



Sex Work in Canada

Research Brief

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Acknowledgements

Egale is Canada's leading organization for 2SLGBTQI people and issues. We improve and save lives through research, education, awareness, and by advocating for human rights and equality in Canada and around the world. Our work helps create societies and systems that reflect the universal truth that all persons are equal and none is other.

Summary

Sex work in Canada is currently criminalized: it is prohibited by criminal law, immigration law, and municipal bylaws. All of these laws work together to criminalize the lives and work of people who sell or trade sexual services for money, goods, or services. The criminalization of sex work further marginalizes 2SLGBTQI, Indigenous, Black, Asian, racialized, and migrant sex workers.¹ This document outlines the current legislative context for sex work² in Canada and examines the marginalization that sex workers in Canada face. It highlights the need for the decriminalization of sex work as an essential step to ensure sex workers' rights are protected, and that sex workers' voices, demands, lived experiences and knowledge should be prioritized and should guide legal and political responses. This document is intended as an informative brief to help our members and allies understand the current issues that impact sex workers lives in Canada. It is also intended to help people learn about how the decriminalization of sex work should be integral to the fight for equality and 2SLGBTQI rights.

Overview: The Need for a Human Rights Approach to Sex Work Law Reform

A well-established body of research exists in demonstrating that criminalization of any part of sex work negatively impacts the health and safety of sex workers (Amnesty International, 2015; Amnesty International 2016a; Canadian Alliance for Sex Work Law Reform, 2017; Centre for Gender and Sexuality Health Equity, 2019; Santini, Ka Hon Chu, & Lam, 2017). These policies work to further marginalize sex workers and create conditions that leave sex workers economically precarious and vulnerable to violence (Krüsi et al., 2014; Amnesty International, 2015; Amnesty International 2016a). Further, these policies often conflate the ideas of human trafficking and sex work and assume all sex work is human trafficking. Policies and practices that conflate sex work with human trafficking and exploitation negate the agency of sex workers and perpetuates harmful policy and further marginalization of sex workers. These policies are discriminatory, target the most marginalized sex workers, and increase the vulnerability of all sex workers by preventing them from being able to create safer and more equitable work environments. Through the criminalization and

1 A "migrant sex worker" refers to anyone who moves across borders and consensually exchanges sexual services for money or goods. Migrant sex workers have a variety of different immigration statuses such as: international student, temporary residency, permanent residency, undocumented/non-status, refugee/asylum claimant.

2 Sex work refers to the consensual exchange of sexual services for money, goods or services.

over regulation of sex work, governments contribute to further marginalization of sex workers and vulnerability to violence that sex workers face (Amnesty International 2015; Canadian Alliance for Sex Work Law Reform 2017; Tyler, 2020; Armstrong, 2020).

In 2017, the Canadian Alliance for Sex Work Law Reform (a coalition of 25+ sex worker rights groups across the country) published, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, which includes a series of recommendations that outline a human rights approach to sex work law reform in Canada. They provide a definition of and process for decriminalization that outlines the principles that must accompany any law reform. Their “Key Principles and Precepts for Sex Work Law Reform” (p. 27) lay out a foundation for sex work law reform. They highlight the fundamental elements that should underscore any framework for sex work law reform. These elements are an integral place to start for those who wish to approach sex work law reform and work in partnership with sex workers.

Key Principles and Precepts for Sex Work Law Reform

- Selling or trading sexual services is not inherently immoral, nor does it constitute per se a public nuisance;
- Selling or trading sexual services is not inherently harmful nor a manifestation of exploitation, engaging in sex work is not itself something that inherently damages the physical or mental health of those who sell or trade sex, and a person who sells or trades sexual services does not inherently become an unfit employee, parent, tenant, customer or client;
- All persons have the right to self-determination and to make choices in their lives, including with whom they live, whom they love, whether to have sex and with whom, and should they choose to sell or trade sexual services, which services to offer and on which conditions;
- All persons of legal age are free to engage in consensual sex, including in exchange for money or other valuable consideration, without being subjected to the coercive or restrictive power of the state, directly or indirectly, in ways that deny their autonomy or put their health and safety at risk, based on the religious or other moral views of others;
- Stigma towards prostitution and against sex workers is real, pervasive and deeply ingrained in Canadian society and around the world, and

it contributes to harassment, discrimination, violence and other abuses. Laws and policies – and their enforcement – often reflect and reinforce this stigma and encourage or tolerate the abuses that flow from it;

