

## TRANSCRIPT

# "SEX, DRUGS, AND CANADIAN POLITICS: ADVANCING HUMAN RIGHTS FOR SEX WORKERS AND PEOPLE WHO USE DRUGS"

*A Conversation With Katrina Pacey and Adrienne Smith*

*Moderator: Sebastian Kohn*

### **ANNOUNCER:**

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### **SEBASTIAN KOHN:**

I am Sebastian Kohn. I'm a program officer with-- the public health program here. So, welcome to this lunch talk-- which, to draw your attention to is (NOISE) we called "Sex, Drugs, and Canadian Politics." (LAUGHS) But in hindsight we should have probably called it something more alluring like, "Sex, Drugs, and Strategic Litigation."

(OFF-MIC CONVERSATION)

### **SEBASTIAN KOHN:**

We're extremely fortunate to be joined-- by Katrina Pa-- Pacey, and Adrienne Smith, (NOISE) from one of the public health programs, Key Grantis (PH). The Pivot Legal Society. Pivot is based in Vancouver, Canada. And uses the law to address some of the root causes of poverty and social exclusion.

Pivot engages in legal advocacy and strategic litigation to address issues related to,

for example, policing-- drug policy, housing, sex work, and violence against women. So, over the next-- hour and a bit-- you'll hear from Pivot's executive director, Katrina Pacey, who will talk-- who will discuss Pivot's political and legal strategies in the aftermath of the now-famous Bedford case. After Katrina-- I think that's the order we're doing. Katrina, and then Adrienne.

After Katrina-- we'll hear Adrienne talk about-- Pivot's health and drug policy campaign. And there'll be-- plenty of time for Q&A after the presentations. But with that I'll-- I'll hand it over to you, Katrina.

## KATRINA PACEY:

Thank you. (COUGH) Thank you all for coming, and to OSF for your incredible support, and for having us there today. I'm slowly waking up. Got in in the middle of the night, so I'll be (NOISE) a little bit slower to the gate, and then I'm sure I'll pick up speed as we go. My name's Katrina, and I'm the executive director of Pivot. That's a pretty new role for me.

I was the lead campaigner and lawyer on Pivot's sex work (UNINTEL) project. And now how-- have moved into this new role. And-- but I'm gonna focus, today-- and talk to you about Pivot's work on-- sex workers' rights in Canada. And the inspiration for my talk today-- is this image. And I'm gonna tell you a little bit about the moment when I took this photo, and what it represented for me. This was a really landmark day. This was a really historic day. But it was not the day that the Bedford hearing happened. It was not the day the Bedford decision came down. This is December 6th, of 2014.

This is the day that Canada enacted its new, extremely harmful-- prostitution laws. So, this was a very devastating day for the movement. It was very a very difficult day after decades of hard work. And a decade of work by Pivot, and sex workers, to litigate this very important issue.

And the government responded with laws that were as bad, or possibly worse than the laws that were struck down. And I'm gonna focus on this day in part because as I took this photo I was sorta sitting on the ground, this is in the Pivot office. And I took this photo. Everything over the last ten years came into very sharp focus.

And in fact everything that I think may happen over the next ten years-- came into sharp focus for me. So, this is a really powerful, and important image. And I'm gonna just take a moment to tell you about what's happening in this photo. And then I'm gonna use it as a, like, marker.

I'm gonna talk about before, and the time leading up to when this photo was taken. And I'm gonna talk about the realizations I had when I took it, and the thoughts that I've had ever since, about where we're headed. So, this was a press conference that sex workers organized-- on the day the new legislation came into force.

We're at the Pivot office. The woman who's sitting at the table is Carrie Porth (PH).

She is the chair of Pivot's board. Is a fearless, courageous, fierce leader in the movement. A former sex worker.

Has been (NOISE) involved in advocacy over the last ten years in a really incredible, and-- powerful way. And Carrie is-- discussing the new legislation. And the theme for this day is "What a difference a day makes." That was the theme for this press conference.

And the reason that the very, very diverse sex workers that are standing behind Carrie are masked is because the day before this moment in time, when the legislation came into force-- these sex workers felt recognized. They felt like they finally had rights in Canada. They had a voice.

They no longer had to be silenced, and hidden. They felt like they could be who they were, which was working people in the world, with rights, and entitlements, and recognition, and dignity, and a voice. This day is when the new laws took effect, and came into force.

And these sex workers felt very, very different. The men, trans, and women sex workers there, that work indoors, on street-- as healers, and in many, many diverse aspects, and-- and parts of the industry. All of a sudden were returned to that hidden, and isolated, and very voiceless place that they had known so well.

So, this was an incredibly, incredibly powerful moment, when these sex workers were speaking out against the new laws. And talking about how over the course of one day they had been returned into the shadows, and returned to this place-- where they no longer felt recognized.

And so now let's flash back, and let's talk a little bit about what led up to that day. And let's talk a little bit about the Bedford case. Which, of course, was also an incredible monumental moment for human rights in Canada. So, this is an image-- of-- the day of the hearing, which was June 13th, of 2013. This was, by far, and hands down one of the best days of my professional life, as-- the movement, you know, took its place on the steps of the Supreme Court of Canada.

As lawyers like myself had the unbelievable privilege to step in t-- through those courtroom doors-- and address the nine justices of the Supreme Court of Canada. And it was an unbelievable moment, and it was an unbelievable hearing. The tension in the room was like you could cut it with a knife. The tension out here-- you can't see it, but there's actually a line down from the middle of the staircase.

They had actually cordoned off-- the area outside the court, because they knew there would be two protests taking place. They knew that on the red umbrella side there would be sex workers demanding rights, demanding justice. Allies there saying, you know, if you really care about sex worker safety, if you really care about anyone's safety, you'll decriminalize prostitution. On the other side of that roped off area-- was those who were supporting criminalization, as a way to eradicate prostitution-- and rescue sex workers from their own lives.

Of course, the hearing itself was very focused on safety. That was the central theme,

that was the most compelling argument at the time. That was ultimately what decided the case for the court. It was all about how the laws in Canada, which-- largely surrounded public communication, working indoors, and being a third party-- (COUGH) living on the (UNINTEL) of prostitution.

How those laws impeded or prevents sex workers from accessing-- safe-- and using safety measure to make their work safer. I'm gonna talk about this a little bit later, because what's very interesting is that I think that was a very strategic decision that was made to focus the case around safety. I think we're at a different place now. And this is part of the excitement of moving forward with this movement, if I think we can move beyond safety now.

And really start talking about dignity, (NOISE) equality, liberty, personal autonomy, and move into a different frame of legal argument. So, I'm gonna talk about that as well. (NOISE) What was amazing about the hearing, and the lead-up was the incredible movement that surrounded the litigation.

And this is something that I think is no surprise to all of you, is the incredible way in which litigation becomes a focal point for social movements. How-- it's absolutely essential and important in the face of controversy on issues where even progressive governments have a difficult time doing the right thing. Because-- politically it's a tricky topic.

Or-- they don't think it's gonna generate votes. So, even our more progressive governments often fail to take the right steps, and do the right thing. On these p-- on these contentious issues. But in a country like Canada right now, with an ultra-conservative government that is all about law and order, all about oppression and repression of marginalized groups.

This was obviously an important piece of the strategy. And the movement-- was-- you know, piquing, (LAUGHS) in terms of-- its power, and its voice, and its strength around that time. And so, ultimately, we had this beautiful decision. And I love this cartoon, which was in *The Globe and Mail*.

