

CRUSADER IN THE COURTS

Lawyer battles new anti-prostitution law

By JOANNE MacDONALD

Criminal lawyer Tony Serka says he's fighting Canada's new anti-prostitution law — and winning — because it's a bad law, not because he's the hookers' "patron saint."

"I don't like the label that I'm the patron saint of prostitutes. I just believe in what I'm doing. It (Bill C-49) is a bad law," Serka said in an interview.

"It's a bad law because it's unconstitutional and it doesn't stand up to the test of the Charter of Rights. It's vague and its actual effects don't correspond with the intended purpose of the legislation, which is to combat street soliciting.

"If people want to say I'm on a crusade, then yeah, I guess I'm on a crusade against bad laws."

That crusade has earned him two acquittals on charges under

the new law in recent months — he's argued that it violates a section of the Charter of Rights and Freedoms — and widespread publicity.

"I've always liked attention. My cases have always attracted notoriety but I don't seek it," Serka said.

"Basically I feel the lawyer should never give up. I hate losing. And it's hard for me to accept it. I think that's good for a lawyer, because people know that you won't quit. I hate losing because in a lot of cases I think a person's been wronged because of it."

His success has enraged Phyllis Alfeld, a resident of Mount Pleasant — a popular hooker hangout — who's protested against prostitution.

"I feel prostitution could have been controlled under Bill C-49 and he's effectively shot that down," she said.

"I've always wondered how Tony Serka would like to live in Mount Pleasant."

(Serka lives on Vancouver's west side.)

But his legal strategy has also earned him respect.

"He has a very good approach in provincial court. He's not one who stands on ceremony, he's not pompous," said Bill Stewart, regional Crown counsel in the

Fraser region.

Said Norman Callegaro, a criminal lawyer who has worked closely with Serka: "I like working with him because he's prepared to try arguments and he's willing to persist to see if he can make them work. He has a real interest in the development of the law."

Marie Arrington, spokesman for Prostitutes and Other Women for Equal Rights, said Serka is "scrupulously honest."

"He's helped us a lot and because of his past record we trust him the most. Plus he's done a lot of free work for us, with a lot of his research time on these recent cases coming out of his own pocket."

Arrington said POWER has recently set up a hooker defence fund that will be used to finance

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prostitutes' legal costs.

The lanky Serka — he's six feet, five inches tall — has worked on prostitution cases ever since he graduated from the University of B.C. in 1970.