- Eliminating such stigma and related abuses requires not only removing harmful laws and policies, and their enforcement, but also proactive ameliorative measures to reduce that stigma and to protect and promote the rights of sex workers, including protection against discrimination, harassment and hate crimes;
- Singling out sex workers, and activities related to sex work, for particular or additional prohibitive or punitive treatment (e.g., in criminal laws) is virtually always harmful, and there should be a strong presumption against any such exceptionalism, such that there is no need for, nor should there be any criminal offences specific to sex work;
- In keeping with this general presumption, in some areas of law (e.g., those governing working conditions, social benefits and other protection), general protections should be available equally to sex workers. However, as is the case with other kinds of work, the nature of sex work may require, in some specific instances or respects, some industry/setting/activity-specific provisions to ensure the adequate protection of the health, safety and rights of sex workers. Consultation with sex workers in determining such provisions is essential to ensuring they are in fact effective and protect the health and other rights of sex workers;
- Coercive measures – whether under criminal law, immigration laws or under the guise of “protection” (e.g., of youth, of health) – that infringe the liberty or security of the person, or the freedoms of movement, assembly or association, of people who sell or trade sex, are not ultimately protective of their welfare;
- Any legislation or policy, adopted by whichever level of government, should maximize the autonomy of sex workers to be able to work as safely as possible, in keeping with their human rights to safe working conditions, bodily integrity, liberty, privacy, non-discrimination and dignity; and
- All legislative reform must involve collaboration and meaningful consultation with sex workers who are the most affected by any such laws and their enforcement, including recognizing the critical expertise of sex workers.

The Canadian government historically and continuously ignores the input and perspectives of sex workers in the development and reform of laws surrounding the sex industry. There is a pattern of passing laws and policies claiming to “help” sex workers without the ongoing input and partnership with people currently working in the sex industry. Along with a lack of involvement of sex workers in law and policy discussions, these approaches have invited further discrimination, harassment and violence into the lives of sex workers.

Legislative Frameworks for Sex Work

This section outlines legal frameworks for sex work and argues for the decriminalization of sex work as the only human rights approach to sex work law reform.

End Demand Models or Prohibition

The “Swedish” or “End Demand” regime seeks to eradicate sex work and is predicated on the belief that all sex work is violent or exploitative. This prohibitive legislative framework categorically views sex workers as victims (Nordic Model Now!, n.d). Despite the fact that these frameworks claim to “criminalize clients and decriminalize sex workers”, in almost every part of the world that this regime has been implemented, it has added new criminal offences to already existing criminal regimes. This results in the criminalization not only of the purchase of sexual services, but of the sale, advertising, and facilitating of sexual services, and other elements of the industry. The claim that the Swedish regime “criminalizes clients but decriminalizes sex workers” is a myth, and one that dangerously ignores what it means for sex workers to work in a criminalized context. If any aspect of sex work is criminalized, sex workers remain in an antagonistic relationship with laws, law enforcement and institutions, are prohibited from establishing workspaces and relationships and are excluded from labour standards and protections, while marginality, discrimination, and stigma towards sex work and sex workers is maintained and supported.

The Swedish model is often accompanied by misguided “rehabilitation” programs known as “exit services” for sex workers. As opposed to being non-judgement, non-directive services that meet sex workers where they are at. These services presuppose that sex workers need to leave the sex industry. To receive support services from these programs, sex workers often need to

promise to stop working in the industry or need to subscribe to the ideology that their sex work exploits them.

Additionally, End Demand regimes tend to include surveillance and additional policing of sex workers who are assumed to be victimized, resulting in unwanted and unsolicited interactions with police for already over-policed and under-protected communities of Indigenous, Black, migrant and trans sex workers, and sex workers who use drugs.

