

# Criminalizing Third Parties in the Sex Industry: Impacts and Consequences

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The *Protection of Communities and Exploited Persons Act*, which came into effect December 6, 2014, repealed s. 212 of the *Criminal Code* (procuring and living on the avails of prostitution) and replaced it with three new sections regulating third parties. The stated objective of the law was to prevent individuals from being enticed into the sex industry and exploited by third parties. While officials claimed the new law did not prohibit people working in the sex industry from working with third parties for security, in reality, the new provisions do not allow sex workers to hire experienced individuals for protection who know their trade. The Supreme Court of Canada in *Canada (Attorney General) v. Bedford*<sup>1</sup> found that third parties can increase the safety and security of sex workers. The new provisions aimed at third parties reproduce the harms of the laws that *Bedford* struck down.

## Who are Third Parties?

Third parties are the people who work, provide services to, or associate with sex workers including: drivers, security, bookers, webmasters, business owners, 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.

Many sex workers are also third parties. Some run small brothels where they and a few colleagues provide services. Others help out at their place of employment (e.g., answering the phone and booking calls for an escort agency, locking up a massage parlour at the end of a night). These individuals are vulnerable to being criminalized under laws that make merely helping a person to engage in sex work and materially benefiting in the context of a commercial enterprise – essentially all sex businesses – a crime.

## What laws target Third Parties?

Three new *Criminal Code* provisions criminalize third parties.

**1. Procuring, s. 286.3 (1),** criminalizes anyone who: “procures a person [over the age of 18] to offer or provide sexual services for consideration or [...] recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person”

**2. Receiving a Material Benefit, s. 286.2 (1),** states that “(e)veryone [except the sex worker providing services] who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1) [obtaining for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person over the age of 18]<sup>2</sup> is guilty of an indictable offence”. This provision also presumes that “a person [who] lives with or is habitually in the company of a person who offers or provides sexual services for consideration” is a financially or other materially benefiting from those services. Specific exceptions include those in “legitimate living arrangements” and when the service is also offered “on the same terms and conditions to the general public. Exceptions do not apply when third parties provide services in the context of a commercial enterprise, such as an escort agency, a massage parlor or a small in-call establishment.

**3. Advertising, s. 286.4,** criminalizes “everyone who knowingly advertises an offer” to sell sexual services, with the possibility of imprisonment on conviction. Sex workers are exempt from prosecution for advertising their own services.

<sup>1</sup> 2013 SCC 72 at paragraph 142.

<sup>2</sup> Criminal Code s. 286.3(2) criminalizes the procurement of individuals under the age of 18.

<sup>3</sup> Criminal Code s. 286.2(2) criminalizes financially or materially benefiting from the sexual services of individuals under the age of 18.

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

## The laws claim to protect against exploitation, but proof of exploitation is not required for charges to be laid.

When similar provisions were interpreted under the old law, it was only necessary that third parties were found to have (or attempted) “to cause or to induce, or to have a persuasive effect.”<sup>4</sup> Persuasion, according to case law, included the promise of significant earnings.<sup>5</sup> Many mundane but necessary work related activities such as scheduling shifts and providing drives to appointments could be construed as evidence of procuring, as “any action exercised over a person with a view to aiding, abetting or compelling that person to engage in or carry on prostitution would be considered influence”<sup>6</sup>.

## The laws targeting third parties that sex workers need and want to work for, with or hire, are exceptionally broad.

Anyone who provides goods or services directly related to, or whose income is contingent on, a sex worker’s work in the context of a commercial enterprise is targeted. These individuals provide services that may not be exploitative and provide sex workers opportunities, security and safety.

- The “**commercial enterprise**” exception that *prevents* sex workers from hiring third parties requires sex workers either to work alone (not in the context of an “enterprise”) or hire individuals who do not offer these services regularly to sex workers, which may mean hiring individuals who do not understand the business or the kind of safety precautions needed.

