Court File No: 34788

**IN THE SUPREME COURT OF CANADA**
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

**ATTORNEY GENERAL OF CANADA**
**ATTORNEY GENERAL OF ONTARIO**

Appellants
(Respondents on Cross-Appeal)

- and -

**TERRI JEAN BEDFORD, AMY LEBOVITCH and VALERIE SCOTT**

Respondents
(Appellants on Cross-Appeal)

- and -

**ATTORNEY GENERAL OF QUEBEC**
**ATTORNEY GENERAL OF BRITISH COLUMBIA**

Interveners

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# FACTUM OF THE INTERVENERS

**CANADIAN HIV/AIDS LEGAL NETWORK, BRITISH COLUMBIA CENTRE FOR EXCELLENCE IN HIV/AIDS and HIV & AIDS LEGAL CLINIC ONTARIO**
**(Pursuant to Rules 37 and 42 the *Rules of the Supreme Court of Canada*)**

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## PART I – OVERVIEW: THE INTERVENERS AND THE FACTS

1. The Canadian HIV/AIDS Legal Network ("Legal Network") is the only national organization in Canada that works exclusively on legal and policy issues related to HIV and is one of the world's leading expert organizations in this field. The British Columbia Centre for Excellence on HIV/AIDS ("BC-CfE") is Canada's largest HIV/AIDS organization providing treatment, research and education across British Columbia and is a world leader in cutting-edge HIV/AIDS research. The HIV & AIDS Legal Clinic Ontario ("HALCO") provides legal services to people living with HIV in Ontario, and is the only such legal clinic in Canada. HALCO has developed considerable expertise in the analysis of legal issues facing people living with and affected by HIV. Collectively, these organizations have an expertise in legal and policy issues related to HIV that is unmatched in Canada.

2. On September 28, 2010, the Honourable Madam Justice Himel of the Superior Court of Justice struck down ss. 210, 212(1)(j) and 213(1)(c) of the *Criminal Code* on the basis that they infringed the Respondents' rights to liberty and security of the person pursuant to s. 7 of the Canadian *Charter of Rights and Freedoms* ("*Charter*"), and that the infringement of those rights was not justified under s. 1 of the *Charter*. She also found that s. 213(1)(c) violated freedom of expression under s. 2(b) of the *Charter* and was not a reasonable limit under s. 1. On appeal, the Court of Appeal for Ontario upheld her finding that s. 210 was unconstitutional; overturned her decision regarding s. 212 (1)(j), but ruled that reading in the words "in circumstances of exploitation" to narrow the provision would remedy its unconstitutionality; and overturned her decision with respect to s. 213(1)(c), finding it to be constitutional.

3. The Legal Network, the BC-CfE and HALCO (the "HIV Coalition") respectfully submit that the clear and compelling evidence of the harm caused by the impugned provisions, individually and collectively, on the health of sex workers, including their vulnerability to HIV, supports the restoration of Justice Himel's original decision in its entirety. Specifically, the impugned provisions:

a) hinder sex workers' access to critical health care services, such as sexual and reproductive health education, HIV prevention and harm reduction services, as well as HIV and sexually transmitted infection (STI) testing, care, treatment and support; and

b) hamper sex workers' ability to control the conditions of their work, including safer sex practices and the use of condoms, thereby making their work less safe and exposing them to unnecessary harm.

## PART II – CONCISE STATEMENT OF POSITIONS REGARDING THE QUESTIONS IN ISSUE

4. Because the impugned provisions impede sex workers' ability to reduce their risks of harm, there is, *inter alia*, a breach of their s. 7 *Charter* rights. In addition, the prohibition on "communicating" in s. 213(1)(c) also breaches sex workers' freedom of expression, as guaranteed by s. 2(b) of the *Charter*. The HIV Coalition respectfully submits that these infringements are not justifiable under s. l of the *Charter* and that the Court of Appeal:

a) was correct to find that s. 210 is unconstitutional and was correct to strike the word "prostitution" from the definition of "common bawdy-house" in s. 197(1) as it applies to s. 210;

b) erred in concluding that it could remedy the constitutional problem posed by s. 212(1)(j) by reading in the words "in circumstances of exploitation," and should instead have struck down the provision in its entirety; and

c) erred in finding that the prohibition on "communicating" in s. 213(1)(c) does not offend the principles of fundamental justice and therefore does not infringe s. 7 of the *Charter* and further erred in failing to strike down s. 213(1)(c) for breaching s. 2(b) of the *Charter*.