End Demand regimes have come under criticism from people impacted by sex work law, for conflating sex work with trafficking and perpetuating victim narratives (Canadian Alliance for Sex Work Law Reform, 2017; Amnesty International, 2016; Belak & Bennett, 2016; NSWP, 2017). Criminalization does not recognize sex workers' agency and produces false claims that it is impossible to consent to sex work due to the belief that sex work is inherently exploitative. In this way, the Swedish regime reinforces and encourages the stigmatization of sex work:

The criminalization of some or all aspects of prostitution remains the dominant legal approach globally, despite growing empirical evidence and clear international guidelines by the WHO, UNAIDS, UNDP and UNFPA calling for full decriminalization of sex work as necessary to promoting the health and human rights of sex workers. (Krüsi et al., 2014, p. 1-2)

Stigma resulting from the criminalization of sex work directly maintains and produces unsafe working environments for sex workers by interfering with sex workers' agency and creating barriers that prevent sex workers from: safely negotiating client interaction; and seeking out healthcare services and reporting crimes or seeking legal assistance (NSWP, 2017; SCOT-PEP, 2015). Research has demonstrated that criminalizing the purchase of sexual services does not reduce demand nor eradicate sex work, it simply creates more precarious situations for sex workers. (Canadian Alliance for Sex Work Law Reform, 2015). In environments where the Swedish regime is implemented, researchers have found that sex workers are reluctant to report violence due to, "fears that information about where sex work takes place could be used to target clients and harass sex workers" (Platt et al., 2018, p. 36). Versions of End Demand criminalization regimes have been implemented in Sweden, Norway, Iceland, Northern Ireland, Israel, France and Canada.

Decriminalization

In 2003, New Zealand implemented a version of a decriminalization model of sex work called the *Prostitution³ Reform Act (PRA)* (Abel, 2014). The goals of the PRA are stated as,

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- a. safeguards the human rights of sex workers and protects them from exploitation:
- b. promotes the welfare and occupational health and safety of sex workers:
- c. is conducive to public health:
- d. prohibits the use in prostitution of persons under 18 years of age:
- e. implements certain other related reforms. (Prostitution Reform Act, 2003, § 3)

This means that for people in New Zealand with citizenship or permanent resident status, it is “not against the law to work as a sex worker or operate a brothel, nor is it against the law to pay for sexual services. However, it is against the law for any third party to facilitate anyone *under the age of 18* into sex work” (NZPC, n.d). The PRA enables most sex workers to exercise their agency through: determining their work conditions; the right to decline clients; negotiation of safer sex practices; and the right to support through Work and Income New Zealand (WINZ) (NZPC, n.d). In New Zealand, many sex workers have access to government support systems in the same manner as workers in other professions. This enforces the idea that sex work is a valid and respected form of work.

An independent review compared sex workers experiences in 2006 to existing data from 1999 to monitor the impact of decriminalization. The study carried out by the University of Otago in Christchurch, New Zealand found that since the implementation of the PRA in 2003:

- There has not been a dramatic increase in the sex work industry, in fact at the time the study was conducted researchers found, “there has

³ In this section the term “prostitution” is used only when necessitated by the name of an organization, the name of legislation or in relation to direct quotes.

been little impact on the number of people entering the industry post-decriminalisation” (Abel et al., 2007, p. 171).

- Sex workers articulated increased feelings of power in their interactions with both clients and management (Abel et al., 2007, p. 173).
- Sex workers stated that the PRA had created an environment where they felt more supported by the legal system (Abel et al., 2007, p. 173).
- Requirements of the law provide many sex workers with the support they need when negotiating safer sex practices. (Abel et al., p. 173).

The New Zealand Prostitute Reform Act, was supported by many feminist organizations leading up to its implementation in 2003, including: the New Zealand Prostitutes’ Collective (NZPC), the National Council of Women of New Zealand (NCWNZ), the National Collective of Independent Women’s Refuges, the New Zealand Federation of Business and Professional Women, the Young Women’s Christian Association, the AIDS Foundation and thirty-four other organizations (Crichton, 2015).

While New Zealand’s model is strong, it has a few major shortcomings. For instance, as mentioned above, migrant sex workers who do not have citizenship or permanent resident status are prohibited from working legally within the sex industry, leaving them outside the realm of government and legal support and at risk of deportation. This creates an atmosphere of violence, exploitation, and precarity for many migrant sex workers.

A Snapshot of Sex Work Law Reform in Canada

Sex workers in Canada have been fighting for decriminalization since the early 80s. There have been numerous parliamentary debates and discussions about sex work law reform. In 2007, three sex workers, Terri Bedford, Amy Lebovitch, and Valerie Scott initiated a constitutional challenge to three of the prostitution offences in Canada’s Criminal Code. They sought to challenge: s. 210⁴ (keeping or being found in a bawdy house), s. 212(1)(j)⁵ (living on the avails of prostitution), and s. 213(1)(c)⁶ (communicating in public for the purpose of prostitution) on the grounds that they violated their freedom of liberty and security under s.7⁷ of the *Canadian Charter of Rights and Freedoms*. They

4 *Criminal Code*, RSC 1985, c C-46 s 210.