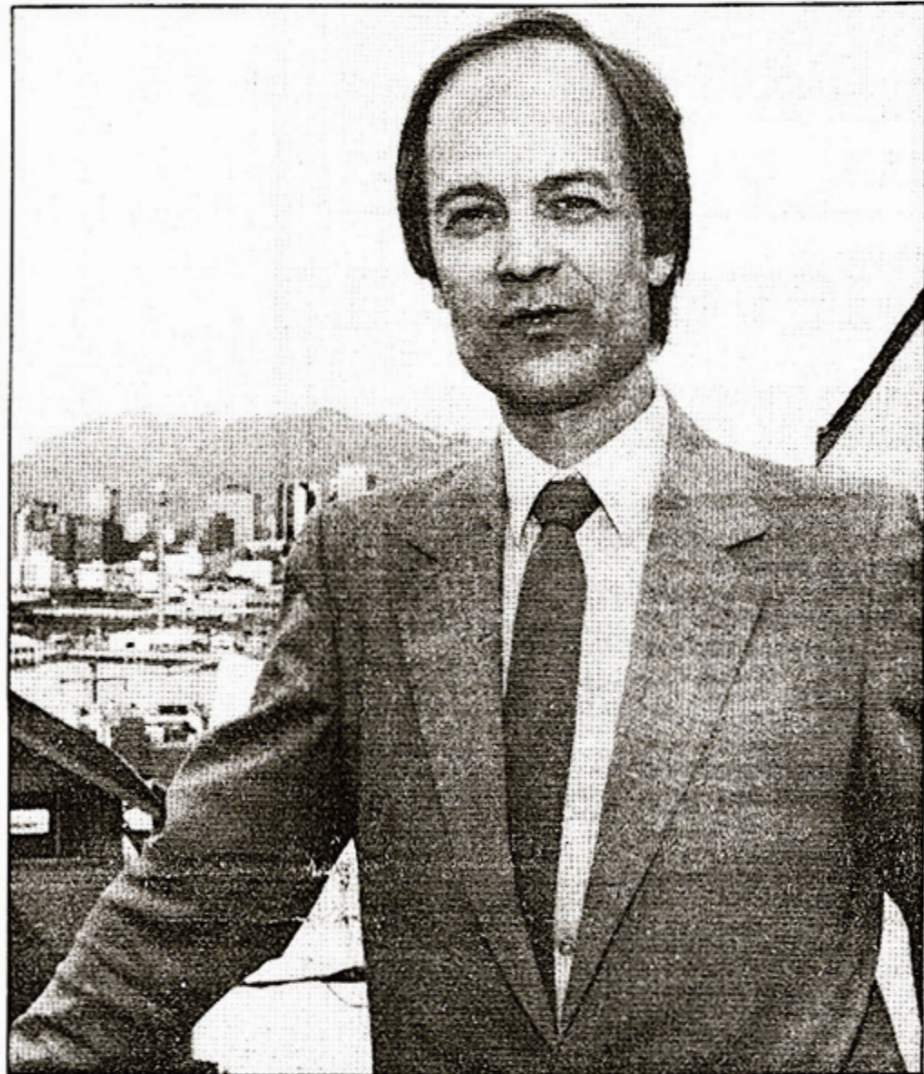
In those days, the legal aid system was in its infancy, and Serka said he and longtime partner Louis Shelling walked into an "instant practice" upon graduation.

In 1978, Serka grabbed headlines when he won the landmark Hutt decision in the Supreme Court of Canada.

The decision, named after Serka's client, Debra Hutt, ruled a prostitute must be pressing and persistent to be convicted of soliciting.

In 1982, he again became part of legal history when, during his defence of a freelance writer charged with purchasing or offering to purchase sexual services on a city street, the city of Vancouver was forced to repeal its anti-prostitution bylaw.

The city bylaw became invalid



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following a Supreme Court of Canada ruling against a similar bylaw passed by Calgary city council.

In his first challenge to Bill C-49 last month, Serka's defence of client Michelle Lee McLean, 19, of Burnaby, resulted in a significant ruling when provincial court Judge Keith Libby struck down some of the wording of the new anti-hooker law, ruling that a car is not a public place where the buying or selling of sex can be ruled illegal.

McLean, who had been charged with communicating with an undercover police officer for the purpose of engaging in prostitution, was later cleared, but the Crown plans to appeal April 30.

Said Serka: "I wanted the whole law struck down. I'm not an advocate of prostitution by any means. But this is a bad law. And that's why we're fighting it. We're not fighting it so there can be prostitution everywhere."

And he insisted his recent "charter challenges" don't involve unique defence tactics.

"You can't survive successfully as a lawyer unless you keep the charter in mind for every single case you get."

Born the son of Yugoslav parents, Serka said he never planned to be a lawyer. As a child, he thought lawyers were liars. He attended university because his late father Anton, a fishing captain, wanted him to go to school.

Serka describes himself as a family man, "happily married to a nurse w/ 2 kids."

His interests outside the courtroom range from sports to obscure rock and roll music.

There's the obsession with trivia.

In late 1984, Serka and two other Vancouver lawyers, Henry Brown and Brian Jackson, dubbed themselves "The Earls of Esoterica," and produced and marketed a trivia game based on Billboard Magazine's top 40 hits. So far, the game has sold 10,000 copies in Canada and the U.S.

Meanwhile, Serka keeps busy with standard legal cases that keep him financially solvent.