular act, including sexual acts. She provided advice and, in some cases, friendship. Be that as it may, it is my view that the appellant was properly convicted. Her conduct falls squarely within the Shaw test that was approved in Celebrity Enterprises and Grilo as applied to a person supplying services to a prostitute. The test as modified by Arbour J.A. in Grilo has no application to this case since the appellant was supplying services to the escorts. She was not merely living with them, nor were the escorts in a relationship in which they were legally or morally obliged to support the appellant. The element of parasitism is found in the fact that she is in the business of rendering services to the escorts because they are prostitutes. To repeat an excerpt from the speech of Lord Reid in Shaw :*

*Such men may render services as protectors or as touts, but that cannot make any difference, even if their relationship were dressed up as a contract of service; and a man could not escape because he acted in some such capacity for a number of women. His occupation would still be parasitic; it would not exist if the women were not prostitutes. [Emphasis added.]"<sup>14</sup>*

[33] I agree with Justice Rosenberg and I conclude that a conviction can be entered on such a charge, depending on the facts, even if there is not a parasitic element in the evidence.

## **THE EVIDENCE**

[34] As certain aspects of the evidence are contradictory, an analysis based on the guidelines contained in *R. v. W. (D.)*<sup>15</sup> from the Supreme Court will be necessary. But before embarking on this venture, certain elements need to be kept in mind. While Mr. Tynes decided to testify, Mr. Lafferty did not. In his summation, counsel for Mr. Tynes

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<sup>14</sup> Supra, note 12, at paragraph 29.

<sup>15</sup> *R. v. W. (D.)* (1991) 1 R.C.S. 742

affirmed that his client would not offer any defence regarding specific charges. Also, the cross-examination of both complainants did not cover what are important issues.

[35] The rules set out in *W. (D.)* mandate that I analyse the evidence given by the accused; if the evidence is believed, an acquittal must be entered. If the evidence is not believed, the court must analyse the defence as a whole and see if it raises a reasonable doubt. If it is not the case, then the evidence as a whole will be analysed and the Court will determine if the charges are proven beyond a reasonable doubt. The evidence of Mr. Tynes cannot be analysed on its own, but rather, the exercise needs to be done while looking at the whole evidence. Before embarking on this exercise, I will evaluate the testimony of the complainants and draw the appropriate factual conclusions.

### **1. Assessing the testimony of Y and X**

[36] Both complainants come from what can be described as broken homes. Y was living with her grandparents. The relationship seemed tenuous and she has a criminal record, with several breaches of probation. She was at the time a drug user and admitted to the Court that she had lied when she testified. X was living with her mother and this was not without difficulties. She was using drugs and also admitted in the Court to lying during her testimony. These are not necessarily the best attributes to have when one's testimony is evaluated regarding credibility.

[37] The versions of both complainants were attacked by defence counsel as being a fabrication of lies and not being truthful. They submit that the Court should come to the same conclusion.

[38] Obviously, the evidence of the complainants needs to be evaluated carefully given the shortcomings listed above. Also, their demeanour needs to be taken into consideration, more specifically when they were cross-examined. In both cases their responses became somewhat evasive and sometimes confused when questioned regarding certain subjects. This was observed regarding their drug consumption, the reason why Y came to Montreal in the first place,<sup>16</sup> the nature of the activities of both of them during their "vacation" right after Christmas in the hotel room with the brother-in-law of X She also had difficulties explaining the purpose of certain text messages sent to Mr. Tynes just before arriving in Montreal. On this aspect, I comes to the conclusion that these messages demonstrate that X knew that she would be involved in activities of a sexual nature. She also knew that Y had been working as a prostitute in Montreal the previous fall. All of this leads me to conclude that X was fully aware that she came to Montreal to work as an escort.

