

THE BASICS: DECRIMINALIZATION OF SEX WORK 101

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THIS INFOSHEET IS PART OF A SERIES OF 5 PRODUCED BY STELLA IN COLLABORATION WITH ALLIES TO EDUCATE AND MOBILIZE COMMUNITIES AROUND LEGAL ADVOCACY AND DECRIMINALIZATION OF SEX WORK.

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INTRODUCTION

The Canadian sex worker rights movement has called for the decriminalization of sex work for more than 30 years.

Decriminalization is part of our larger struggle for the recognition and actualization of sex workers' rights - including the right to autonomy, equality, self-determination and dignity. We recognize that some laws contribute and reinforce inequality, disadvantage and discrimination based on class, race, gender, citizenship status, mobility, mental health and other ways that people are situated. Decriminalization alone cannot overcome all of the other injustices that many of us face, but it is a necessary step to protecting and respecting sex workers' rights.

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WHY PROSTITUTION LAW REFORM?

Sex workers across the globe struggle to work in health and security and without the threat of arrest or imprisonment. Canada's prostitution laws contribute to the violence and discrimination that sex workers experience in our lives and our work. While prostitution is legal, virtually every activity surrounding it is not. The *Criminal Code* of Canada prohibits communicating for the purposes of prostitution in public (s. 213 "communicating"), the use of indoor workspaces (s. 210 "bawdy-houses"), the transportation to a working space (s. 211) and managerial and/or collective activities (s. 212 "procuring"). These laws prevent us from taking meaningful steps towards working safely.

Prostitution laws threaten almost all sex workers in every sector of the indoor and outdoor sex industry.

Criminalizing sex work means the steps we need to take for fair and safe working conditions, and to communicate and negotiate with our clients and the people we work with, are illegal. The communicating law impacts on all sex workers' ability to negotiate clearly with clients. Sex workers, predominantly sex workers working on the street, are continuously trying to avoid arrest and incarceration. We are constantly displaced into more

isolated areas and prevented from working in proximity to each other.

Criminalizing our clients means that clients are also displaced and less visible as they avoid arrest and incarceration. This makes it more difficult for us to meet with clients in contexts where we can effectively screen them and where we can properly negotiate services. As a consequence, sex workers accept clients who we would otherwise turn away — including those that pose as clients but may be targeting us for violence knowing that we are at risk of criminalization, as well as those clients who insist on unsafe sex practices.

Criminalizing third parties means the people we hire, work for or work with to book our clients, offer us protection, drive us to work or provide a working space are at risk of being arrested. It also means that sex workers don't have recourse if we encounter third parties with discriminatory or abusive work practices. Criminalizing third parties who are our partners and the people we live and work with also increases our isolation.

These laws contribute to the high levels of violence in our communities: it means we live and work in isolation, we cannot access legal and social protections (such as police, em

ployment and human rights protections), and we experience grave human rights abuses, such as physical assault, sexual assault, domestic violence, coercion, confinement and theft. It is the most marginalized sex workers who bear the brunt of violence, police brutality and constant arrest and criminalization.

High levels of violence are also a result of the vulnerability that is created when sex workers are labeled as criminals and not able to access police protection without risk of jail time. The stigma of being a criminal, along with the stigma around sex work, increases our risks from people who pose as clients — these people target sex workers for violence because they know we do not have protection of the police and other authorities when we are victims of violence.

These realities need to be visible and recognized in order to reform prostitution laws. These same realities, however, prevent most sex workers from being visible because of the real risks of arrest and incarceration, discrimination, rejection from family, losing custody of children, eviction, being fired from employment, being deported and other consequences related to the criminality and stigma associated with sex work.

WHAT IS THE DECRIMINALIZATION OF SEX WORK?

As part of a movement to recognize our autonomy, self-determination and need for better working conditions, sex workers around the world demand the removal of laws and policies that make sex work a crime. In countries where there are criminal laws, like Canada, we call for the total decriminalization of sex work.

At its core, decriminalization means the removal of all criminal laws that prohibit selling, buying or facilitating (procuring) sex work.

Decriminalization would reduce the stigma, discrimination and uncertainty that comes with criminality – allowing us to live and work in health and safety and without fear of arrest that deprives us of our freedom and dignity.

Sex workers have different needs depending on where we are situated and how we work. What we want our industry to look like in a non-criminalized environment will look different for sex workers across the country. Most sex workers are accustomed and skilled at working in an informal and unrecognized economy for many years. Decriminalization could mean a huge adjustment in working context for sex workers who work in the underground, whether by choice or necessity. For example, sex workers have developed knowledge and skills rooted in avoiding police and other repressive measures; we have developed ways of working around precarious conditions and we have created other forms of security where police and other mechanisms fail to protect us.

Despite the adjustments that come with law reform, decriminalization would mean that sex workers, our clients and third parties (such as security, partners and receptionists), would not be breaking criminal laws for working in the sex industry, and would not be risking arrest.

