Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada

Canadian Alliance for
Sex Work Law Reform

Alliance Canadienne pour
la Réforme des Lois sur le Travail du Sexe

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www.sexworklawreform.com
contact@sexworklawreform.com

Prepared by:
The Canadian Alliance for Sex Work Law Reform/ Alliance canadienne pour la réforme des lois sur le travail du sexe
Design/Layout: Catherine Tessier
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Note from the Authors:

It is with great pride and a sense of achievement that we present our key recommendations for federal and provincial sex work law reform. These recommendations are a result of our national consultation with sex workers in each of our 24 member groups in 15 cities across Canada, including the input of expert lawyers and government relations consultants. Although laws that regulate sex work are currently and will be different across provinces, these recommendations pull on broad tenets and can be applied and contextualized across all provinces and territories. The recommendations are grounded in rights enshrined within the *Canadian Charter of Rights and Freedoms* and the principles of universality, inalienability, indivisibility, interdependence and interrelatedness that underpin international human rights law, and based on academic and community evidence that represents the diverse expertise of the sex workers that make up our member groups of the Canadian Alliance for Sex Work Law Reform.

Sincerely,

Action Santé Travesties et Transsexuel(le)s du Québec (ASTTeQ) (Montreal)
Angel's Angels (Hamilton)
BC Coalition for Experiential Communities (BCCEC) (Vancouver)
Butterfly (Toronto)
Canadian HIV/AIDS Legal Network
Émissaire (Longueuil)
FIRST (Vancouver)
Maggie's Toronto Sex Workers Action Project (Toronto)
Migrant Sex Workers Project (MSWP) (Toronto)
PEERS (Victoria)
Projet Lune (Quebec)
Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton)
Providing Alternatives, Counselling and Education (PACE) Society (Vancouver)
Rézo, projet travailleurs du sexe (Montreal)
Safe Harbour Outreach Project (S.H.O.P.) (St. John's)
Sex Professionals Of Canada (SPOC)
Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury)
Shift (Calgary)
Stella, l'amie de Maimie (Montreal)
Stop the Arrests! (Sault Ste. Marie)
Strut! (Toronto)
Supporting Women's Alternatives Network (SWAN) (Vancouver)
West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver)
Winnipeg Working Group for Sex Workers' Rights (Winnipeg)

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Executive Summary

Academic and community-based research over the past thirty years has demonstrated the negative effects of criminal law on the health and safety of sex workers. This research identifies criminalization as a key contributor to violence experienced by sex workers, among other repercussions such as stigma and discrimination. In particular, Indigenous and im/migrant women who sell or exchange sex are targeted for violence. Predators are aware that police are not only less inclined to investigate disappearances of sex workers, but they also know that Indigenous and im/migrant women are constantly avoiding police for fear of detection, apprehension, and in the case of im/migrant women, deportation.

Various human rights organizations, UN bodies and courts have concluded that criminalization of the sex industry supports exploitation, and leads to numerous violations of sex workers' human rights. However, in spite of this extensive body of research and growing consensus among human rights bodies of the harms associated with criminalizing the sex industry, the *Protection of Communities and Exploited Persons Act* (*PCEPA*) was enacted in 2014. The *PCEPA* defines all sex work as exploitation and frames all sex workers as victims and all clients and third parties[1] as criminals. A primary objective of the legislation is to eradicate prostitution. Advocates for the new regime claim that deterring clients helps remove sex workers from prostitution and that the new laws do not criminalize sex workers themselves. But the new laws still include provisions that directly criminalize sex workers, as well as provisions that criminalize virtually all elements of the sex industry.

1 Third parties are the people who work, provide services to, or associate with sex workers including: drivers, security, bookers, webmasters, business owners and receptionists of outcall agencies (e.g., escort agencies) or incall establishments (e.g., brothels and massage parlours). Third parties in the sex industry are often referred to as 'pimps'; however, this does not accurately reflect the range of relationships sex workers have with third parties – who they work for, with, or hire. Sex workers often act as third parties for other sex workers. Also see, Global Network of Sex Work Projects. *Criminalisation of Third Parties and its Impact on Sex Workers' Human Rights*. 2016. www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights

Sex workers across the country have reported that the new laws have:

- Displaced and isolated sex workers, who fear and avoid contact with the police and other law enforcement;
- Increased targeted violence against sex workers;
- Interfered with safety mechanisms that sex workers use to stay safe on the job;
- Encouraged less responsibility on the part of third parties to ensure good working conditions;
- Increased police profiling and surveillance of racialized sex workers, namely im/migrant and Indigenous sex workers;
- Encouraged misuse and over application of human trafficking laws across Canada, resulting in the profiling, detention, and deportation of im/migrant sex workers;
- Reinforced antagonistic treatment from the police; and
- Increased stigma and discrimination against sex workers and their clients.

Decriminalization is an important first step in addressing the dangers associated with being criminalized and/or working in a criminalized industry. The criminalization of sex work results in a constant police presence, social and racial profiling, harassment, surveillance, arrest and detention – all of which contribute to isolation and vulnerability to violence. Some members of our communities face police harassment regardless of their participation in sex work, particularly Indigenous women and youth, people who are im/migrants (particularly racialized women) and trans people (especially trans women). The criminalization of the sale or exchange of sexual services gravely exacerbates their stigmatization and marginalization.

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This proposal for law reform illustrates the necessity of approaching law reform holistically. 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.

Removing sex work-specific criminal provisions is a most urgent and effective first step to protect, respect and fulfill the human rights of sex workers. This includes the repeal of all offences related to offering, providing or obtaining sexual services for consideration and the commodification of sexual activity (i.e., *Criminal Code* ss. 213(1), 213(1.1) and 213(2); s. 286.1(1), s. 286.1(2), 286.1(3), 286.1(4), 286.1(5); ss. 286.2(1) – s. 286.2(6); s. 286.3(1) and 286.3(2); s. 286.4 and s. 286.5(1) and 286.5(2)). With the removal of criminal provisions to regulate prostitution – legislation that does not distinguish between exploitation and sex work – comes the real possibility of identifying exploitation in the workplace and in the lives of people who sell or trade sex. In addition, when relationships between clients, sex workers, and third parties are no longer criminalized, there is the possibility to negotiate and improve working conditions.

To address violence and exploitation in the sex industry, we recommend using existing criminal laws of general application, including but not limited to criminal prohibitions against assault, sexual assault, theft, robbery, kidnapping and forcible confinement, extortion, intimidation, criminal harassment, uttering threats of death or physical harm, and trafficking of persons. This recommendation is based on the premise that using sex work-specific criminal provisions to address violence and exploitation in the sex industry negatively impacts sex workers by isolating them and increasing opportunities for violence and exploitation. In addition, sex work-specific provisions limit sex workers' capacity to clearly negotiate and communicate their consent to sex with relevant parties. These provisions violate the sexual autonomy of people who sell or exchange sex, as they negate one's capacity to consent to sex when remuneration is provided.

Moreover, exploitation in the sex industry can be addressed using a labour framework that engages provincial legislation related to public health, occupational health and safety, and employment law. In the sex industry, where sex workers are afraid to make a claim against an employer for fear of arrest, scrutiny, deportation and loss of income, they are deprived of legal remedies and vulnerable to labour exploitation. Indeed, in this context the threat of potential criminal charges, detention, deportation, and/or public "outing" can be used by unscrupulous third parties to control sex workers. In order to address this labour exploitation, sex workers need access to employment standards mechanisms and other human rights remedies, including access to police protection, criminal justice redress, occupational health and safety protections, and the ability to advocate for themselves without fear of recrimination. These vital rights can be realized if sex workers' labour is decriminalized and sex workers are entitled to the protections mandated in provincial legislation related to public health, employment standards and occupational health and safety. Provincial employment laws that address minimum wage, vacation allowances, hours of work, and other aspects of employment can address unfair working conditions and third parties who engage in or allow unfair labour practices. Provincial occupational health and safety regulatory frameworks can also help to establish safe and healthy practices.

Exploitation in the sex industry can be addressed using a labour framework that engages provincial legislation related to public health, occupational health and safety, and employment law.

However, the application of alternative non-sex work specific provisions in the *Criminal Code* and in provincial laws is recommended with two important caveats:

- **The conflation of sex work, human trafficking, and exploitation leads to overbroad misuse of current anti-trafficking initiatives which place sex workers at further risk of isolation, marginalization, and violence.** As they are written, the trafficking provisions in the *Criminal Code*, which are not specific to sex work, could be used to address exploitation. However, the broad manner in which they are currently being used, as a general law enforcement strategy to target sex work, violates the human rights of people who sell and trade sex in Canada. Third parties working with sex workers may be mistakenly identified as "traffickers" rather than co-workers, employers, or employees, particularly when working with im/migrant sex workers. This happens to such a degree that we reference the human trafficking provisions throughout our recommendations, but **we caution against their misuse and overbroad application.**

- The best interests of youth must always be considered in reviewing laws that address youth exploitation. While effective measures need to be taken to promote youth's best interests and address situations of exploitation, criminalizing clients and third parties of youth who sell or trade sex contributes to harms

against those youth and facilitates exploitation. Age of consent laws can address certain situations involving minors, but law enforcement must recognize that not all incidents of youth selling or trading sex are experienced as exploitation. Provisions in the *Criminal Code* concerning youth who sell or trade sex can be harmonized with provisions concerning age of consent. This means that the same legal parameters that currently define consent to non-remunerated sex would apply to everyone – independent of a person's motivation to engage in sexual activity.

Finally, it is important to note that 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. It is imperative that sex workers from diverse communities and backgrounds be meaningfully engaged in all of the conversations and policy planning that affect us.

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What follows is a detailed list of recommendations for law reform in relation to the *Criminal Code*, the *Immigration and Refugee Protection Regulations,* public health, employment, occupational health and safety, and youth protection legislation, as well as general recommendations for law reform.

Overview of Recommendations

FEDERAL LAWS	
Criminal Law	
Offences in Relation to Offering, Providing or Obtaining Sexual Services for Consideration and Commodification of Sexual Activity	**Recommendation 1**: Repeal s. 213 **Recommendation 2**: Repeal s. 286.1 **Recommendation 3**: Repeal s. 286.2 **Recommendation 4:** Repeal s. 286.3 **Recommendation 5:** Repeal s. 286.4 **Recommendation 6:** Repeal s. 286.5
Offences Related to Trafficking in Persons	**Recommendation 7:** Do not implement Bill C-452. **Recommendation 8:** CBSA should not collaborate with law enforcement to investigate cases concerning sex workers. **Recommendation 9:** Use evidence-based research to inform anti-trafficking initiatives and prohibit the overbroad misuse of anti-trafficking initiatives as a general law enforcement strategy to target sex work and im/migrant sex workers.
Immigration Law	
	Recommendation 10: Repeal ss. 183(1)(b.1), 196.1(a), 200(3) (g.1) and 203(2)(a) of the *Immigration and Refugee Protection Regulations* (*IRPR*).
Employment Insurance Act	
	Recommendation 11: Add a provision to the *Employment Insurance Act* specifying that the refusal to take employment as a sex worker is not grounds for disqualifying anyone from receiving employment insurance benefits.
PROVINCIAL LAWS	
Occupational Health and Safety Regulatory Frameworks	
Controlling Exposure to Biological Hazards (in the form of sexually transmitted infectious agents)	**Recommendation 12:** Use of personal protective equipment (PPE) such as condoms and other barriers should be encouraged, but not mandated by occupational health and safety law. PPE should therefore not be prescribed in occupational health and safety regulations.
Vaccinations or pre-exposure prophylaxis	**Recommendation 13:** Use of vaccinations or pre-exposure prophylaxis should not be mandated by occupational health and safety law. Sex work employers should be required to provide their workers with evidence-based literature on these controls (including risks and benefits, efficacy, mode of action, method of use and other key elements).

Workers' Compensation	**Recommendation 14:** Sex workers must be eligible to claim workers' compensation for time and earnings lost due to work-related violence, injury or illness, including sexually acquired infections. Employer premiums should be determined through an unbiased and evidence-based process.
Health & Safety Programs and Training	**Recommendation 15:** Sex-work employers should be encouraged to base their health and safety programs and training on existing guidelines developed by sex worker-led organizations. Occupational health and safety inspectors and boards/tribunals should similarly reference these established guidelines in their workplace assessments.
Drug and Alcohol Use	**Recommendation 16:** An employer should not be permitted to exclude a sex worker from new or continuing employment solely on the basis of the use of alcohol or other drug.
Employment Standards Legislation	
Entitlements	**Recommendation 17:** Sex workers should not be classified as an employee group that is fully or partially exempted from employment standards entitlements; any exemptions should only be made in comprehensive collaboration with sex workers.
Contracts and Consent	**Recommendation 18:** Employment standards legislation (or regulations) should explicitly state a version of each of the following stipulations: a) A person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person. b) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if they do not consent, or withdraw their consent, to providing a commercial sexual service.
Right to Refuse to Provide Services, Termination and Just Cause	**Recommendation 19:** Employment standards legislation should reflect the principle and requirement of consent, and hence the right to refuse to provide sexual services. Refusal to provide or complete specific sexual acts should not constitute just cause for termination.
Age Minimums	**Recommendation 20:** Age minimums in the sex trade must not fall below those of criminal age of consent laws, and should be informed by existing provincial/territorial employment and occupational health and safety legislation. The minimum threshold should be in congruence with labour laws in a given jurisdiction, and no higher than 18 years of age.
Im/migrant people working in the sex industry	**Recommendation 21:** There should be no employment standards or other provincial/territorial legal prohibition on employment of an im/migrant or foreign national in sex industry businesses. (A necessary companion to this recommendation is a repeal of s. 183(1)(b.1), s. 196.1(a), s. 200(3) (g.1), and s. 203(2)(a) of the *Immigration and Refugee Protection Regulations*).
Complaints Processes	**Recommendation 22:** Sex workers must have equal access to statutory complaint mechanisms to address contraventions of employment standards legislation. A complainant's status as a sex worker must remain confidential and available to parties.
Confidentiality and Employee Records	**Recommendation 23:** Provincial/territorial Ministries of Labour should take measures to ensure that sex workers' personal and employment information is kept confidential, as required by employment standards and privacy legislation. Workers should never be penalized for referring to their occupation as "consultant", "personal services" or another broad category in Records of Employment, tax forms or other documents.
Unionization and Professional Associations	**Recommendation 24:** Sex workers should enjoy the right to form workplace associations or to unionize and be covered under existing industrial relations legislation, including protections to prevent reprisal for joining or being a member of a union.