[39] On the evidence offered by both complainants, I come the following conclusions: Y worked as an escort engaging in acts of prostitution during the fall of 2009 and for a short period of time in January of 2010. X also worked as an escort in January 2010. Both worked for an agency in Montreal called "Hush" and Mr. Lafferty and Mr. Tynes were involved in its operation. While I believe that both complainants affirmed that they were 18 years of age when they were asked, I do not believe that they were without proper identification in Montreal, as was stated by Y, especially when she affirmed later on that she was "carded" only once in Montreal, when she was buying cigarettes. When they were working as escorts, Y and X were in fact 17 years old.

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<sup>16</sup> In November 2009.

[40] The money made by both complainants was given to Mr. Tynes, but the proportion of what was given will be discussed later on.

## **2. Assessing the testimony of Mr. Tynes.**

[41] The evidence offered by Mr. Tynes differs on some important points from that of the complainants. If and how the age of the complainants was verified, the money arrangement and what drugs were offered will all be analysed.

### **2.1 The age of the complainants.**

[42] When Mr. Tynes first met Y in November 2009, she had been working on one occasion for an Escort Agency in Montreal, but did not like the experience. He proposed that she work for him and she agreed. He asked for and got identification from her and it said that she was 18. Apparently, Y showed what is called an "age of majority card" issued by the government of New Brunswick.

[43] The same process took place when X got to Montreal, she showed the same card proving that she was 18 years old.

[44] He also testified that both complainants were often "carded" when going to clubs and bars in Montreal. Moreover, he specifically stated that the day of the arrival of X and Y, in January 2010, they went out to have drinks and that all of them were asked for proper identification.

[45] When it was found out that X was a minor, while he was upset and felt victimised, not understanding why she would do something like this, he did not offer her some false identification for work purposes.

[46] There are some problems with this version. First, the age of majority in New Brunswick is 19 years old<sup>17</sup>. This makes it hard to believe that both complainants would have had in their possession the type of card that Mr. Tynes described in his testimony.

[47] Also, neither complainant was questioned about these cards during their cross-examinations. I believe that this is an important element of the case as it may involve a minimum period of detention if I come to the conclusion that he his guilty of counts 1 and 15. This deficiency in the cross-examination brings into play the rule set out in *Brown v. Dunn*<sup>18</sup>. The Court of Appeal of Alberta in *Werkman*<sup>19</sup>, explains the rule in the following manner:

*«The rule in Browne v. Dunn requires that counsel put a matter to a witness involving the witness personally if counsel is later going to present contradictory evidence, or is going to impeach the witness' credibility [...]. Though it is not necessary to cross-examine upon minor details in the evidence, a witness should be provided with an opportunity to give evidence on "matters of substance" that will be contradicted" <sup>20</sup>*

[48] I come to the conclusion that both complainants should have been questioned on this issue. The consequence of this is that the ultimate weigh of the testimony of Mr. Tynes is somewhat diminished on this topic<sup>21</sup>.

[49] Further, I do not believe that he was "carded" along with everybody around the table last January.

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<sup>17</sup> Section 1(1) of the *Age of Majority Act*, R.S.N.B. 1973, c. A-4

<sup>18</sup> (1893), 6 R. 67

<sup>19</sup> *R. v. Werkman* 219 C.C.C. (3d) 406

<sup>20</sup> *Supra*, note 19 at page 409.

<sup>21</sup> *Supra* note 19.

[50] Finally, the fact that the accused did not confront Y about her age when it was discovered that X was 17 years old, leads me to believe that the accused was not bothered by the true age of the complainants.

[51] On this issue, I do not believe the version of Mr. Tynes.

## **2.2 The application of section 150.1 of the Criminal Code.**

[52] X and Y were both 17 years old when they were working as escorts in 2009 and 2010. Section 150.1 (5) mandates that where a complainant is under the age of 18 years, an accused must take all reasonable steps to ascertain her age.

