

# Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada

Canadian Alliance for  
Sex Work Law Reform

Alliance Canadienne pour  
la Réforme des Lois sur  
le Travail du Sexe

Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada

Canadian Alliance for  
Sex Work Law Reform

Alliance Canadienne pour  
la Réforme des Lois sur  
le Travail du Sexe

© March 2017

[www.sexworklawreform.com](http://www.sexworklawreform.com)

[contact@sexworklawreform.com](mailto:contact@sexworklawreform.com)

Prepared by:

The Canadian Alliance for Sex Work Law Reform/ Alliance canadienne pour la réforme des lois sur le travail du sexe  
March 2017

## Note from the Authors:

It is with great pride and a sense of achievement that we present our key recommendations for federal and provincial/territorial sex work law reform. These recommendations are a result of our national consultation with sex workers in each of our member groups in 15 cities across Canada, including the input of expert lawyers and government relations consultants. Although laws that regulate sex work are currently and will be different across provinces and territories, these recommendations pull on broad tenets and can be applied and contextualized across all provinces and territories. The recommendations are grounded in rights enshrined within the Canadian Charter of Rights and Freedoms and the principles of universality, inalienability, indivisibility, interdependence and interrelatedness that underpin international human rights law, and based on academic and community evidence that represents the diverse expertise of the sex workers that make up our member groups of the Canadian Alliance for Sex Work Law Reform.

Sincerely,

Action Santé Travesties et Transsexuel(le)s du Québec (ASTTeQ) (Montreal)  
Angel's Angels (Hamilton)  
BC Coalition for Experiential Communities (BCCEC) (Vancouver)  
Butterfly (Toronto)  
Canadian HIV/AIDS Legal Network  
Émissaire (Longueuil, QC)  
FIRST (Vancouver)  
Maggie's: The Toronto Sex Workers Action Project (Toronto)  
Migrant Sex Workers Project (MSWP) (Toronto)  
PEERS (Victoria)  
Projet Lune (Quebec)  
Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton)  
Providing Alternatives, Counselling and Education (PACE) Society (Vancouver)  
Rézo, projet travailleurs du sexe (Montreal)  
Safe Harbour Outreach Project (S.H.O.P.) (Saint John's)  
Sex Professionals Of Canada (SPOC)  
Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury)  
Shift (Calgary)  
Stella, l'amie de Maimie (Montreal)  
Stop the Arrests! (Sault Ste. Marie)  
Strut! (Toronto)  
Supporting Women's Alternatives Network (SWAN) (Vancouver)  
West Coast Cooperative of Sex Industry Professionals (Vancouver)  
Sex Workers of Winnipeg Action Coalition (Winnipeg)

## Introduction

Academic and community-based research over the past thirty years has demonstrated the negative effects of criminal law on the health and safety of sex workers. This research identifies the criminalization of sex workers, their clients and third parties<sup>1</sup> as a key contributor to violence experienced by sex workers, among other repercussions including stigma and discrimination.<sup>2</sup> Various human rights organizations, UN bodies and courts have affirmed this research and concluded that criminalization of the sex industry supports exploitation and other human rights abuses, including Amnesty International,<sup>3</sup> the UN Development Programme (UNDP),<sup>4</sup> Human Rights Watch,<sup>5</sup> the Joint UN Programme on HIV/AIDS (UNAIDS),<sup>6</sup> the World Health Organization (WHO) with the UN Population Fund (UNFPA), UNAIDS and the Global Network of Sex Work Projects,<sup>7</sup> the Global Commission on HIV and the Law,<sup>8</sup> the Global Alliance Against Traffic in Women,<sup>9</sup> the Center for Health and Gender Equity (CHANGE),<sup>10</sup> the UN Special Rapporteur on the Right to Health,<sup>11</sup> and the Supreme Court of Canada in *Canada (Attorney General) v. Bedford (Bedford)*.<sup>12</sup>

This research identifies the criminalization of sex workers, their clients and third parties<sup>1</sup> as a key contributor to violence experienced by sex workers, among other repercussions including stigma and discrimination<sup>2</sup>.

