

## **Supreme Court opens door for 'swingers' clubs**

From The Globe and Mail By RICHARD BLACKWELL

Wednesday, December 21, 2005

Two Montreal "swingers" clubs did not breach Canadian standards of decency when they allowed group sex to take place on their premises, the Supreme Court of Canada ruled this morning.

In its latest attempt to set guidelines that govern sexual morality in Canada, the top court said two swingers clubs in Montreal were not operating as illegal "bawdy houses," because what went on there did not cause any harm to society.

The decision could make it easier for other venues where group sex takes place among consenting adults - such as gay bath houses - to operate without the threat of police intervention.

The ruling dealt with two Quebec Court of Appeal decisions that came down on opposite sides of the issue. In one case, the Coeur à Corps club was acquitted by the appeals court, while in the other the L'Orage club lost an appeal of a conviction on similar charges. The L'Orage club's owner appealed his conviction to the Supreme Court, while the Crown appealed the acquittal of Coeur à Corps.

The criminal code defines a bawdy house as a location that is kept for prostitution or indecent acts. At these clubs there was no direct payment for sexual acts, so there was no issue of prostitution. It was the definition of "indecent act" that became the pivotal issue in the cases. The case law has generally defined an indecent act as something that is beyond standards of community tolerance, or is capable of causing harm by encouraging people to engage in anti-social conduct. There is no evidence that "the sexual conduct at issue harmed individuals or society," Chief Justice Beverley McLachlin wrote in the majority decision, representing seven of the nine judges on the court.

At the clubs, "only those already disposed to this sort of sexual activity were allowed to participate and watch," she wrote. Everyone going into the bars knew what to expect, she added, and at both clubs there was no evidence of anti-social acts or attitudes. "No one was pressured to have sex, paid for sex, or [was] treated as a mere sexual object for the gratification of others." And just because the clubs were businesses, that didn't mean the activities that took place there were commercial - in other words prostitution - the ruling said.

The only real danger to participants was that they might catch a sexually-transmitted disease, the decision said, but this wasn't a factor in their decision because it is "conceptually and causally unrelated to indecency."