

Sex, Work, Rights Reforming Canadian Criminal Laws on Prostitution

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This is one in a series of 10 info sheets examining the need for reform to Canada's prostitution laws to protect and promote the health and human rights of sex workers.

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New Zealand and Sweden: two models of reform

This info sheet examines recent reforms to prostitution laws in New Zealand and Sweden, and considers the effect of those reforms on the health and human rights of sex workers.

New Zealand

Prior to the passage of the *Prostitution Reform Act, 2003*, prostitution was not illegal per se in New Zealand, though many of the activities surrounding it were. This is similar to the situation in many countries, including Canada (see info sheet 3). Efforts in New Zealand to curb activities related to prostitution by criminalizing them undermined efforts to promote safer sex education and practices. Sex workers were the subject of routine police harassment. Typically, police would mount operations in major cities like Wellington and Auckland twice a year. The presence of condoms would often be part of the state's evidence to indicate the presence of a brothel; meanwhile, the Ministry of Health supplied condoms to a sex worker group for distribution to sex workers.

Prostitution Reform Act, 2003

The *Prostitution Reform Act, 2003* received royal assent in June 2003. The Act's stated purpose is to decriminalize certain activities related to prostitution and to create a framework that:

- safeguards the human rights of sex workers and protects them from exploitation;
- promotes the welfare and occupational health and safety of sex workers;
- is conducive to public health; and
- prohibits the use in prostitution of persons under 18 years of age.

The Act defines a "sex worker" as a person who provides "commercial sexual services" and makes it legal to enter into contracts for such services.

It permits and regulates the business of prostitution, and distinguishes between "brothels" and "small owner-operated brothels" in which not more than four sex workers can work and each maintains control over his or her earnings. Restrictions are placed on advertising and local governments are given the power to regulate the location of brothels and signage advertising commercial sexual services. Non-citizens cannot get work permits for the business of prostitution.

Occupational health and safety

The *Prostitution Reform Act, 2003* contains explicit provisions intended to minimize the transmission of sexually transmitted infections and otherwise protect the health of sex workers and clients. Operators of prostitution businesses, sex workers and clients must take all reasonable steps to ensure that

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“a prophylactic sheath or other appropriate barrier is used” if the sexual services “involve vaginal, anal, or oral penetrations or other activity with a similar or greater risk” of a sexually transmitted infection. The Act does not require sex workers to undergo medical examinations or provide health certificates. The Act recognizes a sex worker’s right to refuse to provide or continue to provide a sexual service to any other person. The Department of Labour has published *A Guide to Occupational Health and Safety in the New Zealand Sex Industry*.¹ Finally, the general *Health and Safety in Employment Act 1992* applies to sex workers.

In July of 2005, in the first case of its kind, a district court convicted a man of an offence under the Act for taking his condom off during sexual intercourse without the knowledge of a sex worker. He was fined and ordered to pay costs.

Mandatory review of the Act

The Prostitution Law Review Committee was created to carry out reviews, assessments and reporting under the Act. A full review of the operation of the Act must take place by the end June 2008. Significantly, the Act gives the New Zealand Prostitutes Collective the power to nominate three of the eleven members of the Review Committee.

Sweden

Three Swedish government committees have studied the issue of prostitution since 1977. The committees have made recommendations for criminalizing the buyer of sexual services, the seller of sexual services, and in some instances both the buyer and seller. The committees in 1995 and 1997 based their recommendations on the idea that criminalization of prostitution was necessary for the

protection of women, illustrated by the 1995 committee’s statement that “[n]o prostitution can be said to be of a voluntary nature.” In 1998 the Swedish parliament passed a law reform measure entitled “The Protection of Women.” The official government position in Sweden is that the purchase of sex constitutes violence by men against women.

Law on prohibition of the purchase of sexual services

Included in the 1998 reforms was the *Law on prohibition of the purchase of sexual services (1998:404)*, which came into effect on 1 January 1999. The aim of the law was to eliminate street prostitution and prevent new sex workers from entering prostitution. The law criminalizes the client who purchases sexual services, but not the sex worker. The relevant part of the law states:

The person who, for payment, obtains a casual sexual relationship is penalised – unless the action entails punishment in accordance with the Penal Code – for the purchase of sexual services with fines or imprisonment for a maximum of six months. For attempting to do so, the person is sentenced in accordance with chapter 23 of the Penal Code [the section which deals with attempted criminal offences].

