

# **Safety and the Sex Trade: A Changing Legal Environment**

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# ***R. v. Bedford***

2013 SCC 72

Constitutional challenge to *Criminal Code* sections:

- [s. 210](#) makes it an offence to keep or be in a bawdy-house;
- [s. 212\(1\)\(j\)](#) prohibits living on the avails of prostitution; and
- [s. 213\(1\)\(c\)](#) prohibits communicating in public for the purposes of prostitution.

# ***Bedford***

- Sex trade workers argued that these provisions were contrary to section 7 of the *Charter* security of the person interests.
- Argued they put the safety and lives of sex workers at risk, by preventing them from implementing safety measures — such as hiring security guards or screening potential clients — that could protect them from violence.

# Section 7 of the *Charter*

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Two prongs:

- Right to security of the person; and
- Principles of fundamental justice.

# *Bedford*

## **Right To Security Of The Person**

- The prohibitions do not merely impose conditions on how sex trade workers operate.
- Rather, they impose dangerous conditions on prostitution; preventing people engaged in a risky-but-legal activity from taking steps to protect themselves from risk.  
[para 60]

# ***Bedford***

## **Principles Of Fundamental Justice**

Laws contravene the principles of fundamental justice when the means by which the state seeks to attain its objective is fundamentally flawed:

- Arbitrary;
- Overbroad; or
- Effects that are grossly disproportionate to the legislative goal. [para 105]

# SCC Decision

- All 3 provisions, primarily concerned with preventing public nuisance and exploitation, infringe the section 7 rights of sex trade workers by depriving them of security of the person in a manner that is not in accordance with the principles of fundamental justice.
- One year suspension of the declaration of invalidity (until December 20, 2014).

# ***Protection of Communities and Exploited Persons Act***

- Bill C-36, tabled June 4, 2014.

## **Stated Objectives:**

- Protecting those who sell their sexual services from exploitation;
- Protecting communities from the harms caused by prostitution; and
- Reducing the demand for sexual services.

# **Proposed New Prostitution-Related Offences**

**Purchasing sexual services** - Prohibit the purchase of sexual services and communicating in any place for that purpose.

# Proposed New Prostitution-Related Offences

**Receiving a financial or material benefit** - Prohibit profiting from the prostitution of others, including through businesses that sell the sexual services of others online or out of venues (escort agencies, massage parlours, etc.)

Would not apply to persons who have entered into legitimate living arrangements with people who sell sexual services, children or other dependants. Exceptions made for other non-exploitative relationships – i.e. pharmacists, accountants, security service providers etc.

# Proposed New Prostitution-Related Offences

**Advertising the sale of sexual services** - Prohibit advertising the sale of others' sexual services in print media or on the Internet.

Exemption where advertising one's own sexual services.

# **Proposed New Prostitution-Related Offences**

**Communicating for the purpose of selling sexual services in public places where a child could reasonably be expected to be present.**

People who offer sex for consideration criminally liable where communicating in a public place for the purpose of selling their own sexual services where a person under the age of 18 could reasonably be expected to be present.

# Programs to Address Prostitution

- \$20 million in new funding, including to support grassroots organizations dealing with the most vulnerable.
- Emphasis on funding programs that can help individuals exit prostitution.

# Our Challenge for Today

- To understand what is already in place in Ottawa;
- To think through the changes to come;
- To recommend expansions / improvements to services;
- To build local relationships; and
- To agree that everyone's safety matters.