

Terri-Jean Bedford's Acceptance Speech

2014 OCLA Civil Liberties Award

November 14, 2014

Ottawa, Ontario

Thank you Isabelle. I see some former clients in the audience. How was today's caucus meeting? It's good to be back in Ottawa. Maybe this time I won't get thrown out. But in case I do, I want to first thank the Ontario Civil Liberties Association, executive and members alike, for this award and this event.

Yet, I have to admit I was surprised by the honour. After all, you guys believe in freedom. I believe in bondage. You like free speech. I gag my clients. You support equality. I preach female superiority. You promote humane treatment of prisoners. I torture mine. But why fuss over details?

Tonight I'm going to tell you about my journey through the criminal justice system and how and what I learned about civil liberties. The main point of my talk is that I did not travel and learn alone. I had and have a group of supporters who are steadfast. None lawyers. I will have some words about them. I will also talk about activists, activism, and those who govern us. And I have certainly had lawyers at my side. I'll talk about them first.

Val Scott, Amy Lebovitch and I probably got too much credit for striking down the prostitution laws. Our legal teams got too little credit. Let me drop a few names: Professor Alan Young, Marlys Edwardh, Ron Marzel, Stacey Nichols, Sabrina Pingitore, Kendra Reinhardt, Katrina Pacey, Daniel Sheppard and other lawyers, and law students, many law students, who fought for our side directly and indirectly. The amount of work they did was staggering. They were hardly paid, if paid. They could have made money hand over fist using their talents elsewhere. Their opposition, acting as lackeys for the governments of Canada and Ontario were overpaid, under-worked and accumulated defined pension credits indexed to inflation.

For 20 years I have been fighting, and my lawyers have been fighting on my behalf, against the laws that were struck down once and for all last year. In my youth I was too poor and lacked the support to contemplate challenging laws, or even defending myself in court. But in 1994, when I was raided in Thornhill that changed. I had support. I took a position. I was selling role play and refused to sell sex. Yet I was raided and charged as a prostitute. I, and I might add, my four fellow defendants, entered not guilty pleas. That alone got their charges dropped. I was able to fight on.

David O'Connor represented me at my bail hearing and did a good job. The late Ken Danson began my defense preparations and Morris Manning took over from him. My supporters recommended that change and Ken was supportive. Ken told me, even after he was replaced, "Terri, you can't plead guilty. Promise me you won't". Morris had the charges thrown out because they were too vague. Unfortunately that did not hold up on appeal. Murray Klippenstein took over. Murray has since risen to prominence. He worked with the highly regarded Charlie Campbell and was advised by Paula Rochman and assisted by Wendy Snelgrove. That was in part because I and my supporters felt that lawyers with a reputation as activists were going to be important as the matter became a high profile battle of attrition. During this time corporate lawyer George Callahan, a true gentleman and pit bull as the situation required, assisted me in ensuring my private affairs were in order. He also joined Klippenstein's team. At trial the team was disqualified. They were ruled in conflict because they represented all the accused together, but only after the charges on those other than me were dropped.

Fortunately, Osgoode Professor Alan Young signed on as an advisor to the team and was ready to take over if the Klippenstein team was disqualified, and he did. He was assisted by lawyer Leah Daniels, who taught at Seneca, when my trial finally got under way in 1998. They spent all summer on the case and had a team of students assisting them. They flew in experts and prepared an elaborate defense.

It was a barn-burner of a trial. All the major networks staked out the courthouse in Newmarket, wherever that is. The trial went on for weeks and the questions to be decided, as some reporters said, were as fundamental as those raised over a decade later in the recent Supreme Court decision – in my view more fundamental. The media treated it as front page news, and many of the spectators attended the entire trial for research purposes. Judge Bogusky had a landmark case and the country expected a landmark ruling after a twelve day trial, probably a long written decision which would work its way through the higher courts. He had a few weeks after the close of the trial before he gave his decision.

So what did Bogusky do? He gave a short oral decision. He said the reporters and spectators there had to make a living and were in a hurry to leave. He said there was no reason to rule on what was illegal between consenting adults in private that supported my conviction. The reasons he gave for convicting me were so weak that he was ridiculed in the media. No appeal court that was not rigged would uphold such a disgusting miscarriage of justice. He said the misuse of the search warrant was an understandable reaction of young bucks. Rosie DiManno finished off his reputation for good in her column in the Toronto Star. When I went for my sentencing I faced a broken old man who was angry and humiliated because he got what he deserved. He had

become a laughing stock. But it was no laughing matter. He ran his court like it was the time of Stalin. To this day, I do not see a basis for the conviction.

