SCC File No. 41017

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ALBERTA COURT OF APPEAL)

B E T W E E N:

MIKHAIL KLOUBAKOV and HICHAM MOUSTAINE

Appellants

-and-

HIS MAJESTY THE KING

Respondent

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, WOMEN'S EQUALITY COALITION, CHRISTIAN LEGAL FELLOWSHIP, WOMEN'S LEGAL EDUCATION AND ACTION FUND INC., AMNESTY INTERNATIONAL, SEXUAL HEALTH COALITION, CANADIAN CIVIL LIBERTIES ASSOCIATION, TIFFANY ANWAR, DAVIS ASPER CENTRE OF CONSTITUTIONAL RIGHTS, ONTARIO COALITION OF RAPE CRISIS CENTRES, EVANGELICAL FELLOWSHIP OF CANADA AND ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Interveners

FACTUM OF THE INTERVENER, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Pursuant to Rule 37 of the *Rules of the Supreme Court of Canada*, SOR/2002-156

KASTNER KO LLP
55 University Avenue, Suite 1800
Toronto, ON M5J 2H7

Akosua Matthews, Ruthie Wellen

Tel: 416-655-3044
Fax: 416-981-7453
amatthews@kastnerko.com, rwellen@kastnerko.com

Counsel for the Intervener,
British Columbia Civil Liberties Association (BCCLA)

ORIGINAL TO:

REGISTRAR OF THIS COURT

COPIES TO:

GUNN LAW GROUP
11210-142 Street NW
Edmonton, AB T5M 1T9

Shannon Gunn Emery

Tel: 780-488-4460
Fax: 780-488-4783
semery@gunnlawgroup.ca

Counsel for the Appellant,
Mikhail Kloubakov

GOLDBLATT PARTNERS LLP
1400-270 Albert Street
Ottawa, ON K1P 5G8

Benjamin Piper

Tel: 613-482-2459
Fax: 613-235-3041
bpiper@goldblattpartners.com

Agent for the Appellant,
Mikhail Kloubakov

ARIAL LAW
510 5th Street SW
Suite 820
Calgary, AB T2P 3S2

Marie Kimberly Arial

Tel: 587-387-2797
kim@ariallaw.com

Counsel for the Appellant,
Hicham Moustaine

GOLDBLATT PARTNERS LLP
1400-270 Albert Street
Ottawa, ON K1P 5G8

Benjamin Piper

Tel: 613-482-2459
Fax: 613-235-3041
bpiper@goldblattpartners.com

Agent for the Appellant,
Hicham Moustaine

ALBERTA CROWN PROSECUTION SERVICE
Government of Alberta
Appeal Solicitors, Ministry of Justice
3rd Floor, Bowker Building
9833 109th Street
Edmonton, AB T5K 2E8

Matthew Griener, Katherine Fraser

Tel: 780-422-5402
Fax: 780-422-1106
Matthew.griener@gov.ab.ca,
Katherine.fraser@gov.ab.ca

Counsel for the Respondent

GOWLING WLG (CANADA) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: 613-786-8695
Fax: 613-788-3509
Lynne.watt@gowlingwlg.com

Agent for the Respondent

DEPARTMENT OF JUSTICE – CANADA
120 Adelaide West
Toronto, ON M5H 1T1

John Provart

Tel: 647-256-0784
John.provart@justice.ca

Counsel for the Intervener,
Attorney General of Canada

DEPARTMENT OF JUSTICE – CANADA
50 O'Connor Street
Suite 500, Room 557
Ottawa, ON K1A 0H8

Christopher Rupar

Tel: 613-670-6290
Fax: 613-954-1920
Christopher.rupar@justice.gc.ca

Agent for the Intervener,
Attorney General of Canada

ATTORNEY GENERAL OF ONTARIO
720 Bay Street, 10th Floor
Toronto, ON M7A 2S9

Deborah Krick

Tel: 416-326-4600
Fax: 416-326-4656
Deborah.krick@ontario.ca

Counsel for the Intervener,
Attorney General of Ontario

PUBLIC PROSECUTION SERVICE OF NOVA SCOTIA
700-1625 Grafton Street
Halifax, NS B3J 3K5