## In practice laws criminalizing third parties have proven to be detrimental to sex workers as they prohibit the use of important safety and security mechanisms. For instance:

- When sex workers cannot hire third parties for security, reception, etc., they are required to work in isolation or work as an “independent.”
- Street-based sex workers cannot pay a friend to record license plate numbers of clients, and or act as security at the outdoor location where they provide services.
- Sex workers cannot access agencies or other third parties that screen clients, produce bad date lists, collect and verify client information, match clients to workers, provide a deterring presence, hire on-site or on-call security person and provide transportation.
- Not all sex workers have resources to work as indoor independents (stable housing, credit that allows them to place advertisements and rent working space, reliable access to the Internet to answer emails etc.).
- Working as an independent means doing all of your advertising, security, etc by oneself. The other alternative is working on the street. Indoor sex work is considered more desirable for many sex workers because there is a reduced risk of arrest and it is less visible, and therefore less vulnerable to social judgment and stigmatization.
- That third parties can increase the safety and security was noted by the *Supreme Court of Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paragraph 14

## Criminalizing third parties means sex workers are de facto excluded from employment standards legislation and undermine sex workers’ ability to resolve workplace conflicts and unfair labour practices.

- Unlike other workers, they have no recourse when they are wrongfully dismissed or discriminated against at work. Nor can they draw on occupational health and safety legislation to pressure employers to respect workplace health and safety standards.

## Laws criminalizing third parties deny sex workers access to criminal justice redress

- Sex workers are hesitant to report violence experienced at work to the police when they fear their employer may be charged with prostitution-related offences. Of course, if wrongdoing is not reported, aggressors are not held to account and predators may continue to prey on sex workers.

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4 *R. v. Deutsch* (1983), 5 C.C.C. (3d) 41 (Ont. C.A.) affirmed (1986), 27 C.C.C. (3d) 385 (S.C.C.) at para 403.

5 *R. v. Juneja*, 2009 ABQB 243 (CanLII) at para 24.

6 *R. v. Perrault*, 1996 CanLII 5641 (QCCA), [1996] 113 CCC (3d) 573 (Que. C.A.), cited in *R. v. G. (R.J.)*, 2001 CanLII 369 (SK PC) at para 46.

## How can we address exploitation?

In addition to being harmful, sections 286.2(1) and 286.3(1) are also redundant. There are adequate general Criminal Code provisions to criminalize and prohibit the egregious behaviours that are, in some cases, associated with “pimping,” including the prohibition of kidnapping and forcible confinement (s. 279), organized crime (ss. 467.11- 467.13), physical assault (ss. 265, 267, and 268), sexual assault (ss. 271, 272 and 273), intimidation (s. 423), extortion (s. 346), theft (s. 322), and harassment (s. 264).

Third parties working with sex workers are not necessarily exploitative. Criminalizing third party relationships means that third parties employing sex workers are not accountable under labour or other laws and are therefore more likely to mistreat sex workers. Moreover they cannot be honest and forthright

with sex workers when such conversations risk being defined as procurement. Sadly, and echoing the tension noted by the Ontario Superior Court in *Bedford* in regards to sex workers<sup>7</sup>, when third parties take important precautions to ensure a secure and healthy working environment (e.g., by providing condoms and discussing safer sex practices, by hiring security personnel, and so on) their risk of being criminally charged increases. An absence of these precautions increases sex workers’ vulnerability to violence, making it difficult to improve working conditions. Striking this balance in a criminalized environment creates tension and makes it difficult to improve working conditions. Decriminalization of third parties is therefore necessary to ensure safe and healthy working spaces for sex workers.

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<sup>7</sup> Justice Himel found in *Bedford v. Canada*, 2010 ONSC 4264 at 436 that the three laws challenged (Criminal Code sections 213(c), 210 and 212.1(j)) were grossly disproportionate and therefore unconstitutional, noting that, “The overall effect of the impugned provisions is to force prostitutes to choose between their liberty interest and their personal security”.