But wait, it gets worse. Professor Young and Paul Burstein did the appeal in 1999. Well, Judge Finlayson of the Ontario Court of Appeal wrote the worst decision in its history. Read it some time. It was so poor, lawyers told me, that it meant that a stripper or waitress could be charged as a prostitute and it was almost impossible to have a search warrant that could be challenged. It was so poor that judges afterward threw out prostitution and bawdy house charges simply because my conviction and appeal decision were such garbage that they became precedents to cite when acquitting. He lied about evidence. He saw absolutely no merit in my appeal. Lawyers were alarmed by his decision. So were judges. Ever wondered why prostitution convictions have fallen steadily since, despite a rising population and growth of the sex trade? Answer in part, Finlayson's decision.

Some of this was pointed out by now Judge David Corbett, who sought leave to appeal to the Supreme Court. He worked with Lucy McSweeney and Timothy Banks, then an articling student, when David prepared his masterful factum in 2000. Unfortunately it was not heard. Corbett needed all his abilities just to find the words to explain why Finlayson's decision was so appalling. The Crown's Reply was as bad as Corbett's appeal factum was good. No justice. But wait. Look at what happened in the years after.

Professor Young remained active for me. When I reopened in downtown Toronto just after my conviction he asked the police, in writing, if they had any objection to what I was doing, which was identical to Thornhill. Well, I was open four years and even gave media tours. No raid, no trial. What a contrast. In York Region the police tore my place apart, broke laws and so on. The Crown came at us with full force in a battle of attrition. The judge, and the appeal court, in a manner Stalin would have approved, produced a conviction and fined me \$3,000. The legal fees and legal time amounted to a king's ransom. The property values in the area of the raid fell by hundreds of thousands of dollars per house. I had no place to live and no means of support. Compare that to the Bondage Hotel in Toronto. No investigation. No raid. No trial. And so forth. Who, I ask you who, decides the difference? And there were other civil liberties issues that arose during all this. But I have spoken about those in my memoirs.

But lawyers were not only at my side to fight charges. When I was in business again another lawyer, Pierre Cloutier, advised me on and assisted me in the handling of the administrative matters of my business, like registration and minute books and so forth. In 2011 I published my memoirs and got help from, you guessed it, a lawyer. Sender Herschorn and his staff were wonderful in ensuring I was within the law in writing the

book, in what I said in the book and in advising me on drafts. He wrote to those mentioned in the drafts and sent them copies and made sure that no one had grounds to sue me. He also helped me with the writing and was encouraging throughout. He assisted me in private legal matters as well.

So you see, there is a great deal that lawyers can do for their clients in the sex trade, or those considering entering it, other than just react to charges or arrests. Lawyers can act proactively. So can non-lawyers with legal training, such as paralegals or law students or case managers from law offices.

All this moves me to speak about what I call secret rules that exist in the Canadian criminal justice system. Here are a few. Secret rule: search warrants are not just to gather evidence. Secret rule: each defendant must have his or her own lawyer to fight a charge, so if not rich likely cannot fight. Secret rule: legal aid given to those charged is not viable in court for a proper defense. Secret rule: if you do raise the funds or help to fight they come after you with all guns as punishment. Secret rule: your resources are better spent anticipating and on moving on after a bust and ensuring those busted are expendable. Secret rule: laws are left vague so authorities don't have to account for their actions. Secret rule: constitutional challenges are so expensive that it can be decades before long due challenges are ever brought forward. The prostitution laws ruled unconstitutional in 2010, 2012 and 2013 were unconstitutional 20 or more years before they were challenged. Secret rule: there is window dressing to obscure all these secret rules. Things like credit for time served, legal aid, charges not standing up because of civil liberties violations are all cited by governments like Mr. Harper's as evidence that the system favours those charged.

Secret rules gave rise to a new organization: The Harper Brotherhood of Overpaid and Under-worked Trained Seals. Unless pressed by a scandal they do not speak out against wife beaters, workplace harassers, bullies of all types, dead beat dads, corporate thieves, polluters and I could go on. Organized crime has never had it easier because institutions and organizations that speak for people without means do not have the ear or heart of the Harper Brotherhood. Anyone belonging to a union, or who is a sex worker, or who is part of an anti-poverty group, or who belongs to an environmental group, or who is an intellectual, or even who is a judge is not being listened to. The Harper Brotherhood does not believe in accountability. They do not believe in transparency. They do not believe in open debate. They are creating a Canada where young people see laws made for the wrong reasons and so are all the more tempted not to respect or obey the law.

I say again and again that I cannot comment on the government's policies on external affairs, the economy or on what it is doing to protect the environment. I only comment on their policies in areas where I am informed properly. But if what I see in those areas is going on elsewhere, I have to wonder how patriotic Mr. Harper and his brotherhood of trained seals are.