Public Health	
Mandatory Health Checks, Interventions or Treatment	**Recommendation 25:** There should be no mandatory health interventions imposed on sex workers, including, but not limited to, testing for sexually transmitted and blood borne infections (STBBIs), pre-exposure prophylaxis (PrEP) for HIV, or treatment for STIs.
Health services	**Recommendation 26**: Governments should increase funding for health services for people involved in sex work, including services for STBBIs. Services should also be rendered more accessible.
Condom Use	**Recommendation 27:** Condom use should not be mandatory for sex workers and clients.
Safer sex supplies and educational materials at sex work sites and establishments	**Recommendation 28:** Provincial governments should provide educational materials regarding sexual health, including safer sex practices, to sex work sites and establishments.
Work by sex workers living with HIV	**Recommendation 29:** People living with HIV have the right to work without discrimination and sex workers living with HIV should enjoy the same right. **Recommendation 30:** Owner/operators of sex work businesses should be prohibited from disclosing the health status – including STIs – of sex workers in their establishment. Both clients and sex workers should take reasonable precautions to protect themselves from infection and establishments should facilitate this.
Guidelines around Public Health Initiatives	**Recommendation 31:** Sex workers should have prior, meaningful input into guidelines related to public health initiatives, public health-oriented policies, guidelines and programs that affect sex workers.
Youth Protection and Supports for Youth	
Relationships with Police	**Recommendation 32:** Once a report or file has been opened concerning a young person (as defined in applicable provincial/territorial law), that young person in question should be immediately provided with complete information about the circumstances and the procedures involved, as well as proper legal representation. Youth protection workers and courts should use the least intrusive approach when investigating these matters and when making decisions about their course of action. **Recommendation 33:** Youth protection agencies must not forcibly detain youth who sell or exchange sexual services in "protective safe houses" or other detention facilities. Instead, a harm reduction approach, one that considers the youth's human rights and unique circumstances, should be used. The threshold for taking a young person into custody or protection should be significantly higher than it currently is and only used in cases where serious risk of imminent harm cannot be reduced through less intrusive measures. Selling or exchanging sexual services should not warrant the use of such an exceptional and coercive level of intervention. **Recommendation 34:** Restrict police powers to prohibit the apprehension of youth who sell or exchange sex, in the absence of explicit instructions from youth protection authorities.
Relationships with Social Services	**Recommendation 35:** Access to social services for youth who sell or exchange sex should be separate from youth protection enforcement. Mandatory reporting obligations for social service providers should not place service providers in situations where they cannot create meaningful relationships with youth.

Privacy and Personal Information	**Recommendation 36:** Ensure that youth under 18 have access to the data and information stored about them, with the goals of enabling their full participation in the decisions about their lives and ensuring their right to privacy is respected.
Meaningful Consultation with Youth	**Recommendation 37:** Ensure youth under 18 who sell or exchange sexual services are meaningfully consulted in the development of policies.
Holistic Responses for Youth	**Recommendation 38:** Address the root causes of youth poverty and support the need or desire for independent living arrangements through appropriate social supports that are not based in the youth criminal justice system or coercive youth protection agencies.
OTHER GENERAL RECOMMENDATIONS	
Collaboration Across Jurisdictions	**Recommendation 39:** There should be collaboration and cooperation between federal, provincial/territorial and municipal governments to ensure that human rights are at the core of the application of legislation, and that where jurisdiction is shared, there are agreements regarding delegated power and cost sharing.
Periodic Legislative Review	**Recommendation 40:** Governments should objectively review and analyze legislative outcomes including their impact on sex workers, with meaningful involvement of and consultation with a diversity of sex workers from a diversity of regions.
Public Education and Training	**Recommendation 41:** Provinces and territories, in collaboration with sex workers, should provide public education about sex work, the impacts of criminalization, and human rights as they apply to sex work.
Government Supports and Programs	**Recommendation 42:** Governments should provide support and funding specific to sex workers living in poverty or other situations of disadvantage, without discrimination. Equally this support should not be dependent on "exiting" or transitioning from sex work. **Recommendation 43:** Governments must ensure that sex workers can access (non-sex work-specific) public services, programs, and benefits that are offered to all individuals living in poverty or other situations of disadvantage, without discrimination or non-solicited emphasis on their experience in sex work. **Recommendation 44:** Governments should provide support and provide resources to peer-led (where possible) sex worker rights organizations that provide front line services to people in the sex industry.
Policing	**Recommendation 45:** Sex worker-designed training for police should be mandatory as part of diversity training. **Recommendation 46:** Police should not be permitted to engage in initiatives (including the application of laws unrelated to sex work) to unjustifiably remove and displace sex workers from public spaces. **Recommendation 47:** Provinces and territories should ensure that their cities, local police and community services adopt "Access (To City Services) Without Fear" policies throughout Canada. **Recommendation 48:** Nuisance-based complaints made against sex workers should be resolved using the least intrusive method possible. **Recommendation 49:** Bylaw officers should be trained on the realities of sex work and bylaw enforcement that engages police should proceed with respect for sex workers' rights to privacy and well-being.

PART A:

Introduction

Acknowledgements

These recommendations would not have been possible without input from sex workers and support groups within the 24 Canadian Alliance groups across Canada that came together to provide their expertise. The willingness of sex workers to struggle through differences in experiences, cultures, languages, and opinions was astounding and demonstrated a real effort to find agreement and develop a framework that could benefit all sex workers across Canada. We are indebted to Lindsay Doyle of Summa Strategies and of the Canadian Advocacy Network who has provided invaluable insight and support along the way. Thank you also to Dafna Strauss from One Degree GR, Steven Bittle, Professor of Criminology at the University of Ottawa, and Marcus McMann of Symes Street & Millard Barristers and Solicitors for their additional expertise.

Foreword

Sex work has been a heated topic in the public sphere and in parliamentary settings. Many people have a lot to say about sex work, despite the fact that it is people who sell and trade sex that bear the brunt of legislative regimes. All sex workers[2] can attest to the harms associated with working in a criminalized environment.

Academic and community-based research over the past thirty years has demonstrated the negative effects of criminal law on the health and safety of sex workers. This research identifies criminalization as a key contributor to violence and other risks of harm experienced by sex workers, among other repercussions such as stigma and discrimination.[3] Various human rights organizations, UN bodies and courts have affirmed this research and concluded that criminalization of the sex industry has been proven to support exploitation, including Amnesty International,[4] the UN Development Programme (UNDP),[5] Human Rights Watch,[6] the Joint UN Programme on HIV/AIDS (UNAIDS),[7] the World Health Organization (WHO) with the UN Population Fund (UNFPA), UNAIDS and the Global Network of Sex Work Projects,[8] the Global Commission on HIV and the Law,[9] the Global Alliance Against Traffic in Women,[10] the Center for Health

2 Not all people who sell or trade sex identify as sex workers. We use the terms *sex work* and *sex workers* in this report as a means of signifying the consensual exchange of a sexual service for money, goods or services and to underscore our belief that not all sex work is exploitation. We also use these terms to signify our participation in a global movement that works towards the human and labour rights of sex workers, and the total decriminalization of the sex industry as an integral step towards that goal.

3 Benoit, C., Atchison, C., Casey, L., Jansson, M., McCarthy, B., Phillips, R., Reimer, B., Reist, D. & Shaver, F. 2014. Working paper for Building on the Evidence: An International Symposium on the Sex Industry in Canada; Lowman, J. & Dillon, P. 1998. Life on The Streets is Dangerous. Surrey Leader; Canadian HIV/AIDS Legal Network .2005. "Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution." Canada; Jeffrey, L.A. and G. MacDonald. "It's the Money, Honey: The Economy of Sex Work in the Maritimes." *The Canadian Review of Sociology and Anthropology*; Vol. 43, Issue 3, 2006. 313-328; Lewis, J. & Shaver, F. 2006. "Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House of Commons Subcommittee on Solicitation Laws (SSLR)."; Lowman, J. 2000. "Violence and the Outlaw Status of (Street) Prostitution in Canada." *Violence Against Women*, Vol. 6, No. 9, pp987-1011; Pivot Legal Society. June 2006. "Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform."

4 Amnesty International Policy on state obligations to respect, protect and fulfil the human rights of sex workers. May 2016. www.amnesty.org/en/documents/pol30/4062/2016/en/

5 John Godwin. 2012. *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work.* Bangkok: United Nations Development Programme. www.undp.org/content/dam/undp/library/

6 Human Rights Watch. 2014. "Canada's prostitution bill a step in the wrong direction." www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction

7 UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, **2012.** www.unaids.org/sites/default/files/sub_landing/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

8 World Health Organization, UNFPA, UNAIDS, Global Network of Sex Work Projects. December 2012. Prevention and Treatment of HIV and Other Sexually Transmitted Infections for sex Workers in Low and Middle Income Countries: Recommendations for a Public Health Approach. www.nswp.org/sites/nswp.org/files/WHO%20prevention%20treatment%20HIV%20STI%20sex%20workers_0.pdf

9 Global Commission on HIV and the Law (UNDP HIV/AIDS Group). July 2012. *HIV and the Law: Risks, Rights & Health.* www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law–risks–rights–-health.html

10 Global Alliance Against Traffic in Women (GAATW). 2016. *Response to UN Women's consultation on sex* work. www.gaatw.org/events-and-news/68-gaatw-news/857-response-to-un-women-s-consultation-on-sex-work

and Gender Equity (CHANGE),[11] the UN Special Rapporteur on the Right to Health,[12] and the Supreme Court of Canada in Canada (Attorney General) v. Bedford (Bedford).[13] In particular, the criminalization of sex work leads to violations of sex workers' rights to work, privacy, equality and non-discrimination, life, liberty and security of the person, health, working conditions that are just, favourable, safe and healthy, freedom of expression, freedom of peaceful assembly, freedom of association, freedom from unreasonable search and seizure, freedom from arbitrary detention and imprisonment, and freedom from torture and cruel, inhumane and degrading treatment.

In addition to various parliamentary reports produced since 1985,[14] the 2006 Report of the Parliamentary Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness also acknowledged the need for decriminalization as a necessary step to improving the health and safety of sex workers.[15]

The *Protection of Communities and Exploited Persons Act* (*PCEPA*) that was enacted in Bill C-36 in 2014 was a shock and deep disappointment to sex workers across Canada, who for a brief moment had their human rights violations recognized in *Bedford*. The paradigm shift from sex work as a public nuisance, to sex work as sexual exploitation, did not leave room for the reality that people currently do sell sex and will continue to do so.

The *PCEPA* defines all commercial sex work as exploitation and frames all sex workers as victims, and all clients as criminals. A primary objective of the legislation is to eradicate prostitution. Advocates for the new regime claim that deterring clients helps remove sex workers from prostitution and that the new laws do not criminalize sex workers themselves. But the new laws still include provisions that directly criminalize sex workers *Criminal Code* s. 213(1.1) in addition to the remaining sections of s. 213 (e.g., subsections (1)(a) and (1)(b) were not challenged in *Bedford* nor were they repealed by Bill C-36).

The harmful impacts of criminalizing sex work go beyond the violence of arrest and incarceration. Police repression is a significant factor in creating vulnerability to violence and poor working conditions.

Sex workers across the country have reported that the new laws have interfered with the safety mechanisms that sex workers use to stay safe on the job; have encouraged less responsibility on the part of third parties to ensure good working conditions; have reinforced antagonistic treatment from the police; and have increased stigma and discrimination against sex workers and their clients. The new laws have added yet another tool to the police arsenal that they regularly use to target and antagonize sex workers, and in particular racialized and Indigenous communities, while claiming to save them from exploitation.

The harmful impacts of criminalizing sex work go beyond the violence of arrest and incarceration. Police repression is a significant factor in creating vulnerability to violence and poor working conditions. A context of repression makes it difficult for sex workers to report human

11 CHANGE, Women's Rights Organization Applauds Amnesty International Recommendation to Decriminalize Sex Work, August 11, 2015. www.genderhealth.org/media_and_publications/press_releases/P10/

12 UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Report on the 14th session, UN General Assembly, agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010. www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf

13 Canada (Attorney General) *v.* Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101 http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do#

14 Report of the Special Committee on Pornography and Prostitution (Ottawa: Minister of Supply and Services Canada, 1985) [the "Fraser Report"] and the accompanying five regional studies (British Columbia, the Prairie Provinces, Ontario, Quebec and the Atlantic Region); Department of Justice (1989) *Street Prostitution: Assessing the Impact of the Law* Synthesis Report. Ottawa: Department of Justice Canada. As well as the reports from the five regional studies carried out in Vancouver, Calgary, Toronto, Montreal and Halifax; Federal-Provincial-Territorial Working Group on Prostitution. (1995). *Dealing with prostitution in Canada: A consultation paper*. Ottawa, ON: Department of Justice.; Department of Justice.; Federal-Provincial-Territorial Working Group on Prostitution. (1998). *Report and recommendations in respect of legislation, policy and practices concerning prostitution-related activities*. Ottawa, ON: Department of Justice; Lowman, J. and L. Fraser (1995a) *Violence Against Persons Who Prostitute: The Experience in British Columbia* A Study Funded by the Departments of Justice and Solicitor General Canada, Ottawa.

