

Canadian Case Citation:

***Bedford v Canada*, 2010 ONSC 4264**

In 2010, three current and or former sex workers (Bedford, Lebovitch, and Scott) brought an application to the Ontario Superior Court for a declaration that three provisions in the Canadian *Criminal Code* targeting adult prostitution were unconstitutional: 1) s. 210 regarding the offence of keeping a common bawdy-house, 2) s. 212(1)(j) regarding the offence of living wholly or in part on the avails of prostitution of another person, and 3) s. 213(1)(c) regarding the offence of communicating or attempting to communication in public for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute. The claimants argued that these provisions violate s. 7 of the Canadian *Charter of Rights and Freedoms* – the right to life, liberty and security of the person and that the communication provision also violates s. 2(b) – the right to freedom of expression. Justice Susan Himel of the ONSC ruled that all of the impugned provisions should be struck down. However, the decision has since been partially overturned on appeal. The 2012 Ontario Court of Appeal (ONCA) decision only awarded a partial victory for sex workers. The ONCA's decision will most likely be appealed to the Supreme Court of Canada.

The ONSC judgment placed great consideration on the practical effect of these provisions – that the only way to engage in the legal act of selling sex in Canada without risking criminal sanction is through “out-call” work, which involves meeting clients at indoor locations. The claimants also argue that the impugned provisions prohibit any safety measures that should be associated with this form of engagement (i.e. hiring security personnel, drivers, screening clients). The application was supported by over 25,000 pages of evidence in 88 volumes, which included testimonies from 8 prostitutes that provided first hand evidence showing increased violence when working on the streets with poor management. On the other hand, the Crown argued that risks were inherent to prostitution itself, and adduced evidence from 9 prostitutes who were unable to draw any clear distinctions between the level of safety associated with prostitution conducted indoors or on the street. Overall, much of the evidence at case was in the form of affidavits, and cross-examination on those affidavits, from people affected by prostitution. Witnesses included current and former prostitutes, police officers, a Crown attorney, a representative of an organization that seeks to improve the safety and work conditions of prostitutes and to assist them in leaving the occupation, a politician concerned with victimization of street prostitutes, a journalist with a focus on sex trade etc. There was also extensive expert evidence on the social, political and economic aspects of prostitution in Canada, including a number of government reports and studies (federal, provincial, and municipal) produced within the last 25 years. Evidence regarding the social and legal context of prostitution in international jurisdictions such as the Netherlands, New Zealand, Germany, Australia, Sweden, and the United

States were also considered. The discussion of such evidence alone occupied 29 pages of the 130-page judgment.