5 *Criminal Code*, RSC 1985, c C-46 s 212(1)(j).

6 *Criminal Code*, RSC 1985, c C-46 s 213(1)(c).

7 *Canadian Charter of Rights and Freedoms*, s 1, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c 11.

argued that these criminal offences forced them to choose between their liberty and their security.

In 2010, at the Ontario Superior Court, Justice Himel ruled these offences were unconstitutional. It was the first time that a Canadian court had demonstrated an understanding of the impact of criminalization on sex workers' security. The case made its way to the Supreme Court of Canada (SCC) where in 2013 there was a unanimous decision that the three challenged offences were unconstitutional.

The SCC decision included a one-year stay. In 2013, the Conservative government responded with Bill C-36⁸, passed as the *Protection of Communities and Exploited Persons Act*, in 2014. Contrary to the spirit of *Bedford* that recognized sex workers' right to security, legislators who passed Bill C-36 were clear that their intention was not to protect sex workers but rather to eradicate sex work itself, which they defined in Bill C-36 as violence and exploitation. This approach has resulted in further marginalization and stigmatization of sex workers, and a more antagonistic relationship with law enforcement and institutions.⁹

Current Federal Legislative Framework for Sex Work in Canada

Sex work in Canada is prohibited through criminal law, immigration law, and municipal by-laws. These laws work together to place sex workers in conflict with law enforcement and at risk of resulting in punitive measures.

PCEPA

On December 6, 2014 the *Protection of Communities and Exploited Persons Act* (PCEPA), née Bill C-36, came into effect.

The resulting increase of oppression that sex workers face under PCEPA stems from the antagonistic environment that it creates for sex workers with law enforcement, institutions, and other societal actors. The implementation of PCEPA maintained Canada's criminal approach to sex work and shifted from

⁸ Bill C-36, *An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts*, 2nd sess, 41st Parl, 2014, c 25 (assented to 6 November 2014).

⁹ Lyne Casavant and Dominique Valiquet, "Legislative Summary: Bill C-36: An Act to amend the criminal code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other acts" (18 July 2014).

a nuisance framework to an exploitation framework that has roots in Swedish legislation and End Demand philosophies. PCEPA makes sex work itself illegal for the first time in Canada. In Canada, s. 286.1(1)¹⁰ of PCEPA criminalizes the purchase of sexual services in every context. In addition to this, PCEPA criminalizes the receiving of a material benefit from the purchase of sexual services (s. 286.2¹¹), the facilitating the purchase of someone else's sexual services (s. 286.3), and the advertisement of sexual services (s. 286.4¹²). Section 213 was also amended in 2014 to maintain criminalization of communication related to the sale of sexual services in specific public places (s. 213.1.1). Some of the core problems of PCEPA is that it defines sex work as exploitation and conflates it with human trafficking, which further marginalizes and endangers sex workers, while denying sex workers' agency. Additionally, the immunity from prosecution that some sex workers are provided under s. 286.5¹³ does not mitigate numerous harmful impacts that extend beyond prosecution and result from criminalization.

Ultimately, PCEPA infringes on many of sex workers' Charter rights and reproduces many of the human rights violations that were highlighted in *Bedford*. Therefore, PCEPA has only made the work and lives of sex workers more difficult and must be repealed.

In a global study examining associations between the legal status of sex work and sex worker's health, researchers found in contexts of *any criminalization* there was an over-policing of sex workers that increased existing intersections of marginalization (Platt et al., 2018, p. 3). Criminalization has been proven to result in the disruption of sex workers' community support networks, personal support networks, safety, harm reduction strategies, access to health services and access to justice (Butterfly, 2020; Canadian Alliance for Sex Work Law Reform, 2015; Centre for Gender & Sexual Health Equity, 2019; Platt et al., 2018).

In 2019, the Centre for Gender & Sexual Health Equity developed a community-based research project AESHA (An Evaluation of Sex Workers Health Access), which examined the lived-experiences of indoor and outdoor sex workers of all genders to evaluate the impacts of interventions and policies. This study compared statistics during PCEPA (2015–2018) against pre-PCEPA (2010–2013) and the study found:

¹⁰ *Criminal Code*, RSC 1985, c C-46, s 286.1(1).