Erica Koresawa

Tel: 902-424-2864
Fax: 902-424-8440
Mark.scott@novascotia.ca

Counsel for the Intervener,
Attorney General of Nova Scotia

GOWLING WLG (CANADA) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: 613-786-8695
Fax: 613-788-3509
Lynne.watt@gowlingwlg.com

Agent for the Intervener,
Attorney General of Nova Scotia

ATTORNEY GENERAL OF BRITISH COLUMBIA
Criminal Appeals and Special Prosecutions
3rd Floor, 940 Blanshard Street
Victoria, BC V8W 3E6

Lara Vizsolyi

Tel: 778-974-5144
Fax: 250-387-4262
Lara.vizsolyi@gov.bc.ca

Counsel for the Intervener, Attorney General of British Columbia

GOWLING WLG (CANADA) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

Matthew Estabrooks

Tel: 613-786-0211
Fax: 613-788-3573
Matthew.estabrooks@gowlingwlg.com

Agent for the Intervener, Attorney General of British Columbia

ATTORNEY GENERAL OF MANITOBA
Department of Justice
Constitutional Law section
1205-405 Broadway
Winnipeg, MB R3C 3L6

Charles Murray

Tel: 204-330-2268
Fax: 204-945-0053
Charles.murray@gov.mb.ca

Counsel for the Intervenor, Attorney General of Manitoba

GOWLING WLG (CANADA) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: 613-786-8695
Fax: 613-788-3509
Lynne.watt@gowlingwlg.com

Agent for the Intervener, Attorney General of Manitoba

UNIVERSITY OF BRITISH COLUMBIA PETER A. ALLARD SCHOOL OF LAW
1822 East Mall
Vancouver, BC V6T 1Z1

Janine Benedet, Gwendoline Allison

Tel: (604) 822-0637
benedet@allard.ubc.ca

Counsel for the Intervener, Vancouver Rape Relief Society, Concentration des

SUPREME ADVOCACY LLP
340 Gilmour Street
Suite 100
Ottawa, ON K2P 0R3

Marie-France Major

Tel: 613-695-8855 Ext. 102
Fax: 613-695-8580
mfmajor@supremeadvocacy.ca

luttes contre l'exploitation sexuelle, Aboriginal Women's Action Network, Formerly Exploited Voices Now Educating, London Abused Women's Centre and Strength in Sisterhood (Women's Equality Coalition)

Agent for the Intervener, Vancouver Rape Relief Society, Concentration des luttes contre l'exploitation sexuelle, Aboriginal Women's Action Network, Formerly Exploited Voices Now Educating, London Abused Women's Centre and Strength in Sisterhood (Women's Equality Coalition)

CHRISTIAN LEGAL FELLOWSHIP
285 King Street
Suite 202
London, ON N6B 3M6

Derek B.M. Ross, Vivian W.S. Clemence, André M. Schutten

Tel: (519) 601-4099
execdir@christianlegalfellowship.org

Counsel for the Intervener, Christian Legal Fellowship

SUPREME ADVOCACY LLP
340 Gilmour Street
Suite 100
Ottawa, ON K2P 0R3

Marie-France Major

Tel: 613-695-8855 Ext. 102
Fax: 613-695-8580
mfmajor@supremeadvocacy.ca

Agent for the Intervener, Christian Legal Fellowship

STOCKWOODS LLP
Toronto-Dominion Centre North Tower
Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Andrea Gonsalves, Alexandra Heine, Olivia Eng

Tel: (416) 593-3497
andreag@stockwoods.ca

Counsel for the Intervener, Women's Legal Education and Action Fund Inc.

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: (613) 787-3562
neffendi@blg.com

Agent for the Intervener, Women's Legal Education and Action Fund Inc.