A sex worker fist-bumping. (LAUGHS) And this is really, you know, at the end of the day the court-- made this incredible ruling. It said, "Yes, laws that stand between sex workers and safety are contrary to Canada's charter of rights and freedoms." A law that says that you cannot meaningful steps to improve the conditions of your work, that is unconstitutional in this country, and those laws must be struck down.

This was an incredibly powerful moment. It was everything we hoped for. But what I want to draw your attention to, or-- or let you know about is this really important paragraph that's the third-to-last paragraph in the judgement. Where the court-- after making all of these very important statements about how criminal law impacts the safety of sex workers-- in such profound ways.

In the third-to-last paragraph then says-- but this doesn't mean that prostitution cannot be criminalized. And, of course, I'm paraphrasing terribly right now. But ultimately they sent it back to Parliament. They said, "You have one year to-- fix this." You-- this does not mean that you can't enact new laws.

This does not mean this isn't a matter al-- matter of Federal jurisdiction. Which the government, of course, read to me in criminal law. But these laws must go. So, that was-- read by, and interpreted by the government as a directive. Which, of course, it was not.

It was the court doing what they are supposed to do, which is say, "What don't make law here. What we do is weigh in on whether or not law is constitutional or not." But this paragraph became used as a powerful communications tool, and-- and the government acted as though it was a powerful directive to them.

To then-- enact new laws, and put new laws in place of the ones that were struck down. So, the year that followed from-- the date th-- of the decision, which was December 20th of 2013-- through-- that one-year period where the government had-- ultimately a stay--

--on the decision, or on the ruling. So, the laws remained in force for one year to follow. And the government-- was given that year, or told you have one year to fix these laws. And on the-- on the one-year deadline-- those laws will be struck from the criminal code.

So, it was an amazing year for us, organizationally. To try to figure out what we can do, to organize and strategize to try to prevent new laws-- from coming into force. We knew-- that our chances were-- it was gonna be incredible uphill battle. And our chances-- given the c-- government of the day, given what we were facing-- were slim, in terms of being able to block any new criminal laws from being put into place.

But what we knew is that there was a range of options. From awful, awful, awful, which would be the outright criminalization of prostitution entirely. (NOISE) Through to a range of ways in which the government might-- enact laws that don't look-- or aren't exactly like the ones that were struck down. But are similar in terms of their effect.

So, this is Carrie-- presenting-- to the House of Commons committee. And this is very much what the last year at Pivot has looked like. Many, many trips to Ottawa. Many presentations to government. Trying to educate both government and the public to understand that these laws were struck down for a reason.

New criminal laws that target adult sex work will reproduce the harms-- and should not be put-- into force. And so the new legislation was proposed in the summer of 2014. And there was a very interesting process that followed around committee-- meetings, and government response. And what was-- incredible to see, and very important.

And a real testament to the movement, was the way in which-- the opposition parties, the-- Green Party, the New Democrat Party, and the Liberal Party, responded and critiqued, and opposed the law-- really forcefully. And I wanna just pause to say how-- what an incredible testament that was to sex workers in Canada.

That they were-- able to-- work with government as effectively as they were-- to mount this really powerful response. The media response was overwhelmingly

critical. And, again, incredible work by the movement. Educating journalists-- you know, making sure they understood the impact that this law was gonna have.

And so in the end, you know, we had folks from Ottawa, from, you know, our country's capitol-- where-- Parliament Hill is, telling us, like, you guys won this media battle. We've never seen anything like this.

In terms of conservative journalists coming out and supporting sex workers, and supporting safety. It was-- it was better than I could have ever imagined, in terms of opposition by media. It was amazing in terms of opposition by parties that have traditionally been fairly silent on these issues. And that in and of itself was very, very powerful to see.

So, back to this moment in time. When we find ourselves on December 6th, of 2014. Which-- sadly, and tragically, is actually-- a national day of remembrance, to-- around violence against women in Canada. It was a horrible reality that the (COUGH) government chose this day-- to enact-- laws that are going to reproduce harms that-- we saw under the existing laws.

And just to take a moment of th-- and to tell you what the new law says. So, the new legislation has essentially five provisions. It bans purchasing sex in Canada. Which comes probably as no surprise to-- many of us in this room, who know that there's been a global movement afoot, to say that banning the purchase of sex will somehow eliminate prostitution, or somehow-- stop demand.

We know better. We know the what the evidence says about the harms that that creates for sex workers-- in terms of their safety, and their health, and their-- freedoms. Nevertheless, the government really was able to pitch that as in line-- with ending victimization. The law prohibits-- largely prohibits advertising.

And this is, of course, a very strategic, and-- and tactical way to target indoor sex work. The body house law is gone. Indoor sex work became legal. However, now you can't advertise about it. So, this was a-- v-- you know, a very strategic way to circumvent that finding. But find new ways to prevent indoor sex work from taking place. There's a law-- the communicating for the purpose of prostitution law was struck down. However, we now have a law that bans communication anywhere, anytime, by clients. Indoor, outdoor, anywhere.

And it bans-- communication by sex workers in public places that are near playgrounds, schools, or daycares. And so what you see is a specific targeting of street-based sex workers. Again-- and a ban of-- banning of all client communication. Which, of course, we all know the impacts that will have on health and safety. There's a new prohibition on materially benefitting from prostitution.

That, again, to me reads-- identically-- or-- in an identical way to the living on the avails law. Although they say that they carved out exceptions for third parties that are-- that may be safety enhancing. I don't read the legislation in that way.

And I think that-- it's both going to create the same problems, in terms of sex workers being about to work with others-- as well as the same risks and harms. And,



finally, there's a procuring law that mimics the procuring law that was in place before. That law actually wasn't challenged in the case.

So, I'm gonna take my last few minutes-- to talk about looking forward, and what's to come. The first thing I wanna say is that Canadians are so ready for decriminalization. The public opinion polls-- the level of awareness and understanding has changed unbelievable and substantially in the ten years I've been doing this work.

I cannot believe how much easier it is to talk about this issue. A) People care. Which is in and of itself an amazing change. But the rationale, or the-- or, sorry. The awareness around the harms of criminalization. People don't necessarily know exactly where we should go. But they know that the status quo is failing. They understand the connection that those laws had to sex workers' lack of safety. And they're open to decriminalization.

And they are certainly-- committed, it would seem, in large part, to ensuring that the new laws don't reproduce the old. And what Pivot is working really hard to do, what sex workers are w-- working really hard to do, is deepen that, make sure it's even more nuanced, and make sure Canadians really understand. But the decision was an incredible public education tool.

And one of the ways that we're seeing that sort of manifest is in terms of law enforcement. So, we've had, now-- just over two months, two-and-a-half months, since the law came into force. And-- I don't know if this is gonna remain the case. But based on my understanding-- speaking to communities, and sex workers, and tracking media.

There's been very little enforcement of this law across the country. Which is fascinating. There's gonna be no enforcement in Vancouver. The Vancouver Police Department have committed-- to not enforcing laws that target consensual adult sex work. And that's a written policy.

And we are-- see the government of Ontario saying we're very concerned about these laws. And we're-- the government of Ontario is, in fact, thinking about referring it to the court. The police in Ontario are saying, well, what are we supposed to do, when our Premier is delivering a message that these laws may be harmful.

So, we're seeing a very interesting-- it's unlike Sweden, where the police came, like, as soon as the law came into force, the police were out there, guns blazing, targeting clients everywhere that they could. That, of course, you know, settled down.

When they realized it wasn't working. But-- but there was an initial kind of frenzy of law enforcement activity. We're seeing the exact opposite in Canada. We're seeing a general disinterest-- in-- in-- in-- enforcing these laws.

