

Meaningful Engagement and Consultation

Legislative review and reform must involve meaningful participation and consultation with sex workers, who are those most affected or potentially affected by such legislation. Meaningful consultation involves recognizing the reasons why communities are “hard to reach” and accommodating those circumstances to ensure that policy is informed by those most affected.

Governments must implement mechanisms to ensure that Indigenous persons who sell sex, trans and two-spirited persons, migrant sex workers who risk deportation, sex workers who use drugs, sex workers living with HIV, and sex workers who live in poverty can also participate meaningfully in law reform discussions and speak to the harms of criminalization without being exposed to further harms created by stigma and discrimination associated with selling or trading sex or related to others aspects of their lives or identities.

Engagement is not just consultation, meaning sex workers should be engaged throughout the entire process, through different iterations, at different stages. Engagement shouldn't only happen at the beginning of the process because it can often subject feedback to misinterpretations and can dilute that feedback through different iterations of the policy/legislation/approach. Below are recommendations on how to meaningfully engage sex workers and people who sell sex in the different elements of law reform processes.

Choosing Experts:

- **Treat sex workers like experts on the impacts of sex work-related laws.** Often the only people who are treated as experts with regards to sex work-related laws are lawyers, academics, politicians and social workers. Sex workers are most affected by the law and their perspectives should be at the centre of consultation.
- **Proportionately weigh the consultation based on who is most affected by the laws –** sex workers currently working in the sex industry are most affected and live the experience of criminalization every day, so their perspectives should hold more weight.
- **Scrutinize who is considered an expert on sex work issues.** In her 2010 decision Justice Himel scrutinized the expert testimony of academics Melissa Farley and Janice Raymond, explaining that they had drawn their conclusions before their research had begun
- **Gather experts by asking sex workers who their allied organizations and community groups are and where they access services.**
- **Contact the Canadian Alliance for Sex Work Law Reform** who can get word out to sex work organizations and to sex work support organizations who are not members.

Accounting for Structural Barriers:

- It must be recognized that many Indigenous persons with experience selling or trading sex are disenfranchised from both Canadian and First Nations governments and distanced from national organizations, making the individual consultation mechanisms for law reform suggested above even more critical to ensure their diverse voices are heard.
- **Anonymity.** Sex workers should have the right to remain anonymous or choose pseudonyms.
- **Offer opportunities to have in camera (private) face to face dialogues with sex workers and their chosen supporters.**
- **Ensure that there is sufficient time in the lead up to those conversations.** This would allow individuals and groups who might experience barriers to participation to be able to plan for taking part.
- **Provide information in advance about the kind of questions** that may be asked and the nature of the dialogue. This would help to allay fears of those who might otherwise be reticent to participate.
- **Make particular efforts to contact communities of sex workers who do not always participate in national-level actions or lobbying.**
- **Make particular efforts to contact communities of more marginalized sex workers,** like racialized sex workers, Indigenous sex workers, male sex workers and trans sex workers.
- **Hold informal meetings** for sex workers who are marginalized (for example, by poverty, substance use, immigration status, or Indigeneity).
- For Indigenous sex workers in particular, it may be necessary to **decolonize the process (i.e., by allowing sex workers themselves to determine the appropriate protocols)** in order for them to feel comfortable. It is very important in these situations not to assume that sex workers will necessarily be ready to speak about their experiences in groups. In some Indigenous communities, including in urban settings, sex work prohibitionist groups silence women in the community who do sex work by shaming them. Care should be taken to ensure that prohibitionists are not invited to meetings with sex workers.
- **Assure sex workers that their immigration status will not be questioned** as a result of their participation in any meeting. In many im/migrant communities, there is great distrust of government generally.
- **Ensure translation is available if necessary,** by accounting for adequate time for the meetings and payment to translators.

- It is established practice for researchers to provide sex workers with **stipends** to compensate them for their time. While this may not be possible in a government consultation, **recognize the fact that sex workers who participate in consultations may be losing income and access to other services in order to do so.**
- **Provide food at meetings**, which can serve as an ice breaker and ensures that anyone who attends is not doing so at the expense of taking part in meal distribution or preparation.
- **Do not put sex workers on the spot to share personal stories**, including about how and why they entered sex work or experiences of violence while working. The risks associated with this for sex workers are varied and the consequences are tangible and real.

Meetings:

- **Don't debate.** It should be recognized that if anti-sex work groups are invited to attend consultations with groups in favour of decriminalization, the chances of having a productive dialogue are very small. Time and space should be given so that these groups are not in the same rooms.
- **Provide sex workers and support organizations the opportunity to determine where and when a meeting takes place**, preferably in the community, as well as how the room is set up, and how they would like to present their ideas to government. Early morning meetings are often not ideal.
- **Do not permit media to attend consultations.**
- **Consider roundtable discussions or discussions by Skype**, which are also useful when there are a smaller number of voices around the table.

Written Submissions:

- **Provide opportunities to make written submissions, to do that anonymously or using an assumed name, if desired, and to request that submissions not be made public for privacy reasons.**
- **Provide an adequately long period for written submissions.** One month is not sufficient. Six months would be preferable.
- If there is a general opportunity for people in Canada to make submissions, **give greater weight to written submissions by sex workers** than those made by members of the general public, who may be uninformed or hold biases not based in fact.

Forming Questions and Framing Discussions:

- **Require participants to provide a brief introduction of their credentials** (e.g., “I have done sex work for 8 years;” “I have worked with (organization) on outreach to sex workers since xxxx;” “I have taught about sex work in the Women’s Studies Dept. at University X since... xxx”). Individuals and organizations with direct experience, either as sex workers or serving sex workers, should be prioritized.
- **Ensure that questions asked by people leading a consultation are from the perspective of human and labour rights and not morality or victim frameworks.**
- **Ensure that the format includes plain language** style information and visuals.

Compiling Data:

- **Begin the review process with the data that already exists**, including the report of the Special Committee on Pornography and Prostitution (“Fraser Committee”), the review of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness (House of Commons), and the *Bedford* record, and also consider published works and unpublished research conducted by academics since 2008. A specific request should be made to solicit data from those conducting research (including sex workers’ organizations), as there are a great many research projects currently ongoing.