CAVALLUZZO LLP BARRISTERS & SOLICITORS
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Danielle Bisnar

Tel: (416) 964-5535
dbisnar@cavalluzzo.com

Counsel for the Intervener, Amnesty International, Canadian Section (English Speaking)

HIV & AIDS LEGAL CLINIC ONTARIO (HALCO)
1400-55 University Avenue
Toronto, ON M5J 2H7

Robin Nobleman, Geetha Philipupillai, Laurent Trépanier Capistran

Tel: (416) 340-7790 Ext. 4043
Robin.nobleman@halco.clcj.ca

Counsel for the Intervener, HIV & AIDS Legal Clinic Ontario, Coalition des organismes communautaires québécois de lutte contre le Sida and Action Canada for Sexual Health and Rights ("Sexual Health Coalition")

GOLDBLATT PARTNERS LLP
1400-270 Albert Street
Ottawa, ON K1P 5G8

Colleen Bauman

Tel: (613) 482-2459
cbauman@goldblattpartners.com

Agent for the Intervener, HIV & AIDS Legal Clinic Ontario, Coalition des organismes communautaires québécois de lutte contre le Sida and Action Canada for Sexual Health and Rights ("Sexual Health Coalition")

LAX O'SULLIVAN LISUS GOTTLIEB LLP
145 King Street West
Suite 2750
Toronto, ON M5H 1J8

Jonathan C. Lisus, Zain Naqi, Ronke Akinyemi

Tel: (416) 598-3730

CONWAY BAXTER WILSON LLP
400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9

Abdalla Barqawi

Tel: (613) 288-0149
abarqawi@conwaylitigation.ca

jlisus@lolg.ca

Counsel for the Intervener, Canadian Civil Liberties Association

Agent for the Intervener, Canadian Civil Liberties Association

MCCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

H. Michael Rosenberg, Alana Robert, Holly Kallmeyer, James Lockyer, Jeffrey Hartman

Tel: (416) 601-7831
mrosenberg@mccarthy.ca

Counsel for the Intervener, Tiffany Anwar

STOCKWOODS LLP
TD North Tower
4130-77 King Street W, PO Box 140
Toronto, ON M5K 1H1

Gerald Chan

Tel: (416) 593-1617
geraldc@stockwoods.ca

Counsel for the Intervener, David Asper Centre of Constitutional Rights

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: (613) 787-3562
neffendi@blg.com

Agent for the Intervener, David Asper Centre of Constitutional Rights

MARCUS MCCANN PROFESSIONAL CORPORATION
2008-401 Bay Street
P.O. Box 80
Toronto, ON M5H 2Y4

Marcus McCann

Tel: (437) 222-7356

marcus@marcussmccannlaw.ca

Counsel for the Intervener, Ontario Coalition of Rape Crisis Centres

ACACIA GROUP
38 Auriga Dr, Suite 200
Ottawa, ON K2E 8A5

Garifalia C. Milousis, John Sikkema

Tel: (613) 221-5895
lia@acaciagroup.ca

Counsel for the Intervener, Evangelical Fellowship of Canada and Association for Reformed Political Action (ARPA) Canada

TABLE OF CONTENTS

PART I – OVERVIEW

1. The restrictions imposed through the *Protection of Communities and Exploited Persons Act* ("*PCEPA*")[1] arbitrarily undermine sex workers' autonomy and impose dangerous conditions, contrary to *Bedford*.[2]

2. By criminalizing sex work and limiting sex workers to non-profit work associations – an unrealistic hypothetical – *PCEPA* restricts sex workers from assessing and addressing their protected safety needs.

3. As such, *PCEPA* confronts sex workers with an untenable choice: work alone, placing themselves in materially dangerous conditions, or risk criminalization by choosing to work with others for their own safety and wellbeing.

4. This regime compromises sex worker's section 7 rights to liberty and security of person, protected by the *Canadian Charter of Rights and Freedoms* ("the *Charter*"), in quite similar ways to those identified in *Bedford SCC,* and are not in accordance with the principles of fundamental justice.

5. The BCCLA's submission focuses on three main points:

    a. The impugned provisions comprehensively prohibit sex workers from associating with for-profit enterprises, on the assumption that such relationships are inherently exploitative.

    b. In effect, the impugned provisions prevent sex workers from accessing the critical safety measures identified by this Court in Bedford SCC, infringing liberty and security of person rights under s. 7 of the *Charter*; and

    c. The deprivations caused by the impugned provisions are not in accordance with any of the three principles of fundamental justice.