## PART III - STATEMENT OF ARGUMENT

5. The HIV Coalition adopts and relies upon the law and argument respecting ss. 7, 2(b), and 1 of the *Charter* as set out in the submissions of the Respondents and makes the following additional submissions.

### *The impugned provisions deprive sex workers of full access to health care and increase their exposure to violence and harm*

6. As this Court affirmed in *Canada (Attorney General) v PHS Community Services Society*, "[w]here a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out."[1] Here, the uncontested evidence before Justice Himel was that such care includes safer sex and harm reduction supplies that are essential to protect sex workers' health — and potentially save lives; and that the impugned provisions, individually and collectively,

[1] *Canada (Attorney General) v PHS Community Services Society*, [2011] 3 S.C.R. 134 at para 93, **Book of Authorities of the Respondents/Appellants on Cross Appeal ["Resp. Auth."], Tab 5.**

limit sex workers' access to those supplies and result in inferior or inappropriate health care.

7. More specifically, the evidence showed that the effect of criminalization is to push the sex trade underground, making sex workers vulnerable to exploitation and violence, and marginalizing them from health care and social services, including access to HIV testing, education, prevention, care, treatment and support.[2] Police enforcement and harassment forces sex workers to work in remote areas that are often inaccessible to outreach workers. This prevents the distribution of safer sex supplies, which are necessary to protect sex workers and their clients from HIV and other STIs.[3] Where sex work is criminalized, police have also been known to seize condoms from sex workers, including those working on the street, as evidence of their intention to engage in prostitution[4] and brothel management have been afraid to stock condoms for fear these might be used as evidence of prostitution in the event of a police raid, both of which deter condom use.[5]

8. Moreover, in an environment where exchanging sex for consideration is legal, but virtually all activities associated with sex work are criminalized, sex workers who try to access health services are further stigmatized and discriminated against.[6] This Honourable Court has long recognized the connection between criminalization and stigmatization,[7] especially when the full force of the criminal law is brought to bear on an already stigmatized population.[8]

9. In coming to her conclusions, Justice Himel relied upon significant evidence demonstrating the manner in which the impugned provisions criminalizing sex work materially contribute to and legitimate the high incidence of violence and threats of violence that sex workers face, which can result in coerced unprotected or risky sexual services. As noted by the Feminist Coalition, which

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[2] House of Commons Subcommittee on Solicitation Laws Evidence 2005-03-30, testimony of Mandip Kharod (Volunteer Coordinator, Asian Society for the Intervention of AIDS*)*, **JAR, Vol 84, Tab 164V at p 25578.**
[3] House of Commons Subcommittee on Solicitation Laws Evidence 2005-03-30, testimony of Evan Smith (Coordinator, University of Toronto Genderqueer Group)*,* **JAR, Vol 83, Tab 164P at p 25361.**
[4] "Street Prostitution: Assessing the Impact of the Law: Calgary, Regina, Winnipeg," **JAR, Vol 8, Tab 34C, at pp 2100–2101**; "Prostitution, Power and Freedom," **JAR, Vol. 13, Tab 48F at p 3723**; and "Parliamentary Debates (Hansard) for Wednesday, 11 June 2003, Prostitution Reform Bill," **JAR, Vol 51, Tab 114W at p 15050 and 15054.**
[5] "Erotic Service/Erotic Dance Establishments: Two Types of Marginalized Labour," **JAR, Vol 11, Tab 43F at p. 3061** and "Healthy and unhealthy life styles of female brothel workers and call girls (private sex workers) in Sydney," **JAR, Vol 30, Tab 64M at p 8771.**
[6] "Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws," **JAR, Vol 24, Tab 55M at p 7150** and "Living in Community: Balancing Perspectives on Vancouver's Sex Industry" (Draft), **JAR, Vol 5, Tab 22B at p 1079.**
[7] *R v Beare; R v Higgins*, [1988] 2 SCR 387, Book **of Authorities of the Interveners ["Int. Auth."], Tab 1**.
[8] *R v Mabior*, 2012 SCC 47 at paras 19 & 67, **Int. Auth, Tab 2**.

