

# Criminalizing Advertising of Sexual Services: Impacts and Consequences

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The *Protection of Communities and Exploited Persons Act*, which came into effect on December 6, 2014, introduced the criminal offence of advertising sexual services into the *Criminal Code* with the following section:

**Section 286.4 criminalizes everyone who knowingly advertises the sale of sexual services.**

**Section 286.5 provides immunity for persons who advertise the sale of their own sexual services.**

Therefore sex workers can legally advertise their own sexual services on the Internet or in print, while every person who advertises a sexual service offered by someone else risks prosecution under the new law.

The exemption for “persons”<sup>1</sup> suggests that a business could be charged for advertising the services of its staff, including individual sex workers. A newspaper, magazine, or website that

carries or hosts ads could also be liable. It is inconceivable that an individual sex worker could advertise without using these third party services. In practice, the law prevents sex workers from being able to advertise their services in print or online.

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*1* In Canadian law, a corporation is also a “person;” however, while it is open to judicial interpretation, we believe that “person” here should be interpreted in the ordinary sense of the word, as a human being.

## What is the impact of these laws on sex workers?

Although sex workers are exempt from prosecution for advertising their own sexual services, any other party (e.g., newspaper, website, phone-service, etc.) that is a vehicle for sex workers advertising their services is still liable. Even maintaining one’s own website leaves the Internet Service Provider (ISP) vulnerable to prosecution.

Newspapers and online services that do not want to risk prosecution may refuse to carry sex workers’ ads or require that sex workers remove potentially incriminating explicit language. Sex workers may resort to euphemistic language to avoid having their posts or advertisements blocked. When sex workers are unable to clearly indicate their services (including those they are not providing), their prices and safer sex requirements, the potential for miscommunication with clients increases, as does the risk of misunderstandings, aggression and violence.


When sex workers cannot clearly advertise their services, their health and safety are put at risk as their control over their working conditions and safety measures are greatly reduced:

— An on-line presence or other form of advertising is essential for sex workers who do not solicit clients in public. In other words, prohibiting advertising creates significant barriers to working indoors—which research demonstrates is safer than working on the street—and makes it extremely difficult for sex workers to meet clients in more secure locations.

- If sex workers cannot advertise they cannot establish communication with clients remotely (e.g., online, by phone, etc.). This prevents sex workers from screening clients by obtaining information before meeting with them (e.g., clients’ identification or contact information).
- Sex workers face the likelihood of increased violence through the denial of a forum to share vital information that could improve their security. The ban on advertising may result in the closure of websites that, in addition to providing advertising space, host virtual sex worker-only forums. At these sites, sex workers post information on bad clients, discuss security measures, share industry information on third parties, and elicit client references. These spaces serve as an important security mechanism and foster online communities among independent sex workers who might otherwise be isolated.<sup>2</sup>
- Sex workers who advertise collectively could be prosecuted for knowingly advertising someone else’s services, not just their own.
- Sex workers’ labour options are decreased because of these named barriers to working independently. This increases reliance on third parties that increases opportunities for exploitation.

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*2* C. Bruckert and T. Law, *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Sex Industry*, (2013), available at: [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf)



Under s. 164, a judge can issue a warrant authorizing seizure of copies “of a recording, a publication, a representation or any written material” if it is “an advertisement of sexual services” (s. 164), as well as to order the custodian of a computer system (e.g., the ISP) to give an electronic copy to the court, to take the material down or off the computer system, and to provide the information necessary to identify and locate the person who posted the material (section 164.1).

Canadian sex workers may decide to use websites hosted in other countries, beyond the jurisdiction of Canadian law, as sex workers did in Ireland when that country attempted to ban

erotic advertisements.<sup>3</sup> The issue of whether a website hosted outside Canada could be prosecuted under this law would depend on the circumstances of each case. Canadian courts could have jurisdiction over the matter if they establish that a significant portion of the prohibited activities occurred in Canada, considering factors such as the origin of the content provider, the host server, the intermediaries and the end-user. Advertisements could be subject to seizure. However, enforcement could be challenging.

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<sup>3</sup> Ireland, *Criminal Justice (Public Order) Act, 1994, Section 23.*