

Sex workers' rights

Background information

On DECEMBER 20th 2013, the Supreme Court of Canada (SCC) handed a unanimous ruling in *Canada v Bedford*, which struck down elements of the Criminal Code that were determined to violate the rights of sex workers by undermining their health and safety. The Supreme Court decided that its ruling would take effect in one year's time, at which point those unconstitutional parts of the law would no longer be in force.

In response, the federal government tabled a new piece of legislation (Bill C-36) in early June of 2014. The Protection of Communities and Exploited Persons Act (PCEPA) received royal assent on December 6th 2014, effectively criminalizing the purchase of sexual services; communicating for the purpose of purchasing and selling sexual services; receiving a material benefit from the crimes of purchasing sexual services or communicating to obtain them; procuring a person to offer or provide sexual services for consideration; and prohibiting advertising of sexual services.

With PCEPA, the federal government reinstated provisions very similar to those already found by the SCC to be harmful to sex workers' lives, health and safety, simply by rewording some of them and re-labelling provisions with new and broader objectives. This indicates that the new prostitution laws, like the old ones, are likely in violation of sex workers' Charter rights. The government's response also creates new issues of constitutional validity with the prohibition on advertising and the blanket ban on the purchase of sexual services. This approach continues to impose danger, increased criminalization, little control over working conditions and fewer safe options for sex workers. It runs contrary to the requirement of the SCC to address these dangerous and ineffective laws and does not appear to conform to the December 2013 ruling in *Canada v Bedford*.

The social science evidence from Canada and throughout the world clearly indicates that this type of legislation forces sex workers into unsafe and unprotected areas restricting access to important safety strategies that can have significant and profound negative consequences on sex workers' health, security, safety, equality and human rights.

This is especially alarming for people in precarious immigration situations. Canada's new sex work-related laws do not explicitly address migrant sex workers but their stated objective is to "ensure consistency between prostitution offences and the existing human trafficking offences." This means that human trafficking frameworks are being used to understand prostitution. Because migrant sex workers are often identified as "trafficked victims" and because their work is often referred to as "sexual exploitation," laws and policies criminalizing both sex work and migration lead to both racialized and sex workers of colour being specifically targeted. This puts already vulnerable populations at higher risk of criminalization and violence.¹

The UN Special Rapporteur on the right to health has condemned the criminalization, full or asymmetrical, of sex work as violating sex workers' right to health by creating barriers to their access to health services, which can lead to poor health outcomes. Governments have an obligation to show due diligence in the protection of sex workers' human rights, including their right to health and to freedom from violence. Laws and policies must be evidence-based and address the intersecting and layered systems of oppression impacting sex workers' experiences.



Right to Health the criminalization of both the selling and the purchase of sexual services:

Creates fear among sex workers that they may face legal consequences or harassment if they carry condoms and lubricant, which can be used as evidence of prostitution.³

Reduces sex workers' ability to negotiate safer sex with clients, on the street as well as online, or on the phone.⁴

Affects the relationship between sex workers and any service providers (such as those providing condoms and harm reduction supplies) as sex workers may fear being reported to the police, which can lead to police entrapment.⁵

Heightens risks of HIV and other sexually transmitted infections as sex workers face substantial barriers in accessing prevention, treatment, and care services, largely because of stigma, discrimination and criminalization. Decriminalization of sex work was determined to be the single most efficient structural intervention to reduce HIV infections among sex workers through reducing the risk of violence.⁶

Freedom from Violence the criminalization of both the selling and purchase of sexual services:

Invites police harassment as well as makes sex workers more vulnerable to violence as it pushes sex work underground where it is harder to negotiate safer working conditions and consistent condom use.

Increases sex workers' isolation and marginalization while it concurrently limits access to police protection and support services, as well as decreases their ability to report violence to police.

Results in sex workers having to take risks with new, less familiar or less desirable clients as they have less time to screen them and are being displaced to isolated areas as the client's fear of arrest may also have a dispersal effect.

Prevents sex workers from implementing simple safety enhancing measures such as working in pairs, working in familiar areas or having the time to consult bad date lists, which provides critical information for people to protect themselves.

Intensifies the social stigma of selling sex.

Bodily Autonomy and Women's Agency the criminalization of both the selling and purchase of sexual services:

Is a violation of the right to bodily autonomy and to have control over and decide freely upon all matters relating to one's sexuality; the new law's assumption about sex workers as women strongly links this approach with the desire to control women's sexuality.

Hinders sex workers' ability to communicate with their clients about what services they consent to provide and which ones they do not.

Rests on the incorrect conflation of consensual sex work with coercion or trafficking, which prohibits the



former. There are laws that directly target exploitation, violence and non-consensual sexual activities, including those that prohibit physical assault, sexual assault, threatening, harassment, murder, extortion, human trafficking and child exploitation.

Upholds misconceptions about sex work and sex workers: that all sex workers are women or that they are inherently victims. It posits that sex workers, and by extension women, are in essence vulnerable or in need of state protection. This approach denies sex workers, and women more generally, their agency as rational decision-makers who each navigate more or less constrained choices, as it is laden with the misbelief that no one would choose this profession.

The United Nations is in the process of crafting a universal framework for development for 2015-2030. A set of Sustainable Development Goals has been proposed as a way forward. The proposed goals are universal in nature and will apply to all countries, regardless of economic, social or political realities. In the context of respecting, protecting and fulfilling sex workers' rights, the following targets will therefore apply in Canada:

3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes

3.8 Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all

5.6 Ensure universal access to sexual and reproductive health and reproductive rights agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status

10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard

We call on the Government to:

Protect sex workers' rights under the Canadian Charter of Rights and Freedoms and international human rights law by:

Repealing the Criminal Code sections that individually and as a whole threaten sex workers' health and safety, including the offences of purchasing sexual services; communicating for the purpose of purchasing and selling sexual services; receiving a material benefit from the crimes of purchasing sexual services or communicating to obtain them; procuring a person to offer or provide sexual services for consideration; and prohibiting advertising of sexual services.

Including sex workers in policy and law reform process as the human rights principles of participation, transparency and accountability require that sex workers must have a say in modernizing the laws and policies that affect them.



