

HALCO Submission to Public Consultation on Prostitution-Related Offences in Canada

(submitted by email on March 13, 2014)

Thank you for allowing us an opportunity to offer our comments on prostitution-related offences in Canada.

1. Do you think that purchasing sexual services from an adult should be a criminal offence? Should there be any exceptions? Please explain.

Without exception, the purchase of sexual services from an adult should not be a criminal offence. As an organization that focuses on human rights, we do not support a law that has been demonstrated to violate sex workers' human rights, including their constitutional rights to life, liberty and security of the person.

Evidence shows that criminalizing the purchase of sexual services from an adult is harmful to sex workers and communities. The harms that result from this type of law include:

- **Increased risks and rates of violence against sex workers;**
- **Decreased ability to negotiate safer sex practices;**
- **Less time for sex workers to screen clients and assess risk;**
- **Safety networks among sex workers are threatened;**
- **Aggressive policing that impacts sex workers as well as clients;**
- **Further marginalization and isolation of sex workers;**
- **Clients are reluctant to report violence they may witness against sex workers;**
- **Clients are less likely to provide information to a sex worker before a date, which sex workers use to screen for safety; and**
- **Sex work is driven underground, depriving sex workers of access to police, health services, social programs and benefits.**

Criminalizing the purchase of sexual services from an adult replicates the very harms that sex workers experienced under the laws struck down by the Supreme Court ruling in Bedford. Therefore, it would be unconstitutional and would disregard the large amount of evidence that was accepted by not only the Supreme Court but also by the Superior Court of Justice of Ontario and the Ontario Court of Appeal. These courts all accepted that the current laws restricting sex work result in the harms listed above. There is no reason to believe that an asymmetrical model in which only the purchase of sexual services is criminalized will ameliorate any of the harms listed above.

2. Do you think that selling sexual services by an adult should be a criminal offence? Should there be any exceptions? Please explain.

No, the selling of sexual services by an adult should not be a criminal offence, with no exception. As an organization that focuses on human rights, we support the right of adults to assess the livelihood opportunities available to them and choose to do sex work — or not — as well as sex workers' right to safe and decent living and working conditions.

Adults who sell sex should never be threatened with criminal charges. Prohibiting the sale of sexual services by an adult drives sex workers underground, jeopardizing their safety and access to health, education and housing. It also renders working and living conditions unsafe for sex workers, which violates sex workers' rights to health and safety. Sex workers who are hardest hit are those who are already marginalized (i.e., street, Indigenous, racialized and migrant sex workers). Criminalizing the sale of sex by an adult also leads to aggressive policing, which makes it difficult for sex workers to access protection when they need it. The risk of arrest and of having a criminal record can also make it difficult for sex workers to transition to other forms of work, if and when they choose.

3. If you support allowing the sale or purchase of sexual services, what limitations should there be, if any, on where or how this can be conducted? Please explain.

There should be no criminal laws that target prostitution itself. In all jurisdictions where sex work is criminalized, sex workers have been subject to the very harms that the Supreme Court found to be unconstitutional violations of their rights to life, liberty and security of the person. Canada should use the existing sections of the Criminal Code that are meant to address violence and abuse of all people (e.g., prohibiting assault, harassment and threatening) to protect sex workers.

Sex work is work. Non-criminal laws that address labour conditions and municipal regulation should be developed in consultation with sex workers. These regulations should respect and protect sex workers' human and labour rights.

4. Do you think that it should be a criminal offence for a person to benefit economically from the prostitution of an adult? Should there be any exceptions? Please explain.

No, benefitting economically from sex work should not be a criminal offence. Sex work is work and sex workers hire, work for, and work with third parties of all kinds (e.g., security, drivers, accountants, receptionists, industry colleagues and family members) and provide compensation for these services. Third parties involved in sex work can play an important role in assisting sex workers with aspects of their work and can significantly increase safety. As the Supreme Court recognized in Bedford, prohibiting third parties in sex work criminalizes much-needed working and personal relationships.

5. Are there any other comments you wish to offer to inform the Government's response to the Bedford decision?

We applaud the Supreme Court of Canada's decision in Bedford, recognizing the egregious impact of the criminal law on sex workers' health, safety and security. While the decision recognizes that Parliament has the power to create laws that limit public nuisance, it cannot do this at the expense of the health, safety and lives of sex workers. Significantly, the Court identified the unconstitutional harms that sex workers suffered as a result of the three criminal offences that were challenged in that case (e.g., inability to work from a secure indoor location; inability to hire, work with or for third parties who can promote sex workers' safety; and inability to screen clients for safety, displacement to isolated areas, thus resulting in diminished control over working conditions, etc.). The decision thus provided guidance to Parliament should it contemplate new laws that might reproduce those very harms sex workers.

The Government should introduce a "made-in-Canada New Zealand model" that protects, respects and fulfills sex workers' human and labour rights and is developed in meaningful consultation with sex workers. The model of decriminalization employed in New Zealand offers a measure of protection for sex workers by legitimizing their work as labour and offering protections through occupational health and safety standards. Evidence shows that where sex work is decriminalized, sex workers are able to access accurate, timely and non-judgmental health and social services.

6. Are you writing on behalf of an organization? If so, please identify the organization and your title or role:

I am a staff lawyer at the HIV & AIDS Legal Clinic Ontario (HALCO), on whose behalf I make these comments. HALCO is a poverty law clinic serving the legal needs of low-income people in Ontario who are living with HIV/AIDS. We deliver several kinds of services, including legal representation and law reform within the areas of our expertise. We represented the Canadian HIV/AIDS Legal Network and the B.C. Centre for Excellence in HIV/AIDS in their intervention before the Ontario Court of Appeal in Bedford and we were an intervener at the Supreme Court of Canada in Bedford. I was among counsel of record at both Courts.

If you have any questions about our comments, please do not hesitate to contact me.

Regards,

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