[53] The Crown does not have a burden to prove that a particular complainant appears to be younger than 18 years<sup>22</sup>, but the evidence must demonstrate that all reasonable steps were not taken<sup>23</sup>. Such a verification will be reasonable if it is more than trivial and goes beyond asking the simple question of "how old are you?"<sup>24</sup>, unless the circumstances are such that an inquiry is not necessary. Some of the factors relied on by other Courts can be summarized in the following:

The appearance and behaviour of the complainant;

The relevant activities;

The ages and appearances of those accompanying the complainant;

All other relevant circumstances<sup>25</sup>.

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<sup>22</sup> *R. v. Slater*, 201 C.C.C. (3d) 85, at page 93

<sup>23</sup> *Supra*, note 22, at page 94.

<sup>24</sup> *R. v. Osborne*, (1992) 17 C. R. (4 th) 350.

<sup>25</sup> *Supra*, note 22, at page 94.

[54] Y had been in Montreal for a few days when she met Mr. Tynes. As I stated earlier, her explanations as to why she came to Montreal with the "Gosselin" brothers did not convince me. This being said, I am not prepared to conclude that Y came voluntarily to Montreal to work as an escort. I believe that on this issue, the truth lies somewhere between the versions of Y and Mr. Tynes. But an important fact remains; he did ask what was her age, showing that he was concerned that she was not of legal age. He should have taken other steps.

[55] Mr. Lafferty did not testify and did not offer any evidence on that subject. While it was not mentioned directly during summations, I believe that the theory of defence counsel is that there exists a reasonable doubt on this issue in the evidence of the Crown. As was stated in *Slater* :

*"Nonetheless, where the accused does not lead any evidence other than through the Crown's case, his or her ability to obtain an acquittal based on s. 150.1(5) may be compromised."*<sup>26</sup>

[56] I see nothing in the evidence showing any steps taken by Mr. Lafferty to ascertain the exact age of Y and X.

### **2.3 The money arrangements.**

[57] The complainants said that they had to remit the entirety of the money made when working as escorts. Most of the time Mr. Tynes would take it, at others times Mr. Lafferty would collect the money. In exchange, they were given a "room and board" arrangement in an apartment in Lachine where at times others women, presumably

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<sup>26</sup> Supra, note 22, at page 94.

escorts, would stay and others members of the agency would sleep over to assure some sort of supervision of the complainants.

[58] Mr. Tynes insisted that the arrangement was that he would take only half of the money made in order to pay the expenses of the agency.

[59] Even with the shortcomings of both complainants' versions, I believe them on this issue.

## **2.4 The drug trafficking.**

[60] On this issue, Mr. Tynes says that he offered cocaine only once at the apartment, to the complainants while they say that a number of drugs were always available and brought to them by both accused. On this issue the version of X is more detailed about the nature and quantity of what was available, while Y mentioned that Mr. Lafferty would bring over "weed" (meaning cannabis).

[61] The illicit nature of the activities of the agency, the fact that there were numerous parties and taking into consideration that both complainants were using drugs, leads me to give more weight to their versions.

## **2.5 Conclusion**

[62] The versions of the complainants on the three topics studied above are more credible and reliable. Therefore I reject Mr. Tynes testimony on these issues.

## **3. The second step of the *W. (D.)* analysis**

[63] Mr. Lafferty offered no evidence. Certain aspects of the testimony of Mr. Tynes were rejected. Is there anything in the defence that can raise a reasonable doubt? The answer is no. The aspects of the testimony offered by the defendant that were not rejected confirm to a high degree the evidence of the complainants.

[64] I will therefore analyse if the Crown has met its burden regarding the approximate 50 counts laid.

**4. Did the Crown prove beyond a reasonable doubt the charges against Mr. Lafferty?**

**4.1 Counts 1, 2 and 12, living wholly or in part on the avails of prostitution of X and Y both being under the age of 18 years old<sup>27</sup>.**

[65] At all times mentioned in the information, Mr. Lafferty was working for the "Hush" escort agency. Both complainants were working as prostitutes. He was essentially a driver to bring them to and from the hotels and the calls they would make to the clients residence where the complainants would engage in acts of prostitution. He collected the fares made by both. He was present at the apartment where the complainants resided. He also was present when the rules of the trade were explained to X, and he told her that "to live here, she had to work", meaning that she had to prostitute herself.

