



## **Position Paper #102**

# **Sex Workers' Rights Are Human Rights**

### **Overview**

No one should ever have to fear going to work every day. No one should have to worry about violence, humiliation, the threat of robbery, or arrest. And yet this is what sex workers in Canada must deal with, despite Canada's prostitution law that claims to help them by criminalizing only their clients, and assuming that sex workers are all victims.

To recognize and advance the human rights of sex workers, the Abortion Rights Coalition of Canada supports the full decriminalization of consensual adult sex work.<sup>1</sup> Our position is based on the best evidence available<sup>2</sup> and respect for the autonomy and dignity of sex workers.

In addition, we believe that the right to do sex work legally (and as safely as possible) has parallels with the right to legal and safe abortion. Both issues directly involve the rights to life, liberty, security of the person, equality, privacy, and conscience, and in the case of sex work, the right to free expression and association as well. Like abortion, doing sex work is also a matter of choice in most cases, even if it's a constrained or unhappy choice for many. But when abortion or sex work is criminalized, those affected have even *less* choice and control – for example, they can be more easily exploited or harmed by unaccountable third parties, putting their lives and health at risk. Just like women who have abortions, sex workers face stigma and judgment and are often shamed and silenced, especially women and transgender workers.

Therefore, ARCC views the support of sex worker rights as an important part of Reproductive Justice and gender equality. Of course, we also want programs and resources to be available to help sex workers transition from the industry if they choose to, and we deplore the lack of options that too often lead disadvantaged and marginalized people to enter sex work. Our society needs to address root causes like poverty, colonialism, drug addiction, homelessness, family neglect and abuse, and other social factors, instead of blaming prostitution itself as a scapegoat.

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<sup>1</sup> **Full decriminalization** refers to the removal of all criminal and administrative prohibitions and penalties on sex work, including laws targeting clients and third parties. **Legalization** refers to a system of government control and regulation of sex workers, in which they are only allowed to work under certain conditions, such as being required to register, undergo mandatory health checks, or limited to certain areas. They may still be criminalized.

<sup>2</sup> The information in this position paper is derived from the evidence-based sources listed at the end.

## ***History of Prostitution Laws in Canada***

Canada's prostitution laws were codified in the Criminal Code in 1892, and criminalized the facilitation of prostitution through vagrancy, pimping, procuring, operating brothels, and later through soliciting (1972) or communicating for the purpose of prostitution (1985). Engaging in sexual activity for money was not itself illegal.

In the 2012 Bedford case, three Ontario sex workers challenged three main provisions of the law – communicating, operating a brothel, and living off the avails of prostitution – and won their case when the Ontario Superior Court struck down the law. Upon appeal by the province and federal government, the communicating law was restored, but the repeal of the other two laws was mostly upheld.

The three sex workers appealed to the Supreme Court of Canada. In December 2013, the court unanimously agreed with the trial court, ruling that all three provisions were unconstitutional, largely because they put sex workers in danger by prohibiting them from taking safety measures. The court issued a one-year stay to allow the government time to pass a new law if it chose.

The Conservative government under Stephen Harper introduced Bill C-36 and passed it into law in December 2014 as the *Protection of Communities and Exploited Persons Act* (PCEPA). The law basically replicated the laws struck down by the Supreme Court, but it was claimed to be constitutional based on a new premise that prostitution was harmful to sex workers, as well as to communities. However, the new law went even further than the old laws. It criminalized the purchase but not the sale of sex, and the advertising of sexual services. The stated objective of the government was to “abolish prostitution.” (Refs 2, 8, 9, 10)

## ***Why Criminalizing Sex Work is Harmful***

When any aspect of sex work is criminalized, it does not stop most sex workers from working, or most clients from buying their services. It just becomes more difficult in various ways for sex workers to work safely. Canadian researchers Maria Nengeh Mensah and Chris Bruckert document 10 harms of criminalization (Ref 6):

1. It fuels and fosters violence against women, men, and transgender sex workers.
  - Criminalizing safety measures makes sex workers more vulnerable.
2. It undermines sex workers' access to justice.
  - They are denied the protection of police and the courts, can be arrested if they do seek help, and are often disbelieved or treated disrespectfully by the justice system.
3. It hinders the ability to maintain physical and sexual health.
  - It's more difficult for sex workers to negotiate safe sex, and they face judgment and stigma from health care workers.
4. It denies sex workers the protection of labour laws.
  - They have no benefits, workers' compensation, or protection under occupational safety regulations, and no ability to organize.
5. It limits sex workers' options.
  - Sex workers can't easily find other work if they have a criminal record, and the competencies and skills gained in sex work (business, administrative, problem-solving, interpersonal, etc.) are not recognized by employers.

6. It takes away the right to sexual autonomy.
  - Adults freely consent to have sex for many different reasons, and a commercial aspect does not justify a criminal justice response. Everyone has the right to choose what to do with their bodies.
7. It marginalizes and isolates sex workers.
  - Sex workers cannot achieve social integration because of criminalization, and are often targets of ostracism and exclusion in their own communities.
8. It is unnecessary to address harms.
  - Other criminal laws can protect sex workers, including prohibitions on trafficking, forcible confinement, organized crime, physical assault, intimidation, extortion, theft, and harassment.
9. It legitimates discrimination.
  - Sex workers are seen as inherently different from ‘normal’ citizens, which invites discrimination and stigma – including when they are seen as powerless victims.
10. Criminalizing clients is not the solution.
  - Criminalization of clients perpetuates human rights violations, increases safety risks for sex workers, and will not eliminate prostitution.

