



## HIV COMMUNITY LINK

### Position Statement

### Decriminalization of Prostitution

#### Introduction

All Canadians are afforded the right to work in a safe environment with our general health and well-being protected by various governmental and social organizations. Our human rights as Canadians allow us to be treated equally and provide us with the opportunity to be protected equally. Unfortunately, due to the criminalization of prostitution under sections 210-213 of The Criminal Code of Canada, sex workers are not afforded these same rights. Their basic human rights are violated by the institution of these laws and therefore sex workers' health and safety suffer.

#### Criminalization of Prostitution: Current Canadian Law

- **Section 210** – Prohibits anyone from working in and/or owning a “Bawdy House”, otherwise known as a Brothel. Under Criminal Code, a Bawdy House can constitute any place a person occupies for the purpose of prostitution. This includes sex worker and client houses, hotels, a car, and/or massage and body rub parlors.
- **Section 211** – It is illegal for a person to direct or take someone to a Bawdy House. This includes taxi drivers, hotel concierge and a chauffeur.
- **Section 212** – Outlaws living on the avails of prostitution this includes family members or any persons who would be supported by a sex worker. This law also prohibits procuring prostitution. More specifically, procuring prostitution means it is illegal to persuade someone into engaging in prostitution or making referrals to a sex worker.
- **Section 213** – Prohibits communication for the purpose of prostitution in public. This means it is illegal to negotiate services with a sex worker or for a sex worker to discuss services in a public place, which includes public phones and cell phones. It is also illegal to stop vehicles or people on the street for prostitution.

Breaking these laws can vary in terms of punishment; some include fines or jail time.

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## **Arguments in favor of Criminalization**

### *Deterrence*

Many criminalization advocates believe it will deter those considering sex work as a possible career, and hinder potential clients. Those who agree with this argument assume that criminalization will deter veteran sex workers from continuing to engage in sex work.

### *Exploitation and Human Trafficking*

Many criminalization advocates feel that sex work is not a chosen profession and that sex workers are persuaded or forced into it. Those who agree with this argument believe that criminalization will eliminate human trafficking and sexual exploitation.

### *Public Health Concern*

Many criminalization advocates believe that sex workers do not practice safer sex and are responsible for high rates of sexually transmitted infections (STI's). Those who agree with this argument believe that if prostitution is criminalized there will be a decrease in STI rates.

### *Moral Argument*

Many criminalization advocates believe that sex work is morally wrong and therefore should be against the law. Those who agree with this argument believe that if we continue to criminalize prostitution that people will stop engaging in sex work and we will abolish sex work from our society.

## **Arguments in favor of Decriminalization**

### *Deterrence*

It is clear that although our Criminal Code prohibits activities associated with sex work, people continue to engage in sex acts for money both as clients and as sex workers. The criminalization of prostitution often leads sex workers to be continuously processed through the legal system, sometimes resulting in their own incarceration and contributing to mounting legal fees. In actuality, criminalization keeps people involved in the sex trade creating a cycle where often the only option to repay fines is to return to sex work.

### *Exploitation and Human Trafficking*

Sex work and human trafficking are often believed to be the same thing; creating the assumption that becoming a sex worker is not a choice. Sex workers enter into this line of work for a variety of social and economic reasons. Decriminalizing prostitution would help create transparencies between who is a willful sex worker and who is not, and resources spent on prosecuting consenting adults involved in sex work could be better used to prosecute abuses and trafficking. There are already laws in place used to prosecute trafficking and other offences related to coercion and confinement, prostitution laws are not needed in these cases.

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### *Public Health Concerns*

There are many industries that create health risk for their employees and patrons. Most of these offer protection and education against the risks. Sex workers are disallowed these same rights and decriminalization could instigate the creation of a standardized health care plan, as well as standardized harm reduction education. Also, there is always a risk of STI or HIV transmission when having unprotected sex, however, unprotected sex and infection transmission isn't a direct result of paying for sex with money. By decriminalizing prostitution, we may open the door to testing and health care that can be accessed by sex workers without fear of discrimination, judgment and criminalization. Sex workers will feel more empowered to protect themselves; they will have a voice and will be able to negotiate safer sex with their dates.

### *Stigma and Discrimination*

Most sex workers want to have the ability to function in society without judgment or social barriers. The criminalization of prostitution generalizes that all sex workers are criminals and should be pushed to edges of our society. This legal barrier prevents sex workers from the opportunity to speak openly about their profession, thereby perpetuating stereotypes and stigma. The law suggests that sex workers are second-class citizens, which is a violation of their human rights. We must remember that sex workers are our daughters, sons, mothers, fathers and brothers and they are entitled to be treated with dignity and respect.

### *Increased Harm*

The criminal code contributes to the segregation of sex workers and society. As it is illegal for them to work in groups or public areas, sex workers find themselves in increasingly vulnerable situations and at risk to experience violence. When sex workers are forced to work in isolated areas for fear of criminalization they are more likely to experience violence because they do not have the time to screen dates or negotiate safer sex. Criminalization also creates a divide between sex workers and the police, and promotes the attitude that sex workers deserve whatever abuse they incur as they too are criminals. This means that many of the bad dates that sex workers experience go unreported for fear that they themselves will be criminalized during the reporting.

### *Legal Contradictions*

Although prostitution is legal in Canada the ambiguity of the laws create confusion and violates sex worker's human rights. For example, it is legal to have sex on camera and get paid for the purpose of adult films, be an exotic dancer and work in an erotic massage parlor. The definition of sex worker then becomes blurred, as in most of these professions the exchange of a sexual encounter for money is taking place. These laws are hierocracy and as Canadians we have a vested interest in ensuring our laws are not hypocritical.

### *Moral Argument*

Regardless of whether or not sex work is considered to be immoral, sex workers are human beings who deserve the right to health and safety. We have a right to protect people and all individuals regardless of their job deserve the right to safety and to work free of violence. There

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are many things that people in our society believe are immoral and that we do not criminalize i.e. suicide attempts, infidelity, adult pornography, and homosexuality.

### **Conclusion**

Criminalization of prostitution limits sex workers' ability to take necessary security precautions by forcing them to work alone and in isolated areas. The fear of criminal charges prevents sex workers from properly screening dates, communicating to fellow sex workers information about dangerous clients or negotiating safer sex. These factors contribute to the cycle of sex workers' increased vulnerability to health risks and experiencing violence.

Stigma and prejudice around sex work are also magnified by its criminalization. If these Canadian citizens are entitled to the same health, safety and tax benefits as other professions it would alleviate the idea that sex workers are lesser citizens. Their rights would become par to the rights of other Canadians.

HIV Community Link endorses efforts to decriminalize prostitution in Canada for those adult individuals who engage in sex work.

### **These considerations are compiled from the following sources:**

1. FIRST ([www.firstadvocates.org](http://www.firstadvocates.org)). *Out of the Shadows: Why Canada Must Decriminalize Consensual, Adult Sex Work*. September 2010.
2. John Lowman's Prostitution Research Page (<http://mypage.uniserve.ca/~lowman/>). *Deadly Inertia: A History of Constitutional Challenges to Canada's Criminal Code Sections on Prostitution*. October 2009.
3. Pivot Legal Society ([www.pivotlegal.org](http://www.pivotlegal.org)). *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform*. June 2006.
4. Canadian HIV/AIDS Legal Network (<http://aidslaw.ca>). *Decriminalization of Prostitution to Reduce Sex Workers' Vulnerability to HIV*. September 2006.

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