---

[1] *PCEPA's* underlying rationale is detailed in the *Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act* ("**Technical Paper**").
[2] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII) ("***Bedford SCC***").

PART II – QUESTIONS IN ISSUE

6. Do the impugned provisions violate s. 7 of the *Charter* by: (1) causing deprivations to the right to life, liberty, or security of the person, and (2) doing so in a manner not in accordance with the principles of fundamental justice?

PART III –ARGUMENT

A. *PCEPA* criminalizes sex workers and prohibits their association with others

i. The impugned provisions criminalize sex work

7. This appeal[3] concerns the constitutionality of ss. 286.2 (the "material benefit provision") and 286.3 (the "procuring provision", collectively "the impugned provisions") of the *Criminal Code*, R.S.C., 1985, c. C-46 (the "*Code*").[4]

8. Despite the fact that this appeal concerns only two of the *Code* provisions enacted by *PCEPA*, the impact of these provisions cannot be assessed in isolation from the *PCEPA* regime as a whole, which forces all sex workers to work in a criminalized context.

9. Unlike in *Bedford SCC*, both the purchase and sale of sex work is now illegal. In particular, s. 286.1(1) of the *Code* prohibits obtaining or communicating with anyone for the purposes of obtaining sexual services for consideration,[5] and the material benefit provision prohibits anyone from receiving a benefit, directly or indirectly, from the purchase of sexual services.[6]

10. The procuring provision criminalizes anyone who either: (a) causes a person to offer or provide sexual services for consideration, or (b) recruits, holds, conceals, or harbours a person who offers or provides sexual services for consideration, or exercises control,

---

[3] *R v Kloubakov*, 2023 ABCA 287 (CanLII) ("***Kloubakov ABCA***").
[4] *Criminal Code*, RSC 1985, c C-46, ss. 282.2 and 286.3 ("***Code***").
[5] ***Code***, s. 286.1(1). Note: the term "consideration" is not defined in the *Code*. The Technical Paper sets the broadest possible standard for "consideration" in stating: "a contract or agreement, whether express or implied, for a specific sexual service in return for some form of consideration is required."
[6] ***Code***, s. 286.2.

direction, or influence over a person who offers or provides sexual services for consideration.[7]

11. Under *PCEPA,* sex workers are immunized from prosecution for offences related to the sale of their own sexual services for consideration.[8] However, they can still be prosecuted as third parties, or for their association with any aspect of a commercial enterprise, by virtue of the material benefit and procuring provisions.

12. Accordingly, the notion of asymmetrical criminalization advanced by the Respondent is illusory.

ii. The impugned provisions criminalize safety-enhancing commercial relationships

13. The impugned provisions criminalize both sex workers and third parties for their association with commercial-for-profit services, even those that are safety-enhancing. Accordingly, the regime does not correct the constitutional defects identified in *Bedford SCC,* but re-creates them.

14. The "living on the avails of prostitution" provision was struck down in *Bedford SCC* for depriving sex workers of security of the person in a manner that was overbroad to the law's objectives.[9] In particular, this Court determined that the "living on the avails" provision was intended to "target pimps and the parasitic, exploitative conduct in which they engage,"[10] but in effect, it prohibited sex workers from engaging in commercial relationships that were critical to protecting their safety and security.[11]

15. The "bawdy house" and "communicating in public" provisions were struck for depriving sex workers of security of the person in a manner that was grossly disproportionate to its objective of preventing community nuisance.[12]

---

[7] ***Code***, s. 286.3(1).
[8] ***Code,*** s. 286.5.
[9] ***Bedford SCC,*** at paras 140 - 142.
[10] ***Bedford SCC,*** at para. 137.
[11] ***Bedford SCC,*** at para. 142.
[12] ***Bedford SCC***, at para 134.