15 Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. December 2006. *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws.* www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2599932&Language=E&Mod

rights violations and other crimes and for police to investigate acts of targeted violence against sex workers by predators, who commit such violence in a context of impunity. Legal and social constructions of sex work as exploitation contribute to a climate of stigma and disdain for sex workers and sex work, which promotes violence and discrimination.

The recommendations in this report are holistic in nature and reform depends on the integration of all elements. First, we begin with a recommendation to remove criminal laws related to sex work: this is the most urgent necessary and effective way to protect, respect and fulfill the human rights of sex workers. The removal of criminal provisions – particularly of legislation that does not distinguish between exploitation and sex work – allows the possibility of identifying actual exploitation in the workplace and in the lives of people who sell or trade sex. In addition, when relationships between clients, sex workers and third parties are no longer criminalized, there is the possibility to negotiate and improve working conditions. Criminalization impedes negotiation with clients regarding services and the conditions of the arrangement (particularly, but not exclusively, in the case of street sex work), and impedes negotiation with third parties for better working conditions. It is here that the report provides recommendations on how public health legislation, occupational health and safety regulatory frameworks, employment standards legislation, and youth protection and supports for youth can address human rights concerns for sex workers and people who sell or trade sex, that are based in evidence rather than moral approaches.

All sex workers and people who sell or trade sex, whether they self-identify as sex workers or not, are entitled to human rights, including the rights to work, privacy, equality and non-discrimination, life, liberty and security of the person, health, working conditions that are just, favourable, safe and healthy, freedom of expression, freedom of peaceful assembly, freedom of association, freedom from unreasonable search and seizure, freedom from arbitrary detention and imprisonment, and freedom from torture and cruel, inhumane and degrading treatment. These recommendations are underpinned by the desperate need to uphold sex workers' human rights and end targeted violence and exploitation against sex workers and people who sell or exchange sexual services.

These recommendations propose a legislative model for sex work that promotes the health and safety of sex workers and people who sell or exchange sexual services.

We seek the repeal of existing criminal laws specific to sex work, which criminalize activities associated with sex work, and recommend enforcement of other existing laws that safeguard against coercion and exploitation. We also elaborate on provincial/territorial legislation and regulations that would, in the absence of such sex work-specific criminal laws, protect and respect sex workers' human rights, including their labour rights.

Together and across jurisdictions, lawmakers can ensure a comprehensive approach to improve living and working conditions of people working in the sex industry.

Objectives and Process

In January 2016, the Canadian Alliance for Sex Work Law Reform began its national consultation with its member groups to develop recommendations for federal, provincial and municipal levels of government regarding decriminalization and regulation that respects and protects sex workers' rights. These recommendations are vital to sex workers who are experiencing the negative impacts of the new criminalized regime under the *Protection of Communities and Exploited Persons Act* (*PCEPA*). This consultation and resulting recommendations provided an opportunity for sex workers across the country to define what decriminalization looks like, in a federal and provincial context. **It shifts regulation of the sex industry from a criminal framework to a framework of labour and other human rights.**

These recommendations are vital to sex workers who are experiencing the negative impacts of the new criminalized regime under the *Protection of Communities and Exploited Persons Act (PCEPA).*

We surveyed members of our Alliance on the issues that affected them most under the *PCEPA*. We also worked closely with legal experts (including allies within the Alliance) and government relations experts to ensure that our recommendations were legally sound and coherent.

To produce these recommendations for sex work law reform, a Steering Committee of 8 Alliance member groups, including expert lawyers and government relations specialists, met throughout the year to produce draft recommendations. The recommendations were then elaborated and approved by Alliance member groups.

This report is intended for law and policy makers and also for the general public. It outlines the elements necessary for a legislative framework that respects, protects and fulfills the human rights, including labour rights, of sex workers and people who sell and trade sex in Canada.

About the Stakeholders

The stakeholders in a sex work law reform process are, naturally, those affected by the legislation. *The Canadian Alliance for Sex Work Law Reform* is composed of 24 sex worker rights and allied groups and individuals in 15 cities across Canada: Calgary, Edmonton, Hamilton, London, Longueuil, Montreal, Kingston, Québec, Sault Ste. Marie, St. John's, Sudbury, Toronto, Vancouver, Victoria and Winnipeg. Members work together for sex work law reform, sex workers' rights, and community well-being. Of our current 24 member groups, 21 are sex worker-led and 3 are allied groups. Some of the groups provide front-line service provision to sex workers in their region, and others are grassroots advocacy organizations.

The 24 member groups of the Alliance operate differently in their approach and every day work with sex workers. They hold a wide variety of perspectives on the details for a legislative approach to sex work. However, in the context of the *PCEPA*, we came together to form a comprehensive and agreed upon set of recommendations that would respect, protect and fulfill sex workers' human rights, including their labour rights. A full description of member groups is provided at the end of this document.

PART B:

Legal Context

Bedford Supreme Court Decision

In December 2013, the Supreme Court of Canada released its decision in *Canada (Attorney General) v. Bedford, Lebovitch and Scott*, 2013 SCC 72 (*Bedford*).[16] The case was the culmination of many years of advocacy by sex workers, accumulated social science research and testimonies about the effects of criminalization on sex workers, and the public education efforts that sex workers engaged in while the case was ongoing helped to consolidate a strong national movement for sex workers' rights. Sex workers and allied organizations across Canada intervened in the case at the Ontario Court of Appeal and Supreme Court and subsequently advocated for law reform.

16 Canada (Attorney General) *v.* Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101 http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do

17 Ibid.

The *Bedford* case was initiated in 2007 by three sex workers as a constitutional challenge to three of the most commonly enforced *Criminal Code* provisions on prostitution:

- **Section 210**, which prohibited the keeping of, or being found in, a "bawdy house" and therefore made it illegal for anyone to offer sexual services from a fixed location; and
- **Section 212(1)(j),** which prohibited anyone from living on the avails of prostitution and therefore made it illegal for sex workers to work with other people; and
- **Section 213(1)(c),** which prohibited communicating in public for the purpose of prostitution and therefore put pressure on outdoor sex workers to rush initial client screening and to work isolated in desolate areas, in order to avoid detection by law enforcement

It took more than five years for the *Bedford* case to move from the initial application through the appellate courts. In 2013, the Supreme Court of Canada affirmed the decision of the Ontario Superior Court of Justice, which had struck down these three provisions because they violated sex workers' rights to liberty and security of the person under Section 7 of the *Charter*. The Court found the laws "prevent(ed) people engaged in a risky, but legal, activity from taking steps to protect themselves from the risks" (para. 89) Among the Court's findings were that sex workers relied on screening their clients as an essential safety measure, that working inside was safer than working outside, and that working with others could be safety-enhancing (paras. 63 and 64).[17] The Court suspended its declaration that the laws were invalid and thus no longer in force, allowing the government one year to devise new laws or continue without criminal laws in these areas.

Protection of Communities and Exploited Persons Act (PCEPA)

In response, the Conservative federal government introduced Bill C-36, which became law as the *Protection of Communities and Exploited Persons Act* or *PCEPA* on December 6, 2014. The *PCEPA*, sometimes referred to as the "Nordic model" – because it is akin to laws in Sweden, Iceland and Norway – essentially targets buyers of sexual services and third parties who work with sex workers, and in theory avoids criminalizing sex workers on the premise that they are "victims" of prostitution, which is case as inherently exploitative.

The *PCEPA* in fact continues to criminalize sex workers for communicating in public spaces at or next to schools, playgrounds and daycares. It also recreates the harms sex workers experienced under the pre-*Bedford* laws by criminalizing clients and third parties. In spite of the findings in *Bedford* that it is generally safer to do sex work from a stable indoor location where others could provide support if necessary, the *PCEPA* makes it a crime to hire another person to do sex work or to operate a commercial establishment where sexual services are offered. Making most aspects of sex work illegal fosters and perpetuates stigma and discrimination against sex workers and contributes to antagonism between those working in the sex work industry and police. This makes it much harder for sex workers to access the criminal justice system when they are victims of crimes.

For the first time in Canada, the *PCEPA* made exchanging money or goods for sex or goods illegal, even though Justice Himel, the trial judge in *Bedford*, rejected as biased expert testimony the suggestion that sex work is inherently violent (para 344)[18] She found that the operation of the laws prevented sex workers from establishing safe working environments. Sex workers propose that their safety and autonomy are best supported

18 *Bedford v. Canada*, 2010 ONSC 4264 (CanLII), http://canlii.ca/t/2cr62

by a legal regime that recognizes their labour rights and does not inhibit their access to laws of general application meant to benefit everyone in Canada, including laws against violence, exploitation and harmful working conditions.

The *PCEPA* was touted by its advocates as a regime that would address gender inequality. While gender inequality is indeed pervasive in our societies, the concept of equality is largely misunderstood and rarely takes into account the different ways that many of us are positioned. Some sex workers have money, while others are living in poverty, and some sex workers are racialized, Indigenous or white. To conform to an equality model, sex work legislation needs to recognize substantive equality, and the different decisions that different people make based on their different positionalities. Sex work — regardless of how sex workers feel about it — is an economic decision, for those who live in poverty and those who do not. Removing sex work as an option is not a step towards equality. When *PCEPA* is framed as an equality model, it ignores the reality of people working in the sex industry and instead prioritizes ideologies. In addition, criminal law has historically been and continues to be a tool that perpetuates gender inequality by placing the most marginalized women in conflict with the law. To address gender inequality, we need to promote autonomy and power. Laws that define sex workers as victims despite their decision to sell or trade sex are not laws that promote gender equality. Additionally, laws that contravene sex workers' human rights to safety, liberty, security and autonomy are not laws that promote gender equality. In the context of sex work, gender equality means recognizing and protecting individuals' autonomy to determine their working and living conditions.

Division of Powers

As long as sex work is criminalized under federal law, sex workers are excluded from provincial laws that guarantee protections for workers. Use of criminal law to regulate any aspect of sex work tends to result in human rights abuses for sex workers. A comprehensive response to ensuring sex workers' rights would require cooperation between different levels of government holding different jurisdictional powers.

Our recommendations for law reform throughout this document address crucial directions and recommendations for various levels of government, including federal and provincial laws, programs and policies to achieve meaningful change.

Federal laws: Ensuring that our laws uphold sex workers' health, safety, and human rights must start with decriminalization — the removal of laws prohibiting sex work and related activities from the *Criminal Code*. In addition, immigration regulations currently preclude people on travel and work visas from working in specific businesses such as strip clubs and massage parlours. These restrictions deny people who are im/migrants seeking these jobs the opportunities to work legally. They also serve as a pretext for law enforcement surveillance and raids of these establishments. In a decriminalized context, it may also be desirable to enact specific provisions within the *Employment Insurance Act*.

Provincial laws: Laws governing working conditions in workplaces that are not federally regulated are under provincial jurisdiction. Although these laws vary somewhat by province, they are based on similar principles and aim to protect workers' human rights. Provincial laws include employment standards legislation, which set minimum conditions for hiring, terminating employment, overtime, and parental leave; occupational health and safety regulatory frameworks, which govern workplace safety and related practices; and industrial relations legislation, which governs relations in unionized workplaces. In a decriminalized environment, these laws would also apply to sex workers and their workplaces, and would allow sex workers access to mechanisms for redress for unfair or unsafe workplace conditions and practices.

Provincial youth protection legislation sets out conditions under which minors can be taken into government care. Some provinces have secure care legislation that allows authorities to detain youth, ostensibly for their own protection. The use of these laws to detain youth engaged in trading and selling sex results in a quasi-criminal system that does not respond to the needs of youth or the situations that lead some youth to engage in exchanging sex for compensation.

Municipal bylaws: Our division of powers doctrine prohibits municipalities from usurping federal powers by enacting bylaws that mimic or recreate criminal laws, as these are the exclusive purview of the federal government. For example, municipalities cannot use zoning bylaws to engage in *de facto* criminalization of sex work by entirely prohibiting it from taking place within a municipality. However, municipalities do retain some powers to determine where and when sex work takes place. Providing universal guidelines would help to ensure that municipalities uphold sex workers' human rights.

PART C:

How to Approach Sex Work Law Reform

Creating a Holistic Response to Sex Work Law Reform

Decriminalization is one part of our larger struggle for the recognition and actualization of sex workers' rights – including the rights to autonomy and self-determination, security of the person, freedom of expression and association, equality and non-discrimination, self-determination, work (and safe, healthy, just working conditions), health and dignity. 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.

Decriminalization is an important first step towards addressing the dangers that come with being criminalized and/or working in a criminalized industry. The criminalization of our work comes with a constant police presence, social and racial profiling, harassment, surveillance, arrest, detention and deportation – all of which contribute to our isolation and vulnerability to violence.

Some members of our communities face police harassment regardless of their participation in sex work, particularly Indigenous women and youth, people who are im/migrants (particularly racialized women) and trans people (especially trans women). The criminalization of the sale or exchange of sexual services gravely exacerbates their stigmatization and marginalization.

