



10 REASONS TO FIGHT FOR THE DECRIMINALIZATION OF SEX WORK

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Canadian laws currently criminalize sex workers as well as their clients, their drivers and the owners and managers of the agencies or establishments where they work. This situation pushes the industry into the shadows and weakens our ability to combat coercion, exploitive labour conditions and violence against sex workers.



1 CRIMINALIZATION FUELS AND FOSTERS VIOLENCE AGAINST WOMEN, MEN AND TRANS SEX WORKERS!

+ When sex work is criminalized sex workers are vulnerable to violence and obliged to “choose between their liberty interest and their right to security of the person” (Justice Himel in Bedford v Canada).

+ The Canadian Criminal Code (CCC s. 210) makes it illegal for sex workers to work in their own homes or in establishments – the very places where they are safest because they can have security measures in place (i.e. cameras, neighbours, known exits).

+ The Canadian Criminal Code (CCC s. 210, 211, 212) makes it illegal for individuals to provide support or security to sex workers by criminalizing drivers, agency personnel and establishment owners.

+ Street-based sex workers are often charged under Canadian Criminal Code s. 213. In order to avoid coming to the attention of the police, street-based sex workers abandon safety strategies such as working in pairs, soliciting in well-lit populated areas, and taking the time to carefully assess a client prior to entering a vehicle.

2 CRIMINALIZATION UNDERMINES SEX WORKERS ACCESS TO JUSTICE!

+ Criminalization creates an adversarial relationship between police and sex workers. As a result sex workers do not feel comfortable turning to the police when they are in need.

+ Sex workers are hesitant to report domestic violence knowing that they themselves may be ‘outed’ as a sex worker if, for example, their partner is charged with “living on the avails of prostitution” (CCC s. 212). Knowing that they, their employer and colleagues may be criminally charged or arrested, sex workers are reluctant to report abuse, violence or exploitation against them or someone else at work.

+ Sex workers deplore the lack of credibility they are afforded when reporting a crime, making a statement or when testifying in court. At times, their statements are not believed solely because of the work they do. In fact, sex workers are often told that they somehow ‘asked for it’ when they report a sexual assault.

+ Sex workers are over-policed but under-protected. As a result, they are hyper-vulnerable to violence and predators target them with virtual impunity.

3 CRIMINALIZATION HINDERS THE ABILITY TO MAINTAIN PHYSICAL AND SEXUAL HEALTH!

- + Sex workers' ability to communicate openly and clearly with clients - including their ability to negotiate safe sex practices - is restricted by laws that prohibit "communicating for the purposes of prostitution" (CCC s. 213).
- + Social judgment of sex work is a significant barrier to sex workers' access to health services. Not only do sex workers face abusive and disrespectful attitudes from healthcare providers, but these prejudices taint the ability of health professionals to adequately assess the situation and respond appropriately. As a result sex workers may not receive the health services they require and do not feel that they can be forthright without being the object of discrimination.
- + Street-based sex workers who receive boundary restrictions (red-zones) from the courts or from the police, as a probation condition and/or as a 'promise to appear' condition, are denied access to the community and health services located in those areas.
- + The police's informal use of condoms as proof of 'prostitution' or to pressure sex workers to self-incriminate creates a powerful disincentive to carrying, and therefore using, the most effective protection available against HIV and other sexually transmitted infections. Moreover establishments seeking to protect themselves from charges of "keeping a bawdy house" (CCC s. 210) may not provide condoms and other safer sex equipment.

4 CRIMINALIZATION DENIES SEX WORKERS THE PROTECTION OF LABOUR LAWS!

- + Unlike other workers, sex workers are excluded from federal and provincial Employment Standards Legislation. As a result sex workers do not have health benefits, parental or family leave, retirement plans or vacation pay. Nor do they have recourse when they are wrongfully dismissed or discriminated against at work.
- + Sex workers are not protected by provincial legislation such as the *Occupational Health and Safety Act in Ontario* or the *Industrial Accidents and Occupational Diseases Act in Ontario*, and the *Loi sur la santé et la sécurité du travail* or the *Loi sur les accidents du travail et les maladies professionnelles* in Quebec. This means that sex workers do not have basic work security such as compensation when they are injured.
- + Sex workers cannot organize into labour unions through which they could address labour site exploitation, bargain for better working conditions, or collectively negotiate wages.

5 CRIMINALIZATION LIMITS WORKERS' OPTIONS!

- + Sex workers who have been criminally convicted find themselves permanently labeled and many employers will not hire a former sex worker. In addition, many jobs are not available to persons with a criminal record.
- + Sex workers acquire many competencies in the course of their work including interpersonal, business, administrative and problem-solving skills. These competencies and skills are not recognized by employers and by community agencies providing employment assistance.
- + Criminalization positions sex work as an illegal activity and pushes it into the shadows. This context dramatically reduces the options of workers who labour in those conditions. The hidden nature of the industry means that unscrupulous individuals can act aggressively and exploitatively with virtual impunity.