16. *PCEPA*'s "commercial enterprise" exception to the material benefit provision was the legislative response to the overbreadth concerns identified in *Bedford SCC*.[13]

17. However, in practice, the exception is illusory. Under the "commercial enterprise" exception, sex workers are prohibited from working in conjunction with commercial-for-profit enterprises, whether safety-enhancing or not. This restriction rests on *PCEPA*'s problematic presumption that all commercial relationships in the context of sex work are exploitative.[14] Sex workers must either work alone or establish non-profit cooperatives.[15]

18. It is this conflation of "exploitation" and "for-profit services" that is non-responsive to the constitutional guideposts established in *Bedford SCC*. This Court made an explicit distinction between commercial and harmful relationships and connects that critical distinction with the safety and security of sex workers:

> The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (for example, controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards). It also includes anyone involved in business with a prostitute, such as accountants or receptionists. In these ways, the law includes some conduct that bears no relation to its purpose of preventing the exploitation of prostitutes. The living on the avails provision is therefore overbroad.[16]

19. The same conflation of "exploitation" and "for-profit services" underlies the procuring provision.[17] The Alberta Court of Appeal's response to this conflation was to state that procuring must be done for the purpose of "facilitating an offence under s. 286.1," which it distinguished from the broader purpose of "facilitating commercial sex work".[18]

20. However, under *PCEPA*, there is no meaningful distinction between "facilitating an offence under s. 286.1" and "facilitating commercial sex work." Section 286.1 broadly

---

[13] ***Bedford SCC***, at paras. 140 - 142.
[14] Note: none of *PCEPA's* provisions require demonstration of 'exploitation'. The presumption of inherent exploitation in sex work is stated in the preamble.
[15] ***Kloubakov ABCA***, at para. 69-70, citing *R. v. N.S.*, 2022 ONCA 160 (CanLII), ("***NSCA***") at para 76.
[16] ***Bedford SCC,*** at para. 142.
[17] *R. v. Anwar*, 2020 ONCJ 103 (CanLII), at para. 166.
[18] ***Kloubakov ABCA***, at paras. 80-81.

criminalizes the purchasing of sexual services for consideration. Therefore, *all commercial sex work* involves the commission of an offence under Section 286.1. This interpretation is supported by the wording of the provision and the Technical Paper, which defines the purpose requirement of the procuring provision as "for the purposes of prostitution."[19]

21. In summary, the impugned provisions comprehensively criminalize sex workers' meaningful association with for-profit third parties offering safety-enhancing services to sex workers.

B. The Impugned Provisions deprive sex workers of liberty and security of the person

i. The s. 7 rights at issue are not merely economic rights

22. While sex work arises within the sphere of work, the rights at issue extend far beyond the right to generate income by the means of one's choosing, as the Respondent asserts.[20]

23. Sex work involves continual and highly personal decisions regarding the use of one's body and the manner in which one engages in sexual activities. Among decisions related to the body, individual decisions regarding sexual activity – even if including an element of remuneration – must be regarded as falling within the sphere of personal decisions integral to individual autonomy and dignity.

24. In the unique context of sex work, the rights at issue necessarily overlap with and extend beyond the economic sphere to include core aspects of sex workers' personal and bodily autonomy and security of the person, which are entitled to protection under s. 7.[21]

ii. The impugned provisions create "dangerous conditions"

25. The *Charter*'s guarantee of liberty protects a sphere of autonomy in which individuals have the right to make fundamentally personal decisions for themselves, including decisions

---

[19] **Technical Paper**, at footnote 44.
[20] Factum of the Respondent, His Majesty the King ("**HMK Factum**"), at para. 52.
[21] *Carter v. Canada (Attorney General)*, 2015 SCC 5 ("***Carter***"), at para. 64; *R. v. Morgentaler*, [1988] 1 SCR 30; *Gosselin v. Québec (Attorney General)*, 2002 SCC 84, at paras. 311-313; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 131, at para. 131.

regarding the use of their bodies.[22] The security of the person interest protects a notion of personal autonomy involving control over one's bodily integrity, and the right to be free from state-imposed physical or psychological suffering.[23]

26. The BCCLA recognizes that the concept of autonomy does not connote an unconstrained or de-contextualized freedom to act. However, the state cannot invade the protected sphere of personal autonomy by imposing dangerous conditions on sex work, or by constraining sex workers' ability to make safety-enhancing decisions about the use of their bodies.[24] The impugned provisions do both.