However, despite this extensive body of research and growing consensus among human rights bodies of the harms associated with criminalizing the sex industry, the *Protection of Communities and Exploited Persons Act (PCEPA)* was enacted in 2014. In addition to maintaining the criminalization of sex workers under s. 213 of the Criminal Code, the *PCEPA* criminalizes the purchase of sexual services for the first time in Canada, and maintains the criminalization of third parties and street-based sex workers, thus replicating the harms of the former laws that the Supreme Court of Canada found violated sex workers' Charter right to security of person.<sup>13</sup> In particular, Indigenous women and youth, people who are im/migrants (particularly racialized women) and trans people (especially trans women) face targeted violence, stigmatization and overpolicing under the *PCEPA*. Predators are aware that in a criminalized regime, sex workers actively avoid police for fear of detection, apprehension, and in the case of im/migrant women, deportation.

The *PCEPA's* conceptualization of sex work as violence against women is as harmful to sex workers as its specific provisions. The *PCEPA* defines sex work as a form of inherent exploitation and frames all sex workers as automatic victims and all clients and third parties as violent criminals. This moral and ideological premise is not only false but dangerous, as it trivializes actual violence when it does occur. When sex work is seen as a form of violence, abuse of sex workers is expected and condoned. Further, the message that there is something inherently wrong with sex work stigmatizes those selling or trading sex and leads to social discrimination.

## Impacts of Sex Work Laws on Sex Workers

Sex workers across the country have reported that the new laws have:

- Displaced and isolated sex workers, who fear and avoid contact with the police and other law enforcement;
- Increased targeted violence against sex workers;
- Interfered with safety mechanisms that sex workers use to stay safe on the job;
- Encouraged less responsibility on the part of third parties to ensure good working conditions;
- Increased police profiling and surveillance of racialized sex workers, particularly im/migrant and Indigenous sex workers;
- Encouraged misuse and over application of human trafficking laws across Canada, resulting in the profiling, detention, and deportation of migrant sex workers;
- Reinforced antagonistic treatment from the police; and
- Increased stigma and discrimination against sex workers and their clients.

All sex workers and people who sell or trade sex, whether they self-identify as sex workers or not, are entitled to human rights, including the rights to work, privacy, equality and non-discrimination; life, liberty and security of the person; health; working conditions that are just, favourable, safe and healthy; freedom of expression; freedom of peaceful assembly and freedom of association; freedom from unreasonable search and seizure; freedom from arbitrary detention and imprisonment; and freedom from torture and cruel, inhumane and degrading treatment. These recommendations are underpinned by the desperate need to uphold sex workers' human rights and end targeted violence and exploitation against sex workers and people who sell or exchange sexual services.

These recommendations propose a legislative model for sex work that promotes the health and safety of sex workers and people who sell or exchange sexual services.

We seek the repeal of existing criminal laws specific to sex work, which criminalize activities associated with sex work, and recommend enforcement of other existing laws that safeguard against coercion and exploitation. We also elaborate on provincial/territorial legislation and regulations that would, in the absence of such sex work-specific criminal laws, protect and respect sex workers' human rights, including their labour rights.

Together and across jurisdictions, lawmakers can ensure a comprehensive approach to improve living and working conditions of people working in the sex industry.

## Decriminalization: Three steps towards realizing sex workers' rights and safety

Decriminalization is a first necessary step in realizing sex workers' rights and safety, as it eliminates the dangers caused by working in a criminalized context.

But decriminalization by itself is not sufficient to realize sex workers' rights and safety, which requires approaching law reform holistically. This means not only repealing federal criminal laws specific to sex work, but also examining the use of criminal laws of general application and the use of provincial/territorial laws including employment standards, occupational health and safety, and youth protection.

