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**CANADIAN HIV/AIDS LEGAL NETWORK AND HIV & AIDS  
LEGAL CLINIC ONTARIO WELCOME SEX WORK DECISION  
FROM ONTARIO COURT OF APPEAL**

***But caution that some of our most vulnerable remain targeted by current laws***

**Tuesday, March 27, 2012** — The Canadian HIV/AIDS Legal Network and the HIV & AIDS Clinic Ontario (HALCO) welcome the March 26 Ontario Court of Appeal landmark decision on the constitutionality of Canada’s sex work laws, but caution that sex workers who work on the street remain unable to negotiate safer sex and are thus still extremely vulnerable to harm. This decision addresses the laws concerning “common bawdy houses” that prohibits indoor sex work, “living on the avails” of prostitution, and the prohibition of communicating in public for the purposes of sex work.

While sex work itself is not illegal in Canada, many of the provisions in Canada’s *Criminal Code* make it all but impossible to engage in sex work without risk of prosecution. All five of the Ontario Court of Appeal judges recognized that the current provisions regarding sex work have serious and negative impacts on the security and liberty rights of sex workers by reducing the ability of individuals to take steps to conduct their work more safely and make more informed decisions to protect themselves from harm.

The restriction on “common bawdy houses” was struck down by the Court, which found the provision in Section 210 to be grossly disproportionate and overly broad in its application. The Court has given Parliament one year to rewrite the law or it will be rendered invalid.

The Court also revised the Section 212 prohibition regarding “living on the avails” of prostitution by limiting criminalization to situations where there are demonstrated “circumstances of exploitation.” In so doing, the Court has recognized that the provision is overbroad and served to criminalize non-exploitative relationships.

Overall, the Legal Network and HALCO applaud the Court’s decision to recognize the human rights of sex workers by making indoor work safer and easier, without risk of prosecution. If Parliament chooses to rewrite the law regarding “common bawdy houses,” sex workers must be centrally involved in the process and closely consulted to ensure the new provisions reflect their experiences and address their security and safety needs.

Unfortunately, three of five justices chose to uphold the provision in Section 213 concerning the criminalization of communicating for the purpose of prostitution. The

Court concluded that the provision legitimately works to reduce nuisance and harm to communities and must be weighed against the harms it might cause to sex workers. By upholding this communication prohibition, the law effectively makes it illegal to engage in outdoor sex work, despite the fact that sex work itself is not illegal in Canada. Working outside is often the riskiest form of sex work, and the communication law has serious implications for sex workers' relationships with local law enforcement and causes crimes against them to go unreported. Furthermore, the communication prohibition seriously hinders sex workers' ability to negotiate safer sex with clients, effectively forcing them to work in unsafe conditions. This renders outdoor sex workers disproportionately vulnerable to violence, death and increased risk of contracting HIV and other communicable diseases.

For more information on how Canada's criminal laws regarding prostitution affect the health and the human rights of sex workers, see the Canadian HIV/AIDS Legal Network's booklet *Sex, work, rights: Changing Canada's criminal laws to protect sex workers' health and human rights*, at <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=197>.

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