¹¹ *Criminal Code*, RSC 1985, c C-46, s 286.2.

¹² *Criminal Code*, RSC 1985, c C-46, s 286.4.

¹³ *Criminal Code*, RSC 1985, c C-46, s 286.5.

Statistics Under PCEPA (Center for Gender & Sexual Health Equity, 2019)

Working Conditions	<ul style="list-style-type: none"> • 72% of sex workers report no improvement in working conditions with PCEPA • 26% of sex workers report negative changes in working conditions with PCEPA
Access to Justice (in reporting violence)	<ul style="list-style-type: none"> • No increase in rates of reporting violence with PCEPA
Health and Social Support	<ul style="list-style-type: none"> • 41% reduction in access to health services with PCEPA • 21% reduction in access to community-led support services with PCEPA
Racialized Im/migrant Sex Workers	<ul style="list-style-type: none"> • 87% increase in unreported violence

This research indicates that, “end-demand legal approaches focused on curtailing demand by criminalizing sex workers’ clients and third parties who materially benefit, replicates the same harms as prior legislation” (Centre for Gender & Sexual Health Equity, 2019, p. 13). In *Sex Work and Changes to the Criminal Code After Bill C-36: What Does the Evidence Say?* a document produced by the Canadian Alliance for Sex Work Law Reform, they further explore problems with PCEPA and provide a breakdown of the implications of criminalization on sex workers in Canada. The table below provides a brief overview, the [full document](#) can be consulted for a more in depth examination on the effects of prohibition surrounding sex work.

Some Effects of Prohibition include:	<ul style="list-style-type: none"> • Sex workers are affected by decreased ability to screen clients and therefore are at an increased risk of violence. • Sex workers report less access to social services and an inability to benefit from health and safety regulations, labour laws, and human rights protection.
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- Sex workers experience reduced ability to negotiate clear terms of service including rates and safer sex practices.
- Sex workers are less able to establish safe indoor spaces to do sex work.
- Street-based sex workers experience increased isolation and dangerous working conditions including increased violence.
- Clients and sex workers are less willing to contact police about bad working conditions, exploitation, or trafficking.
- Migrant sex workers who work with third parties often get caught up in detention and deportation sweeps produced by anti-trafficking raids.
- Law enforcement's ability to identify and intervene in situations of exploitation, abuse, and trafficking is decreased.

PCEPA creates an antagonistic environment for sex workers. Since the implementation of PCEPA, sex workers have experienced reduced access to, health services, sex worker/community-led supports (Argento et al., 2020). The prohibition of communication, purchasing sex, materially benefiting from sexual services, facilitating (“procuring”) and advertising sexual services all function together to have an extremely negative impact upon the lives of sex workers and their ability to safely work within Canada.

Immigration Provisions on Sex Work: Impact on Sex Workers

An approach that assumes that sex work is inherently exploitative limits service providers' understanding of the diversity of migrant sex workers' lives and realities, and the complexities of their needs and concerns.
(Santini & Scott, 2017, p. 17)

Immigration regulations in Canada discriminate against migrant sex workers. *The Immigration and Refugee Protection Act* and its Regulations (IRPR) prohibit the involvement of migrant sex workers' in the sex industry through regulations that dictate that anyone who does not have Canadian citizenship or permanent

residence is prohibited from doing sex work (Santini, & Scott, 2017). Migrant sex workers who decide to engage in sex work are in breach of immigration regulations. They are bound in a contradiction where they cannot disclose their employment and at the same time cannot misrepresent or withhold from immigration facts related to their employment (Santini & Scott, 2017). The IRPR prohibits legally working as erotic dancers, offering striptease, erotic massage, or escort services, and work permits in Canada are not valid for employment in businesses that are related to the sex trade (Santini & Scott, 2017). This places migrant sex workers in a particularly precarious position as they are constrained and punished by the legal frameworks and regulations surrounding both immigration and the criminalization of sex work:

These laws include specific immigration regulations, criminal offences, and municipal regulations that directly target sex workers and sex work. Criminal and municipal investigations that arise from these laws may lead to immigration consequences for migrant sex workers, even when they are not charged with a criminal or municipal offence. (Santini & Scott, 2017, p. 24)

Immigration provisions that prohibit sex work create barriers to migrant sex workers' access to support as workers who do decide to seek support risk being investigated for violations related to immigration, sex work and/or assumptions of human trafficking (even without evidence of coercion and exploitation) (Santini & Scott, 2017). The complex combination of laws surrounding sex work and immigration, act as barriers to migrant sex workers access of labour and employment rights, "it is only when sex work is not perceived as exploitation that working conditions - including equity and dignity in the workplace - can be recognized and respected" (Santini, Lam & Wong, 2017, p. 3).