The second thing is that the movement has never been stronger. And I love this slide, and I rarely get to use it, 'cause I'm often talking to, you know, folks that don't wanna see underwear that say, "We Fuck to Win." But-- (LAUGHS) it's-- this is an-- just an amazing image, and it really represents-- where the movement is at.

And I-- won't say much about this, except to say that I'm seeing a cohesion, and a s-- strategic thinking, and a level of organization across the country like I've never seen before in my ten years or more of doing this.

Sex workers are unified, they're committed, they're focused, they know what they want. They've learned, we have all learned so much together-- over the last decade. And we really feel ready. Pivot, of course, is ready. We have a new lawyer who's joining us.

Who's going to be-- leading the next round of litigation. And we, and Suave (PH)-- are-- Suave has retained us to carry on with the next challenge. And we're now just thinking strategically how do we support the movement nationally-- to bring the case forward.

But the last thing I wanna say, or one of my last points is that this case-- as we will see it, as the new litigation-- will-- take place, we'll see a different approach. We will still see that core safety argument. It's necessary, it's important, it has to be there. But I really believe it's time.

And extremely important that it's flesh that out. And that we move beyond talking just about personal safety, to expand the argument to include other rights, and other protections, and other interests. So, for example I think a focus on health will be really important.

I think a focus on equality-- will be really important in terms of taking that argument around safety, and then bringing in an equality argument around what does this mean for oppressed groups. What does this mean for gender equality? What does this mean for trans justice?

What does this mean for poverty and marginalization? Making the argument that decriminalization is actually further all of those-- all of those areas of justice. And then finally, I think it's really time to start talking about personal au-- autonomy. And talking about a sex worker's right to do what they want with their bodies, when they feel like it. And it's-- was an argument that I think people were a bit nervous about. And it felt safer, and we did, too. To rest with-- safety.

And make sure the argument-- but it's really time to move into that broader, more diverse argument, for so many reasons-- including-- making sure Canadians, and the world, knows that this is really a diverse industry, with diverse experiences. And-- and really starting to flesh out that whole question of choice in an empowered way. And in a-- in a-- in an honest way.

The last thing I wanna say, and then I'm gonna pass it over to Adrienne, is that-- oh, this was my equality piece, that I forgot to advance. The last thing I just wanna say is that this case-- as we will see it, the-- challenge to the new laws, I believe, could have global implications-- like we have not seen before. And the reason is this.

If we could have the Supreme Court of Canada strike down a law that prohibits the purchase of sex, saying that it violates sex workers' fundamental constitutional rights. And if we can make sure that we're being strategic and thoughtful about how to make



sure that has-- a ripple effect.

And-- and international implications for the world. I believe that, unlike Bedford, this case-- could change everything. I think that we could-- be-- Canada could be a very important piece in turning the tide on this sort of global movement towards banning-- you know, buying sex. And-- and new forms of criminalization.

I think with Bedford people were able to distinguish from those laws. And say, "Oh, we've moved on from there. We're Sweden, don't worry. We've got something very different going on here."

And I think this case-- could be really-- monumental-- in terms of challenging that-- and looking-- at countries around the world, and making sure that-- they know that those-- that that approach-- wasn't working in Canada. Was harmful. Violated fundamental human rights-- and is having the same effect everywhere.

## **ADRIENNE SMITH:**

Thanks, everybody. For those joining us via audio, I am Adrienne Smith. And I am Pivot's health and drug policy staff lawyer.

(OFF-MIC CONVERSATION)

## **ADRIENNE SMITH:**

The goals of our campaign is to have drug use read as a health issue-- and not as a crime. And to make sure that drug users have timely access to fair health care that keeps 'em alive, in their communities. Today I'm going to talk to you about-- four, maybe five things, if there's-- time at the end.

And the first is about a right to maintenance treatment for drug users. And we're-- working on a case around prescription heroin, to strengthen that right in Canada. The second is defending a right to supervised injection services. This is a follow-up to the insight case that quite famously went to the Canadian Supreme Court of Canada.

And that is a challenge to new legislation by the same, very arch conservative federal government, that's criminalizing sex work. And the third is a right to health, basic (UNINTEL) health care in prison. And-- the last is challenges to a suite of law and order tough-on-crime initiatives that our government has introduced that have a particularly egregious impact on-- drug users and sex workers.

And then we'll talk about our future plans, if there is time. I wanna start by saying a little bit about the way that Pivot does its work. 'Cause you might have guessed that we (NOISE) are not just lawyers. We see our-- this is an image of the First United Church, which stopped doing church in the downtown East Side. And is merely a shelter and social service-- agency.

And this image, I think, is a delightful contrast. This is an image of the (UNINTEL)

justices of the Supreme Court of Canada. And we take this story, and we take it here. So, it's coherent. And we are a kind of activist lawyer, in an unfamiliar way. This is an image of a lawyer-- in his robes with a megaphone in the street at a protest.

And part of our work necessarily involves-- that public education piece. So that I sit down at Thanksgiving dinner with my mother, and we're talking about sex work in an enlightened way. And that means that when we win these decisions, and we take them down the steps of the courthouse, they actually have an impact on the way Canadians see the law, and justice. I would like to talk now about heroin-assisted treatment. And I would like to take an opportunity to thank-- (LAUGHS) Scott Bernstein, who had my position before me. Who really set lots of these ducks in a row for us. And I feel very much like I'm standing on his shoulders (NOISE) when--

## **FEMALE VOICE:**

And what a great t-shirt you're wearing.

## **ADRIENNE SMITH:**

I think we're-- (LAUGHS) both wearing some fantastic t-shirts.

## **FEMALE VOICE:**

And it's a nice poster in the back.

## **ADRIENNE SMITH:**

Yeah. (LAUGHS)

## **FEMALE VOICE:**

Everybody sees what they wanna see. (LAUGHS)

## **ADRIENNE SMITH:**

For the benefit of the audio recording, my t-shirt says, "Insight Saves Lives." And it's-- has a picture of a syringe on it. Which gets you lots of comments when you wear it internationally. So, I'm sure many people in the room know Vancouver had a horrific epidemic-- which would really take-- a lifetime to tell, so I won't.

But the way that we solved that-- epidemic overdose rates, epidemic infection rates-- was that drug users in the community came together in the same way that we're

seeing sex workers unite as a movement. And they made the government listen to them. And community activists, working with those user groups, established-- the first supervised injection site in Canada.

Where drug users can inject illicit drugs that they buy on the street under medical supervision. And there are people there to intervene, should they overdose. And to connect them with social services if they're ready for that. Its ability to exist is also a long story. And it led to a series of litigations.

That took us to the Supreme Court of Canada. That enshrined a constitutional right to supervised injection services for drug users in Canada. And there's me in the red hat, reading the decision, while everybody else is celebrating here. (LAUGHS) In front of Insight (PH).

So, if there is a hero, and it is our community, there's also a villain to this story. This is Peter McKay (PH), who was responsible for-- this really egregious sex work legislation. And the person seated beside him is our Minister of Health, Rona Ambrose (PH).

Who is the bad guy in lots of these cases I'm going to tell you about. So, this is another lovely health care facility in our neighborhood. This is the Providence cross-town clinic. It was the site of a drug trial, testing prescription heroin, which we know is effective because there had been a study in Vancouver called Naomi (PH).

Against-- hydromorphone (PH), for maintenance, to see if hydromorphone was as effective. We found that the 202 people in the study had fantastic-- advances in their health and their social functioning. So, their doctors applied to keep them on their prescription heroin, which had stabilized them, when their time in the study ended. Health Canada agreed.

But then the Minister of Health changed the legislation. You can-- you can boo and hiss at her, if you like. (LAUGHS) So, we took her to court. Saying that that change was unconstitutional. This is one of the litigants in the middle, his name is Dave Murray (PH).