27. Although the appellants are non-sex worker third parties, it is critical to understand that sex workers do act as third parties for other sex workers, and in so doing, offer safety-enhancing support and services. It is also critical to understand that third parties offer a wide range of services, including: transportation, sexual and emotional health services, training, safety and security screening, and general business services. These services assist sex workers with establishing the terms and conditions of sex work.

28. Despite acknowledging that many of the harms faced by sex workers are enacted by non-state actors, this Court in *Bedford SCC* concluded that "the violence of a john [or aggressors] does not diminish the role of the state in making… [sex workers] more vulnerable to that violence."[25]

29. Ultimately, the Alberta Court of Appeal has not disturbed the factual finding that the material benefit and procuring provisions engage the liberty and security interests of sex workers.[26]

---

[22] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, at para. 54 ("***Blencoe***"); ***Carter***, at para. 64.
[23] *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519, at pp. 587-88; *Godbout v. Longueuil (City of)*, [1997] 3 S.C.R. 844, at para. 66; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, at para. 58; ***Carter***, at para. 64; ***Blencoe***, at paras. 55-57.
[24] ***Bedford SCC***, at para. 60.
[25] ***Bedford SCC***, at para. 89.
[26] ***Kloubakov ABCA***, at paras. 30, 32.

30. The trial judge identified many examples of these violations, including:

a. Prevention from hiring third parties, including administrative staff, drivers and bodyguards, causing lack of protection in unsafe and emergency situations;[27]

b. Preventing working within or in association with organizations, isolating sex workers and putting them at a greater risk of violence;[28]

c. Prohibiting communicating regarding the terms and conditions of sex work, including the screening of clients or implementation of security protocols.[29] Sex workers cannot confirm the identity or reputation of their clients to make informed decisions regarding consent and safety risks.[30] This undermines sex workers' ability to establish consent. This also impacts sex workers' ability to seek and/or provide advice and consultation for consideration; and

d. Restricting indoor work and encouraging street-based sex work.[31]

31. In sum, the impugned provisions increase sex workers' vulnerability to violence, including criminalization and exploitation. The impugned provisions also force sex workers to risk criminalization for making personal decisions about consent, health, and safety.

32. This effective isolation from safety-enhancing third-party services, including those provided by other sex workers, imposes "dangerous conditions" on sex workers, contrary to s. 7 of the *Charter*.[32]

33. The proffered sex worker "cooperative" [33] is an illusory hypothetical, not a workaround to the harms caused by *PCEPA* The hypothetical relies on the falsity that sex work can occur

---

[27] *R v. Kloubakov*, 2021 ABQB 960 ("***Kloubakov ABQB***"), at paras. 18-19, 152.
[28] ***Kloubakov ABQB***, at para. 146.
[29] ***Kloubakov ABQB***, at paras. 130, 142, 220.
[30] ***Kloubakov ABQB***, at paras. 130, 220.
[31] ***Kloubakov ABQB***, at paras. 126-127, 220.
[32] ***Bedford SCC***, at para. 60; ***Carter***, at para. 62; *R. v. Malmo-Levine*, 2003 SCC 74, at paras. 88-89.
[33] See ***NSCA***, at paras. 70-84.

absent "some form of consideration[34] and the unrealistic assumption that such an arrangement would alleviate the risk of exploitation. In *Bedford SCC*, this Court essentially confirmed that this hypothetical is imaginary.[35]

iii. The deprivations to sex workers are not in accordance with the principles of fundamental justice.

34. The deprivations caused by the impugned provisions are not in accordance with any of the three principles of fundamental justice: arbitrariness, overbreadth and gross disproportionality.