represents women's shelters, rape crisis centers and other agencies across Canada responding to violence against women, sex work is not inherently violent but many sex workers experience violence that is attributable to their stigmatized, criminalized and marginalized status under the current legislative regime.[9] In effect, the impugned provisions expose sex workers to violence and make it even more challenging to insist on condom use with clients.[10]

10. In contrast with the Canadian approach, the decriminalization of sex work in a number of other countries has been associated with better and improved health.[11] In New Zealand, after the government decriminalized prostitution in all forms in 2003, sex workers exercised greater power to demand safer sex. Both brothel-based sex workers and sex workers working on the street who had previously not carried condoms or lubrication for fear of it being used as evidence for a conviction told the Prostitution Law Review Committee that they now felt safe being in possession of these items.[12] According to the United Nations Development Programme (UNDP), evidence from New Zealand and the Australian state of New South Wales indicates that decriminalization of sex work empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates. Very low STI prevalence has been maintained among sex workers in New Zealand and New South Wales, and HIV transmission within the context of sex work is understood to be extremely low or nonexistent.[13] This finding is, of course, not new to Canada; in 2006, a similar conclusion was reached by the Report on Solicitation Laws of the House of Commons' Standing Committee on Justice, whose conclusions were relied upon by both Justice Himel and the dissenting justices of the Court of Appeal.[14]

***The impugned provisions deprive sex workers of necessary control over working conditions thereby diminishing their ability to reduce their risk of HIV***

**Section 210 - 'Bawdy Houses'**

11. The HIV Coalition submits that the Court of Appeal was correct to uphold Justice Himel's decision to strike down s. 210 of the *Criminal Code.* The evidence before Justice Himel demonstrated

[9] Affidavit of Kara Gillies, **JAR, Vol 6, Tab 24 at p 1305.**
[10] Kate Shannon & Joanne Csete, "Violence, Condom Negotiation, and HIV/STI Risk Among Sex Workers" (2010) 304:5 JAMA 573, **Int Auth, Tab 3**.
[11] *Bedford v Canada*, 2010 ONSC 4264, see paras 178–213, **AR Vol I, Tab 3, pp 49-58** ["*Bedford SCJ*"].
[12] *Bedford SCJ*, supra at paras 191-193 and para 476, **AR Vol I, Tab 3, pp 53, 124.**
[13] John Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work* (Bangkok: United Nations Development Programme, 2012) at 6, **Int. Auth. Tab 3**.
[14] *Bedford SCJ*, supra at para 170, **AR Vol I, Tab 3, pp 47-48,** *Canada (Attorney General) v. Bedford*, 2012 ONCA 186 at paras 349 and 352 ["*Bedford OCA"*], **AR Vol II, Tab 7, pp 138-140.**

that working indoors and with others enhances sex workers' ability to control their working conditions, including the ability to negotiate safer sex and condom use.[15] The Court of Appeal upheld Justice Himel's conclusion, stating, "[T]he evidence before the application judge overwhelmingly indicated that indoor prostitution is safer than street prostitution."[16] The above-noted evidence, *inter alia,* warrants the finding of the courts below that s. 210 deprives sex workers of their constitutional right to security of the person and cannot be saved by s. 1.

**Section 212(1)(j)- 'Living off the Avails'**

12. The HIV Coalition submits that the Court of Appeal erred in concluding that it could remedy the constitutional defect in s. 212(1)(j) by reading in the words "in circumstances of exploitation." The evidence before Justice Himel was that this section impedes sex workers' ability to work together and engage in commercial relationships with others that promote workplace safety. It is clear that sex workers who are able to work collectively can organize and insist upon the availability and use of HIV prevention materials such as condoms. Management can also better promote sexual health when condoms are no longer seized as evidence of illegal activity. In a study of sex workers in Canada, research participants lamented the barrier erected by the procuring law to the provision of work materials (especially condoms) by management to workers, as such items could be used as evidence in criminal proceedings.[17]

13. Forcing sex workers to work in isolation, whether indoors or on the street, undermines their health and infringes their right to security of the person by, *inter alia*, significantly interfering with their ability to practice safer sex. Reading in the phrase "in circumstances of exploitation" does not remedy this problem; rather, the language is so broad that it will continue to limit the ability of sex workers to work with others for fear of contravening this provision.[18] Rather, decriminalization is the best approach. As noted by the UNDP, in decriminalized contexts such as New Zealand and New South Wales, the sex industry can be subject to the same general laws regarding workplace health and safety and anti-discrimination protections as other industries.[19]