Municipal Bylaws: Impact on Sex Workers

Municipal and provincial regulations are often used to control and displace sex workers. This control and regulation extend from inside workplaces to public spaces and violates the human rights of sex workers, targeting individuals through racial and social profiling. Often these regulations are framed as protecting public from nuisance and ensuring the health and safety of the public. These discriminatory regulations are utilized to displace marginalized individuals from public spaces and disproportionately affect Black, Indigenous, trans and migrant sex workers (Santini & Lam, 2017).

Municipal bylaws and licensing schemes equip law enforcement with legal powers to regularly enter sex workers' workplaces. As a result, the frequent presence of city inspectors and police officers in the workplace causes great stress and uncertainty for migrant sex workers, and creates barriers that prevent businesses from establishing equitable and safe working conditions that promote and protect sex workers' personal safety. (Santini & Lam, 2017, p. 10)

Municipal bylaws differ as each city has its own specific bylaws. Within Canada, certain cities have been designated as "sanctuary cities" (CASSA & The Law Foundation of Ontario, n.d) A sanctuary city is a city that has adopted a formal policy which allows undocumented migrants access to city services regardless of immigration status (Keung, 2013). This policy has been adopted in several cities across Canada including Toronto, and yet there have been instances of unequal application and disregard of this policy (Santini, Ka Hon Chu & Lam, 2017). This results in a great deal of stress for migrant sex workers who are at risk due to the uncertainty of these interactions within and outside of "sanctuary cities" (Santini & Lam, 2017; Santini, Ka Hon Chu & Lam, 2017).

Living and Working at the Intersections: How Criminalization Creates Harmful Conditions for the most Marginalized Sex Workers

Sex workers living and working at the intersections of gender, race, immigration status, and economic insecurity experience heightened impacts of criminalization of sex work.

In 2016, Egale published a document in partnership with the International Lesbian, Gay, Bisexual, Trans and Intersex Association - North America (ILGA-NA) that examined discrimination and violence in Canada, "*Lesbian, Bisexual, and Transgender Women and Gender Diverse and Two Spirit People on the Basis of Sexual Orientation, Gender Identity and Gender Expression*" (Egale & ILGA-NA, 2016). The document stated that the current legislation surrounding sex work in Canada (which remains in place today), places sex workers in precarious circumstances, "Specifically, sex workers from these communities are unable to benefit from health and safety regulations, labour laws, and human rights protections. As individuals already marginalized in employment, LBT women and gender diverse and Two Spirit people are harshly affected by legislation criminalizing sex work" (p. 8).

In Canada research involving 2SLGBTQI sex workers is limited. A study funded by Canadian Institutes of Health Research (CIHR) conducted in 2014, found:

Gender	<ul style="list-style-type: none">• 77% of sex workers identify as women• 17% identify as men• 6% as genders other than men or women, including those who see themselves as transgender or as gender-fluid (Benoit et al., 2014, p. 3).
Sexuality	<ul style="list-style-type: none">• 38% identified as bisexual or bi-curious• 6% as gay or lesbian• 11% reported other sexual orientations (Benoit et al., 2014, p. 3).

In a Pivot Legal Society report they highlight that,

Acknowledging and exploring the experiences of people selling or trading sex who are not cisgender women may help to expand our understanding of sex work and undo the perception that it is inherently a form of gender exploitation. (Belak & Bennett, 2016, p. 34)

The report published in 2016 found that 25% of sex workers in Canada do not identify as women (p. 34). The report noted, sex work is often discussed through a cisgender, heterosexual lens which erases Two Spirit, transgender, non-binary, and male sex workers (p. 34).