6 CRIMINALIZATION TAKES AWAY THE RIGHT TO SEXUAL AUTONOMY!

- + Adult women, men and trans persons freely consent to exchange sex for many different reasons including physical satisfaction, emotion reward, self-validation and financial benefit. There exists a continuum of socio-economic sexual exchanges from donation to payment. The commercial aspect does not justify a criminal justice response.
- + All persons have the right to choose what they do with their bodies - they have the right to have a baby or have an abortion; to have sex for pleasure or for profit or for both.
- + In the 21st century, criminalizing consensual sex between adults is outdated. Laws should reflect the mores and values of the society - this is why the Canadian laws that criminalized homosexuality were struck down more than 40 years ago.

7 CRIMINALIZATION MARGINALIZES AND ISOLATES SEX WORKERS!

+ Sex workers are members of our communities. They are our mothers, fathers, sons, daughters, neighbours and friends. Criminalization undermines the ability of these citizens to be fully integrated into society.

+ Partners, family members and others who are regularly in the company of a sex worker are vulnerable to being charged under the reverse onus crime of "living on the avails of prostitution" (CCC s. 212). In effect, the law criminalizes personal relationships and therefore undermines the social integration of sex workers.

+ Street-based workers are particularly vulnerable to being alienated, ostracized and excluded from the communities in which they live and work. At times these workers are the objects of concerted efforts by vigilante community groups to displace them.

+ It is difficult for sex workers to provide proof of their income. Without an institutionally recognized record of earnings it is very challenging to get credit for things like a mortgage or a car loan; even renting an apartment can be problematic.

8 CRIMINALIZATION IS UNNECESSARY TO ADDRESS HARMS!

+ The prostitution laws are redundant. There are ample provisions in the Canadian criminal code to sanction those who harm, abuse or exploit sex workers.

+ There are laws to protect all citizens from criminal acts, including the prohibition of trafficking in persons and forcible confinement (CCC s. 279), organized crime (CCC s. 467.11 - 467.13), physical assault (CCC s. 265, 267, 268); sexual assault (sections 271, 272, 273), intimidation (CCC s. 423), extortion (CCC s. 346); theft (CCC s. 322), and harassment (CCC s. 264).

+ Ironically laws ostensibly put in place to protect sex workers criminalize the very people deemed vulnerable and in need of protection.

9 CRIMINALIZATION LEGITIMATES DISCRIMINATION!

+ The very existence of 'prostitution' laws positions sex workers (and their partners, employers, drivers etc.) as inherently different from 'normal' citizens and in the process reaffirms and legitimates that perceived difference. Discrimination against sex workers appears justified.

+ In current legal discourse, the identity of people who work in the sex industry is confused with the work they do. All other aspects of those individuals are negated and all their behaviours and relationships are evaluated through the lens of this one activity. This is precisely what stigmatization is.

+ The idea that sex workers are powerless victims in need of salvation is often used to justify criminalization. This delegitimizes and silences sex workers at the same time as it renders their diversity, engagement and agency invisible.

10 CRIMINALIZING CLIENTS IS NOT THE SOLUTION!

+ In Canada, sex workers' clients are already criminalized. Changing the laws so that only the purchasing (but not the selling) of sexual services is illegal will maintain or even exacerbate current repression. Criminalization is criminalization.

+ When clients are targeted, sex workers' customer base is eroded and they are more likely to take risks with new or unknown clients and/or provide services they would not otherwise be prepared to offer. They may also reduce the fees they charge which in turn means they must work longer and more often to generate the same income.

+ When clients are criminalized they are unlikely to provide information to police when, for example, they encounter a worker who is being coerced or a person who is underage.

+ The criminalization of clients perpetuates human rights violations. In Sweden those sex workers who continue to work on the street are harassed and abused by police (e.g. videotaped, strip searched and searched for condoms). Moreover because sex workers are implicated in a criminal act they are required to appear in court to provide evidence against clients.

+ The criminalization of clients will not eliminate prostitution nor will it put an end to violence. In Sweden, sex workers have been displaced and are more likely to work under third-party control and/or organized crime.

DECRIMINALIZATION IS THE ONLY ANSWER!

The criminalization of commercial and consensual sexual activity is not only unnecessary, it fosters and fuels violence, undermines sex workers' access to justice, weakens their ability to maintain health, denies the protection of labour laws, limits their options, takes away the right to sexual autonomy, marginalizes, isolates, and legitimates discrimination in Canada.

In New Zealand, where sex work was decriminalized in 2003, sex workers are now able to call on the criminal justice system when they are victims of crime, can receive customers in their own small secure establishments, are empowered to oblige clients to use condoms and can draw on labour law to negotiate working conditions. Decriminalizing sex work is the only answer to improve the lives of thousands of persons in Canada and to ensure sex workers are respected and have access to the same rights and protections as every other citizen.

Decriminalization means repealing the criminal laws that make consensual adult sex work criminal in Canada:

CCC s. 210: keeping or being found in a 'common bawdy-house', a place that is kept or occupied for the purpose of prostitution or the practice of acts of indecency

CCC s. 211: taking or offering to take someone to a common bawdy-house

CCC s. 212: procuring someone into becoming a prostitute or living wholly or in part on the avails of prostitution

CCC s. 213: communicating or attempting to communicate with any person in a public place or in any place open to public view for the purpose of engaging in prostitution.



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