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[15] *Bedford SCJ*, supra at para 325, **AR Vol 1, Tab 3, pp 89-91.**
[16] *Bedford OCA*, supra at para. 316, **AR Vol II, Tab 7, p 127**.
[17] "Bound By Law: How Canada's Protectionist Public Policies in the Areas of Both Rape and Prostitution Limit Women's Choices, Agency and Activities," **JAR, Vol 6, Tab 24A at p 1336.**
[18] *Bedford OCA*, supra at para 268, **AR Vol II, Tab 7, p 107.**
[19] John Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, supra at p 6, **Int. Auth. Tab 3.**

14. In light of the grossly disproportionate outcomes of the prohibition on living on the avails, particularly on sex workers' health, and the fact that such a provision is unnecessary given other protections in law against abuse and exploitation, Justice Himel's decision to strike down s. 212(1)(j) in its entirety should be restored.

**Section 213(1)(c) — 'Communicating'**

15. In striking down the bawdy house provision while upholding the "communicating" provision, the majority of the Court of Appeal has created a scenario whereby sex workers who work on the street (and whom are often the most marginalized) remain subject to criminalization while those with the means and desire to organize and work indoors could be sheltered from prosecution. This dichotomy defies common sense and creates an inequality — that will be disproportionately borne by Aboriginal, trans, and drug dependent sex workers, and sex workers with the least resources — that cannot be upheld by this Honourable Court.[20] In finding the bawdy house provisions unconstitutional, the Court of Appeal recognized that there is a very high homicide rate among sex workers and that the overwhelming majority of victims work on the street, where the rate of violence is much higher and the nature of it more extreme than for those working indoors.[21] However, that same evidence was not applied when considering the "communicating" provision. Properly considered, this evidence leads to one inevitable conclusion: the "communicating" provision is also grossly disproportionate and should be struck down.

16. Abundant evidence outlined in the factum of the Respondents at paragraphs 9 to 14 also supports Justice Himel's finding that face-to-face communication with prospective clients is a vital tool to enhance sex workers' safety. In the context of HIV, screening is indispensable to establish the types of activities in which a sex worker is willing to engage, including with respect to safer sex, and to gauging a prospective client's willingness to respect such limits on the services to be provided. For sex workers who wish to protect their — and their clients' — health by only practicing safer sex, communication is the sole tool that can be employed to negotiate these terms upfront.

17. The majority of the Court of Appeal also overlooked evidence that the communicating provision discourages sex workers from working together in an outdoor setting and forces them into isolated and dangerous areas, settings that expose sex workers to a greater risk of violence by

[20] *Bedford SCJ*, supra at paras 90, 165, 174 and 305 **AR Vol I, Tab 3, pp 98 and 99.**
[21] *Bedford OCA*, supra at para 207, **AR Vol II, Tab 7, p 85.**

diminishing the control they have over the conditions of their work, including with respect to safer sex. The HIV Coalition submits that the dissent by Justice MacPherson in the Court of Appeal succinctly outlines the errors in reasoning of the majority with regard to the "communicating" provision and urges this Court to restore Justice Himel's decision: the evidence amply demonstrates that the effects of s. 213(l)(c) are grossly disproportionate to its legislative objective and hence a violation of s. 7, which cannot be saved by s. 1.

18. The HIV Coalition further submits that the Court of Appeal for Ontario erred in failing to strike down s. 213(1)(c) for breaching s. 2(b) of the *Charter*. The communications criminalized by s. 213(1)(c) are not merely financial transactions, but also involve screening prospective clients and delineating professional boundaries. The evidence heard on the application showed that s. 213 (1)(c) hinders sex workers' ability to negotiate the services to be provided, including conditions for making their work safer, because sex workers and their clients were reluctant to take the time to fully work out expectations such as agreements on services to be provided, fees and condom use before they moved to a private location.[22]

19. This type of speech lies at the heart of the s. 2(b) guarantee. Justice Himel found as fact that s. 213(1)(c) curtails communication that "is capable of reducing the risk of harm to street-based prostitutes," thus impeding sex workers' expression for the purpose of guarding personal security[23] while also capturing communication that does not pose a social nuisance.[24] Because the communicating provision impairs sex workers' ability to communicate in order to minimize their risk of harm, Justice Himel found it did not constitute a minimal impairment of sex workers' freedom of expression.