The over-policing of Indigenous communities translates to an over-representation of Indigenous women in prison populations. Government statistics indicate that "Aboriginal adults are overrepresented in admissions to provincial/territorial correctional services, as they accounted for one-quarter (25%) of admissions in 2014/2015 while representing about 3% of the Canadian adult population. The findings for custodial admissions (26%) were similar to community admissions (24%) in the provinces and territories. With regard to federal correctional services, Aboriginal adults accounted for 22% of admissions to sentenced custody in 2014/2015."[19]

Indigenous youth are also targeted by law enforcement. The Native Youth Sexual Health Network, an organization by and for Indigenous youth working across Canada and the United States has observed that while decriminalization of sex work "does not adequately address the systemic racism and classism as well as a fundamental power imbalance and issues of inequality, which are realities for Indigenous youth in Canada," it is still a step they identify as crucial. They call for the process for law reform to recognize and emphasize that "Indigenous youth are over policed, but under protected. High rates of arrest and incarceration are a reality, yet there still has been no justice for the over 500 missing and murdered Indigenous women in Canada." They conclude: "that being said, **decriminalization is still one of the many steps that the courts and lawmakers must take to respect the self-determination of Indigenous sex workers."**[20]

Decriminalization is still one of the many steps that the courts and lawmakers must take to respect the self-determination of Indigenous sex workers.

Addressing the issue of missing and murdered Indigenous women and girls in Canada has finally and rightfully become a government priority. It is of great importance that a significant number of the women who went missing or were murdered had sold or traded sex. Indigenous women – and particularly those who sell or exchange sex – are targeted for violence because predators are aware that police are not only less inclined to investigate their disappearances but also because they know Indigenous women are constantly avoiding police for fear of detection and apprehension.[21]

19 Statistics Canada. Adult correctional statistics in Canada, 2014/2015. www.statcan.gc.ca/pub/85-002-x/2016001/article/14318-eng.htm; Annual Report of the Correctional Investigator 2014-2015. www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx

20 Native Youth Sexual Health Network. 2010. "Decriminalization of sex work and Indigenous youth and communities – Response from the Native Youth Sexual Health Network" https://inciteblog.wordpress.com/2010/10/18/decriminalization-of-sex-work-and-indigenous-youth-and-communities-response-from-the-native-youth-sexual-health-network/

21 Rossmo, K. "Predators target indigenous women because of sex trade work. We need answers – not excuses." *The Globe and Mail*, November 25, 2015. www.theglobeandmail.com/opinion/predators-target-indigenous-women-because-of-sex-trade-work-we-need-answers--not-excuses/article27477095/

Much of the violence against Indigenous women who sell or trade sex is mis-categorized and conflated with "trafficking" – which has grossly inflated estimates of the number of "trafficked" Indigenous women and girls in Canada, and misdirected efforts to address violence against Indigenous women who sell or trade sex. This categorization of Indigenous women as victims without agency has led to prioritizing of funding for law enforcement strategies that increase over-policing in Indigenous communities.

The over policing of Indigenous women with the criminalization of sex work exacerbates already significant barriers and has made access to the protection of the justice system even more difficult for Indigenous people who sell or trade sex. The inability to benefit from state protection and from the redress that could be provided by the justice system has contributed greatly to the violence experienced by sex workers.

Decriminalization is a first, but not sufficient step that needs to be taken to address the rights of people who are overpoliced and underprotected.

Similarly, im/migrant communities are made particularly vulnerable by the criminalization of sex work. The threat of police involvement and deportation increases their vulnerability to violence and limits their ability to come forward as victims of violence. Im/migrant sex workers have been targeted by law enforcement who often work hand in hand with Canada Border Services Agency. For example, in 2015, the Ottawa Police Service released information about a raid on massage parlours that led to the deportation of 11 women.[22] Trying to avoid detection increases im/migrant sex workers' isolation and dramatically reduces their access to health and safety resources. Im/migrant workers who are victims of violence do not report it for fear of being arrested and deported.[23] Like with other vulnerable communities, the decriminalization of sex work is a crucial first step to reduce instances of violence and provide meaningful assistance to im/migrant sex workers.

It is imperative that sex workers from diverse communities and backgrounds be meaningfully engaged in all of the conversations and policy planning that affect us.

22 Wolfson, C. "Eleven women face deportation following human trafficking investigation in Ottawa." *Occupational Health and Safety Canada*. May 19, 2015. www.ohscanada.com/health-safety/eleven-women-face-deportation-following-human-trafficking-investigation-in-ottawa/1003347142/

23 SWAN Vancouver Society. 2015. *Im/migrant Sex Workers, Myths and Misconceptions: Realities of the Anti-Trafficked*. www.swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf

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. It is imperative that sex workers from diverse communities and backgrounds be meaningfully engaged in all of the conversations and policy planning that affect us.

Statement of Principles and Values

Whereas all persons, including sex workers, and those who currently sell or trade sexual services and those who have previously sold or traded sexual services, are entitled to the full enjoyment of their rights and freedoms set out in international law and in the *Canadian Charter of Rights and Freedoms* and other domestic laws;

Whereas these include freedom of expression, freedom of peaceful assembly, freedom of association, freedom from unreasonable search and seizure, freedom from arbitrary detention and imprisonment, freedom from cruel and unusual treatment or punishment, and the rights to life, liberty, security of the person, privacy, equality, the highest attainable standard of health, and working conditions that are just, favourable, safe and healthy;

Whereas the Supreme Court of Canada recognized, in the matter of *Canada (Attorney General) v. Bedford*, 2013 SCC 72, that the law must respect and protect the constitutionally-guaranteed rights of sex workers to security of the person, and specifically that laws must not unjustifiably interfere with sex workers' efforts to employ non-exploitative, safety-enhancing measures such as screening clients, hiring and working for third parties, and working cooperatively with others, whether indoors or outside;

Whereas the *Protection of Communities and Exploited Persons Act* enacted in 2014 in response to the Supreme Court of Canada's ruling is (i) premised on the demonstrably incorrect assumption that any sale or trading of sexual services is inherently exploitative, (ii) disregards the guidance provided by the Supreme Court by reinstating the substance of many of the provisions previously found unconstitutional, thereby replicating the same or similar harms to the health and safety of sex workers, and (iii) extends the criminal law even further with new criminal prohibitions that further infringe multiple rights of sex workers (and also of their clients, in ways that then pose further risks to the health and rights of sex workers);

Whereas the law and the actions of law enforcement and government authorities must uphold and promote rights and freedoms of all individuals, without discrimination, and must thus respect the human rights of all those who sell or trade sexual services, including all those rights and freedoms set out above;

Whereas Canadian values include respect for the right of individuals to bodily autonomy, which includes the right to give fully voluntary consent to sexual activity and to refuse sexual activity, and to communicate to reach such consent, and people who sell or trade sexual services are equally entitled to the enjoyment and protection of such rights;

Whereas Canada has obligations under international law to take steps to respect, protect and fulfil the human rights of all persons, and must discharge such obligations without discrimination, and whereas this includes an obligation on the part of the federal, provincial/territorial and municipal governments to refrain from basing legislation or other actions on moral objections to persons selling or trading sexual services and to instead act in good faith to respect, protect and fulfill the rights of sex workers;

Whereas Canada has obligations under international law to prevent and redress human rights abuses arising in the context of human trafficking;

Whereas such abuses in the context of human trafficking can and do arise in the context of many different kinds of work, and should be addressed as abuses independently of whether they occur in a context of selling or trading sexual services or other kinds of labour;

Whereas the manifestly false premise that any sale or trading of sexual services is inherently exploitative often leads to the related, incorrect assumption that migration by sex workers always or often amounts to human trafficking, with the result that the interpretation and application of anti-trafficking measures often end up harming the health, safety and human rights of sex workers without justification;

Whereas the *Criminal Code* has provisions to address exploitation and violence, including assault, sexual assault, extortion, uttering threats, theft, robbery, criminal harassment, kidnapping and forcible confinement, and there is therefore no need for any additional provisions specific to sex work to deal with these concerns, which are frequently cited as ostensible justification for specific provisions criminalizing activities related to the sale or trading of sexual services;

Whereas the *Criminal Code* has existing provisions to address sexual exploitation of youth, including those relating to age of consent for sexual activity, sexual interference, invitation to sexual touching, procuring of sexual activity of a minor by a parent or guardian, and there is therefore no need for any additional provisions in the criminal law in relation to the sale or trading of sexual services by youth to deal with these concerns;

Whereas the Parliament of Canada wishes to protect and promote the autonomy of all persons, including their bodily and sexual autonomy, and therefore wishes to encourage those who sell or trade sex to report incidents of violence or exploitation, and to provide support to those who no longer wish to sell or trade sexual services or who have stopped selling or trading sexual services;

Whereas previous and current laws criminalizing sex workers, their clients, and third parties with whom sex workers may make voluntary working arrangements, did not and do not encourage the development of trusting relationships between sex workers and police that would facilitate that reporting, and whereas the evidence demonstrates that broad criminalization creates and exacerbates harm for sex workers, including such risks of exploitation and violence;

Whereas the decriminalization of prostitution is a necessary but not sufficient condition to reduce stigma against sex workers and promote their health and safety, and must be accompanied by other measures, at various levels of government, to ensure the respect for, and protection and fulfilment of, sex workers' equal enjoyment of universal human rights, including their rights in the context of their work;

1. The federal government and Parliament of Canada must review and reform federal laws so as to respect, protect and fulfil the rights of sex workers and people who sell or trade sex, beginning with the repeal of sex work-specific criminal laws that infringe and undermine these rights, in the *Criminal Code* and elsewhere;

2.The provincial and territorial governments and their respective legislatures must review and reform laws falling within their jurisdiction, such as labour laws and those relating to occupational health and safety and youth protection legislation, to ensure that the provincial laws (and municipal by-laws) neither reproduce harms arising out of the current criminalization of sex workers, their clients and work settings, and third parties with whom sex workers make voluntary arrangements, nor create new or separate harms to the health and rights of sex workers;

3. The review and reform of federal and provincial/territorial legislation (and of any subsidiary legislation such as municipal bylaws), must be rooted in and reflect some key principles and precepts.

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.

PART D:

Recommendations For Law Reform

Human rights are universal, inalienable, indivisible, interdependent and interrelated. Everyone, including sex workers and all people who sell or trade sex, is entitled to human rights, which can never be taken away. These recommendations for law reform focus on repealing harmful laws, encouraging the use of existing protective laws, where appropriate, and creating a legal framework for sex work that does not define it as sexual exploitation, but rather an income-generating activity that should be underpinned by human rights values.

As such, these recommendations include a call to repeal all criminal laws specific to sex work and to employ existing legislation that is not specific to sex work to address violence and exploitation. They also elaborate on provincial/territorial legislation that would help to protect and respect sex workers' human rights, including labour rights. Together and across jurisdictions, lawmakers can ensure a comprehensive approach to address sex workers' needs for health, safety and dignity — needs that belong to all people in Canada.

1. FEDERAL LAW

Criminal Law

This section sets out why the federal criminal provisions related to sex work should be repealed. We define *sex work* as the consensual exchange of a sexual service for money, goods or services, although we recognize that not everyone who sells or exchanges sexual services identifies as a sex worker.

The *Protection of Communities and Exploited Persons Act* (*PCEPA*) was drafted on the premises that all sex work is violence and exploitation, that sex work reinforces gender inequalities by objectifying the human body and commodifying sexual activity, and as such, that sex work causes social harm to all Canadians, particularly to people who sell or trade sex and to surrounding communities. This law presumes that criminalization will eliminate the practice of sex work itself and thereby eliminate the alleged moral and social harm it causes to society, as well as actual violence against and exploitation of sex workers.

Many sex workers assert that the law's underlying ideological premises are false, and instead distinguish between violence or exploitation on the one hand, and sex work on the other. We denounce all forms of violence and labour exploitation when they do occur and we know that violence can be mitigated. Attempts to eradicate the sex industry and prohibit people from working together do not assist in countering violence and exploitation. Rather these attempts isolate sex workers and consequently increase their vulnerability to violence and exploitation.

The *PCEPA* does not distinguish between sex work, labour exploitation and violence. Further, it criminalizes virtually all elements of the sex industry. This negatively impacts sex workers' health and safety by:

- Increasing antagonism between police and sex workers, motivating sex workers to avoid law enforcement at all costs, even when they are victims of violence;
- Displacing and isolating sex workers, who fear contact with the police
- Increasing targeted violence[24] against sex workers;
- Increasing police profiling and surveillance of racialized sex workers, particularly im/migrant and Indigenous sex workers; and
- Misapplying human trafficking provisions across Canada, resulting in the profiling, detention and deportation of im/migrant sex workers.

Sex workers are incredibly diverse and form part of all Canadian communities. People engage in sex work for various reasons – primarily to generate income to support themselves and their families, and to meet their needs and fulfill their aspirations. Sex workers may identify as victims of systemic gender inequality – including gendered economic disparity and discrimination within the labour force – and simultaneously not identify as victims of sex work.

The premise that consensual sexual activity – remunerated or otherwise – causes social harm is not reflective of values established in Canadian law that respect autonomy and the other human rights of individuals. Most importantly, the ideological and moral position that sex workers should be removed from public view not only violates sex workers' right to security, it also increases social stigma towards sex workers and sends the message that sex workers are less valuable members of society who do not deserve to work and live in safety and with dignity; it fosters discrimination and violence.