### Step 1: Remove sex work-specific criminal provisions.

Removing sex work-specific criminal provisions is an urgent and effective first step to respect, protect and fulfill the human rights of sex workers. This includes the repeal of all offences related to offering, providing or obtaining sexual services for consideration and the commodification of sexual activity (i.e., *Criminal Code* ss. 213(1), 213(1.1) and 213(2); s. 286.1(1) – 286.1(5); ss. 286.2(1)–s. 286.2(6); s. 286.3(1) and 286.3(2); s. 286.4 and s. 286.5(1) – 286.5(2)).

The following activities are currently criminalized and cause harms as described. These laws should be repealed:

#### S. 213 Stopping or Impeding Traffic and Communicating to Provide Sexual Services

- These laws cause harm to sex workers by imposing dangerous conditions on and preventing sex workers from taking steps to protect themselves.
- It was for this reason that the Supreme Court of Canada (SCC) struck down s. 213(1)(c) in *Bedford*.
- Remaining sections under s. 213 produce the same harms identified in *Bedford*.
- These laws prohibit sex workers from communicating to establish and consent to the terms of exchange.
- It prohibits sex workers from taking the time to screen prospective clients, which can reduce risk.
- It displaces sex workers from familiar areas and support services to more isolated areas, which increases vulnerability to violence.
- It is based on an ideological and moral position that viewing sex workers in public spaces causes social harm, increases social stigma and undermines women's equality. It sends the message that people – especially women – who sell or trade sex are less valuable members of society that do not deserve to work and live in safety and with dignity.

### **S. 286.1(1) and (2) Obtaining Sexual Services for Consideration**

- This provision renders it illegal to purchase sexual services or even communicate for that purpose. Prohibiting the purchase of sexual services and communications for such purpose leads to impacts similar to those noted in s. 213.
- Clients and sex workers are displaced and isolated because clients are attempting to avoid detection by law enforcement.
- These laws make it difficult for sex workers to screen clients and negotiate terms in advance by telephone or internet, because clients use blocked numbers or refuse to explicitly communicate information about themselves due to fear of arrest and prosecution.
- These laws also make it difficult for sex workers to screen clients and negotiate terms before getting into the confined space of a client's car, because clients hurry or avoid discussion due to fear of police detection and arrest.
- Clients and sex workers avoid discussing parameters of a service such as price and requested services for fear of surveillance, entrapment and arrest, which may result in misunderstandings and even violence.
- This sanction also interferes with the consenting process, which is a legal and ethical requirement for any sexual engagement, commercial or otherwise.
- Sex workers are less able to establish or work in safe indoor spaces because their workspaces are easily surveilled and raided, or clients are harassed and deterred.
- This provision makes no distinction between clients and perpetrators of violence. It presumes all clients are at all times committing acts of violence against women. This moral and ideological premise is not only false, but also harmful as it trivializes actual violence when it does occur. Consenting to sell or exchange sex does not mean consenting to violence.
- This framing of all sex work as violence against women also renders all cisgender and transgender male sex workers invisible.
- Criminalizing the purchase sends a message that there is something inherently wrong with sex work; this stigma leaves lasting impacts on sex workers and their capacity to access services.
- Criminalizing the purchase of sexual services isolates all people who sell or exchange sex for goods or money and pushes people out of sight and away from law enforcement, community and government supports. It fuels antagonism with police and stigmatizes communities.

### **S. 286.2: Material Benefit from Sexual Services**

- This provision criminalizes anyone who receives a financial or other material benefit from the purchase of someone else's sexual services.
- It is similar to the former s. 212(1)(j) "living on the avails" law that the SCC struck down for violating sex workers' right to security of person.
- The material benefit provision prevents sex workers from entering into supportive and informed work relationships with third parties who provide beneficial services such as security, marketing, work spaces and administrative supports.
- The law provides a small number of exceptions, but these are largely codifications of jurisprudence that existed at the time of the SCC decision.
- Significantly, this provision explicitly criminalizes materially benefiting in the context of a "commercial enterprise," which prohibits all relationships that sex workers require to work in established and organized workplaces (such as escort agencies and massage parlours) with supportive safety infrastructure. Without access to such "commercial enterprises", the least resourced sex workers are often unable to work indoors.