20. The majority of the Court of Appeal relied heavily on the prevention of social nuisance in upholding the impugned provision. The HIV Coalition respectfully submits that the Court erred in so doing and adopts the submissions of the Respondent in this regard. In addition, in the context of HIV prevention, the deleterious effects of the communicating provision that s. 213(1)(c) poses are clear. Because of the fear of being detected by police when negotiating sexual transactions, sex workers on the street tend to reach agreements with clients hastily. This hinders their ability to negotiate safer

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[22] Affidavit of Eleanor Maticka-Tyndale, para 12, **JAR, Vol 12, Tab 45 at p 3094.**
[23] *Bedford SCJ*, supra at paras 460-461 and 471, **AR Vol I, Tab 3, pp 120, 122-123.**
[24] *Bedford SCJ*, supra at para 472, **AR Vol I, Tab 3, p 123.**

sex.[25] In light of this additional deleterious effect of the communicating provision, s. 213(1)(c) fails to meet the proportionality test in *Oakes* and is an unjustifiable limit on the right to freedom of expression.

**International Law, Human Rights and the *Charter***

21. Canada has ratified a number of international conventions creating binding legal obligations that must guide the interpretation and analysis of domestic law in this case. These include the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR"), which legally obliges Canada to take steps towards the progressive realization of sex workers' rights to work (Article 6), to enjoy just, favourable, safe and healthy working conditions (Article 7), and to the highest attainable standard of physical and mental health (Article 12), including HIV prevention, treatment, care and support.[26] The *International Covenant on Civil and Political Rights* ("ICCPR") legally obliges Canada to guarantee sex workers' rights to life (Article 6), liberty and security of the person (Article 9), freedom of expression (Article 19) and equality before the law and equal protection of the law without any discrimination on any ground (Article 26).[27] These rights animate the *Charter* rights to life, liberty and security of the person: they support a more robust interpretation of their content that (i) acknowledges the decision to engage in sex work is an act of personal autonomy that is protected by s. 7 and (ii) encompasses a state obligation to refrain from enacting laws that materially contribute to sex workers' health and safety risks.

22. Specific to women who do sex work, the *Convention on the Elimination of All Forms of Discrimination against Women* ("CEDAW") similarly obliges Canada to take all appropriate measures to ensure the protection of health and safety in working conditions (Article 11(1)(f)) and to repeal all national penal provisions that constitute discrimination against women (Article 2(g)).[28]

23. The Attorney General of Ontario incorrectly claims that CEDAW commits the Canadian government to eradicate sex work,[29] while the Women's Coalition for the Abolition of Prostitution

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[25] Affidavit of Cecilia Benoit, para 7, **JAR, Vol. 13, Tab 48 at p 3419.**
[26] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 21 UN GAOR Supp (No 16) at 49, 999 UNTS 171 ["ICESCR"], **Int. Auth. Tab 5**.
[27] *International Covenant on Civil and Political Rights*, 16 December 1966, 21 UN GAOR Supp (No 16) at 52, 999 UNTS 171 ["ICCPR"], **Int. Auth. Tab 6.**
[28] *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/46 ["CEDAW"], **Int. Auth. Tab 7.**
[29] Factum of the Attorney General of Canada at para 83.

similarly incorrectly asserts that international human rights obligations require Canada to "constrain those who exploit women in prostitution" by criminalizing those who purchase sex, common bawdy houses and those who live on the avails of sex work.[30]

24. While Article 6 of the Convention requires that States suppress the exploitation of prostitution of women,[31] CEDAW does not impose an obligation on States to criminalize prostitution, or practices associated with it such as communication, common bawdy houses or living on the avails of prostitution. CEDAW recognizes that the state obligations lie in reducing harm to women engaged in sex work and not necessarily reducing or eliminating the sex trade itself. The Committee on the Elimination of Discrimination against Women ("CEDAW Committee") — the body of independent experts that monitors the Convention's implementation — has not equated the purchase of sex with "exploitation" (of women) and has not found states that have decriminalized sex work (including New Zealand, which had decriminalized "living on the earnings of prostitution") to be in violation of the Convention, nor has it recommended that these States criminalize practices related to sex work.[32] Where sex work is illegal, the CEDAW Committee has recommended the decriminalization of prostitution and distinguished prostitution from the "exploitation of prostitution."[33]