24 *Targeted violence* refers to violence experienced by a group of people who are singled out because of their marginality and isolation. Perpetrators are aware that certain communities, such as sex workers, are viewed as more disposable and less valued. When violence is assumed to be inherent to sex work, it promotes the idea that violence against sex workers is expected and even permitted. This assumption perpetuates and increases targeted violence. See, for example: www.theglobeandmail.com/opinion/predators-target-indigenous-women-because-of-sex-trade-work-we-need-answers--not-excuses/article27477095/ and Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101, para 123 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do

We recommend using existing criminal law provisions of general application to address violence and exploitation, when either occurs. This recommendation is based on the premise that using sex work specific criminal provisions to address violence and exploitation in the sex industry negatively affects sex workers and increases incidents and risk of violence and exploitation.

We recommend the use of provincial/territorial employment laws to regulate the sex industry as a form of labour, in consultation with sex workers to determine how best to protect their rights.

We also recommend distinguishing between human trafficking of persons, violent crimes including sexual assault, labour exploitation, and sex work. Without clear differentiation of these terms and realities, the human rights of people who sell or exchange sex will continue to be violated, by both those who take advantage of the marginalized position of sex workers and by state agents misusing the law.

These recommendations are based the following tenets:

1. There should be no criminal provisions specific to sex work.

As explained further below, sex work-specific criminal provisions endanger sex workers' lives and work. Criminal provisions specific to sex work do not address violence and exploitation, but actually have the opposite effect by isolating sex workers and increasing opportunities for violence and exploitation against them.

In addition, sex work specific provisions limit sex workers' capacity to clearly negotiate and communicate their consent to sex with relevant parties. These provisions violate the sexual autonomy of people who sell or exchange sex, as they negate one's capacity to consent to sex when remuneration is provided. Legislative frameworks for sex work must evolve to encompass the reality that a person *can* consent to sell or exchange sex.

2. The exchange of sex for money is not inherently violent.

Consenting to sell or trade sex does *not* mean consenting to violence or coercion. Sex that occurs without consent is not sex work – it is sexual assault. We do not need additional sex work-specific provisions to "protect" sex workers. We want the following general provisions to apply in any situation where sex workers are victims of a crime.

Existing or alternative provisions to address coercion, abuse and violence against persons, including against sex workers:

- **Section 265-268** – Assault
- **Section 269** – Bodily harm
- **Section 271-273** – Sexual assault
- **Section 322** – Theft
- **Section 343** – Robbery (stealing with violence or threat of violence)
- **Section 279** – Kidnapping and forcible confinement
- **Section 346(1)** – Extortion
- **Section 423(1)** – Intimidation
- **Section 264** – Criminal harassment
- **Section 264.1** – Uttering threats of death or physical harm
- **Section 279.01(1)** – Trafficking
- **Section 279.02(1)** – Material benefit from trafficking
- **Section 279.03(1)** – Withholding or destroying documents (in the context of trafficking)

3. Exploitation or abuse in the sex industry can be addressed, as it is in other industries or work settings, using a labour framework that engages provincial legislation related to occupational health and safety, and employment law and also by looking at public health.

Exploitative working conditions can and do occur in many under-regulated industries or informal labour markets. In the sex industry, where sex workers are afraid to make a claim against an employer for fear of arrest, scrutiny or deportation, they are deprived of legal remedies and vulnerable to labour exploitation. Indeed, in this context the

threat of potential criminal charges, deportation, and/or public "outing" can be used by unscrupulous third parties to control sex workers. Exploitation can include such things as: non-payment of wages or fees, the requirement that workers pay unreasonable fees and fines to management, expectations that workers will provide uncompensated cleaning or receptionist services, and unsafe or unhygienic working conditions. In order to address this exploitation, sex workers need access to employment standards mechanisms and other human rights remedies, including access to police protection, criminal justice redress, occupational health and safety protections, and the ability to advocate for themselves without fear of retaliation, prosecution or other negative consequences. These vital rights can only be realized if sex workers' labour is decriminalized.

Provincial employment laws that address minimum wage, vacation allowances, hours of work, and other aspects of employment can address unfair working conditions and third parties who engage in or allow unfair labour practices. Provincial occupational health and safety regulatory frameworks can also help to establish safe and healthy practices. Examples from New South Wales, Australia, and New Zealand demonstrate that addressing sex work from an occupational health and safety perspective helps to safeguard the rights of sex workers. Rather than treating all cases of sex work as exploitation, an employment or labour rights framework helps to identify cases of workplace unfairness and provides formal recourse for such exploitation when and if it occurs. For example, because New Zealand's *Prostitution Reform Act*[25]decriminalized most aspects of sex work, sex workers are now protected from harassment in the workplace with the ability to report human rights and labour violations. In 2014, one such sex worker filed sexual harassment charges against the owner of the brothel for which she worked and was awarded damages.[26] This could only happen in a context where sex work is identified as labour and sex workers' human and labour rights are recognized.

25 New Zealand Prostitution Reform Act. 2003. http://www.legislation.govt.nz/act/public/2003/0028/latest/DlM197815.html

26 Duff, M. "Sex worker gets $25,000 over harassment." *Business Day*. January 3, 2014. http://www.stuff.co.nz/business/industries/9777879/Sex-worker-gets-25-000-over-harassment

27 Millar, H. and T. O'Doherty, in collaboration with SWAN Vancouver Society. October 2015. *The Palermo Protocol & Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada (2002-2015)*. http://icclr.law.ubc.ca/publications/palermo-protocol-canada-evolution-and-human-rights-impacts-anti-trafficking-laws-canada

28 See *R v Nur*, 2015 SCC 15 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15272/index.do and *R v Lloyd*, 2016 SCC 13. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do

4. <u>The application of alternative non-sex work-specific provisions, in the *Criminal Code* and in provincial/territorial laws, is recommended with two important caveats:</u>

a) Conflation of sex work, human trafficking, and exploitation leads to overly-broad misuse of current anti-trafficking initiatives, placing sex workers at further risk of isolation, marginalization and violence. Conviction rates for human trafficking are rare in Canada and attributable at least in part to the small number of instances of trafficking.[27] As they are written, the trafficking provisions in the *Criminal Code*, which are not specific to sex work, could indeed be used to address exploitation. However, the broad manner in which they are currently being used, as a general law enforcement strategy to target sex work, violates the human rights of people who sell and trade sex in Canada. Third parties working with sex workers may be mistakenly identified as "traffickers" rather than co-workers, employers or employees, particularly when working with im/migrant sex workers. This happens to such a degree that we also consistently reference the human trafficking provisions throughout our recommendations as ones that may in theory be applied to protect sex workers in cases of actual exploitative trafficking, while **we caution against their misuse and overbroad application.**

We do not recommend a repeal of the trafficking provisions in the *Criminal Code* as this is beyond the scope of this document, which only recommends repeal of sex work specific provisions. However, we caution against their misuse by law enforcement, as the manner in which they are currently being applied captures people who are not trafficked and third parties who are not exploitative.

We also object to the mandatory minimum sentences for trafficking stipulated in sections 279.011(1)(a) and (b) and 279.02(2) of the *Criminal Code* because the Supreme Court of Canada has found mandatory minimum sentences to be unconstitutional in some circumstances, as they may violate the right to be free from cruel and unusual punishment under section 12 of the *Charter*.[28] As the Court noted in *R. v. Lloyd,* "[T]he reality is that mandatory minimum sentences for offences that can be committed in many ways and under many different circumstances by a wide range of people are constitutionally vulnerable because they will almost inevitably catch situations where the

prescribed mandatory minimum would require an unconstitutional sentence."[29] The Justice Minister has also identified the need to evaluate mandatory minimums to prevent unduly harsh sentences and return appropriate sentencing discretion to judges.[30]

b) The best interests of youth must always be considered in reviewing laws that address youth protection. While effective measures need to be taken to promote youth's best interests and address situations of exploitation, criminalizing clients and third parties of youth who sell or trade sex contributes to harms against those youth and facilitates exploitation. Age of consent laws can address certain situations involving minors, but law enforcement must recognize that not all incidents of youth selling or trading sex are experienced by those youth as exploitation.

29 See *R v Lloyd*, 2016 SCC 13. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do

30 Fine, S. "Federal government plans to reduce use of mandatory minimum prison sentences." *The Globe and Mail*. Tuesday, November 1, 2016. www.theglobeandmail.com/news/national/ottawa-plans-to-reduce-use-of-mandatory-prison-sentences/article32609570/

Because international human rights law (e.g., the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*) obligates Canada to criminalize "offering, obtaining, procuring or providing … the use of a child in sexual activities for remuneration or any other form of consideration," we recognize that some may view the recommendation to repeal sections of the *Criminal Code* that prohibit the purchase of sexual services from a person under 18, as well as materially benefiting from or procuring such services to be in contravention of this international human rights law. At the same time, international human rights law also affirms that the "best interests of the child" should be a primary consideration, and that all children are entitled to human rights, including the rights to life, health, freedom of expression and association.

As demonstrated throughout our recommendations, the criminal provisions at issue contribute to many harms experienced by youth who sell or trade sex. Rather than prevent abuse and exploitation against youth, the overly broad use of criminal laws against clients and third parties leads to their isolation and facilitates situations of exploitation. In the absence of abuse or exploitation, criminalizing all clients and third parties related to youth who sell or trade sex contributes to harms that violate many of the human rights of those youth, which Canada also has a responsibility to respect, protect and fulfill. Because this is not in youth's best interests, the Canadian Alliance for Sex Work Law Reform posits that supporting the repeal of all sex work-specific criminal provisions – including youth provisions – is a principled and defensible position for Canada to take in respect of its international human rights obligations.

Provisions in the *Criminal Code* regarding youth who sell or trade sex can be harmonized with provisions concerning age of consent. This means that the same legal parameters that currently define consent to non-remunerated sex would apply to everyone – independent of a person's motivation to engage in sexual activity.

Under current Canadian law, a person 16 years of age can consent to having sex with an older person of any age provided there was no relationship of authority, trust, dependence or exploitation. Youth 14 and 15 years of age can consent to sex with someone within 5 years of age, and youth 12 and 13 years of age can consent to sex with someone within 2 years of age, provided there was no relationship of authority, trust, dependence or exploitation in all cases. Outside these parameters, there is no consent to legally valid sex on the part of a young person.

Existing or alternative provisions to address the violence and exploitation of youth: As with adults, there are alternative non-sex work specific *Criminal Code* provisions that can be used to address violence against or exploitation of youth who sell or trade sex, including:

- Section 150.1 (age of consent)
- Section 151 (sexual interference involving those under 16)
- Section 152 (invitation to sexual touching involving those under 16)
- Section 153 (sexual exploitation involving those between 16 and 18)
- Section 163.1 (child pornography – subjects under the age of 18)
- Section 170 (procuring of someone under 18 by a parent or guardian)
- Section 171 (owners, occupiers and managers prohibited from allowing someone under 18 to engage in illegal sexual activity)
- Section 172.1 (internet luring – ages vary depending on offence)
- Section 172.2 (agreement or arrangement to commit sexual offence against child – ages vary depending on offence)

- Section 173(2) (exposure of genitals to those under 16)
- Sections 7(4.1) – 7(4.3) prohibition of child sex tourism, making it illegal to do anything outside of Canada that would be illegal in Canada
- Section 279.011(1) (Trafficking a person under 18)
- Section 279.02(2) (Material benefit – trafficking a person under 18)
- Section 279.03(2) (Withholding or destroying documents – in the context of trafficking a person under 18)

Youth sell or trade sex for many reasons that need to be addressed, and that are discussed in the section of this report on *Youth Protection and Supports for Youth.*

Offences in Relation to Offering, Providing or Obtaining Sexual Services for Consideration and Commodification of Sexual Activity

Recommendation 1: Repeal s. 213

Stopping or impeding traffic
213 (1) Everyone is guilty of an offence punishable on summary conviction who, in a public place or in any place open to public view, for the purpose of offering, providing or obtaining sexual services for consideration,
(a) stops or attempts to stop any motor vehicle; or
(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place.

Communicating to provide sexual services for consideration
(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person – for the purpose of offering or providing sexual services for consideration – in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre.

Definition of public place
(2) In this section, public place includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

Rationale: Provisions that prohibit offering sexual services for compensation negatively impact sex workers' right to security of the person in the same way that the previous s. 213(1)(c)[31] caused harm to sex workers, by imposing *dangerous* conditions on and preventing sex workers from taking steps to protect themselves. It was for this reason that the Supreme Court of Canada (SCC) struck down s. 213(1)(c) in *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (*Bedford*) and ruled that the provision was unconstitutional, because it violated sex workers' rights to security of the person under s. 7 of the *Charter of Rights and Freedoms* (the *Charter*).

The ideological and moral position that seeing a sex worker in a public spaces causes social harm increases social stigma and targeted violence towards sex workers.

Ss. 213(1)(a), 213(1)(b) and 213(1.1) produce the same harms as those well documented under the previous law. S. 213(1.1) prohibits sex workers from communicating to establish and consent to the terms of the exchange. These provisions prohibit sex workers from taking the time required to screen prospective clients, which can reduce risk. They displace sex workers from familiar areas and supports to more isolated areas, which increases their vulnerability to violence. These harms were recognized by the SCC and they form part of the existing evidentiary record from *Bedford*.[32]

In addition, the ideological and moral position that seeing a sex worker in a public spaces causes social harm increases social stigma and targeted violence towards sex workers and sends the message that we are less valuable members of society that do not deserve to work and live in safety and with dignity.