### **S. 286.3: Procuring**

- This provision reproduces the harms of s. 212(1)(j) “living on the avails” that was struck down in *Bedford*.
- It perpetuates social isolation and increases the risk of violence against and exploitation of sex workers, who face fewer options for safe workplaces and fewer opportunities to choose among the people they work with and for.
- This provision captures non-exploitative conduct that can provide sex workers with safer working conditions, including drivers, receptionists, bodyguards or other security.
- It prevents sex workers from legally entering into useful and informed working relationships with third parties who are in management positions or who can introduce sex workers to potential clients.
- Sex workers who are also third parties are captured under this law when they perform administrative tasks like organizing a work space in a hotel or other location, finding clients and booking clients.
- Because this provision dictates that law enforcement treat all third parties as exploitative, it isolates sex workers and third parties and creates conditions for exploitation.

### **S. 286.4: Advertising**

- This provision makes advertising more difficult for sex workers, which is very important to openly communicate the terms of their services.
- It is near to impossible for sex workers to advertise their own services without engaging a third party or enterprise to help – website and newspaper advertising are hosted and owned by third parties who are criminalized under this provision.
- This prohibition creates significant barriers to working indoors, which was demonstrated in *Bedford* as safer than working on the street.
- Sex workers who do not have the means to work independently can no longer have someone advertise their services and are also prevented from communicating with clients remotely (since s. 286.1 and s. 286.2 prevent clients from providing information) before meeting them, which facilitates misunderstandings and violence.
- This provision prevents sex workers from gathering necessary information from clients.
- This provision makes virtual “lounges” for sex workers and support organizations that share information illegal since information on working conditions is shared this way.

### **S. 286.5: Material Benefit and Advertising**

- This provision claims to provide immunity for sex workers for advertising their own sexual services, despite the fact that doing so is still a crime.
- The belief that exempting sex workers from criminal penalties is sufficient to protect sex workers from violence and exploitation is simplistic and naïve.
- Sex workers cannot employ safety measures when they, their clients or third parties, are avoiding detection by police.
- This avoidance is not limited to fear of arrest, but extends to avoiding regular police presence in their lives in a context of criminalization.
- It encourages sex workers’ isolation from the people they would decide to work with and for each other.
- It is not possible for sex workers to safely sell sex or exchange their services in a context where the purchase of sexual services is criminalized.

Taken collectively, these laws fuel stigma and discrimination against sex workers, clients and third parties in the sex industry, further contributing to sex workers' marginalization and social isolation. They also increase antagonism between police and sex workers, motivating them to avoid law enforcement at all costs, even when they are victims of violence.

With the removal of criminal provisions to regulate prostitution – legislation that does not distinguish between exploitation and sex work – comes the real possibility of identifying exploitation in the workplace and in the lives of people who sell or trade sex. When relationships between clients, sex workers, and third parties are no longer criminalized, there is also the possibility to negotiate and improve working conditions.

## **Step 2: Use existing criminal laws of general application to address violence and exploitation in the sex industry.**

Violence and exploitation in the sex industry can be more effectively addressed through general criminal prohibitions on abusive activities than through stigmatizing sex-work specific laws that push sex workers away from assistance and cause the harms outlined above.

Existing or alternative provisions to address coercion, abuse and violence against persons, including against sex workers:

**Section 265-268** – Assault

**Section 269** – Bodily harm

**Section 271-273** – Sexual assault

**Section 322** – Theft

**Section 343** – Robbery (stealing with violence or threat of violence)

**Section 279** – Kidnapping and forcible confinement

**Section 346(1)** – Extortion

**Section 423(1)** – Intimidation

**Section 264** – Criminal harassment

**Section 264.1** – Uttering threats of death or physical harm

**Section 279.01(1)** – Trafficking in Persons

**Section 279.02(1)** – Material benefit from trafficking in persons

**Section 279.03(1)** – Withholding or destroying documents (in the context of trafficking in persons)

These laws are appropriate tools to address coercion, abuse and violence because they target behaviours that are expressly and objectively abusive and are accepted as such by the Canadian public. This stands in stark contrast to the sex-work specific laws that address activities that are only assumed to be harmful by those holding a particular ideological or moral position.