[66] No evidence was put forward regarding the steps taken by him to make sure that both complainants were at least 18 years old.

[67] I am convinced that the Crown met its burden on these counts.

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<sup>27</sup> S. 212 (2) of the Criminal Code.

**4.2 Counts 3 and 13, procuring or soliciting a person to have illicit sexual intercourse.<sup>28</sup>**

[68] Mr. Lafferty was present when Y was met for the first time in November 2009. He and Mr. Tynes discussed the business, how it worked and the prices that should be charged. The evidence reveals that Mr. Lafferty was involved in the day-to-day operations of the agency whose sole purpose was to provide the services of prostitutes to clients<sup>29</sup>.

[69] Mr. Lafferty paid for the bus ride from New Brunswick to Montreal in January 2010 for both Y and X. He was also present when instructions were given to X about the trade. He also gave condoms to both complainants.

[70] I am convinced that the Crown met its burden on these counts.

**4.3 Counts 4 and 14, enticing a person to a common bawdy-house for the purpose of prostitution.<sup>30</sup>**

[71] While it was suggested that Y had been working as an escort prior to meeting with Mr. Lafferty and Mr. Tynes in November 2009 the evidence on this issue falls far short of demonstrating such a fact. Therefore, I am not convinced that Y was a prostitute before meeting the accused in November 2009.

[72] As discussed earlier, I am convinced that a hotel room used for the purpose of prostitution becomes a common bawdy-house. Not having had the chance of hearing

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<sup>28</sup> Section 212 (1) a) of the Criminal Code.

<sup>29</sup> *R. v. Babcock*, (1974) 18 C.C.C. (2d) 175.

<sup>30</sup> Section 212 (1) b) of the Criminal Code.

the words used by Mr. Lafferty when he first met Y, I cannot decide if it comes within the meaning of the words "entice" and "inveigles".

[73] Therefore, the Crown did not meet its burden.

**4.5 Counts 5 and 15, procuring a person to become a prostitute.<sup>31</sup>**

[74] Both X and Y became prostitutes after meeting Mr. Lafferty who not only explained the rules of the trade but also was also present and help them when they exercised their trade. As was said earlier, the allegations that Y was a prostitute before meeting Mr. Lafferty do not convince me.<sup>32</sup>

[75] I am convinced that the Crown met its burden on these count.

**4.6 Counts 6 and 16, procuring a person to leave his place of abode to become a frequenter of a common-bawdy house.<sup>33</sup>**

[76] There is no evidence suggesting that Mr. Lafferty had anything to do in bringing Y to Montreal in November 2009. However, he played a significant role in January 2010, by communicating with Y, paying the bus fare from New Brunswick to Montreal for both complainants, meeting them at the bus station, bringing them to the apartment in Lachine and giving instructions to X on the rules of the trade.

[77] I am convinced that the Crown has met its burden on count 16, but failed to do so on count 6.

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<sup>31</sup> Section 212 (1) d) of the Criminal Code.

<sup>32</sup> *R. v. Cline*, 65 C.C.C. (2d) 214.

<sup>33</sup> Section 212 (1) e) of the Criminal Code.

**4.6 Counts 7, 9 and 17, exercising control over a person in such a manner that he is aiding that person to engage in prostitution.<sup>34</sup>**

[78] Mr. Lafferty was working for the escort agency as a driver and collector that "employed" both X and Y as prostitutes. He was present on numerous occasions in the apartment in Lachine to which he had a key. He gave instructions to both complainants and provided them with condoms. He collected the money they made and provided them with drugs. He even went so far as to have sexual relations with Y.<sup>35</sup>

[79] I come to the conclusion that he was exercising control over both complainants for the sole purpose of keeping them working for the agency.