31 S. 213(1)(c) Every person who in a public place or in any place open to public view stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction. [Repealed, 204, c.25, s. 15]

32 *Bedford*, paras. 68-71. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do#

Other possible approaches to address public nuisance: Canadian courts have identified the elimination of public nuisance as the primary objective of the communicating provisions. Addressing issues allegedly associated with street-based sex work such as street noise and traffic does not require criminalizing the exchange of sexual services for remuneration.

Any understanding of public safety that includes removing sex workers from public view increases dangers against sex workers themselves.

In a sex industry that is regulated according to the safety, security and dignity of the people working in the industry, and that allows for the application of protective measures, it would be possible to respect the concerns and safety of all community members, including sex workers. Non-discriminatory municipal zoning bylaws that do not relegate sex workers to industrial or isolated areas – and are developed with meaningful input from sex workers – could be useful to address concerns with public nuisance, if in fact it does occur in areas where sex workers inhabit public spaces. It is also important to keep in mind that sex workers frequently face harassment and safety risks arising from concerns about nuisance and are blamed for activities in which they have no involvement. Any understanding of public safety that includes removing sex workers from public view increases dangers against sex workers themselves.

Recommendation 2: Repeal s. 286.1

Obtaining sexual services for consideration

286.1(1) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of,

(i) in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a chool or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present,
(A) for a first offence, a fine of $2,000, and
(B) for each subsequent offence, a fine of $4,000, or

(ii) in any other case,
(A) for a first offence, a fine of $1,000, and
(B) for each subsequent offence, a fine of $2,000; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months and a minimum punishment of,

(i) in the case referred to in subparagraph (a)(i),
(A) for a first offence, a fine of $1,000, and
(B) for each subsequent offence, a fine of $2,000, or

(ii) in any other case,
(A) for a first offence, a fine of $500, and
(B) for each subsequent offence, a fine of $1,000.

286.1(2) Obtaining sexual services for consideration from person under 18 years

(2) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person under the age of 18 years is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of
(a) for a first offence, six months; and
(b) for each subsequent offence, one year.

Rationale: Prohibiting the purchase of sexual services (and related communications) leads to impacts similar to those noted in s. 213 above, in terms of displacement and isolation, because clients try to avoid detection by law enforcement. This provision also makes it difficult for sex workers to screen clients and negotiate terms in advance by telephone or the internet, because clients use blocked numbers or refuse to explicitly communicate information regarding their identity, address, requested services, and other conditions due to fear of arrest and prosecution. Clients and sex workers avoid discussing particulars such as prices and requested sexual services to be provided for fear of surveillance, entrapment and arrest, which may result in misunderstandings. Sex workers are also less able to establish safe indoor spaces to do sex work, because their work spaces are surveilled and raided and their clients and colleagues are at risk of arrest. Clients and sex workers are also less willing to contact police about poor working conditions, exploitation or trafficking, because doing so can lead to investigation and prosecution.

This provision makes no distinction between clients and perpetrators of violence. It presumes that clients are, at all times, committing acts of violence against women, and that sex workers experience every act of sex work as violence against them. **Sex workers claim that this moral and ideological premise is not only false, but also extremely harmful, as it trivializes actual violence when it does occur.** Consenting to sell or exchange sex does *not* mean consenting to violence. When sex work is conceived as a form of violence, violence against sex workers is expected, condoned and happens with impunity. Perpetrators target sex workers for violence because they know sex workers are avoiding exposure, surveillance, investigation and general contact with police, and many will not report if they experience violence of any sort.

In addition, this framing of all sex work as a form of violence against women renders all male sex workers invisible. It also largely assumes that all clients are male.

Criminalizing the purchase of sexual services perpetuates a message that there is something inherently wrong with sex work. In addition to stigmatizing sex workers and positioning them as targets for violence, regulating consensual sex does not respect the human rights values upheld by Canadian courts which have increasingly found that morality is not a sufficient basis for criminalizing activities.

In addition to stigmatizing sex workers and positioning them as targets for violence, regulating consensual sex does not respect the human rights values upheld by Canadian courts which have increasingly found that morality is not a sufficient basis for criminalizing activities.

With regards to the penalty enhancement under s. 286.1(2) in the case of the purchase of sexual service from individuals under 18, we recognize that exploitation is a reality for some people under 18 who sell or trade sex, that youth deserve specific protections, and that effective measures should be taken to promote youth's best interests and to address these exploitative situations. However, criminalizing the purchase of sexual services from youth has the same impacts on youth who sell or trade sex as the corresponding prohibition related to adults outlined in s. 286.1(1), above. Because there is often no distinction between minors of different ages (e.g., those who are 17 years old versus those who are 13 years old, and everyone in between) in discourse concerning youth who sell or trade sex, there is little recognition of the varied experiences, agency and decision-making capacities of youth, including those who may sell or exchange sex to survive. While these recommendations do not endorse the purchase of sexual services from youth under the age 18, we do not support criminalizing any part of sex work because it ultimately put individuals who sell or trade sex at increased risk of harm. Different measures need to be taken to protect youth from exploitation where this occurs.

Criminalizing the purchase of sexual services from people under 18 isolates and pushes youth out of sight and away from law enforcement and community and government supports. It can fuel existing antagonism between police and youth who have fled homes and can stigmatize youth who are surviving through revenue made from selling or exchanging sex. Marginalized youth already experience the effects of being associated with activities that are criminalized, and criminalizing their clients provides yet another tool for police profiling and surveillance against youth who often try to avoid law enforcement. By isolating youth from supports, criminalization may facilitate, rather than protect youth from, exploitation.

Other possible approaches to address violence against sex workers: As outlined in the tenets for criminal law reform, we recommend that when people do become violent in the context of a sexual exchange, laws that do not stigmatize sex work or sex workers are not helpful. Rather, the legal response should be to apply laws that address the violence.

There are equally better approaches to protect youth's best interests and address violence towards and exploitation of youth who sell or exchange sex. Many of the current federal and provincial attempts to assist youth who sell or trade sex are focused on detention, forced rehabilitation, and institutionalization. This does not promote youth's best interests and can exacerbate the vulnerability that youth face. Young people who trade and sell sex have complex realities, but are too often presented with "one-size-fits-all solutions" that prioritize law enforcement rather than support.

Recommendation 3: Repeal s. 286.2

Material benefit from sexual services
286.2(1) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Material benefit from sexual services provided by person under 18 years
(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(2), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

Presumption
(3) For the purposes of subsections (1) and (2), evidence that a person lives with or is habitually in the company of a person who offers or provides sexual services for consideration is, in the absence of evidence to the contrary, proof that the person received a financial or other material benefit from those services.

Exception
(4) Subject to subsection (5), subsections (1) and (2) do not apply to a person who receives the benefit
(a) in the context of a legitimate living arrangement with the person from whose sexual services the benefit is derived;
(b) as a result of a legal or moral obligation of the person from whose sexual services the benefit is derived;
(c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or
(d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

No exception
(5) Subsection (4) does not apply to a person who commits an offence under subsection (1) or (2) if that person
(a) used, threatened to use or attempted to use violence, intimidation or coercion in relation to the person from whose sexual services the benefit is derived;
(b) abused a position of trust, power or authority in relation to the person from whose sexual services the benefit is derived;
(c) provided a drug, alcohol or any other intoxicating substance to the person from whose sexual services the benefit is derived for the purpose of aiding or abetting that person to offer or provide sexual services for consideration;
(d) engaged in conduct, in relation to any person, that would constitute an offence under section 286.3; or
(e) received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

Aggravating factor
(6) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that that person received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

Rationale: The material benefit provisions reproduce many of the harms that the Supreme Court of Canada found to violate sex workers' constitutional rights in *Bedford*, including perpetuating social isolation and increasing the risk of violence against and exploitation of sex workers, who face fewer options for safe workplaces.

In particularly, these provisions recreate the harms of the previous s. 212(1)(j) "living on the avails" provision that was struck down in *Bedford* for violating sex workers' s. 7 *Charter* rights. Despite the exceptions listed in s. 284.2(4), the restrictions on receiving a material benefit prohibit sex workers from legally entering into useful and informed work relationships with third parties that enhance their safety and improve their working conditions. Consequently, sex workers have fewer opportunities to access the services of third parties who could promote their safety and security.

As a result, sex workers' options regarding where and how they work are restricted, despite the finding based on a comprehensive evidentiary record in *Bedford* that working indoors is safer than working on the street and that being able to establish arrangements with others to structure their work can help to promote safety.

Ss. 286.2(1) and **286.2(2)** dictate that law enforcement, police agencies, and the Canada Border Services Agency engage with sex work from the approach and presumption that all third party relationships are exploitative. This includes an assumption that all people who work with people who sell or trade sex – including agencies, drivers, receptionists, bodyguards, or other security personnel – are exploitative. This assumption encourages law enforcement raids of sex work establishments, as well as surveillance by undercover agents, both which increase isolation and distress among sex workers. Sex workers are forced to work in isolation, increasing their vulnerability to violence and equally undermining their ability to call on police. It also limits redress for sex workers involved in labour disputes with third parties who are criminalized and denies sex workers access to labour laws.

Section 286.2(2) is based on the assumption that all people who associate with youth exchanging sexual services (e.g., including the people whom youth seek out to help find shelter, food and other resources) are third parties materially benefitting from the exploitation of youth. In many cases, however, people who provide security and support to sex workers – known as third parties in the sex industry – can often be a support to youth, and are often young persons themselves.

Criminalization not only encourages youth to hide themselves and their relationships from police, but also pushes youth away from possible supports who would otherwise act as allies to youth.

We know that exploitation is a reality for some people under 18 who sell or trade sex, as it is for some adults; we also take the position that youth deserve specific protections, and that effective measures should be taken to promote the best interests of young people and address this exploitation. However, this criminal provision produces the same negative impacts as the material benefits provision pertaining to adults, discussed above.

S. 286.2(3) does not recognize the capacity of people who do sex work to make their own decisions. S. 286.2(3) violates sex workers' autonomy by prohibiting sex workers from establishing their own working and personal relationships, because of the threat of criminal sanction for people associated with sex workers.

These harms are not adequately mitigated by ss. 286.2(4) and (5).

S. 286.2(4) is intended to permit exceptions to the prohibition on material benefits from the sale of sexual services, in the context of *certain* relationships. *In theory,* ss. (a) and (b) are intended to exempt relationships based on living arrangements and legal and moral obligations (e.g., of financial support), and subsections (c) and (d) are intended to exempt from prosecution people who receive a material benefit for providing a good or service to a sex worker in *certain* transactional contexts.

However, none of these exceptions apply if that person uses threats or violence, abuses a position of power or trust, provides intoxicants, engages in conduct related to procuring, or receives benefits in a "commercial enterprise" to sell sexual services (s. 286.2(5)).

The people and relationships excluded from criminal liability by s. 286.2(4), and/or included in potential liability under ss. 286.2(5)(d) and (e), render illegal virtually all working relationships that provide safety measures for sex workers. Making a profit from someone else's labour is a fundamental principle of a market economy. Most people in the private sector in Canada work for an employer who materially benefits from their labour. The stated objectives of the material benefit provision include not only to denounce exploitation but also to prohibit the development of any economic interest in relation to another person's provision of sexual services.

The practical problems associated with applying ss. 286.2(4), (5) and (6) are numerous:

- S. 286.2(4)(a) – Despite some jurisprudence under the previous (pre-*Bedford*) laws to inform what might constitute a "legitimate" living relationship, "legitimate" is an extremely broad and value-laden term. Sex workers, who are already profoundly stigmatized, fear that there is insufficient guidance to prevent police and courts from misconstruing and disregarding their legitimate associations with other people.

- S. 286.2(4)(c) only applies to people who offer the service or good in question to the general public. This exception would not apply to third parties who only provide the good or service within the context of the sex industry. For example, this exception would exempt a taxi driver who has no working relationship with a sex worker. Yet it would not apply to a private driver – hired by or working with a sex worker – who does not otherwise offer the service to the public. **The result is that sex workers cannot work with people knowledgeable of the sex industry and capable of providing the security measures and safer practices that sex workers need.**

- S. 286.2(4)(d) does not require that the third party offer the service or good in question to the public. Although it attempts to prohibit exploitation by requiring that the benefit be proportionate to market value, this does not offset the harms resulting from the requirement that the third party "did not counsel or encourage that person to provide sexual services". For example, a private driver would not fall within this exception if they also facilitate communication with clients. Often this overlap of services is precisely what promotes sex workers' security. For example, a driver who coordinates or assists meetings with clients may also provide vital security measures by being present on or near the location of the meeting, accompanying the worker to meet the client, and receiving "safe calls" during the meeting. **These same actions that promote sex workers' security are the very same actions that exclude them from this exception, as they can be interpreted as "counselling or encouraging".** Further, even if the third party were to fall within s. 286.2(4)(d), and thereby perhaps avoid criminal liability, they could still be excluded from this protection – i.e., still be exposed to liability – under ss. 286.2(5)(d) or (e).

- S. 286.2(5)(d) denies protection from criminal liability to anyone who "engaged in conduct" that would constitute an offence under the procuring provision. As discussed below**, the procuring provision captures non-exploitative conduct that can facilitate safer working conditions for sex workers.**

- S. 286.2(5)(e) excludes anyone who "receives the benefit in the context of a commercial enterprise that offers sexual services for consideration." **This renders illegal all relationships that sex workers require to work in established and organized workplaces that provide security measures and decrease isolation.** All sex workers' ability to access safer indoor working spaces and to work with others is restricted. This provision is contrary to the findings in *Bedford* that indoor spaces are generally safer for sex work. Further, this provision inflicts great harm on sex workers who have fewer resources and for whom working completely autonomously is impossible.