And he's holding a copy of the injunction that keeps him on his medication until this case can come to trial. But we do foresee this being a-- long litigation. I've blocked off the next six years to take this to the Supreme Court of Canada. And we're hoping that-- access to prescription heroin is available to anybody in Canada for whom it's medically appropriate. And-- move it beyond the 200 people-- who are covered by the injunction. The second is the Respect for Communities Act. This is Bill C2.

This is a-- very much like you heard that-- the laws were struck down. The court ruled there was a constitutional right. And the government brought in horrible legislation, and the sex work context. The decision in Portland Hotel Society and Attorney General of Canada, which, in trying to-- right the access to supervised injection services for users in Vancouver-- and around the country, in theory.

This conservative government is reading that court case as a directive. And there's a very small section. The whole case stands for the fact that this is a constitutionally

protected right, which unless there's a very compelling public health reason, or a public safety issue s-- should be-- accessible. And then there's a small section in the third to last paragraph. It seems to be one of their favorites, of the matter of this case.

It says-- and there are some other factors that you can consider, and one of those is community consultation. So, what Bill C2 does is prevent-- access to services, by opening up-- imposing a tremendous burden on applicants-- for additional supervised injection services. And opening up this access for community consultation for people who are not involved in health care.

And-- who are unfamiliar with harm reduction services. And on the same day that the bill was tabled in Parliament the conservative government issued a fundraising letter to all of its conservative party supports saying "they," us guys, this is you guys, (LAUGHS) "they" wanna put shooting galleries next to your child's school.

Send us your money. So-- I went to Ottawa to speak to a House of Commons committee, to say that this was unconstitutional, and that we would litigate. That this is a settled issue. That the Supreme Court has ruled clearly on it. And that the minister is not being truthful when she says that the Supreme Court decision demands this restriction on services.

And unfortunately it's-- going to pass in the House of Commons-- this month. And then it will go off to the Senate of Canada. And it will likely be law before we have a federal government in October. So, we're looking at re-litigating insight on different facts.

And-- because of the progress that we've already made organizing user groups, and service providers there are national talks among applicants and user groups to talk about how we're come up-- going to come up with a concerted challenge. I still remain dimly hopeful that they will stall long enough-- for the government to change, but. I have simple lawyer hopes. Prison, needle exchange litigation. This is an Ontario case.

And it is challenging the federal corrections ban on sharps. We're taking it in Toronto. We were just in Toronto, it was so beautiful. That's an image of Toronto. So, what we know is that drug use doesn't stop when you go to jail, it just become more expensive, and it becomes more dangerous. Here are some images of-- do-it-yourself guide for making a syringe in jail.

And a couple of-- syringes that have been confiscated-- from in mates. And we know people are making their own. We know when there is one-- it's hidden, which becomes a poke danger, but also everybody uses it. And this means that the infection rates inside federal prisons in Canada are in the 80 percents.

Ninety-five percent of prisoners are released eventually, and they're-- sent out into the community. Which is a substantial-- public health issue, as well as a matter of basic justice. What is particularly galling is that the corrections legislation that governs how prisons are run says that prisoners are entitled to the same level of health care inside that they are in the community.

But-- this ban on sharps is preventing access to supervised injection, or to-- harm reduction services in prison. And we would like to change that landscape, so it looks less like this, and more like this. This is an image of standard syringes that you would see in any needle exchange.

The last thing that is-- clearly within our health and drug policy-- which may not be an intuitive drug issue, is challenges to new minimum-- mandatory minimum prison sentences, which are legislated. They're extremely popular. Our government is taking the worst cues from American tough-on-crime jail-for-everybody-- legislation and bringing in a suite of changes.

Which limit community service-- options for people. Limit diversion. Require that people serve their sentences in jail. Require that those jail terms be a particular-- length of time-- in these facilities where there's no service, and no hope of rehabilitation. It is nonsensical, and it's unjust.

So, Pivot intervened in the case of a downtown East Side, very low-level drug dealer. Most of these-- the really interesting-- mandatory minimums are in the context of drug use. But they also exist for a number of other crimes including sex work. Which is why it's interesting for Pivot. So, this is the case of-- of Lloyd.

Mr. Lloyd is a 25-year-old-- resident of the downtown East Side. He was caught riding his bicycle on the sidewalk without a helmet. So, the police searched him and they found about ten grams of a collection of-- crystal meth, heroin, and cocaine.

Mr. Lloyd was-- admitted to trafficking. He told the provincial court that he was selling the drugs that he had on him-- on him. And-- he also explained that he was paid for his work as a low-level drug dealer in these three drugs, all of which he-- to which he was addicted.

Which is a very common aspect of the structure of the drug trade. On the ground in Vancouver, people are hired. And they'll be given a certain amount of drugs. And if they sell most of it they can keep a little bit. Or they'll be paid later for their time. But because he has a previous-- drug conviction, a mandatory minimum of one year was in play. So, his-- defense attorney brought a challenge and said that this would violate our constitutional protection against cruel and unusual punishment. And the provincial court judge agreed.

The crown appealed it to the BC court of appeal. And here we are intervening. Unfortunately what the Court of Appeal did was decline to hear the Constitutional argument. They just decided that the-- sentence that Mr. Lloyd had been given was insufficient, and gave him an additional six months. And we are waiting to hear if our-- Supreme Court of Canada will hear this appeal.

At the same time another set of cases came out of-- Ontario, which had to do with minimums for-- firearms offences. Which have not been-- they don't have the same social standing in Canada as they do in the United States. Because guns are much-- there is no Constitutional-- right to bear arms in Canada.

They are rarer, and they appear in urban centers. This suite of Ontario cases came

out of Toronto, where all of the applicants were people of color. And there were many interveners on that ground, saying that mandatory minimums are gonna have a disproportionate effect on people who come from marginalized communities of color. We intervened because this is the case. It's a case called *Nerr* (PH). It was heard with another case called *Charles*. And these came out of six cases that were heard together by the Ontario Court of Appeal. Those cases struck down the mandatory minimum for drug charges.

So, the crown appealed it to the Supreme Court of Canada. We intervened because this is the case that's going to determine how the-- "cruel and unusual" protection in our constitution is understood by the courts. And that's very relevant to our drug use.

It was a very turbulent week for me because it was the same week that we spoke on the Supervised Injection bill. And luckily in Ottawa the Supreme Court and Parliament are right together in this block.

(OFF-MIC CONVERSATION)

## ADRIENNE SMITH:

For the audio, this is me standing in front of the Supreme Court of Canada. Sign on their front lawn, but I'm opening my lawyer clothes and showing off an Insight t-shirt. (LAUGHS) Because that's how we litigate. And it's a very exciting time for us to be lawyers. I didn't think working for a Vancouver downtown East Side not-for-profit was going to send me off to talk in New York, and to litigate all over the place.

And it's an extremely exciting time for us. Because it's no longer-- blindered (SIC) by the capacity of our own province, to bring litigation. And Pivot's really moving into a place when we're (UNINTEL) legislation-- legislative recommendations, and challenge litigation across the country. A third thing that I will touch on only briefly is a glimmer of the future for Pivot.

It's not yet a-- official campaign of ours. But-- it is a flashpoint in the world for the emerging protection-- of existing rights for transgender, transsexual, and-- gender non-- non-conforming people in Canada. There's been some federal legislation recently which sought to add these-- to the Canadian Bill of Rights, and to increase protection against hate crimes.