### **Step 3: Apply a labour framework that engages provincial/territorial legislation, including occupational health and safety law and employment standards, to address exploitation in the sex industry.**

In a legal context that criminalizes employers and commercial sexual enterprises, the employer-worker relationship is *de facto* illegal and workers in the sex trade are deprived of basic labour and occupational health and safety protections. In practice, when sex workers are afraid to make a claim against an employer for fear of arrest, scrutiny, deportation and loss of income, they cannot access the legal remedies available to other groups of workers and are rendered vulnerable to labour exploitation and unsafe working conditions. In the absence of sex-work specific criminal laws, sex workers would be entitled to the benefits guaranteed under employment standards legislation, such as rest breaks, a minimum wage and recourse for unfair employer practices. Sex workers and their employers would also be governed by provincial/territorial occupational health and safety laws, requiring workplace measures to reduce the risk of hazards, including violence, on the job.

### **A note of caution around overpolicing and profiling of certain communities of people who sell and trade sex...**

Some members of our communities are overpoliced and profiled, particularly Asian communities, Indigenous communities and youth communities. We therefore want to highlight that alternative non-sex work specific provisions in the *Criminal Code* and in provincial/territorial laws be applied with two important caveats:

The best interests of youth must always be considered in reviewing laws that address youth exploitation. Effective measures must be taken to promote youth's best interests and address situations of exploitation.

**1. Addressing Trafficking:** The conflation of sex work, human trafficking, and exploitation leads to overbroad misuse of current anti-trafficking initiatives which place sex workers at further risk of isolation, marginalization, and violence. As they are written, the trafficking provisions in the *Criminal Code*, which are not specific to sex work, could be used to address exploitation in the sex trade as in other arenas. However, the broad manner in which they are currently being used, as a general law enforcement strategy to target sex work, violates the human rights of people who sell and trade sex in Canada. Third parties working with sex workers may be mistakenly identified as “traffickers” rather than co-workers, employers, or employees, particularly when working with im/migrant sex workers. This happens to such a degree that while we reference the human trafficking provisions throughout our recommendations, **we caution against their misuse and overbroad application.**

**2. Addressing Youth:** The best interests of youth must always be considered in reviewing laws that address youth exploitation. Effective measures must be taken to promote youth's best interests and address situations of exploitation. However, criminalizing clients and third parties of youth who sell or trade sex causes the same harms to those youth as it does to sex workers over 18. In fact, as with adults, such criminalization serves to facilitate exploitation, by driving both youth and those involved with them away from police, social services and other mechanisms. In place of harmful and stigmatizing sex-work specific laws, existing age of consent laws can be applied. This means that the same legal parameters that currently define consent to non-remunerated sex would apply to everyone – independent of a person's motivation to engage in sexual activity. At the same time, measures must be taken to provide youth with housing and support services that recognize

their rights as well as their wellbeing. We recognize the complexity and contention of this recommendation. However, we would be remiss in our objective of advancing the rights and safety of all people who sell or trade sex in Canada if we excluded youth.

**Decriminalization is a first and necessary step to address the rights and safety of people who sell or trade sex, particularly those who are overpoliced and underprotected. However, decriminalization is not enough on its own. A holistic plan for sex work law reform is propelled by a larger vision and by concrete measures to address discrimination and inequality in all forms, poverty, inadequate housing, inadequate healthcare, lack of access to safe transportation, inadequate access to legal aid, over-criminalization and over-incarceration, and ongoing problems with youth protection systems. It is imperative that sex workers from diverse communities and backgrounds be meaningfully engaged in all of the conversations and policy planning that affect us.**

For a full list and details of our recommendations, see our full report which includes recommendations in relation to the *Criminal Code*, the *Immigration and Refugee Protection Regulations* and the *Employment Insurance Act*, provincial/territorial occupational health and safety, employment standards, public health, and youth protection legislation, as well as general recommendations for law reform.