More specifically, the removal of prostitution laws would mean:

- We could openly communicate and advertise our services, prices and negotiate limits and boundaries with clients;
- We could work alone or with groups in indoor or outdoor spaces without fear of arrest;
- We could report abusive or discriminatory hiring and work practices and fight for access to labour protections that facilitate negotiating or bargaining power with third parties;
- We could work with, work for, or hire people to help us find and book clients, provide security, drive us to work, handle our money and work with others so we are not always isolated; and
- It would also mean that our partners and people we live with would not be at risk of criminalization.

FOR REASONS TO SUPPORT THE DECRIMINALIZATION OF SEX WORK

10 REASONS TO FIGHT FOR THE DECRIMINALIZATION OF SEX WORK

By Mensah, M.N. and C. Bruckert. 2011.
cybersolidaires.typepad.com/files/10reasons.pdf

10 REASONS TO DECRIMINALIZE SEX WORK

Public Health Program, Open Society Foundations. 2012.
www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work

HOW DOES DECRIMINALIZATION HAPPEN?

For law reform or decriminalization to happen, sex workers and allies need to engage the legal systems that take apart and rebuild laws – the courts or Parliament.

THROUGH PARLIAMENT

Parliamentary committees are sometimes set up to have discussions about pressing social issues. Since 1980, Canada has had three parliamentary reviews and researches of prostitution laws and their impact on sex workers: The Special Committee on Pornography, otherwise known as the Prostitution Fraser Committee (1982); the Federal/Provincial/Territorial (F/T/P) Working Group on Prostitution (1990); and most recently in 2003, the Subcommittee on Solicitation Law Review (SSLR). These committees often make recommendations for changes to prostitution law.

Historically, it has been valuable to engage with politicians and lawmakers around policies that negatively affect sex work communities.

THROUGH THE COURTS

Laws are also struck down or changed by the Canadian courts – individuals or groups can try to take the government to court to challenge the usefulness or fairness of a law. Court cases come with a range of challenges for sex workers. They can be very legalistic and can result in sex worker rights communities losing power – court cases can have limitations and may not be able to address all of the issues that we might address at a community level or through social campaigns.

Court cases also need to be brought forward by an individual. Finding an individual who can represent the diversity of sex workers' experiences is difficult. Also, often the people who do come forward face a lot of public scrutiny as not being representative or not appealing to the image of sex work that people have. Stigma around sex work means a constant discrediting of sex workers who do come forward and more importantly, criminal and financial risk!

A court challenge can place the focus on the fundamental problem with prostitution laws: They deny sex workers of our rights to safety, autonomy and equality. A court challenge allows sex workers' experiences to be recognized as legal evidence – we can demonstrate how the laws actually make it more dangerous for us to work and live. In this sense, court challenges can address the core problem – our human rights violations.

There's no "best way" to approach decriminalization. How we engage with Parliament and the courts, and the role that sex workers play in framing and articulating the problems, defines the success of any law reform initiative. That being said, the dominant values and ideologies of the court or Parliament at any given time will impact the results of any law reform initiative.

SEX WORKERS AND DECRIMINALIZATION THROUGH THE COURTS

Since 2007, there have been two major initiatives to remove criminal laws against sex work. Both of these were in response to violence against sex workers. It is well documented that over sixty sex workers have been murdered in Vancouver, more than sixteen sex workers have gone missing in the Edmonton area over the last twenty years and seventeen sex workers were killed over the last ten years in Quebec. This does not even address the violence in other provinces. The violence experienced by sex workers on the street is disproportionate compared to the rates of violence experienced by other sex workers. More so, police departments across Canada have failed to properly investigate these incidents, focusing instead on arresting sex workers. For us, decriminalizing all aspects of sex work is essential to reducing this violence.

BEDFORD V. CANADA

In 2007, Terri Jean Bedford, Amy Lebovitch and Valerie Scott initiated their case at the Ontario Superior Court of Justice seeking the removal of three prostitution laws from the *Canadian Criminal Code*:

- s. 210 (bawdy house);
- s. 212(1)(j) (living on the avails); and
- s. 213(1)(c) (communicating in a public place for the purposes of prostitution).

The arguments are relatively straightforward: It is not unlawful to work as a sex worker yet criminal laws make it virtually impossible for a sex worker to work in a safe and secure environment. They argue that these prostitution laws contradict sex workers' rights protected by the *Canadian Charter of Rights and Freedoms*. Specifically, these three laws violate sex workers' s. 7 right to liberty and security of the person, and the communicating law also violates sex workers' s. 2 right to freedom of expression.

SWUAV V. CANADA

In February 2007, a group of sex workers who work on the streets of the Downtown Eastside of Vancouver, called the Downtown Eastside Sex Workers United Against Violence (SWUAV), along with former sex worker Sheri Kiselbach, went to the Supreme Court of British Columbia to challenge a wide range of criminal laws on prostitution.