35. This Court in *Bedford SCC* noted that "there is significant overlap between these three principles, and one law may properly be characterized by more than one of them[...]."[36] Ultimately, the principles of fundamental justice set out minimum requirements aimed at addressing two different evils:

> The first evil is the absence of a connection between the infringement of rights and what the law seeks to achieve - the situation where the law's deprivation of an individual's life, liberty or security of the person is not connected to the purpose of the law. The first evil is addressed by the norms against arbitrariness and overbreadth, which target the absence of connection between the laws purpose and the s. 7 deprivation.
>
> The second evil lives in depriving a person of life, liberty or security of the person in a manner that is grossly disproportionate to the law's objective. The law's impact on the s. 7 interest is connected to the purpose, but the impact is so severe that it violates our fundamental norms.[37]

36. Parliament was concerned with exploitation and the risk of violence to sex workers, but the impugned provisions paradoxically have the effect of exposing sex workers to criminalization and increasing the risk of exploitation and violence towards sex workers. The provisions bear no relationship to some of the stated purposes of the law, and therefore the effect is arbitrary.

---

[34] **Technical Paper**, at footnote 25.
[35] ***Bedford SCC***, at para. 142.
[36] ***Bedford SCC***, at para. 107.
[37] ***Bedford SCC***, at paras. 108-109.

37. The material impacts to sex workers' liberty and security of the person interests are grossly disproportionate for a legislative scheme with an objective of protecting sex workers and reducing their exposure to exploitation and violence, including criminality.

38. Parliament could have tailored the impugned provisions to allow sex workers to hire and associate within safety-enhancing third-party relationships for consideration. Instead, Parliament chose to conflate "exploitation" and "for-profit" relationships as one and the same, contrary to *Bedford SCC*. Sex workers who lack the desire, skills or resources to work independently are prevented from exploring the possibility of relationships with third-party managers on terms acceptable to the sex worker, to enhance the health and safety of the sex worker. Therefore the provisions are overly broad.

39. The sex worker safety objective cannot be deprioritized amongst other objectives and treated as ancillary. Nor can there be interpretations of the safety objective that undermine sex workers' autonomy and security of person.

40. *PCEPA* causes unjustified, demonstrated harm to sex workers, and has not reduced the demand for sexual services, minimized exploitation, or facilitated sex workers' access to safety measures. The impugned provisions are not minimally impairing or rationally connected to their objective, having regard to their measured impact. On balance, the deleterious effects of the laws outweigh any salutary effects.

PART IV – COSTS

41. The BCCLA does not seek costs and asks that no costs be ordered against it.

PART V – ORDER SOUGHT

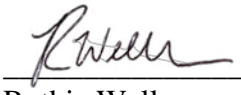
42. Pursuant to the Order of Justice Rowe dated May 27, 2024, the BCCLA has been granted permission to present oral argument at the hearing of this appeal for 5 minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED: July 8, 2024

SIGNED BY:

Akosua Matthews



Ruthie Wellen

KASTNER KO LLP

Counsel for the Intervener, the British Columbia Civil Liberties Association

PART VI – TABLE OF AUTHORITIES

Case:	Paragraph No.:
Canada (Attorney General) v. Bedford, 2013 SCC 72	1, 14, 15, 16, 18, 26, 28, 32, 33, 35
R v Kloubakov, 2023 ABCA 287	7, 17, 19, 29
R. v. N.S., 2022 ONCA 160	18, 33
R. v. Anwar, 2020 ONCJ 103	19
Carter v. Canada (Attorney General), 2015 SCC 5	24, 25, 32
R. v. Morgentaler, [1988] 1 SCR 30	24
Gosselin v. Québec (Attorney General), 2002 SCC 84	24
United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of), 2002 ABCA 131	24
Blencoe v. British Columbia (Human Rights Commission), 2000 SCC 44	25
Rodriguez v. British Columbia (Attorney General), [1993] 3 SCR 519	25
Godbout v. Longueuil (City of), [1997] 3 S.C.R. 844	25
New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46	25
R v. Kloubakov, 2021 ABQB 960	30
R. v. Malmo-Levine, 2003 SCC 74	32

Statutory Provision or Regulation:	Paragraph No.:
Criminal Code, RSC 1985, c C-46	
s. 282.2	7
s. 286.1(1)	9
s. 286.2	9
s. 286.3	7, 10
s. 286.5	11

Secondary Sources:	**Paragraph No.:**
Department of Justice Canada, "Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act"	1, 20, 33