## ***Negative Impacts of Criminalizing Purchase of Sex***

Criminalizing the purchase of sex is often referred to as the “Swedish” model. The Canadian PCEPA law was modelled in part after Sweden’s 1999 law. Norway, Iceland, and Northern Ireland now have similar laws. The objective of these laws is to “end demand” for commercial sex.

Experts agree that the PCEPA is highly likely to be unconstitutional, as it poses the same threats to sex workers’ safety, autonomy, human rights, and labour rights as did the previous laws (Refs 2, 4, 8, 10). For example, street sex workers have a reduced ability to screen potential clients or negotiate the terms of transactions, because clients are more afraid. Sex workers are also being harassed and surveilled by police in many cities, leading some workers to work in isolated areas to avoid police surveillance. These factors increase the risk of unsafe sex, wage theft, and violence.

Street-based sex workers in Sweden report increased violence when clients are targeted by police, as well as police harassment and abuse. In addition to being displaced to more isolated areas and not being able to properly screen clients, Swedish sex workers report that they (Ref 2b):

- Face increased discrimination from health service providers
- Experience more stigmatization and isolation
- Cannot access social security benefits or other labour benefits
- Have difficulties accessing and maintaining housing, and are often evicted by landlords who are criminalized if premises are used for sex work
- Are required to provide evidence against their own clients in court

A study on prostitution law enforcement in Vancouver was published in June 2014 (Ref 5), just a few months before passage of the PCEPA. The Vancouver Police Department had implemented new enforcement guidelines in January 2013 that focused on clients and third parties instead of sex workers. The study concluded that this strategy failed to reduce work-related violence, and profoundly impacted sex workers’ ability to negotiate or control their working conditions or their health and safety, putting them at risk for abuse and contracting HIV/STIs.

In February 2020, an Ontario Court found that three parts of Canada's prostitution law violate the Charter of Rights and Freedoms (Ref 14). The judge ruled unconstitutional the laws prohibiting procuring, advertising, and materially benefiting from someone else's sexual services. In particular, the advertising law violated the Charter right to freedom of expression, and the laws against procuring and materially benefiting violated the Charter guarantee of "security of the person." The case stemmed from 2015 charges against a London Ontario couple who were running an escort agency. Unfortunately, the federal prostitution law continues to stand until the ruling is appealed and upheld. Further, the law is due for a governmental review in 2020, but sex worker advocates are disillusioned with the Liberal government's handling of the issue (Ref 15).

## ***What about Trafficking, and Minors in Prostitution?***

Trafficking and underage prostitution are both illegal in Canada, and will remain so if consensual adult sex work is decriminalized. Trafficking involves coercion or threats by a third party and is very different from consensual adult sex work.

Criminalization of adult sex work pushes trafficking and underage prostitution further underground and makes it harder to detect. Sex workers and clients are actually in the best position to detect when someone is being trafficked or exploited, but they won't report it if they themselves fear arrest.

Anti-trafficking measures and "rescue" measures often expose sex workers to intrusive and damaging enforcement efforts. The alleged trafficking "victims" are often arrested or detained and treated like criminals. Migrant workers are particularly vulnerable to harsh treatment from law enforcement and are often deported. (ARCC supports access to visas and permanent immigration status for all migrant workers and undocumented people, including sex workers.) The alleged numbers of adults and youth trafficked in the world today are not based on good research and tend to be grossly overestimated. This undermines efforts to combat actual trafficking. (Refs 2e, 11)

Minors in prostitution should never be criminalized and instead should be provided with access to health care and a range of social supports and programs to enable them to lead a safe and healthy life free from poverty.

## ***Benefits of Decriminalization***

Full decriminalization would respect sex workers' autonomy and dignity, give them more control over their financial and bodily autonomy, and provide equal protection to them under the law, including criminal laws, labour laws, tax laws, human rights codes, and the *Charter of Rights and Freedoms*. Decriminalization would allow the most marginalized street workers, such as those with addiction issues and Aboriginal workers, to build more trusting relationships with police and call on them for protection. It also would improve their access to harm reduction, social services, and transition services (Ref 7).

Canadian sex workers want a model based on New Zealand, which is the only country in the world to decriminalize sex work so far. Its 2003 law, the *Prostitution Reform Act* (PRA), was drafted in close consultation with sex workers and its aim was to protect their health and safety. Five years after its introduction, the government's Prostitution Law Review Committee found (Ref 3):

"The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously."

An independent review found that over 90% of sex workers in New Zealand said the law gave them employment, legal, and health and safety rights; 64% found it easier to refuse clients; and 57% said police attitudes to sex workers changed for the better.

## **Supporting Organizations**

Many leading human rights and other organizations support the decriminalization of sex work. Globally, these include the World Health Organization (Ref 16), Global Alliance Against Trafficking in Women (Ref 17), Global Network of Sex Work Projects, Human Rights Watch (Ref 18), Open Society Foundation (Ref 7), Amnesty International (Ref 1), and *The Lancet* journal (Ref 19). The United Nations (Ref 12) also explicitly urges that criminal laws against prostitution be repealed, including the Global Commission on HIV and the Law, UNAIDS, UN Women, UN Population Fund (UNFPA), UN Development Program (UNDP), and the International Labour Organization (ILO). In Canada, over 60 organizations signed a letter calling for the full decriminalization of sex work (Ref 13).

These organizations have examined the evidence and concluded that criminalizing sex work pushes the industry underground where it is prone to more violence, human rights violations, and health risks. They recommend decriminalization as the best way to safeguard the rights of sex workers.

ARCC is proud to join these organizations.

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