Legislation must consider sex workers who are members of the 2SLGBTQI community and consider their experiences of homophobia and transphobia. This discrimination on the grounds of sexual orientation and/or gender identity intersects with the discrimination that is experienced as a sex worker (NSWP & MPact, 2018). A document released by the Global Network of Sex Work Projects

(NSWP) titled, *The Needs and Rights of Trans Sex Workers* outlines some of these intersections of oppression:

Trans sex workers (TSW) are amongst the most marginalised and vulnerable sex workers due to widespread social stigmatisation attributable, in general, to transphobic prejudice in almost all countries. Sex work is a highly risky sector in almost all countries of the world due to several reasons, including a lack of legal frameworks that offer protection from violence, while promoting whorephobia; lack of political will to create programmes to support sex workers; religious and cultural approaches that foster whorephobic legislations and policies; and other factors that enhance stigma and marginalisation of sex workers. TSW are highly vulnerable to the risk of violence as they work and live at what can be described as an intersection of whorephobia and transphobia. The experiences of trans sex workers can also be affected by other factors, including but not limited to poverty, ethnic and religious background, disability, HIV status, and residency status. All these factors can serve to increase the impact of transphobic and whorephobic discrimination. *This intersectionality of oppressions must be recognised in policy-making platforms and discussions on programme implementation (NSWP, 2014, p. 2, emphasis added).*

The ICRSE (International Committee on The Rights of Sex Workers in Europe) published a document in 2015 which examines the intersections of LGBT sex workers. The document outlines how it is crucial to link the decriminalisation of sex work with anti-racist, anti-xenophobic, anti-homophobic, anti-transphobic and intersectional demands (ICRSE, 2015). Sex workers often face multiple intersections of marginalization and their experience should not be reduced to their occupations. It is important to acknowledge and consider that sex work does not happen outside of contexts, such as, but not limited to race, sexuality, and gender. It is also incredibly important to consider the ways that these contexts work intersectionally within and beyond sex work.

It is important to note that there are gendered and racialized differences within the targeted application of the laws that regulate sex work. Historic and ongoing racial discrimination and community mistrust have reinforced Black and Indigenous sex workers' concerns that the criminal justice system would not take complaints seriously (Platt et al., 2018). This discrimination and resulting mistrust are present in Canada, where:

[There is a] need to challenge whether the Canadian criminal justice system effectively “protects” the safety and security interests of racialized and marginalized groups, especially migrant, Indigenous and Black sex workers; indeed, it appears virtually impossible for the state to continue down its path of targeted criminalization and meet its parallel international and domestic legal commitments to ensure a range of protected human rights and freedoms, including equitable access to justice (Millar & O’Doherty, 2020, p. 25)

It is imperative that the development of legislation surrounding sex work has anti-racism at its foundation so that these interventions do not create further barriers for Indigenous, Black, Asian, and other racialized, and migrant workers.

Migrant sex workers face further barriers, profiling and policing as the laws that oppress sex workers within Canada intersect with the laws that oppress and endanger migrants. Migrant sex workers are at constant risk of losing immigration status due to criminal inadmissibility issues resulting from sex work convictions. This has been a systematic problem for migrant trans sex workers.

Oppression against migrant sex workers is furthered by compounding intersections of the experience of racism, stigma and profiling and harassment by law enforcement (Butterfly, 2020). Migrant sex workers often face increased barriers through their sex work being conflated with human trafficking. Racism and sexism profoundly influence anti-human trafficking initiatives that depict migrant sex workers as victims. This is especially true in cases of racialized women, particularly from migrant, Asian and Indigenous communities who engage in sex work (Butterfly, 2020).

In the Canadian context, it is crucial to note the ongoing violence that colonization continues to have on Indigenous communities, especially Indigenous women who sell or trade sexual services. On December 14th, 2018, as part of the National Inquiry into Missing and Murdered Indigenous Women and Girls, the Vancouver Sex Workers Rights Collective (VSWRC) published a document that identified barriers and provided recommendations from Indigenous sex workers. One of the barriers identified is:

Indigenous women and individuals of diverse sexual orientations and gender identities who participate in sex work face multiple and often compounding barriers to reporting violence to police. These barriers include previous bad experiences and distrustful relationships with police; fear of having their children removed, losing their home, and violence; and the fear of being outed to their families and communities as someone involved in sex work or trade. Barriers to reporting violence silence truth and hide violence. (VSWRC, 2018, p. 14)