[80] I am satisfied that the Crown has met its burden on these counts.

**4.7 Counts 8, 10 and 18, living on the avails of prostitution.<sup>36</sup>**

[81] I come to the same conclusion on these counts as I did on counts 1, 2 and 12.

**4.8 Counts 11 and 19, trafficking in persons.<sup>37</sup>**

[82] I did not authorize the modification of these counts; therefore, Mr. Lafferty is acquitted.

**4.9 Counts 20, 21, 22 and 23, trafficking in controlled substances.<sup>38</sup>**

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<sup>34</sup> Section 212 (1) h) of the Criminal Code.

<sup>35</sup> The evidence comes within the scope of *R. v. Perreault*, 6 C.R. (5<sup>th</sup>) 132.

<sup>36</sup> Section 212 (1) j) of the Criminal Code.

<sup>37</sup> Section 279.01(1) b) of the Criminal Code.

<sup>38</sup> Section 5 (1) of the Controlled Drugs and Substances Act.

[83] While Y testified that Mr. Lafferty gave her "weed"<sup>39</sup>, the evidence given by X on this subject was more elaborate and precise. She said that Mr. Lafferty also brought over cocaine, GHB and ecstasy. This evidence regarding the nature of the substances was not contradicted and there is no reason why this part of the testimony of X should not be believed. The Crown also met its burden on these counts.

**5. Did the Crown prove beyond a reasonable doubt the charges against Mr. Tynes?**

**5.1 Counts 1 and 15, living wholly or in part on the avails of prostitution of X and Y both being under the age of 18 years old.<sup>40</sup>**

[84] I have come to the conclusion that Mr. Tynes did not take all possible steps to confirm that both X and Y were in fact 18 years old. Also, the rest of the evidence, including the testimony of Mr. Tynes shows that he operated an escort agency and was involved in every aspects of the business. He received the wages from both of them and kept part of it.

[85] I am satisfied that the Crown met its burden on these counts.

**5.2 Counts 2, 8 and 16, procuring or soliciting a person to have illicit sexual intercourse.**

[86] Mr. Tynes was running an escort agency whose sole purpose was to provide prostitutes to client.<sup>41</sup> He had discussed the rules, the prices and the work schedule with the complainants and was taking the fees that they charged to their clients.

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<sup>39</sup> I conclude that this refers to cannabis.

<sup>40</sup> Section 212 (2) of the Criminal Code.

[87] I am satisfied that the Crown met its burden on these counts.

**5.3 Counts 3, 9 and 17, enticing a person to a common bawdy-house for the purpose of prostitution.<sup>42</sup>**

[88] The conclusion I arrived to regarding Y's activities prior to her meeting with the accused is the same. So is my conclusion regarding the lack of evidence of what was said to her before she agreed to work as a prostitute for Mr. Tynes, therefore I cannot ascertain if he did in fact enticed or inveigled Y in November 2009 and X in January 2010 to become a prostitute.

[89] Also, regarding count 9, I believe that the activities of Y in November 2009 as a prostitute prohibits a verdict of guilty for the period charged, January 2010.

[90] I am convinced that the Crown did not meet its burden on counts 3, 9 and 17.

**5.4 Counts 4, 10 and 18, procuring a person to become a prostitute.<sup>43</sup>**

[91] As it was the case with Mr. Lafferty, both Y and X began working as prostitutes after meeting with the accused. He also was present on a daily basis when the complainants exercised their trade. I am convinced that the Crown met its burden on counts 4 and 10, as they cover the period that both complainants worked as prostitute for the first time.

[92] Count 18 refers, I presume, to the second period Y worked for the agency. As she had already worked as a prostitute a few weeks prior to January, this comes

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<sup>41</sup> Supra, note 29.