25. Moreover, CEDAW confers a positive responsibility on States to protect sex workers' rights to be free from violence and threats to their health. According to CEDAW, "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."[34] On numerous occasions, the CEDAW Committee has noted its concern with discrimination and violence against sex workers and recommended legislation and other action

[30] Application for Leave to Intervene filed by the Women's Coalition for the Abolition of Prostitution at para 25.
[31] Article 6 of CEDAW provides: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."
[32] See, for example, Committee on the Elimination of Discrimination against Women ["CEDAW Committee"], *Concluding Observations of the Committee on the Elimination of Discrimination against Women: New Zealand*, 52nd Sess, CEDAW/C/NZL/CO/7, (2012) at para 25, **Int. Auth. Tab 8**;CEDAW Committee, *Combined second and third periodic reports: Greece*, 20th sess, CEDAW/C/GRC/2-3, (1999) at para 197, **Int. Auth. Tab 9**; and CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: The Netherlands*, 45th Sess, CEDAW/C/NLD/CO/5, (2010), **Int. Auth. Tab 10**.
[33] See, for example, CEDAW Committee, *Concluding comments by the Committee: China*, 20th Sess, CEDAW/C/SR.419-421, (1999), **Int. Auth. Tab 11**, which recommends at para 289 the "decriminalization of prostitution" and further urges the Chinese government at para 291 to prosecute all persons engaged in "trafficking and the *exploitation of prostitution*" [emphasis added] and CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Fiji*, 46th Sess, CEDAW/C/FJI/CO/4, (2010), **Int. Auth. Tab 12**, in which the Committee urges Fiji at para 25 to take concrete steps aimed at effectively "decriminalizing sex work."
[34] CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11th Sess, UN Doc A/47/38, (1992) at para 1 ["CEDAW General Recommendation No. 19"], **Int. Auth. Tab 13**.

to prevent such discrimination and violence and to promote safe working conditions.[35] This is in line with the CEDAW Committee's General Recommendation No. 19 on Violence against Women, in which the Committee notes that"[p]rostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence."[36]

26. The HIV Coalition respectfully submits that a concern for the health and welfare of sex workers is profoundly inconsistent with the criminalization of prostitution, which stigmatizes sex workers and gravely threatens their health and safety. Ideology and moral judgments about sex work should not be the basis for public policy. Rather, laws must be grounded in evidence and human rights. The overwhelming evidence before Justice Himel demonstrated that (1) the impugned provisions are unjustifiably harmful and (2) where sex work has been decriminalized, sex workers' human rights, health and safety have been advanced without deleterious consequences such as an escalation in public nuisance. Therefore, the HIV Coalition respectfully requests that this Honourable Court restore the decision of Justice Himel in its entirety.

**PART V – REQUEST FOR PERMISSION TO PRESENT ORAL ARGUMENT**

27. The HIV Coalition requests that it be permitted to present oral argument to the Court upon the hearing of this matter as oral submissions will allow for important amplification on these written submissions.

All of which is respectfully submitted, this 29th day of May, 2013.

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Jonathan Shime, Renée Lang, Megan Schwartzentruber, Richard Elliott and Ryan Peck,
Solicitors for the Interveners

[35]See, for example, CEDAW Committee, *Concluding observations on the combined seventh and eighth periodic reports of Hungary adopted by the Committee at its fifty fourth session*, 54thSess, CEDAW/C/HUN/CO/7-8, (2013) at paras 22–23, **Int. Auth. Tab 14**; CEDAW *Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan*, 42nd Sess, CEDAW/C/KGZ/CO/3, (2008) at para 43, **Int. Auth. Tab 15**; CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Fiji*, supra at para 24, **Int. Auth. Tab 12**; CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Russian Federation*, 46th Sess, CEDAW/C/USR/CO/7, (2010) at paras 28–29, **Int. Auth. Tab 16**; and CEDAW Committee, *Concluding comments by the Committee: China*, supra at paras 325–326, **Int. Auth. Tab 11**.

[36]CEDAW General Recommendation No. 19, supra at para 15, **Int. Auth. Tab 13.**

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