



Case in Brief: ***R. v. Albashir***

Judgment of November 19, 2021 | On appeal from the Court of Appeal for British Columbia  
Neutral citation: 2021 SCC 48

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***The Supreme Court upholds convictions for two men who were operating a sexual escort service.***

The question in this case is how courts should treat crimes that are committed after the Supreme Court of Canada declares a law unconstitutional but before that declaration takes effect. That is what happened when Mr. Tamim Albashir and Mr. Kasra Mohsenipour were convicted in 2019 for offences that occurred between 2013 and 2016. At that time, the men were operating a sexual escort service in Vancouver. Among the offences was a violation of section 212(1)(j) of the *Criminal Code*, which barred pimps from living off the money made by sex workers.

In 2013, in the case of [Canada \(Attorney General\) v. Bedford](#), the Supreme Court found Canada's prostitution laws were unconstitutional, including section 212(1)(j). The judges found that it had criminalized all sex work, instead of focusing on controlling and abusive pimps. The Supreme Court gave Parliament a one year "suspension period" to change the law, which it did in 2014. Mr. Albashir and Mr. Mohsenipour committed the section 212(1)(j) offences during that suspension period, but were charged after it ended.

At their trial, the question was whether the old law had become unconstitutional, preventing the men from being convicted. The trial judge decided that the law had indeed been unconstitutional at the time the crimes were committed and quashed the charges against both men.

The Crown appealed to the British Columbia Court of Appeal, which convicted the men. The Court of Appeal held that the Supreme Court's declaration of unconstitutionality had never taken effect because Parliament had replaced section 212(1)(j) before the end of the suspension period. Mr. Albashir and Mr. Mohsenipour appealed their convictions to the Supreme Court of Canada.

The Supreme Court has dismissed the appeals.

**The men could be charged and convicted under section 212(1)(j) of the *Criminal Code* after the suspension period had ended for conduct committed during it.**

Writing for the majority, Justice Karakatsanis explained that a retroactive declaration means the law is considered to have always been invalid. A prospective declaration, on the other hand, means the law is considered to be invalid only after the suspension period has ended and the declaration of constitutional invalidity has taken effect.

In the *Bedford* case, the Court had not said whether that declaration would apply retroactively or prospectively. But the purpose for the suspension was to continue to protect vulnerable sex workers while Parliament replaced section 212(1)(j) with a new law. In light of this purpose, the majority in this case said section 212(1)(j) was unconstitutional only after the suspension period had ended. As a result, Mr. Albashir and Mr. Mohsenipour were liable under this provision for their conduct during the suspension period, and could be charged and convicted under it.

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**Breakdown of the decision:** **Majority:** Justice [Karakatsanis](#) dismissed the appeals and upheld the convictions, holding that section 212(1)(j) of the *Criminal Code* remained valid during the suspension period of the declaration of constitutional invalidity. (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Côté](#), [Martin](#) and [Kasirer](#) agreed) | **Dissenting:** Justice [Rowe](#) would have allowed the appeals, set aside the convictions and restored the trial judge's decision. He found the declaration of constitutional invalidity rendered section 212(1)(j) of the *Criminal Code* null and void as if it never existed (Justice [Brown](#) agreed).

**More information:** [Decision](#) | Case information ([39277](#)) ([39278](#)) | [Webcast of hearing](#)

**Lower court rulings:** trial (Supreme Court of British Columbia – unreported) | [appeal](#) (British Columbia Court of Appeal)

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