<sup>42</sup> Section 212 (1) b) of the Criminal Code.

<sup>43</sup> Section 212 (1) d) of the Criminal Code

within the exception set out in the Alberta's Court of Appeal decision of *R. v. Cline*.<sup>44</sup> Therefore, Mr. Tynes is acquitted of count 18.

**5.5 Counts 5, 11 and 19, procuring a person to leave his place of abode to become a frequenter of a common-bawdy house.**<sup>45</sup>

[93] There is no evidence that demonstrate that Mr. Tynes had anything to do with Y's trip to Montreal in November 2009. Therefore he cannot be found guilty of count 5.

[94] But there is evidence that Mr. Tynes was actively involved in convincing X to come to Montreal in January 2010, especially with the exchange of text messages between them. This evidence was not contradicted. I am convinced that the Crown met its burden on Count 11.

[95] This being said, I believe that the exception set out In *Cline*<sup>46</sup>, supra, applies regarding the second visit of Y to Montreal in January 2010. Thus, he cannot be found guilty of count 19.

**5.6 Counts 6, 12 and 20, exercising control over a person in such a manner that he is aiding that person to engage in prostitution.**<sup>47</sup>

[96] He hired both X and Y to work as prostitutes. Mr. Tynes was running the escort agency; he arranged for publicity on the Internet, featuring both complainants. He set the rules, collected the money made by the complainants. I cannot come to a different

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<sup>44</sup> *R. v. Cline*, supra note 32.

<sup>45</sup> Section 212 (1) e) of the Criminal Code.

<sup>46</sup> Supra, note 32.

<sup>47</sup> Section 212 (1) h) of the Criminal Code.

conclusion with Mr. Tynes than I did with is co-accused.<sup>48</sup> I am convinced that the Crown met its burden on these counts.

**5.7 Counts 13 and 21, living on the avails of prostitution.<sup>49</sup>**

[97] On these counts, I come to same conclusion as I did regarding counts 1 and 15.

**5.8 Count 14, conspiracy to procure.<sup>50</sup>**

[98] There is no evidence in the case that could support a conviction on this charge.

**5.9 Count 22, trafficking in persons.<sup>51</sup>**

[99] Mr. Tynes is acquitted of this charge.

**5.9 Counts 23 to 26, trafficking in controlled substances.<sup>52</sup>**

[100] Mr. Tynes admitted to trafficking in cocaine. The evidence of X was more elaborate and precise on this specific issue. I come to the conclusion, for the same reasons I gave, that he gave GHB, ecstasy and cocaine to both complainants. However, there is no evidence that he ever gave them cannabis, therefore, the Crown did not meet its burden on count 23, but did so regarding counts 24, 25 and 26.

**6. Conclusion.**

[101] Mr. Lafferty is guilty, in file **500-01-035485-108**, of counts **1, 2, 3, 5, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 20, 21, 22 and 23.**

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<sup>48</sup> Supra, note 35.

<sup>49</sup> Section 212 (1) j) of the Criminal Code.

<sup>50</sup> Sections 465 (1) c) and 212 (1) of the Criminal Code.

<sup>51</sup> Section 279.01 (1) b) of the Criminal Code.

<sup>52</sup> Section 5 (1) of the Controlled Drugs and Substances Act.

[102] Mr. Lafferty is acquitted of counts **4, 6, 11, 14 and 19**.

[103] Mr. Tynes is guilty, in file **500-01-034231-099**, of counts **1, 2, 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 20, 21, 24, 25 and 26**.

[104] Mr. Tynes is acquitted of counts **3, 5, 9, 14, 17, 18, 19, 22 and 23**.

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**Pierre E. Labelle, J.C.Q**

**Me Hélène Décarie  
For the Crown**

**Me Pierre l'Écuyer  
For Myles Tynes**

**Me Clemente Monterosso  
For Philip Lafferty**

**Dates of hearing: August 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>, September 27<sup>th</sup> 2010.**