## Endnotes

- 1 Third parties are the people who work, provide services to, or associate with sex workers including: drivers, security, bookers, webmasters, business owners and receptionists of outcall agencies (e.g., escort agencies) or incall establishments (e.g., brothels and massage parlours). Third parties in the sex industry are often referred to as ‘pimps’; however, this does not accurately reflect the range of relationships sex workers have with third parties – who they work for, with, or hire. Sex workers often act as third parties for other sex workers. Also see, Global Network of Sex Work Projects. *Criminalisation of Third Parties and its Impact on Sex Workers’ Human Rights*. 2016. <http://www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights>
- 2 Benoit, C., Atchison, C., Casey, L., Jansson, M., McCarthy, B., Phillips, R., Reimer, B., Reist, D. & Shaver, F. (2014). Working paper for Building on the Evidence: An International Symposium on the Sex Industry in Canada; Lowman, J. & Dillon, P. (1998). *Life on The Streets is Dangerous*. Surrey Leader; Canadian HIV/AIDS Legal Network 2005 “Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution.” Canada; Jeffrey, L.A. and G. MacDonald. “It’s the Money, Honey: The Economy of Sex Work in the Maritimes.” *The Canadian Review of Sociology and Anthropology*, Vol. 43, Issue 3, 2006. 313-328; Lewis, J. & Shaver, F. 2006. “Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House of Commons Subcommittee on Solicitation Laws (SSLR).”; Lowman, J. 2000. “Violence and the Outlaw Status of (Street) Prostitution in Canada.” *Violence Against Women*, Vol. 6, No. 9, pp987-1011; Pivot Legal Society. June 2006. “Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform.”
- 3 Amnesty International Policy on state obligations to respect, protect and fulfil the human rights of sex workers. May 2016. <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>
- 4 John Godwin. 2012. *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*. Bangkok: United Nations Development Programme. <http://www.undp.org/content/dam/undp/library/hiv aids/English/HIV-2012-SexWorkAndLaw.pdf>
- 5 Human Rights Watch. 2014. “Canada’s prostitution bill a step in the wrong direction.” <https://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction>
- 6 UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012. [http://www.unaids.org/en/resources/documents/2012/20120402\\_UNAIDS-guidance-note-HIV-sex-work](http://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work)
- 7 World Health Organization, UNFPA, UNAIDS, Global Network of Sex Work Projects. December 2012. Prevention and Treatment of HIV and Other Sexually Transmitted Infections for sex Workers in Low and Middle Income Countries: Recommendations for a Public Health Approach. [http://www.nswp.org/sites/nswp.org/files/WHO%20prevention%20treatment%20HIV%20STI%20sex%20workers\\_0.pdf](http://www.nswp.org/sites/nswp.org/files/WHO%20prevention%20treatment%20HIV%20STI%20sex%20workers_0.pdf)
- 8 Global Commission on HIV and the Law (UNDP HIV/AIDS Group). July 2012. HIV and the Law: Risks, Rights & Health. <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights--health.html>
- 9 Global Alliance Against Traffic in Women (GAATW). 2016. Response to UN Women’s consultation on sex work. <http://www.gaatw.org/events-and-news/68-gaatw-news/857-response-to-un-women-s-consultation-on-sex-work>
- 10 CHANGE, Women’s Rights Organization Applauds Amnesty International Recommendation to Decriminalize Sex Work, August 11, 2015. [http://www.genderhealth.org/media\\_and\\_publications/press\\_releases/P10/](http://www.genderhealth.org/media_and_publications/press_releases/P10/)
- 11 UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Report on the 14th session, UN General Assembly, agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>
- 12 Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>
- 13 Ibid.

