

*Downtown Eastside Sex Workers United Against Violence (SWUAV) v. Canada*, [2010 BCCA 439](#)

The British Columbia Court of Appeal granted public interest standing to SWUAV, an organization representing sex trade workers, and to an individual sex trade worker, Sheryl Kiselbach, to challenge the constitutional validity of prostitution-related sections of the *Criminal Code*.

In overturning the lower court's ruling on public interest standing, the appeal court reasoned that equality challenges to legislation under s. 15 of the *Charter* warrant a generous approach when considering whether to grant an applicant public interest standing, because of the systemic and comprehensive nature of the issues they raise. In this case, where sections of the *Criminal Code* are being challenged, the claim alleges they have an impact on the lives of sex workers by creating conditions that impact on their equality and wellbeing generally, whether or not specific charges under the *Code* are laid. Thus, the Court reasoned that public interest standing is appropriate, and an individual facing a charge need not be the only avenue of bringing the case to court:

“Nor, in my view, must the only opportunity to mount a challenge to a section of the *Criminal Code* arise in the presentation of a defence to a criminal charge. Where, as here, the essence of the complaint is that the law impermissibly renders individuals vulnerable while they go about otherwise lawful activities, and exacerbates their vulnerability, the law on standing does not require the challenge to be by a person with private interest standing.” (para. 63)

The Court did uphold the lower court's finding that the individual claimant, Ms. Kiselbach, is not sufficiently directly affected by the impugned provisions of the *Criminal Code* to have private standing in this case.

The decision is important for marginalized groups who need access to the courts. Public interest standing is especially significant for those who are vulnerable and lack resources to mount court challenges on their own. The Court stated that public interest standing must be given a broad and liberal application when equality rights are at stake, and in particular when the essence of the complaint is that the law heightens the vulnerability of the complainants.

Further Reading:

[Case Summary of the B.C. Supreme Court Decision](#)

[Case Summary of the \*Charter\* challenge](#)

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