- S. 286.2(5)(c) excludes anyone who provides an intoxicating substance to a sex worker "for the purpose of aiding or abetting that person to offer or provide sexual services for consideration". **This provision is overbroad, discriminatory, and lends itself to police abuse.** Sex workers may consume alcohol or drugs, including in the course of their work. They may consume alcohol or drugs with family or lovers, or at times with clients. There is no presumption in other types of work that when someone you work or live with provides one with drugs or alcohol, that they are coercing a person to work. Controlling the use of alcohol and drugs through sex work-specific criminal provisions treats sex work as fundamentally different from other forms of labour, where the use of drugs and alcohol is regulated through occupational health and safety regulations. Criminalizing drug use in this context assumes sex workers who use drugs are being exploited and lends itself to overbroad regulation.

- S. 286.2(6) makes it an aggravating factor to receive a material benefit in the context of a commercial enterprise, demonstrating the current legislative desire to prohibit and eradicate the entire industry. **Prohibiting the existence of commercial enterprises is dangerous because it drastically reduces sex workers' capacities to work collectively, which *Bedford* found to be significantly safer than working in isolation.** Assuming that all sex workers have the resources to work independently or cooperatively is unrealistic and disproportionately harms sex workers who are most disadvantaged.

Other possible approaches to address violence against and labour exploitation of sex workers: As outlined above in the principles and precepts for criminal law reform, it is more appropriate to use existing *Criminal Code* provisions to pursue perpetrators of violence, and to use provincial public health, occupational health and safety, and employment laws to address workplace exploitation.

There are more effective ways to protect the best interests of youth and to address violence against, and exploitation of, youth selling or exchanging sex. Criminal law isolates youth, as it does adults, from protective and other mainstream mechanisms that can address marginalization, isolation, and structural violence. Issues facing youth selling or exchanging sex such as homelessness, discrimination, violence and poverty can be better addressed through mechanisms that seek to improve conditions rather than "rehabilitate" youth themselves through detention and other infringement of rights. Provincial youth protection authorities should seek to ameliorate conditions for youth by creating youth-centred responses (see recommendations under Youth Protection and Supports for Youth).

Recommendation 4: Repeal s. 286.3

S. 286.3(1) Procuring
Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

S. 286.3(2) Procuring a person under 18 years
Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years.

Rationale: The procuring provision reproduces the harms of the previous s. 212(1)(j) "living on the avails" provision that was struck down in *Bedford* for violating sex workers' s. 7 *Charter* rights. It perpetuates social isolation and increases the risk of violence against and exploitation of sex workers, who face fewer options for safe workplaces and fewer opportunities to choose among the people they work with and for.

The procuring provision captures non-exploitative conduct that can provide sex workers with safer working conditions. This overbroad provision captures people who work with and for sex workers, including drivers, receptionists, bodyguards or other security. It prevents sex workers from legally entering into useful and informed work relationships with third parties who are in management positions or who can introduce sex workers to potential clients. These relationships can enhance sex workers' safety and improve their working conditions. As a result, sex workers' options regarding where and how they work are restricted, despite the finding in *Bedford* that working indoors is safer than working on the street. In particular, this provision prevents sex workers with fewer resources – including disproportionately sex workers who are racialized, Indigenous, im/migrant or trans – from working in safer indoor spaces and from working together with people who enhance their safety.

The procuring provision captures non-exploitative conduct that can provide sex workers with safer working conditions.

The procuring provision captures third parties who are actively involved in sex work and who perform many mundane but necessary work-related activities, such as scheduling shifts, exchanging or facilitating contacts, and providing transportation to and from appointments. Because of the exceptionally broad manner in which this provision is drafted, routine administrative and risk-mitigating activities in the sex industry could be construed as procuring. Many sex workers work with third parties to help organize and support their work, to help communicate with clients, or to help advertise their services. Third parties working with sex workers may be mistakenly identified as "procurers" and "traffickers" – rather than co-workers, employers or employees – particularly when working with im/migrant sex workers. Im/migrant sex workers may find it valuable to work with people who may have more knowledge about the local sex work sector, or laws in Canada governing sex work (and how to navigate the ambiguity and contradictions within those laws). As a result, there is a risk that the above offences may be combined with human trafficking offences when charges are laid.

The procuring provision also dictates that law enforcement – police agencies, Canada Border Services Agency, municipal inspectors – engage with sex work under the presumption that all third party relationships are exploitative. In reality, this provision forces sex workers to work in isolation and increases their vulnerability to violence and undermines their ability to call on police.

With regards to **s. 286.3(2)**, we recognize that exploitation is a reality for some people under 18 who sell or trade sex, that youth deserve specific protections, and that effective measures should be taken to promote youth's best interests and address these exploitative situations. However, this criminal provision produces the same impacts as the procuring offense pertaining to adults discussed above, namely, preventing youth who sell or trade sex from engaging people for security and establishing non-exploitative relationships, thus reducing their bargaining or negotiating power.

This provision forces sex workers to work in isolation and increases their vulnerability to violence and undermines their ability to call on police.

A blanket prohibition on youth procurement assumes that all people who associate with youth exchanging sexual services (e.g., the people whom youth seek out to help find shelter, food and other resources) are exploitative. However, people who provide security and support to sex workers – known as third parties – can often be a support to youth. Criminalization encourages youth to not only hide themselves and their relationships from police, but also pushes youth away from possible supports to address and avoid circumstances of exploitation.

There are other possible approaches to address violence and labour exploitation of sex workers. As outlined above in the tenets for criminal law reform, it is more appropriate to use existing *Criminal Code* provisions to pursue perpetrators of violence, and to use provincial public health, occupational health and safety, and employment legislation to address workplace exploitation.

There are also more effective approaches to protect the best interests of youth and to address violence towards and exploitation of youth. In addition to the use of non-sex work specific criminal laws indicated above in the introduction and tenets, we recommend a close look at relationships between police and youth and how these are manifested through provincial youth legislation.

Recommendation 5: Repeal s. 286.4

Advertising Sexual Services
Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of
(a) an indictable offence and liable to imprisonment for a term of not more than five years; or
(b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

Rationale: As with the prohibitions on communicating (s. 213(1.1)) and purchasing (s. 286.1), this provision prohibiting advertising makes it more difficult for sex workers to openly communicate the terms and conditions of their agreements, set boundaries with clients, manage client expectations, and negotiate with clients. It is near to impossible for a sex worker to advertise their own services: they need to engage a third party or enterprise to do so. Website and newspaper advertising are hosted and owned by third parties who are criminalized under this provision.

Prohibiting advertising creates significant barriers to working indoors, which the comprehensive research-based evidentiary record in *Bedford* demonstrates is safer than working on the street. Since the enactment of the advertising provision, many websites and newspapers will no longer publicize sex workers' services. On one hand, sex workers who are most disadvantaged and do not have the means to work independently can no longer advertise their services through agency websites and consequently have fewer opportunities to work safely indoors. On the other hand, sex workers who do work independently are also prevented from communicating with clients remotely and in advance, before meeting them indoors. In practice, this provision forces sex workers to meet clients directly in public spaces (where any communication is criminalized under s. 286.1).

Section 286.1 prevents sex workers from being able to inform clients of their terms and limits in advance, rather than having to negotiate face-to-face and in the moment of the first interaction. Advertisements can be used to set

out a sex worker's requirements of a client, such as information relevant to a client's identity, requested services, locations and other conditions. **Advertisements therefore work together with direct client communications as a screening tool**. When sex workers are unable to advertise (because third party publications or online services carrying their ads are criminalized), there is an increased risk that clients will misunderstand the services sex workers are or are not providing, their prices, and safer sex requirements.

Further, websites devoted to sex work often provide sex worker-only virtual "lounges" for sex workers and support organizations to share information. Since the passage of the *Protection of Communities and Exploited Persons Act,* some websites no longer provide these services; others continue to do so at risk of prosecution. Sex workers face a greater vulnerability to violence when they are denied a forum through which to share vital information that could improve their security (e.g., regarding particular clients who became aggressive).

Other possible approaches to address the advertising of sexual services: Section 11 of New Zealand's *Prostitution Reform Act* places some restrictions on advertising commercial sexual services, including only permitting such advertisements in the classified sections of newspapers and magazines and prohibiting screening at public cinemas. These are reasonable restrictions that could be used as a model for legislation in Canada. **The content of advertisements for the sale/purchase of sexual services can be regulated without a complete prohibition on the advertisement of sexual services.** Any concerns regarding external signage on premises are better dealt with by applying municipal bylaws.

Recommendation 6: Repeal s. 286.5

Immunity — Material Benefit and Advertising
No person shall be prosecuted for
(a) an offence under section 286.2 if the benefit is derived from the provision of their own sexual services; or
(b) an offence under section 286.4 in relation to the advertisement of their own sexual services.

Rationale: If sections 286.2 and 286.4 were repealed, this provision would be irrelevant. This provision assumes that the immunity provided in s. 286.5 offsets the harms caused by the prohibitions on material benefit (s. 286.2) and advertising (s. 286.4). Even with immunity from prosecution for material benefit and advertising, the criminalization of clients and third parties, and the continued criminalization of sex workers in certain circumstances under s. 213 [prohibition on communication], reproduce the great majority of the same harms to sex workers as those produced by the criminalization of their own activities.

Criminalization of other aspects of sex work reinforces the stigma surrounding sex work and increase sex workers' vulnerability to targeted violence. The belief that exempting sex workers from criminal penalties is sufficient to protect sex workers from violence and exploitation is simplistic and naïve. Sex workers cannot employ safety measures when they, or their clients or third parties, are avoiding detection by police. This avoidance is not limited to a fear of arrest, but extends to avoiding a constant police presence in their lives in a context of criminalization. It also encourages sex workers' isolation from the people they would choose to work with and from each other. **It is not possible for sex workers to safely sell or exchange their services in a context where the purchase of sexual services is criminalized.**

Offences Related to Trafficking In Persons

Human trafficking is a complex legal and social problem of international and domestic significance. In keeping with its international obligations, the Canadian government has committed to combating human trafficking within and across its borders through the *Criminal Code,* the *Immigration and Refugee Protection Act* and *Regulations,* and other national anti-trafficking initiatives. **Canada's international obligations do not impose an obligation on States to criminalize prostitution, or practices associated with it.**

Concepts of *exploitation* and *consent* are at the core of legal and social definitions of trafficking in persons. Problematically, however, there is little consistency, clarity or consensus on what constitutes exploitation, when a person's consent is legally valid, and how exploitation is defined within the framework of human trafficking. As a result, these concepts are poorly defined in law and not well understood by law enforcement.

Sex workers who are im/migrant often rely on third parties for support and assistance. Third parties working with sex workers may be mistakenly identified as "traffickers" rather than co-workers, employers or employees of sex workers. Although the law may aim to locate exploitative third parties, anti-trafficking raids often result in the detention and deportation of im/migrant sex workers. They isolate all sex workers from much needed third parties, as sex workers fear and avoid detection and detention by law enforcement. This creates a huge incentive *not* to report exploitative working conditions.

The intent of criminal anti-trafficking provisions is to protect victims who are forced to provide labour or services against their will. However, **the conflation of all sex work with trafficking, and the resulting broad application and aggressive enforcement of anti-trafficking laws, cause significant harms to sex workers** including:

- **Restricted capacity to work safely:** Sex workers' physical and economic security is threatened when third parties are mistakenly identified as "traffickers" rather than as employers, co-workers or employees of sex workers. This inhibits sex workers' ability to associate with the third parties who help organize and support their work, communicate with clients, offer additional security or safety precautions, or advertise their services. It also provides a disincentive to third parties to provide safer sex supplies in work settings, as these may be used as evidence of sex work and hence used to convict on a charge of trafficking, materially benefitting from another's sex work, etc. These devastating consequences are the very reason that the Supreme Court of Canada in *Bedford* struck down the criminal provision that captured all third parties because it contributed to the violation of sex workers' *Charter* right to security of the person.

- **Increased risk of criminalization and deportation:** Punitive law enforcement under the guise of anti-trafficking initiatives has resulted in increased operations and raids, ostensibly targeting clients and third parties but often resulting in the detention, interrogation, arrest and deportation of indoor sex workers. Sex workers themselves, including im/migrant sex workers, may be prosecuted for offences related to third party material benefits, procuring and trafficking when they work with, receive material benefits from, or assist other sex workers to enter or work in Canada. These actions further marginalize, isolate and intimidate people, including people who may experience mistreatment.

- **Greater barriers to accessing the criminal justice system if violence does occur:** Criminalization and stigma increase sex workers' vulnerability to targeted violence by predators who operate with impunity. When sex workers do experience violence, they rarely approach law enforcement for fear of repercussions for themselves or for their colleagues, friends and/or family. This is magnified when anti-trafficking measures manifest as repressive policing. Often, when im/migrant sex workers seek assistance as victims of crime, they are forced to identify as either criminals or illegal workers. Thus, the very people most in need of protection are denied access to the criminal justice system.

- **Increased stigma, social isolation and exclusion of sex workers from local communities:** Treating all sex workers as real or potential victims of sex trafficking denies the agency, sexual autonomy and capability of sex workers. This can result in unwelcome discriminatory and stigmatizing scrutiny, for example, when sex workers accessing social and health services are subjected to questions about whether they are being forced to do sex work. Such well-intentioned but unnecessary and invasive questioning leaves many sex workers unwilling to be forthright with service providers. As a result, sex workers do not have access to quality health care and social services and are more likely to isolate themselves from the broader community.