Unfortunately, some hateful senators have just amended this bill-- this week, which will send it back to the House of Commons. So, it won't be law, federally. We're doing a little bit better on the ground. The Vancouver Parks Board has just brought in a trans accessibility policy. Which means people can use whatever change room they want. There are accessible forums. The Vancouver School Board has also just brought in a trans-inclusion policy, which will protect little children. And Pivot was active-- in the hearings for both of those cases.

And a third thing that's happening is a challenge to the inclusion of-- sex or gender



markers on British Columbia birth certificates. Because for trans, intersex, gender non-conforming people, these will never appropriately describe them. And having a (UNINTEL) of ID is-- a barrier to full citizenship for trans folks. Are there questions? (LAUGHS)

## SEBASTIAN KOHN:

Awesome. (APPLAUSE) First, thank you both for two fascinating presentations. I'm sure there are lots of questions in the room. So, I wanna open up for-- for Q&A, but ask you to please state your name and affiliation for the benefit of the recording, and also for those on the phone. Yes.

## QUESTION:

Thank you both for a fabulous presentation. It was great to hear so much about the-- the diversity of the work. I maybe just wanted to ask a question about the media engagement that you flagged earlier, and why you think-- what was different this time in-- in the way that you managed to get conservative media onboard as part of the overall advocacy?

## ADRIENNE SMITH:

I mean, I think there's a few parts to that answer. One-- would be that-- it was a long time coming, and there was a lot of public education and media educ-- education along the way. And I think it was sort of building up to that point in time.

Also, during that year our media outreach strategy was very proactive. We were meeting with media, whether they wanted to write-- (NOISE) whether they were planning to write about it or not. And saying we just want ten minutes with you over coffee, to tell you about this issue. And so we were meeting with, you know, editorial boards, and-- and leaders within the major sort of media outlets. And pa-- and s-- and papers.

Just to educate them. And say, we don't know if you're writing about this, or if you're going to. But we just want ten minutes to tell you about the issue. And then-- and we had-- communications strategists-- brought onto our team like we had never had before. And-- and they brought a t-- so much expertise to the work.

So, I mean, an experience I had never had before was going in to do a national sort of C-TV interview, and on the way in-- our communications people grabbing journalists, like, in the hallways. And just having these amazing conversations on our way in. And I-- and-- that's just not-- not anything I'd been (UNINTEL), 'cause I didn't know to grab them.

I didn't know I could. And so it was really-- felt next-level. And so while I was

getting, you know, that silly makeup on that they put on you before you on TV, I'd be talking to either, you know, reporters-- who the co-- communications people would have grabbed from the hallway.

So, it was really, really incredible to kind of do that next-level communications. The last thing I'll say, though, is that the legislation was so bad that it wasn't hard (LAUGHS) for people to criticize it. I'll-- so-- so, I actually wonder if the legislation had been less bad, (LAUGHS) would it have been harder to drum up the level of critique that we did.

But it was so bad that people had no problem saying this is ridiculous. Whereas had-- had it been a little bit less-- yeah-- you get my point? So-- so, both from the parties, as well as from the media. It was very easy for them to say this is outrageous, because it so clearly-- replicated the f-- framework the had just been struck down.

## SEBASTIAN KOHN:

So, Tamar and (UNINTEL).

## QUESTION:

Thank you both, really-- great presentations, and also amazing work that you're sharing with us. I was really struck by how you said there has been an evolution. And the concern was about safety in the beginning, but now it's more about dignity, equality, and autonomy. Can you say more how that shift has taken place? Did the case play-- a big role in that? And also how that's playing out. Is it now the arguments that you're leading with are different?

## KATRINA PACEY:

I think-- I-- I mean, what I would give credit to in large part is sex workers courageously telling their stories. I think that the movement in Canada has been-- doing an amazing job to the extent that they can in a criminalized environment.

And in a very oppressive environment. Really making sure Canadians start to understand the diversity that exists. So that, you know, we represent Suave, which is a col-- collective of street-based sex workers. We're aware that-- that representing Suave is, you know, representative of sex workers is not true.

They represent a small percentage of the sex industry. And what we needed to make sure was that sex workers across the country were supported, to say, oh, we are, you know, sister organizations to Suave, or we sisters to suave, but we are different in that we work in these environments.

Or we work with these resources, or we work in this way. So, I think the diversity has been essential. And has started to kind of come up. And people are starting to

recognize-- that street-based sex work, and that sort of those very constrained circumstances, and constrained choices are not representative. And that there is this huge population of sex workers that are doing sex work for all the same reasons we all do our jobs.

Which is because we like it, or because it's economically-- you know, makes sense for us. Or because-- you know, there's-- all of the same factors are operating. And so I-- I really think that that is the key piece. And-- but I also think that-- the courts are being presented with and are thinking about sexuality differently. And that is it's time to integrate that in as well.

And say-- you know, this really is about-- you know, the-- Canadians agree that the government doesn't belong in the bedrooms of the nation. To, you know, quote a former Prime Minister. It-- that applies here, too.

## AVI:

Great-- thank you so much. My name is Avi, I work in the public health program as well. And I know that-- that your focus is on the-- the legal challenges. And it was fascinating to hear the presentation. But I'm also curious the-- there was a point where you mentioned-- some of the-- the tactics that-- I think you said it was the conservative party-- trying to drum up support.

And I'm curious about the messaging, actually-- that's tied into the legal challenges that you're-- you're bringing. Because I think that when you have-- folks on one side saying-- you know, beware, there'll be sex workers, you know, next to your child's school.

What-- what is the-- the response to that? Or what is the messaging that you're-- you're putting forward to sort of paint a different picture? And-- and what is that-- that picture? Because I-- I think that-- this is an-- an issue that in-- in a lot of the areas in which we-- we work, there are sort of the-- the legal basis for the work. Which can be, in fact, very different from how we actually begin to change the way we talk about these-- these issues. So, I'm curious-- and-- on that level-- how-- how are you focusing on-- on changing the-- the narrative around this?

## KATRINA PACEY:

Sure. That's a great question. Just to back up for a second, and talk about the government's messaging. I mean, the government had a very good time-- sort of playing both sides of a coin. On one hand saying we care about victims, and we care about sex workers, and we are trying to rescue them by making sure prostitution never happens in Canada.

And we're not judging sex workers for where they're at. We know that this is because they have no choices, and they're-- they're victims in all of this. And at the same time, being able to play to the moralism that exists among-- you know, conservative

members of Canadian society who say prostitution is bad. And-- and sex workers are bad. And they're all bad. And everything about it is bad. And it should be stamped out.

So, they sort of just played back-and-forth between those two lines of-- of sort of reasoning, and justification, depending on who their audience was. And it was quite fascinating to watch them do that in the media. And to try to reconcile those two perspectives.

But what they-- that was the key messaging brought forward. In terms of-- our work, and what we need to be thinking about-- is that-- and this is part of the reflection piece, is when you focus so wholeheartedly on safety, and you don't bring in equality, and you don't talk about autonomy, you don't talk about personal freedom. And-- and control over one's body. And all of those dimensions of this issue-- do you feed into the ability to say this is actually about victimization. And in-- upon reflection I think that the litigation was strategic, in that it-- we chose a winning argument, and that was the one.

But I do think that we fed into-- to a certain extent-- a sort of narrow perspective on who sex workers are and what their experiences are. And it became all about safety, which then fed into this-- is sex work inherently unsafe. And therefor-- it was-- it was too narrow. And what we really need to do this time-- is be thoughtful and strategic, both inside the courtroom and out.

To make sure that we are-- representing sex work for what it really is, and for why it really happens. All of the diversities, sort of, I've touched upon. And make sure that we are clear that this is about safety. This is all about-- autonomy as well.