Is it patriotic if laws passed are unconstitutional, or contrary to Canada's values as laid out by the Supreme Court? Is it patriotic to focus on length of sentences and ignore overcrowding in prisons? Is it patriotic to ignore the misuse of warrants? Is it patriotic to ignore the underfunding of legal aid? Ignore spousal abuse? Ignore the shortage of shelters for women, or of shelters that accept family pets so the wife beaters can't use the family pet as a hostage? Is it patriotic to be caught by surprise by the sexual harassment scandals about women and minorities in the armed forces and the RCMP? And, my friends, is it patriotic to tell women they can only have sex if they have it for free?

We have seen, in Canada, not too many years ago, morality and vice squads arrest drinkers, gamblers, gays, lesbians, readers of adult pornography, and sellers and buyers of sex acts in the absence of a list of prohibited acts.

Since then we have also seen changes. Now, governments sell alcohol, sell lottery tickets, gays are openly gay, lesbians are openly lesbian, adult pornography is part of cable television packages and now, thanks to Bill C-36, legalization of the sale of sex acts has been formalized. Maybe one day, we will even get a list of what constitutes a sex act under Bill C-36. Until then, we may have to learn by trial and error.

These freedoms did not fall from the sky. They were fought for. But by whom? I dedicated my memoirs to The Dozen. None are lawyers. They are citizens who saw wrongs being done to someone they knew. So, first of all, they were mad at those who did it. Second, it alerted them to the broader issues and they got angrier. Third, they realized they could make a difference individually and collectively. Here is what I learned from them, and from the lawyers and activists with whom I have fought.

If there is a wrong committed by the authorities, find the enemy of your enemy and become their friend. Find people with money, time, numbers or compromising information. But above all, above all, make sure the effort is in the hands of capable, reliable people. We don't have lawyers doing court cases only because they care. They also have training on how to win and create change. The same must be true of the activists. I am an activist, but I am not a professional organizer or administrator. But I have around me people who have track records not only of activism, and maybe not

even that, but of corporate success, community leadership, academic and administrative expertise and political experience. Some have money. Some have time. The lesson is to put together a winning team to guide and even head the committed activists.

Let me also put it this way. If something is wrong and you want to do something about it, don't be shy or ashamed to ask everyone to ask everyone else. If the cause is just you will be surprised at how often you get what you want simply by asking for it, asking for it and asking for it. When enough good, capable, reliable people are asked enough they will attract more such people.

Let me come back to the lawyers for a moment. I have had about 20 lawyers represent me and/or my fellow defendants or plaintiffs. One of them, Professor Alan Young, should get the Order of Canada. Another, David Corbett, became Canada's first openly gay judge. Most of the others have distinguished themselves in ways too numerous to mention. But they all have had something in common, something very important. They fought for what was right, not profitable or career enhancing. Lawyers will devote part of their time to the high ideals of their profession, if asked. Lawyers get angry about some things too. I have many recollections of how incensed many of those representing me were at how the authorities have behaved. It is good to have a skilled and angry lawyer on your side, and one skill that is crucial is that he or she works well with the activists and supporters.

Now, sadly, one lawyer is the polar opposite of all that. Former justice minister Rob Nicholson. I want to tell you about one single moment in his life. I think it was a defining moment for both him and Canada. In March 2012 the Ontario Court of Appeal basically upheld Justice Himel's 2010 decision striking down the key laws against prostitution. A few weeks later Nicholson stood up in the House of Commons and said something to the effect that he was pleased to say that the government would appeal to the Supreme Court and would not discuss the matter further until the court had ruled.

Now let me tell you why I think that was a defining moment.

Reason number one. I think he knew there were merits to what Himel's decision contained, merits that he could have acted upon immediately – like allowing sex workers to hire off-duty police as security or work in groups from fixed locations, or support spouses and children who lived with them. I think he knew the laws were void for vagueness and could have made them clearer and fairer. I think he knew that other laws could, as Himel said, be used to control the worst aspects of sex work. And I think

he knew the laws themselves created dangers for women and resulted in deaths. I think he knew all this yet, with pleasure, as he put it, appealed the whole package.

Reason number two. He knew or should have known that it was against every principle his party stood for to lump consenting harmless adult behaviour in private, like women paying younger men for sex, men keeping women, women like me who enjoy punishing and humiliating men who pay me to do it, in with trafficked or abused women. That is not allowing for individual autonomy and responsibility for one's own decisions. I think he knew all this, yet, with pleasure, he appealed.

Reason number three. If I am wrong about the first two reasons it was definitely an even more defining moment. Perhaps he actually believed his stated position that the laws were constitutional, and that no changes were needed. If that is true, if he believed that nothing being said by all the judges, experts, sex workers and others had any merit at all. If he believed all that, he is a mental defective.

So, my friends, it was a defining moment because it was then and there that the justice minister proved himself and his government to be either liars or mental defectives. Three levels of court are there to show it.