SWUAV v. *Canada* wanted to decriminalize adult sex work by challenging most of the

prostitution provisions in ss. 210-213 of the *Canadian Criminal Code*. SWUAV argued that, as a result of these laws, sex workers experience systematic discrimination, exploitation and violence. They wanted to demonstrate how these laws negatively impact sex workers' safety, health and well being and as a result violate sex workers' constitutional rights to life, liberty, security and equality, and freedom of expression and association.

This constitutional challenge is different to the *Bedford* case in two distinct ways: First, in addition to sections 2(b) and 7 of the *Charter*, it argues that the s. 15 *Charter* right to equality, and the s. 2(d) freedom of association are also violated – arguing that sex workers as a group are discriminated against and experience inequality due to these laws. Second, SWUAV challenges a much wider range of the prostitution laws.

At first the court rejected SWUAV on the grounds that both SWUAV and Sheri Kiselbach do not have the legal right to bring the case forward – SWUAV, as an organization, was not affected by prostitution laws and Sheri, as a former sex worker, was not currently affected by prostitution laws. In other words, the court said that only an individual sex worker who was currently working or arrested could make this *Charter* claim. So at this point the nature of the case changed. Instead of arguing for decriminalization, these sex workers first had to argue that they had the right to represent their case and to be heard by the courts!

SWUAV argued that a collective such as theirs, representing sex workers in the Downtown Eastside, had the right to bring forward a *Charter* challenge. SWUAV was created to protect individual sex workers from the risks related to publicly outing and naming oneself as a sex worker. They also argued that the individuals within their collective are stigmatized to bring forward their case individually. This reality is well understood by sex workers, people who work with marginalized women and other communities that lack legal, economic and social support.

SWUAV contested the decision at the Supreme Court of Canada. In 2012, they won their right to be heard in court. They are now able to launch their *Charter* challenge.

SECTIONS OF THE CRIMINAL CODE CHALLENGED IN BEDFORD

210	Bawdy house
212(1)(j)	Living on the avails
213(1)(c)	Communicating in a public place for the purposes of prostitution

SECTION 7 OF THE CHARTER

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

SECTION 2(B) OF THE CHARTER

Everyone has the fundamental freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Bedford v. Canada at the Ontario Court of Appeal: www.canlii.org/en/on/onca/doc/2012/2012onca186/2012onca186.html

Bedford v. Canada at the Ontario Superior Court: www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html

BEDFORD TIMELINE

March 2007

Terri-Jean Bedford, Amy Lebovitch and Val Scott file their *Charter* challenge with the courts.

October 2009

Bedford v. Canada was argued before the Ontario Superior Court of Justice.

September 28, 2010

Justice Himel decides that these three prostitution laws are unconstitutional under s. 7 of the *Canadian Charter*, and that the "communication law" is unconstitutional under s. 2(b) of the *Charter*.

June 2011

The appeal from the Superior Court is argued before the Ontario Court of Appeal.

March 26, 2012

The majority decision of the Ontario Court of Appeal is released:

- a) s. 210 is unconstitutional and can no longer be used to arrest people involved in prostitution;
- b) s. 212(1)(j) is unconstitutional but should be re-written and reinterpreted through the lens of exploitation; and
- c) s. 213(1)(c) is constitutional and should remain in the *Criminal Code*.

July 2012

The Ontario Court of Appeal decision is challenged by the government and the plaintiffs – next step, Supreme Court of Canada.

June 2013

Supreme Court will hear *Bedford v. Canada*. This decision will be final.

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HOW TO SUPPORT SEX WORKERS IN LAW REFORM?

The reality is that governments like to regulate things. The federal, provincial or municipal governments may step in to control our work if the criminal laws were removed. We cannot predict this. This is where our struggle for recognition becomes very important – our experiences as sex workers are vital to explain how regulation impacts on our work and our lives. It is imperative that any legal reform or law developments involve leadership of, and collaboration with, sex workers. Here are some easy steps to follow for meaningful participation of people impacted by sex work laws and regulations:

- If new regulation of the industry is established, it should be structured and driven by sex workers' needs and with sex workers' safety in mind and must involve leadership of, and collaboration with, sex workers;
- No laws should be written that further limit the freedoms and civil liberties of sex workers. This includes immigration law and the negative impact that anti-trafficking laws have on the lives of sex workers;
- Laws or conditions should not be more restrictive or invasive than the regulations of other forms of work;
- Legal reform and development should be driven by civil rights and liberties, not by moralism; and
- Models of law reform and development should consider sex workers of all genders and all sectors of the sex industry.

Writing Jenn Clamen, Tara Santini & Marie-Claude Charlebois

Project Coordinator Jenn Clamen

Reading and Editing Committee JD Drummond, Emilie Laliberté & Robyn Maynard

Design Marie-Claude Charlebois & Elitza Koroueva

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www.cheststella.org

2065 rue Parthenais, suite 404
Montreal QC
H2K 3T1
Office 514.285.1599
Drop-in 514.285.8889

Stella is a community organization created and run by and for sex workers. At Stella we provide support and information to sex workers so that we may live and work in safety and with dignity.