This is all about ending stigma discrimination. And-- and, you know, advancing equality. It's all of those things, all at the same time. And making sure we are-- more nuanced-- and less afraid to do all of that at the same time. And I think that-- the work of the movement has kind of brought us to that place where we can do that a little bit-- more confidently.

## **ADRIENNE SMITH:**

It's also really important that we work directly with sex workers. And that there's a person who can stand up and say, "I'm a former sex worker. This law is not actually gonna protect me. And from my experience this is what I think." 'Cause they don't have that.

## **SEBASTIAN KOHN:**

Sev-- Sev (PH).

## SEV:

You touched on it briefly. But I was wondering if you could say more about the challenge of speaking for populations in these really important venues. And how you think through things like feedback, exchange, and dialogue, and pitfalls. I think lessons that we could learn too.

## FEMALE VOICE:

I think it's really important for me never to do what I think is right. But to check in. It's (NOISE) often very helpful to rely on those old--old rules of being a lawyer. That you take instruction. And if you're taking instruction from a community, that's more complicated, because they're going to be divided.

And there's going to be a debate. And often the people who are advising you don't have an answer yet. And it's been great to watch the sex worker community come to a collective understanding about what laws they wanna push. I meet with drug users. And they write to me every day and say, "I didn't get into the study. And I need heroin. And here's my story, and here's why."

And when I sit at my desk, and I'm buried in law, and I feel like this isn't possible. Never gonna fight this government. I go to an organizing meeting at the Vancouver area network of drug users. And they talk about their issues. And I live in the neighborhood, and people stop me in the grocery store.

And say, "Hey, what's going on with that?" And I need to never remember-- this last slide is interesting, because it partly answers your question. This is a photograph, on the left, of the alley behind our office. Which is-- a lived-in alley.

People live in it. And they live in the buildings attached to it. And this is my last block, when I walk to work. And the slide on the right is a picture of me in a suit, in a white shirt-- outside the BC Supreme Court. And I can't do the one on the right, without being in the place on the left.

Does that answer your question?

## SEV:

Uh-huh (AFFIRM). (LAUGHS)

## FEMALE VOICE:

Thanks, though.

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## SEBASTIAN KOHN:

Naomi.

## NAOMI:

So-- thank you so much, again, for coming to share this. Your work is incredibly inspiring. I want to ask a question about your-- your drug work, very much following on from Sebastian's. I was wondering with the kind of strategic kind of suite of legal strategies you've used, how do you think that's-- influenced or kind of increased the community's awareness of their rights, and their ability to claim, or to fight back against something? I mean, you kinda just touched on it then.

## ADRIENNE SMITH:

There's a necessary feedback in that because we need to be connected. But also because Pivot is Pivot and we have this really global reputation now-- I think it's a testament to how un-lawyerly we've been in the neighborhood, that the community still trusts us, and-- (LAUGHS)

I got a phone call very late at night on my mobile phone. I was in my pajamas, watching TV. And it was the coordinator of the Supervise Injection Site-- calling me to tell me about a really terrible thing that had happened to a participant in the-- the facility, who-- had been assaulted.

And she'd told the police what had happened. She was a drug user, and a sex worker, and an aboriginal woman. And she omitted a detail, which is that she fought back against her attackers, and she cut one of them. There were three of them. And she wanted to know what the legal implications were of that. And if she needed to call the police.

And say that she had not been entirely truthful. And-- that-- the community calls us, for that kind of feedback. And that we are a resource. And that all day long the phone rings. And when there's a place to send someone, and there's a crisis. And legal services in Canada. And there's not often a place to send them. But we are the place they call. Does that answer your question?

## SEBASTIAN KOHN:

Scott.

## SCOTT:

Yeah. So, I-- I wanna talk a bit about-- drug policy. And-- (VOICES) yeah, yeah, I do.



So, you know, I think for-- for many years Canada was seen as-- as being a leader in-- harm reduction, and treatment of people who use drugs. And, you know, and obviously the-- insight was the-- the big focal point for look-- you know, look how far we've come.

And-- you know, I think things like Bill C2, and the Canadian position it takes in international meetings, where it now fights tooth-and-nail against-- putting the words "harm" and the words "reduction" in the-- together in the same sentence.

You know, I-- I think that's-- there's this-- this bit of-- a shift now. And obviously, the fighting against Insight. So, I'm-- I'm wondering what do you see as kind of Pivot's role, and the role of strategic litigation, in-- in getting-- getting that back? Like, how-- you know, you-- you talked to Adrian about being-- having a global reputation. Like, what's-- what's Pivot's piece in the global movement? Like, where-- where's the advance come?

## ADRIENNE SMITH:

Yeah, I think there's absolutely a problem. And the fact that we have an extremely conservative government has tarnished Canada's reputation in lots of ways. I'm not proud of the positions that Canada takes internationally. Because they're the same positions that they take on social policy, and-- crime issues elsewhere. I think we are lucky right now that it's a popular time to be challenging a conservative government.

Because the longer they're in office, the more things they do that seem to be so far over-the-top. That regular Canadians, who might have supported fiscal restraint, and military support initiatives in the beginning of their reign, are very different. But I found it very helpful to move the conversation back to the place that we need to be talking.

So, if somebody says, "We can't have a needle exchange. That encourages drug use." I would like the end goal to be that there is nobody using drugs. Or, I would like the end goal to be that there's no longer prostitution in Canada. It's super helpful to roll back, which is the discussion that we've been having in harm reduction advocacy everywhere. And say, I don't have an end position about what that looks like. But none of it is gonna work if people aren't alive-- to get there. And in the meantime, what do you need? You can't just plan a better arc. You need to be bailing in the meantime.

## KATRINA PACEY:

Can I add to that, to say that (COUGH) our work has been very domestically focused. And we have obviously relied on litigation as our key tactic. Our hope being that Canada can become a model. That it becomes something that the world looks at and says, "Oh, look at Canada. They're going the right way."

This government is like a constant make-work project for us. We wish that we didn't

have so much litigation, ongoing. And this is actually, you know, I mean, we're like bulging at the seams, as an organization, in terms of our capacity to do all of this. And-- and there's more coming down.

And we're sort of struggling to find out how are we gonna do it all. And-- but one of the questions that I think we need to be posing to ourselves, and challenging ourselves-- even in light of all of that, is what can we make sure-- we can do to make sure that our Supreme Court of Canada, that is-- an amazing court.

That takes charter rights and freedoms and brings it, and breathes life into it, into real rights on the ground. How can we make sure that's having an impact-- internationally. And how can we make sure that that-- and-- and I don't think we have a good answer for that. I don't think we're a very sophisticated organization right now in that respect.

Because we've been so focused on the ground, in our community, and with our national court. But I do think that the sex work campaign, in its next iteration, I think drug policy, are gonna be two places where we start asking ourselves some of those hard questions. Which is-- what more can Pivot be doing so that when we generate, or if we are able to be part of these big wins, that it has a lasting effect in Canada, as well as-- an effect-- around the world.

Because we're certainly feeling it. And-- as, you know, the Sweedens, and Norways of the world. And-- the claims they're making about prostitution laws are impacting us. So, it's really important that we're able to-- see that impact as well.

(OFF-MIC CONVERSATION)

## SCOTT:

And-- and I-- and I just wanna follow up, like, you know, for example, the-- the-- Insight case is unique in the world. 'Cause no-- no government elsewhere actually w-- you know, went in and tried to shut down an injection site. So, it actually teed up the opportunity to get into court, to articulate those rights. And so it's-- you know, it's a-- th-- there's no other case like it that's really articulated human rights around-- supervised injections. So, I think, like, you know-- and, I know internationally that's look at as a model. Like, oh, look at this. Look at what this means, and what the court said about it, so.

