

Unforeseen Virtue of the Landmark Decision in *R v. Bedford*

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The COVID-19 pandemic has led to many different changes to our everyday lives. The delivery of services has changed for many different sectors. Service providers in a variety of service sectors have increased the risk to their person to continue to deliver their services and continue to earn a living. Some people have observed that sex workers may face a unique increase to risk during the COVID-19 crisis. My article will outline the Supreme Court's decision in *R v. Bedford*, discuss how COVID-19 may impact sex-workers and how the two are interrelated.

In 2013, the Supreme Court of Canada ruled that provisions of the *Criminal Code* that dealt with prostitution were unconstitutional. *Criminal Code* s. 210 dealing with the keeping of a bawdy house, s. 212 (1)(j) dealing with living off the avails of prostitution, and s. 213(1)(c) communication in public for the purpose of prostitution, were all found to violate the s.7 rights to security of the person under the *Charter of Rights and Freedoms*. The court determined these provisions increased risks to sex workers, a group already at risk, and that a group performing a legal service were entitled to a level of safety under s. 7 of the *Charter*.

The keeping of a common bawdy house provision prevented sex workers from working at a fixed address, which is much safer than working on the street. The living off the avails of prostitution provision did not distinguish between those exploiting sex workers and those who could benefit sex workers (i.e. drivers and security guards). Communicating in public for the purposes of prostitution was found to restrict sex workers the ability to screen their clients. Without the ability to arrange the interaction, sex workers could not adequately screen their clients or negotiate the arrangement (i.e. safe sex practices or setting). The increase to risks created by these provisions were found to be grossly disproportionate to their intended benefits and were found to be unconstitutional.

Sex workers often face serious disadvantages as many face feats like poverty, addictions and mental health issues. The provisions of the *Criminal Code* prevented sex workers from controlling key aspects of their practice which put already vulnerable people at an even greater risk. The risk to vulnerable persons in already high-risk industry increases even more during a global pandemic. In Nina Grossman's article, "Sex workers face new risk during Covid-19 pandemic," Grossman reports multiple ways in which sex workers may be put at greater risk during times of health crisis. The first and most obvious being the risk that sex-workers may contract and transmit the virus. Many sex workers, already economically vulnerable members of the community, may not be able to opt out of working during a pandemic, especially undocumented sex workers who may not be able to apply for government relief.

It could be argued that the risk of transmission might be lowered due in part to changes to practice, made possible by the decision in *Bedford*. In Grossman's article, a condo owner who rents some of her condos to sex workers, cleans and disinfects the condos between uses, in attempts of lowering the risk of transmission between different sex workers and clients. These precautions may not have been available, if the former *Criminal Code* provisions still existed.

Keeping of a common bawdy house provisions may have prevented this landowner from renting to the sex workers. Further, the landowner may not have cleaned if she could not have been

remunerated for doing so, under the living off the avails of prostitution provision. Though not enough to eliminate the risk of transmission entirely, these examples are positive practices that better ensure the safety of some sex workers.

Risk to sex workers may also be increased by the recent reduction in their most lucrative client base, men over 50 years old. Grossmans' article mentions a concern held by sex workers that this clientele segment might be reduced, due to being at a higher risk of contracting COVID-19. The reduction in this client bracket may lead to desperation on the part of sex worker and may result in their choosing to deal with clients who pose risk to the sex worker. In instances like these, it is important for these sex workers to have security measures in place. This would not have been legal had the old legislation been in effect. Further, when dealing with potentially high-risk clients, it is important to screen the clients and negotiate arrangements that reduce the likelihood of violence and/or viral transmission. These negotiations would also not have been possible if legislation still prevented public communication for the purposes of prostitution.

Unfortunately, many of the most vulnerable members of the sex work community may not benefit from post *Bedford* changes during the COVID-19 pandemic. Though many of these workers do not have access to the resources available to others within the sex work industry, the legislative changes are very positively benefitting some. The Supreme Court may not have contemplated a lowered risk of viral transmission to sex workers during a global pandemic, but nonetheless, their decision was intended to benefit those at high-risk.