The law criminalizes situations where money, narcotic substances, gifts or other forms of compensation have been agreed upon – even if not given – in exchange for sexual services. The law does not define “casual sexual relationship.”

Experience with the law

In October 2004 the Swedish Ministry of Justice and the Police released a report the experience with the law criminalizing the purchase of sexual services.² The report documents that most of the police resources directed at enforcing the law have been used

to target street prostitution. While the report provides some evidence of a reduction in street prostitution, it states that it is impossible to say whether this was due to the legislation or other factors (e.g., mobile phones, the internet). The report acknowledges that because of the extreme unreliability of data regarding off-street prostitution, it is impossible to say anything meaningful about it.

The report also recognizes that violence is an everyday occurrence for women involved in prostitution, but that the extent of the violence has not been recorded systematically before or after the passage of the law. Overall, the report indicates that since the law came into effect:

- there are fewer clients and a larger proportion are dangerous;
- sex workers have less time to assess clients;
- the prices for sexual services have fallen;
- more clients are prepared to pay for unprotected sex; and
- sex workers feel that their risk of encountering violence while working has increased.

These effects have been experienced most acutely by the most vulnerable women – sex workers who work on the streets, who have psychiatric problems, who are homeless or who are immigrants to Sweden. The report also remarks that the law has created a new form of crime: women posing as sex workers rob clients, who dare not report the robbery for fear of being charged with attempting to purchase sexual services.

A number of non-governmental organizations, sex workers and other people have written critiques of the Swedish law.³

Comparison and contrasts

In its conception and as written, the New Zealand *Prostitution Reform Act, 2003* is much more respectful of the autonomy, dignity and human rights of sex workers than the Swedish *Law on prohibition of the purchase of sexual services*. Given that it only came into force in 2003, so far little evidence of the effect of the New Zealand legislation has been gathered. In contrast, evidence indicates that the Swedish law has not eliminated prostitution and has resulted in more dangerous working conditions for women sex workers, especially the most vulnerable women. The New Zealand model offers a better example of a reform that respects, protects and fulfils the human rights of sex workers and holds more promise for better protecting their health. It should be considered seriously by countries committed to improving the health and safety of sex workers.

Notes

- ¹ This guide is available at www.osh.dol.govt.nz/order/catalogue/235.shtml.
- ² This report is available at www.odin.no/filarkiv/232216/Purchasing_Sexual_Services_in_Sweden_and_The_Netherlands.pdf.
- ³ These are available via the website of the Bay Area Sex Worker Advocacy Network (California, US) at www.bayswan.org/swed/swed_index.html.

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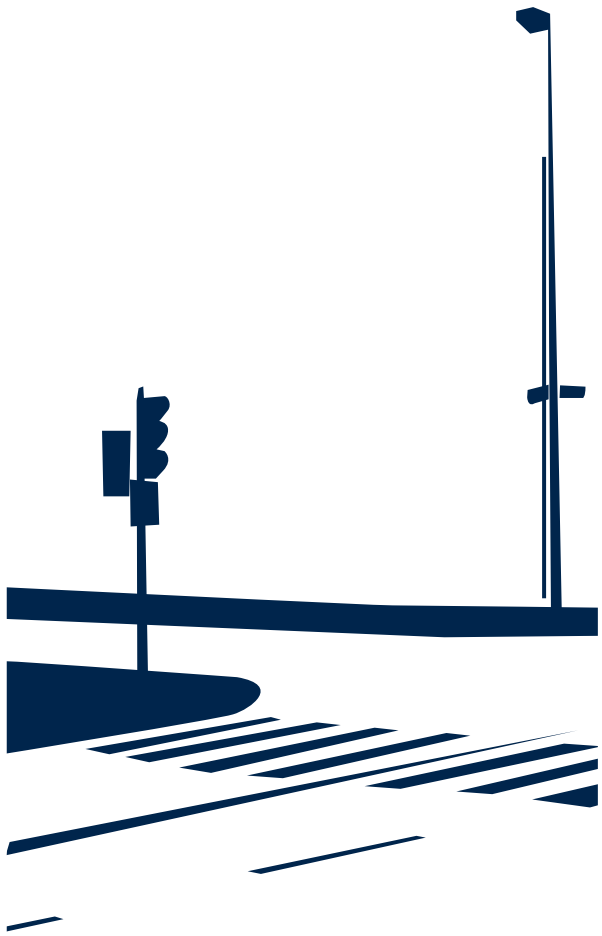
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Ce feuillet est également disponible en français.

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