Did, Nicholson, the country's highest legal official, who swore to defend our constitution forget, or even know, what is involved in mounting a constitutional challenge? How many has he done? He should try it some time and see what it involves. For instance, big bucks. Add to that tons of volunteer legal time. The work involved with the experts. Try 3 years of hearings and related preparation. Try dealing with government lawyers who do not hesitate to offer crap as evidence and argument. If you don't believe it was crap ask Judge Himel and the Supreme Court. Try to deal with a government that orders their lawyers to make it go away by any means necessary and then orders them to appeal, when there are no grounds to appeal, simply to make the issue go away. A government that has no regard for Charter challenges. A government that dismissed with a wave of a hand tens of thousands of pages of court tested evidence that should have been an alarm bell to any reasonably intelligent person.

Then try dealing with a portion of the media who in one breath points to the downsides of the sex trade, whatever that is, while turning a blind eye to the finding of the courts that the very laws they are fighting to retain are largely the cause of those evils. Try dealing with commentators who bring in obscure new studies or reports, not tested in court, to attack legalization of the sex trade, while ignoring the findings of a virtual 3 year public inquiry, with evidence tested in court, that resulted in the Himel decision and what it had to say about other countries. Barbara Kay and Margaret Wente are two

recent examples of such cherry pickers who don't even say in their columns if they have even read the decision. Rosie DiManno said "read the damn decision", out of frustration with such lousy journalism.

Mr. Harper has replaced Mr. Nicholson with Mr. MacKay, the former defense minister. Women and minorities being harassed in the armed forces is more of a problem than enemy fire. That will be the MacKay legacy. Let me speak for a moment about Peter MacKay. He recently said he was not aware of sexual harassment in his party or in parliament and so forth. He of course conveniently forgets to mention a few things. One is the problem of rape and sexual harassment in the armed forces during the time he was defense minister, as I have just mentioned. It is also an epidemic in the RCMP. But with Vic Toews as minister, who is surprised? But why be surprised at any of this. Elmer MacKay, Peter's father, was a prominent conservative. When it comes to father and son ask around. Ask Karlheinz Schreiber. Ask David Orchard. Ask Belinda Stronach. Ask Brian Mulroney's former staffers. Ask the women in armed forces about the culture of blame the victim, blame the women who come forward. Ask around about the fecklessness of the Integrity Commissioner's office. Ask about the iron grip the government has taken on the internal audit process and destroyed it. Ask about Mr. MacKay's appearances before the Senate and Commons justice committees where he skated around legitimate questions about C-36. Why didn't he get thrown out? And this, this is the guy who is talking about zero tolerance for abusive behaviour towards women? Good heavens, he is the only guy in Ottawa who doesn't know what is going on if he is being honest. His notion of accountability and zero tolerance would scare Joseph Stalin. Well, enough about Mr. MacKay. Believe me, you'll be hearing plenty more about him and his in the months to come.

Well, regardless of what he knows I also know a few things. I and my supporters and many others have been asking around. You wouldn't believe what I am being told and shown. I will not take up any more time tonight about what we have been told and provided with, except to say that I will not accept criticism if I, and my fellow activists, refuse to keep to the high road in the debate on the new sex trade laws or in dealing with this government and its supporters. The government and its trained seals hit bottom long ago. They deserve everything they are going to get. They don't deserve fair treatment. If sex workers are worried about the code of confidentiality, and we are, we must remember that the Harper Brotherhood has disregarded all sorts of codes of honour and we should not, in a fight for the lives of our sisters, feel compelled to hold ourselves to a higher standard.

Canada faces some threats from terrorists and hate groups. Our men and women in uniform are fighting for us here and abroad. We know what they are fighting against. But

let me respectfully say to Canadians what I think our troops are fighting for as well. They stand for security, yes. But security for what? I think they are fighting for our freedoms, meaning, yes, our civil liberties. We disrespect our citizens in uniform when we allow people with power to act arbitrarily, the way Mr. Harper and his lackeys are doing with the sex trade. We disrespect them when we allow Mr. Harper's government to disregard prominent citizens – judges, professors, leaders in unions, churches, community organizations and other bodies in society that speak for people without money or political power.

So my friends we must all be soldiers, and each do what we can to ensure our governments at all levels are held to a standard of accountability that ensures they respect truth and properly justify their actions. For that matter, governments can hold other governments to such a standard. For example, Vancouver has asked the federal government to refer C-36 to the Supreme Court and has indicated that C-36 will work against the guidelines of the Supreme Court decision

In Ontario, Premier Kathleen Wynne and Toronto Mayor John Tory must now speak. She has a majority government in Canada's largest province. He was just elected mayor of Canada's largest city. I believe how they act, not just speak, in response to C-36, will define their level of integrity.

Thank you again so very much for this honour, and for having me here tonight.