

Canada v. Bedford: The Importance of the SCC Decision

Canadian Alliance for
Sex Work Law Reform

*Sex Workers, Organizations and
Individuals Advocating for Sex Workers'
Rights and Community Well-Being*
www.sexworklawreform.com

In 2007, three Ontario sex workers initiated a constitutional challenge to provisions of the Criminal Code that prohibit various aspects of adult prostitution, including:

- **s. 210 (keeping or being found in a bawdy house),**
- **s. 212(1)(j) (living on the avails of prostitution), and**
- **s. 213(1)(c) (communicating in public for the purpose of prostitution).**

The case of Attorney General of Canada v. Terri Jean Bedford, Amy Lebovitch and Valerie Scott examined whether these three provisions violate sex worker's constitutional right to security of the person (protected by s. 7 of the Charter of Rights and Freedoms) and freedom of expression (pursuant to s. 2(b) of the Charter).

On December 20, 2013, the Supreme Court of Canada delivered a landmark unanimous decision that these provisions contravene the s. 7 security of the person rights of sex workers, and that this violation are not justifiable. Writing for the Court, Chief Justice McLachlin said:

The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the riskⁱ

This decision mirrors the arguments made by the Applicants and many of the interveners in this case, including Pivot Legal Society, Downtown Eastside Sex Workers United Against Violence Society (SWUAV), PACE Society, Secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS), British Columbia Civil Liberties Association (BCCLA), Canadian HIV/AIDS Legal Network, British Columbia Centre for Excellence in HIV/AIDS, HIV & AIDS Legal Clinic Ontario, Simone de Beauvoir Institute, and Aboriginal Legal Services of Toronto.

Keeping or being found in a common bawdy house (s. 210)

The SCC held that the bawdy house law violates sex workers' constitutionally protected right to security of the person. The Court found that this law prevents sex workers from working a fixed location, which is safer than working on the street or meeting clients at different locations.ⁱⁱ The Court stated that the negative impact of the bawdy-house prohibition is grossly disproportionate to its objective of preventing public nuisance:

[T]he harms identified by the courts below are grossly disproportionate to the deterrence of community disruption that is the object of the law. Parliament has the power to regulate against nuisances, but not at the cost of the health safety and lives of prostitutes. A law that prevents street-prostitutes from resorting to a safe haven such as Grandma's House while a suspected serial killer prowls the streets, is a law that has lost sight of its purpose.ⁱⁱⁱ

Living on the avails of prostitution (s. 212(1)(j))

The SCC held that the living on the avails provision violates sex workers' constitutionally protected right to security of the person. The SCC ruled that the law is overbroad in that:

The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (such as controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards.^{iv}

ⁱ Attorney General of Canada v. Bedford et al Para 60

ⁱⁱ *ibid* Para 64

ⁱⁱⁱ *ibid* Para 136

^{iv} *ibid* Para 142

Communicating in public for the purpose of prostitution (s. 213(1)(c))

The SCC found that the communication law violates sex workers' constitutionally protected right to security of the person. In its decision, the Court writes:

By prohibiting communication in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risk they face.^v

In this way, the harms caused by the law are grossly disproportional to intended objective of the law:

If screening could have prevented one woman from jumping into Robert Pickton's car, the severity of the harmful effects is established^{vi}

This decision marked a huge step forward in judicial recognition of sex workers' rights specifically and human rights in Canada more generally. It reinforces the inability of criminal prostitution laws to protect sex workers from violence and the harm of making elements of sex work a crime. The declaration of invalidity is suspended for one year, during which time the federal government can consider whether or not to design new laws, bearing in mind that new legislation must comply with the Charter of Rights of Freedoms.

The full decision is available at:

<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13389/index.do>

v *ibid* Para 71

vi *ibid* Para 158