

## *Bedford v. Canada:* Report from an intervention

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From June 13–17, 2011, five justices of the Ontario Court of Appeal heard arguments about the constitutionality of *Criminal Code* provisions relating to adult prostitution. This was an appeal of an Ontario Superior Court of Justice decision from September 2010, when Justice Susan Himel struck down the communication, bawdy house and living-on-the-avails provisions of the *Criminal Code* because she found they forced sex workers into more dangerous situations and contributed to a greater risk of violence and other threats to their health and safety.

Besides the applicants in the case (namely Terri Jean Bedford, Amy Lebovitch and Valerie Scott — all current or former sex workers) and the Attorneys General of Ontario and Canada, seven groups were granted intervener status in order to assist the court with the issues before it. The seven interveners included a coalition of the Christian Legal Fellowship, REAL Women of Canada and the Catholic Civil Rights League; a coalition of organizations that included the Canadian Association of Sexual Assault Centres; the Canadian Civil Liberties Association; the B.C. Civil Liberties Association; a coalition of PACE, Downtown Eastside Sex Workers United Against Violence Society (or “SWUAV” — both sex worker organizations in Vancouver) and Pivot Legal Society; a joint intervention from Maggie’s (Toronto sex worker organization) and POWER (Ottawa sex work organization); and a joint intervention from the Canadian HIV/AIDS Legal Network and the B.C. Centre for Excellence in HIV/AIDS (BC-CfE).

In their appeal, the Attorneys General of Canada and Ontario argued that the purpose of the prostitution-related provisions in the *Criminal Code* was to eradicate prostitution by discouraging sex work, an argument forcefully countered by Alan Young, a lawyer and professor at Osgoode Hall who represented the applicants. The Attorney General of Canada also argued that the law was not the cause of, nor did it facilitate, the harm sex workers face — an argument that did not seem to persuade the panel of judges.

Among the interveners, the coalition of PACE, SWUAV and Pivot was particularly compelling because it represented the perspective of street-based sex workers, upon whom the communicating provision has had a tremendously harmful impact in terms of safety and health. Counsel for PACE, SWUAV and Pivot as well as Maggie’s and POWER also decried the “asymmetrical” or “Swedish” model, whereby clients and employers of sex workers continue to be criminalized but sex workers are not. This argument, also endorsed by the Legal Network and the BC-CfE, submits that the asymmetrical approach fails to lessen or eliminate the risks to sex workers exacerbated by the current provisions. Under an asymmetrical regime, sex workers would continue to

be prevented from screening their clients by negotiating in advance the terms of their transactions, since it would still be illegal for clients to engage in these communications. Also, sex workers would still be prevented from working indoors, where the work is safer, because the bawdy house law would apply to clients and others found on the premises. Additionally, it would still be illegal for sex workers to hire a bodyguard or a driver, since these persons could be criminalized by the living-on-the-avails provision.

The Legal Network and the BC-CfE argued that, in addition to the violence to which sex workers are subject as a result of the law, they are also prevented from taking precautions to negotiate and practise safer sex. The communicating provision, for example, hampers sex workers' ability to negotiate condom use. Even more broadly, the criminalization of prostitution hinders sex workers' access to health-care services, including HIV testing, education, prevention, care, treatment and support.

The impact of the prostitution laws on the health and safety of sex workers was a central theme at the Legal Network's Symposium on HIV, Law and Human Rights held June 9–10, where sex workers Émilie Laliberté (Stella) and Nikki Thomas (Sex Professionals of Canada) and lawyers Elin Sigurdson (SWUAV) and Alan Young were featured speakers. The timely discussion helped inform the pressing issue of "next steps" in the event of a positive or negative decision from the Ontario Court of Appeal and, ultimately, the Supreme Court of Canada. The road ahead is long, but one thing is certain: there is no shortage of passion, commitment and activism from sex workers and their colleagues to change the law to protect and promote the human rights of all sex workers.