## ADRIENNE SMITH:

It's-- it's not-- insignificant that the Supreme Court of Canada, and the House of Parliament stand side-by-side on this same (UNINTEL) looking over the river in Ottawa. 'Cause it's an important object lesson, that there's two ways to change the law.

And one is through the Parliament, and one is through the courts. And we musn't

forget to do both all the time. And right now, because our government is so bad, the court is the best place to push. But if the-- our government were to soften, and become more progressive, there would be no need to litigate.

But we would do more work with the receptive government to make the kinds of laws that don't result in this harm, and deal with the harm that already exists.

## **SEBASTIAN KOHN:**

So, I wanna just check if we have anyone on the phone-- (VOICE) who would like to ask a question.

(OFF-MIC CONVERSATION)

## **SEBASTIAN KOHN:**

Is that Anne (PH)?

## **ANNE:**

Yeah, this is Anne.

## **SEBASTIAN KOHN:**

Yeah!

## **ADRIENNE SMITH:**

Hi, Anne. (LAUGHS)

## **ANNE:**

Hi-- hi Katrina, hi Vivienne (PH).

## **FEMALE VOICE:**

Hello. (LAUGHS)

## **ANNE:**

Thanks for doing this. I've been on the phone, calling from (UNINTEL). So, you

alluded to the-- some of the arguments you've been making in the-- in the strategic litigation. Could you speak to how different you think-- the strategy is going to be-- in-- in-- going forward, than what happened in the Bedford (PH) case.

**KATRINA PACEY:**

Do you mean the litigation strategy?

**ANNE:**

Yeah.

**KATRINA PACEY:**

Yeah, you know, I don't have an answer because we're really-- in that sort of-- analysis stage. We are-- in conversation, and working-- with sex worker organizations across the country right now-- to both sort of-- we're building our legal kind of strategy and thinking about-- the ways the argument could unfold, kind of within Pivot, right now.

And sharing that, and thinking about that collectively with the movement-- to then think about where should litigation happen, in what provinces. Should there be more than one case, as there was in the Suave and Bedford era. Should there be one mega-case. (LAUGHS)

Should-- do you take the whole piece of legislation on-- in one shot? Do you pull pieces out? There's a lotta strategic questions that we need to think about-- that we're gonna be doing between kind of now and throughout summer. With the hopes being that we know, and are planning, and maybe even carrying out sort of the initial steps of litigation in the fall.

**ADRIENNE SMITH:**

And we can't make those--

**ANNE:**

Okay.

**ADRIENNE SMITH:**

--decisions by ourselves.

## KATRINA PACEY:

That's right.

## ADRIENNE SMITH:

It's gonna be something that the national movement does.

## KATRINA PACEY:

Yeah. So-- so-- so the-- what's great, and another real strength-- about now-- compared to sorta 2005, when we f-- started to get Suave ready-- is that this is happening nationally now. Whereas, back then it wasn't happening nearly in this type of coordinated, strategic, awesome way.

Back then it was just more piecemeal. People were sort of working in their own areas. And the litigation unfolded in the way that it did, which was great. But now it's really happening at this national level. And-- I'm very excited to see that. And-- Pivot feels really lucky to be part of that process.

## SEBASTIAN KOHN:

Sarah.

## SARAH:

Hi, thank you, you guys. So, my questions kinda build on the last two that went along. I mean, I think it's so important for people to recognize, like, non-Canadians in the room, th-- what a weird thing is happening in Canada. Where we're having these great Supreme Court victories, and then the government is essentially end-running them. Right? Through legislation.

And that was true with-- you know, with the Insight case, and it's true with the Bedford case, too. And so, like, it just raises a really important question that others have kind of touched on, which is, like, on the one hand the Bedford case was a great victory.

Then they put into place worse legislation than what we started with. But on the other hand, there was-- you guys used it, and it was such a great opportunity for galvanizing, and bringing together the national sex worker movement. And-- for a lot of public education. And actually for thoughts about, like, you pointed out, a future case, with challenging the new laws, which would be even f-- more far-reaching than the current case.

So, it's just a very complex situation, strategically, that you guys, and the movement

are facing. And I guess I sort of wanted to dig into your thoughts about that a little bit. And maybe put to you the question, maybe it's a weird question. But, our President puts it to us when we do these portfolio reviews.

Which is, if you knew then what you know now, like, if you knew that Harper was gonna end-run your great victory, would you have done anything differently? Or are-- are-- or are these pieces, the galvanizing of the movement, the public education, are they all leading towards the end, and these are necessary steps?

## KATRINA PACEY:

I'll go first, to say, yes, we would have done it again. And we would-- and that is because we are in a better place in Canada now than we were pre-Bedford. The legislation is-- going to be harmful, and is harmful in all sorts of ways. But there are material changes that we can mark and note.

For example, sex workers are not being arrested-- you know, in the way that they were. And they cannot, and won't be arrested in the same way that they were. We have a decision from the Supreme Court of Canada in our back pocket, that provides everything we need, frankly-- to move forward with the next challenge.

And the public education, all of those things have been amazing. I think that as an organization the question that every strategic litigation group needs to think about is do you file challenges to legislation in the hopes that those laws will be struck down? And clear the slate when you have a government in power like we do. And that is a fundamental question that we need to be asking ourselves at all times.

Which is do we wanna clear the slate for them. Or, do we just rest with what is there. And the reality is that each time you-- secure one of these court decisions-- you build, you know, this incredible arsenal. I hate that word, sorry. This incredible tool kit. (LAUGHS) It's less aggressive. But-- (LAUGHS) not quite aggressive enough.

Anyway. You build what you need-- for the fight, and for the movement, and for the struggle. So, the answer is yes, we would have-- we would have done it just as we did. But it doesn't-- it doesn't mean 2014 wasn't an unbelievably hard year-- to reconcile. Yeah.

## ADRIENNE SMITH:

But in a sense it's also good. I didn't litigate Insight. It was one of those cases that I read as a young law student and thought-- maybe not-so-young law student. (LAUGHS) And-- and thought, "Oh, that's so amazing. I'd love to be able to do that work." But now that I am a lawyer, there's something really elegant about being able to go to a government hearing and call the Federal Minister of Health a liar, on the record.

Because she's mischaracterizing what the court decision says. Because it's a thick



read. I didn't understand it the first several times through. And particularly Constitutional law in Canada has a whole different lexicon. And the principles are not intuitive.

And to be able to explain to the public we already won this. This is what the decision says, and this is what it means. And this new law is just as bad, and it's worse in these ways. That's a present. Not just because we have this tremendous record, and all the evidence is there. And what's left for us to s-- is to gather evidence of new harm. (COUGH) But to say, "Come on now. We've already settled this."

## SEBASTIAN KOHN:

So we have a few more minutes for another question or two. Alicia.

## ALICIA:

Yeah, sure. So, there's an election this year. I guess I'm wondering how much-- how much of an impact is that planning having on your work. And do you see any of these issues being election issues?

## ADRIENNE SMITH:

Over to me. (LAUGHS) Well, I think we are all still just reeling from-- there was a suggestion that the election would come early. Although we have fixed election dates, this government is not very excited about the rule of law. And they will call it whenever they want. And we were expecting-- a March election. It seems like there will not now be a March election.

There has been a really high-profile-- shooting-- on-- in Ottawa, of-- gunman went into the House of Parliament. He was a member of our community, known to lots of service providers in Vancouver. And he was very mentally ill. But now he's become the basis for a really invasive-- suite of anti-terrorist legislation that's going to chisel away at Canadian civil liberties.