The document from the VSWRC goes on to examine the way Indigenous women are often reduced to the historic and ongoing violence that they experience. The VSWRC notes this is especially true for Indigenous sex workers stating, “[those] who participate in sex work or provide sexual services cannot and should not be reduced to the violence they experience as a result of choices they make or their jobs” (VSWRC, 2018, p. 13). The VSWRC documents that Indigenous sex workers have often gone ignored when speaking up about,

“the violence they have experienced including violence because of structural inequality and colonialism” (VSWRC, 2018, p. 41). This intentional dismissal of the voices of Indigenous sex workers stems from the fact that, “their truths and lives are not valued” (VSWRC, 2018, p. 41).

These intersections must be considered when creating policies regarding sex work. These experiences display how intersecting forms of oppression result in very real experiences of violence for marginalized communities not only within Canada but globally as well. It is crucial that policies contribute to positive change and safer working conditions for all sex workers, many of whom experience intersectional marginalization associated with racism, sexism, transphobia, and homophobia within and beyond sex work.

Decriminalization: A First Step

Canada’s current criminal legislation (PCEPA), does not protect sex workers. It disregards the agency and labour of sex workers and constructs sex workers as victims while actively working to undermine their safety. The criminalization of sex work perpetuates a system of violence and exploitation against sex workers. Conflating sex work with human trafficking and exploitation negates sex workers’ agency and perpetuates an incredibly harmful narrative of victimization, which results in policies that further harm sex workers. Criminalization creates an environment that prevents sex workers from accessing legal, social, health, and other government support systems. It prevents sex workers from accessing basic workplace safety, such as the right to participate in the creation of a safe workspace and to refuse unsafe work. Criminalization makes sex work highly precarious and contributes to the further marginalization of 2SLGBTQI, racialized and migrant sex workers. Though decriminalization is an urgent and necessary first step it is only one aspect of a set of changes that must be made to create safer worker conditions for sex workers.

Decriminalization of sex work needs to move beyond the repeal of criminal laws and immigration laws to account for the realities for sex workers living at the intersections of different oppressions. Systems of oppression are preserved through criminalization and it is vital that sex workers who experience different forms of racial, social, economic, institutional, and gendered violence and discrimination are meaningfully engaged in discussion regarding the policy and planning that affects them. Legislation must work toward respecting, protecting,

and fulfilling sex workers' human rights and creating safer working conditions for all sex workers. Sex workers and allies in the Canadian Alliance for Sex Work Law Reform provide a clear definition of what decriminalization should look like,

This means not only reforming federal criminal law, but also examining the interplay with immigration and employment law, provincial laws around public health, occupational health and safety and employment standards, and youth protection legislation. It also insists we look at how funding, policing, education, and collaboration are key to a holistic law reform process. (Canadian Alliance for Sex Work Law Reform, 2017, p. 7).

Law reform alone will not solve the oppression that is embedded within our society. While changes are needed to Canada's legislation surrounding sex work this is only part of a larger holistic plan that requires change at multiple levels of the system to produce:

Decriminalization is a first – but not sufficient – step that needs to be taken to address the rights of people who are overpoliced and underprotected. A holistic plan for sex work law reform is propelled by a larger vision and by concrete measures to address discrimination and inequality of various kinds, poverty, inadequate housing, inadequate healthcare, lack of access to safe transportation, inadequate access to legal aid, over-criminalization and over-incarceration, and ongoing problems with youth protection systems. (Canadian Alliance for Sex Work Law Reform, 2017, p. 24).

Decriminalization is an incredibly important step, but it is not the only step to protecting sex workers' rights,

Beyond the criminalization of sex work, laws and policies contribute and reinforce inequality, disadvantage and discrimination based on various biological, social and cultural categories such as race, gender, class, ability, citizenship status, mobility, and physical and mental health status, among others. Decriminalization alone cannot overcome all of the other injustices and structural barriers that many of us face, but it is a necessary step to ensure the protection of sex workers' rights. (Canadian Alliance for Sex Work Law Reform 2017, p. 23)

It is imperative that all changes to legislation and surrounding systems be made in partnership with sex workers from various and diverse communities to ensure that the safety and autonomy of sex workers is prioritized, and their lived experiences and subsequent knowledge is centred. For more information on sex work legislation and sex work law reform contact the [Canadian Alliance for Sex Work Law Reform](#).

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