And all of the Parliamentary calendar, and-- a lot of-- civil society organizations are quite distracted by this. The problem is that's the election issue. And peoples' fear of the specter of terror, which Americans in the room will be really familiar with, particularly in the city.

'Cause we're in New York. Will understand it's quite familiar. I think the way to get these issues on the table, we've very much already done. Because when we're in the room at Parliament, talking to people about this legislation, there are opposition members of Parliament who aren't allowed to do anything-- particularly in this era, 'cause the conservatives are governing very differently than governing parties have been before.

It used to be you could go to a Parliamentary committee, somebody would propose an amendment and it would pass. Now, none of that happens. The government introduces legislation. It goes through this committee stage. Comes back unchanged, and is passed. But those members were all in the room. And they've been listening to us all along.

And they've been-- taking good positions, and opposing sex work legislation, opposing anti-injection site legislation. I think the test will be if a liberal government is elected-- and the joke about the liberal government-- the-- in Canada is that they-- govern like New Democrats. The left is-- they campaign like New Democrats.

The leftist party. But they govern like conservatives. And whether that's still true is a question of where we continue aggressive litigation, or whether we can cooperate, and contribute to making the situation better in Canada. So, that choice we can't make. The voters will make it.

## SEBASTIAN KOHN:

Jonathan.

## JONATHAN:

Yeah, thank you both. So-- such brilliant work. And great presentations. My question is almost a rhetorical question. What-- what Sarah, I think, rightly refers to as this kind of end run around the courts. It's sometimes politely referred to as a dialogue between the branches of government. You know, the two buildings on the bluff.

Sort of talking to each other. And no, we'll tweak it this way, we'll tweak it this way. But in fact it's-- it seems like such a blatant flouting of the judicial branch of government. And the kind of rhetorical question is where is the accountability for that? And you know, I mean, I'm sure you've thought about it, and are there kind of contempt proceedings. Or, is there a public campaign of accountability.

You mentioned tweaking the argument from more of a safety argument to more of a privacy arg-- but it seems to me a whole other public narrative you have to develop around just the utter-- disrespect for the courts that this government is displaying.

Not just in this area, but in many other areas as well. And people who care about separation of powers, and the Canadian Constitution. They need to stop talking about this as a dialogue, and start naming it as a total-- power grab by the Prime Minister and his kind of cronies in-- in Parliament.

## ADRIENNE SMITH:

Well, and they are--

## JONATHAN:

So, yeah. What's the strategy there?

## ADRIENNE SMITH:

There was a recent scandal about the appointment of a new justice to our Supreme Court. And the Prime Minister took a really personal public potshot at the Chief Justice. Who had called-- (VOICES) his office, as is part of her role, to say that the applicants that you've sent to us are not appropriate because there's some criteria that are not met.

And he was really nasty to her. And the Canadian public rallied behind her and said, "No, actually, the Chief Justice seems like a nice woman. That's not cool." (LAUGHS) So, I think people aren't referring to it softly as a dialogue anymore.

And whenever one of these mandatory minimum sentences is struck down-- the right wing Toronto papers say, "Oh, another blow for Harper. Courts stand up for justice." I think there's two things to rely on. And the first is that it's not all terrible. These movements are thriving under things that are happening far away in Ottawa in paper.

But people have real lives that happen in the world that are getting better because sex workers are talking to each other. Drug users are organizing. Homeless people are bringing constitutional challenges against the municipalities that are tryin' to criminalize their lives.

These steps are all good. And the second thing is that my mom is talking about sex work at Thanksgiving. And she's a voter. And there's millions of my mom in Canada, who would never have thought about sex worker safety as an election issue until we had duked it out in the court for years.

## KATRINA PACEY:

Ditto.

## ADRIENNE SMITH:

Do-- do you wanna talk about-- (LAUGHS) the challenge to the Minister of Public Safety.

## KATRINA PACEY:

No. (COUGH) I mean-- (UNINTEL) question in Toronto?

## **ADRIENNE SMITH:**

Yeah.

## **KATRINA PACEY:**

I don't-- y-- yeah. No. I-- I don't know-- we are, right now, thinking about and contemplating what more we might be able to do to increase accountability and whether there's some possibility for a directed legal action. But I don't know the answer yet. And we're-- yeah, just starting to try to bring in some people that are way smarter than me to figure that out.

## **ADRIENNE SMITH:**

Our Attorney General in British Columbia was censured by his law society-- for gutting the legal aid program. And it didn't affect his ability to be a lawyer, or be the Attorney General.

But it did generate some media buzz. And people are now aware more of access to justice. And I think those procedural things lead to a rise in public awareness and activism. More than they stop the bad conduct of a governing minister.

## **SEBASTIAN KOHN:**

We're gonna take a last question from Ralph.

## **RALPH:**

Yeah, and first of all thank you. And it's just such impressive work. And we always used to have the example of South Africa, and-- it's law project, and (UNINTEL) and-- the really strategic litigation. But combining it with community mobilization, and incredibly sophisticated media work.

And I think thanks to the work of Pivot now we have another example that is more recent in history. Where those three strategies are combined. So, it's really incredible work, and congratulations. My question is about the pri-- prison needle exchange-- case.

And this is an area in which I have worked. And I've actually written an affidavit for the case. So, I'm fully supportive of it. But there is no community of prisoners. And wh-- how are you thinking of tackling that? And what do you see-- how-- how are you-- I mean, how is the public going to learn about those issues? And how can you involve prisoners and their families in this--

## ADRIENNE SMITH:

I think there--

## RALPH:

--in a meaningful way?

## ADRIENNE SMITH:

--absolutely is a community of prisoners. They're just not imprisoned at the moment. And something that I learned living in the downtown East Side is that prison is a normal fact of life for lots of marginalized communities. And incarceration is certain. It's just a question of how often, and for how long.

I think it's artificial, the way we talk about our campaigns as separate campaigns. And here's sex work, and here's drug policy. And here's trans rates. And here's housing. And here's over-policing. These are all the same folks. And they're all our neighbors. And there is a raft of-- NGO's doing work with, and for, and alongside these folks.

And I think neatly a lot of the harm reduction work that's happening globally ports over into this context. We're very lucky in British Columbia-- well, we're lucky in Canada because some-- high-profile organizations talking about civil liberties have brought a challenge to-- solitary confinement in prison, as a practice.

Which is particularly-- egregious for trans people who are often put in segregation for their own protection. There have been some very tragic and high-profile-- suicides in prison. And it's a greater point of public consciousness now than it, I think, ever has been.

And it's-- a unique factor of prison law that it all happens away from the gaze of most citizens. And those walls are overflowing right now. It's a good time to be doing this work. And I think those people, when sex workers go to jail, when drug users go to jail, and they have this history of having organized in the community.

There's a great back-and-forth. There was also a really high-profile British Columbia case-- when the warden of a women's institution cancelled a mother/baby program that allowed women who were going to deliver their babies during their sentence to keep their babies with them.

And a group of lawyers working with these women, and with doctors and nurses in the facility, brought a constitutional challenge. And our court said not only do these women have a constitutional right to stay with their babies, but the babies have a const-- constitutional right to stay with their parents. And all of these flashpoints have made prison law more of a dinner table topic.

## **SEBASTIAN KOHN:**

So, we-- we have to wrap up, but I wanna thank you both for taking the time to speak to us. This was incredibly interesting, I've learned a lot. I'm sure others have, too. And thanks also to everyone who-- who came to the presentations.

## **FEMALE VOICE:**

Thank you. (APPLAUSE)

\* \* \*END OF TRANSCRIPT\* \* \*