- **Profiling and targeting of racialized communities:** When racialized sex workers work together – especially if they are Asian or speak English/French with a discernible accent – they are assumed to be trafficked and are subjected to police investigation. The same conclusion is not immediately drawn about non-racialized sex workers.

- **Indigenous women and girls are also presumed to be at higher risk for trafficking.** There is abundant evidence that Indigenous women and girls experience violence at rates far higher than other women in Canada, but there is no evidence that they are disproportionately trafficked. As is true with other marginalized communities, the presumption that Indigenous women doing sex work have been trafficked results in increased surveillance, which tends to put them and others in their communities in conflict with law enforcement, but does not result in increased protection or discourage perpetrators of violence.

Recommendation 7: Do not implement Bill C-452 — An Act to amend the Criminal Code (exploitation and trafficking in persons).

Mandatory minimum sentences have also been found to be unconstitutional for violating the guarantee against cruel and unusual punishment under Charter s. 12.

Rationale: This *Act* supplements the provisions on exploitation in ss. 279.01 and 279.011 of the *Criminal Code* by including a presumption of guilt for anyone who lives with or is habitually in the company of an "exploited person". The effect of Bill C-452 is to reverse the usual onus of proof in criminal law, requiring an accused person to prove that they are innocent of the charge of "exploitation", rather than the state having to prove their guilt. If the accused cannot do so, they will be convicted despite the fact that there may be a reasonable doubt about their guilt, thus contravening their right to the presumption of innocence under Charter s. 11(d).

Mandatory minimum sentences have also been found to be unconstitutional for violating the guarantee against cruel and unusual punishment under Charter s. 12. In light of the Canadian government's commitment to a criminal justice review, which includes a reconsideration of existing mandatory minimum sentences, and the lack of evidence to suggest such sentences are effective, there are no compelling reasons to legislate additional mandatory minimum sentences.

Recommendation 8: CBSA should not collaborate with law enforcement to investigate cases concerning sex workers.

Rationale: Collaboration between law enforcement and CBSA often results in over-policing via racial profiling, and targeting of racialized sex workers or any sex worker who is not perceived to be a 'local'. The RCMP, local police forces and the CBSA have conducted joint raids and investigations in a stated effort to locate victims of trafficking. These efforts, largely targeted at im/migrant and racialized sex workers, have led to increased surveillance, interrogation, arrests, detention, and deportation, often in circumstances where there is no evidence that human trafficking is occurring.

CBSA's involvement in investigations that purport to locate victims of human trafficking exacerbate im/migrant sex workers' fear of detention and deportation and aggravates antagonism with law enforcement. In practice, CBSA's unnecessary involvement pushes im/migrant sex workers into more clandestine locations and away from services and supports, and deters im/migrant sex workers from reporting violence, exploitation, and abuse and seeking assistance from law enforcement.[33]

While provincial statues delegate certain powers to provincial and municipal police, there are many instances where it is not necessary to involve CBSA (e.g., when inspecting a massage parlour). Specific guidelines and policies from police forces should be established to deter unnecessary seizing and sharing of information and CBSA involvement in policing matters.

Recommendation 9: Use evidence-based research to inform anti-trafficking initiatives and prohibit the overbroad misuse of anti-trafficking initiatives as a general law enforcement strategy to target sex work and im/migrant sex workers.

Rationale: Current government anti-trafficking efforts rely heavily on unsubstantiated statistics about trafficking and on estimates with no basis in fact.[34] Given the direct impact this false data has on the allocation of resources, enforcement patterns, and common perceptions of trafficking and sex work, it is critically important that government and all law enforcement scrupulously ensure the validity of the statistics used to inform policy formation and implementation. Evidence based research must analyze the impacts that trafficking in persons legislation and enforcement initiatives directly have on sex workers, in particular im/migrant sex workers.

33 Butterfly in collaboration with Migrant Sex Workers Project, Maggie's, Canadian HIV/AIDS Legal Network, STRUT and No One Is Illegal. 2015. "Stop the Harm from Anti-Trafficking Policies & Campaigns: Support Sex Workers' Rights, Justice, and Dignity". www.butterflysw.org/harm-of-anti-trafficking-campaign-

34 Millar, H. and T. O'Doherty, in collaboration with SWAN Vancouver Society. October 2015. *The Palermo Protocol & Canada : The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada (2002-2015)* http://icclr.law.ubc.ca/publications/palermo-protocol-canada-evolution-and-human-rights-impacts-anti-trafficking-laws-canada; SWAN Vancouver Society. 2015. *Im/migrant Sex Workers, Myths and Misconceptions: Realities of the Anti-Trafficked.* www.swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf

The conflation of sex work, human trafficking, and exploitation leads to overbroad misuse of current anti-trafficking initiatives which place sex workers at further risk of isolation, marginalization, and violence. As they are written, the trafficking provisions in the *Criminal Code*, which are not specific to sex work, could indeed be used to address exploitation. However, the broad manner in which they are currently being used, as a general law enforcement strategy to target sex work, violates the human rights of people who sell and trade sex in Canada.

Third parties working with sex workers may be mistakenly identified as "traffickers" rather than co-workers, employers, or employees, particularly when working with im/migrant sex workers. It is important to understand the importance of third parties to sex workers security and general working conditions. Further, in all sex working communities, sex workers themselves frequently act as third parties for workers.

Immigration Law

Recommendation 10: Repeal s. 183(1)(b.1), s. 196.1(a), s. 200(3) (g.1), and s. 203(2)(a) of the *Immigration and Refugee Protection Regulations (IRPR).*

s. 183 (1) Subject to section 185, the following conditions are imposed on all temporary residents:

> **(b.1)** if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages;

s. 196.1 A foreign national must not enter into an employment agreement, or extend the term of an employment agreement, with an employer

> (a) who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; …

s. 200(3) An officer shall not issue a work permit to a foreign national if […]

> (g.1) the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; […]

Work permits shall be refused for any foreign national applying to work in Canada in any occupation for a business that provides striptease, erotic dance, escort services or erotic massages on a regular basis.

These instructions apply to all foreign nationals entering or already in Canada. Foreign nationals are prohibited from working in any capacity (e.g., janitor, cook or dancer) for any business in Canada that offers striptease, erotic dance, escort services or erotic massages on a regular basis. Foreign nationals entering Canada as work permit exempt or on open work permits are prohibited, as per the new regulations, from entering into employment with employers who offer these activities.

s. 203(2) The Department of Employment and Social Development must provide the assessment referred to in subsection (1) on the request of an officer or an employer or group of employers, none of whom is an employer who on a regular basis, offers striptease, erotic dance, escort services or erotic massages …

Rationale: The provisions prohibiting foreign nationals from working for employers offering striptease, erotic dance, escort services or erotic massages increase sex workers' vulnerability to violence and exploitation, discriminate against sex workers, and violate sex workers' autonomy and right to freedom of movement.

Together, these provisions have the harmful impact of placing im/migrant sex workers in conflict with immigration law and regulations in addition to criminal offenses related to sex work. Such restrictions do not actually address exploitation or provide support or redress for im/migrant workers in exploitative working conditions. Rather, the threat of detention and deportation pushes sex workers into precarious working conditions, increases their vulnerability to exploitation and violence, and deters them from seeking supports, including state protection, if they do experience exploitation or violence.

These provisions also discriminate against people working in the sex industry for no valid objective, imposing restrictive immigration regulations on individuals solely based on the kind of labour they provide. Moral objections to the sex industry should not be deployed to prevent im/migrants from working in particular occupations. These infantilizing prohibitions violate sex workers' autonomy by negating sex workers' ability to make their own decisions and to consent to the sexual activities in which they engage. Attention should be focused on exploitative working conditions rather than limiting the agency and options of im/migrant workers.

Other possible approaches to address exploitation of and violence against im/migrant workers: Again, with a caution regarding their potential misuse, provisions related to trafficking in persons exist for the purpose of addressing concerns about forced and coerced labour for the purpose of exploitation. If these provisions are applied in a manner that clearly distinguishes sex work from trafficking, greater attention can be directed towards addressing exploitative working conditions among im/migrant workers when exploitation actually occurs. Provincial legislation governing employment, occupational health and safety and public health can also offer protections against workplace exploitation.

The threat of detention and deportation pushes sex workers into precarious working conditions, increases their vulnerability to exploitation and violence, and deters them from seeking supports, including state protection, if they do experience exploitation or violence.

Employment Insurance Act

Recommendation 11: Add a provision to the *Employment Insurance Act* specifying that the refusal to take employment as a sex worker is not grounds for disqualifying anyone from receiving employment insurance benefits.

Rationale: S. 27(1) of the *Employment Insurance Act*, SC 1995, c 23, provides that an applicant can be disqualified from receiving benefits if they do not apply for and take advantage of "suitable employment" while they are unemployed. Since sex work should always be voluntary, when sex work is decriminalized, we advocate adding a provision clarifying that no one should be required under employment insurance law to take employment providing sexual services when sex work is decriminalized.

Even without such a provision, Canadian criminal law forbids non-consensual sex (i.e., sexual assault). While sex work involves a contract, it also involves consent to sexual activity. Every person has the right to refuse to engage in sex as a fundamental aspect of their personal autonomy. No one can "contract away" consent, which must be affirmative and ongoing and which can be revoked at any time. For this reason, no one could ever be legally required to accept employment that involves providing sexual services.

2. PROVINCIAL LAWS

Occupational Health and Safety Regulatory Frameworks

In a system that criminalizes sex work employers and commercial sexual enterprises, any measures that employers take to promote health and safety in the workplace are voluntary, arbitrary and inconsistent. Sex workers are not guaranteed of being advised of hazards such as aggressors posing as clients or provided with safety protocols when working alone, although it may be prudent for employers to develop and provide this information and indeed in their own self-interest to do so. Absent criminal prohibitions, employers would be governed by occupational health and safety legislation, to the benefit of workers.

Absent criminal prohibitions, employers would be governed by occupational health and safety legislation, to the benefit of workers.

Although occupational health and safety laws vary across provinces and territories, they share common objectives and basic elements. The key objectives are to maintain all aspects of workers' health as well as workers' capacity to work and maintain a livelihood. They ensure that workplace cultures promote and value health and safety, with a primary focus on preventing illness and injury through identifying and controlling workplace hazards. Workers enjoy the right to participate in the identification and resolution of health and safety issues (e.g., poorly lit entrances), to know about potential hazards (e.g., aggressors posing as clients), and to refuse unsafe work without reprisal. Of particular value to sex workers is the fact that all provincial/territorial occupational health and safety laws have provisions specific to preventing violence in the workplace, and many have provisions to protect people working alone.

Occupational health and safety laws cover all workers including employees and independent contractors.

The responsibility for promoting health and safety in the workplace is shared among workers and employers; however, regulations assign the greatest responsibility to employers, as they have the most power in the workplace. Together, workers and employers identify potential workplace hazards, assess the risks, and implement appropriate controls. This process supports occupational health and safety measures that are suitable for specific work sites and work practices, and would therefore accommodate the diversity of sex work venues and activities.

The application of generic occupational health and safety legislation should satisfy the majority of sex workers' workplace health and safety needs. We have, however, identified some sex-work specific issues that might benefit from further analysis or potentially industry-specific regulations. Any special regulatory requirements for the sex trade should be reasonable, evidence-based and developed in collaboration with sex workers.

Controlling Exposure to Biological Hazards (in the form of sexually transmitted infectious agents)

Mandatory health interventions from a public health perspective focused on communicable disease control and the protection of all members of the public are addressed above. Here we discuss similar health interventions, but from a workers' health and safety angle.

Recommendation 12: Use of personal protective equipment (PPE) such as condoms and other barriers should be encouraged, but not mandated by occupational health and safety law. PPE should therefore not be prescribed in occupational health and safety regulations.

Rationale: The sexual element of sex work poses unique considerations regarding personal protective equipment. Based on tenets of sexual assault law, it would be problematic to legally mandate blanket conditions to sex, such

Monitoring and enforcing compliance with mandatory condom use would raise logistical challenges and risk infringing on sex workers' and clients' privacy rights.

as condom use. Monitoring and enforcing compliance with mandatory condom use would raise logistical challenges and risk infringing on sex workers' and clients' privacy rights. Additionally, most PPEs in a sex work context are in practice worn or used by the person who has a penis, often the client, further complicating prescribing or requiring them in an occupational health and safety framework, since such regulations apply to workers.

Individual employers would likely be able to require condoms as PPE as part of an overall workplace health and safety program based on an assessment of risks and available controls and developed with input from their workers. This would permit appropriate PPE use tailored to a particular business's sexual services and the expressed needs of its workers.

Vaccinations or pre-exposure prophylaxis

Recommendation 13: Use of vaccinations or pre-exposure prophylaxis should not be mandated by occupational health and safety law. Sex work employers should be required to provide their workers with evidence-based literature on these controls (including risks and benefits, efficacy, mode of action, method of use and other key elements).

Rationale: Vaccinations such as those against HPV and Hepatitis B Virus, and HIV pre-exposure prophylaxis, can provide protection against some sexually transmitted infections. However, such mandatory prevention measures raise significant human rights concerns. Education and evidence-based information are the preferred tools for promoting immunization.

Mandatory prevention measures raise significant human rights concerns.

Workers' Compensation

Recommendation 14: Sex workers must be eligible to claim workers' compensation for time and earnings lost due to work-related violence, injury or illness, including sexually acquired infections. Employer premiums should be determined through an unbiased and evidence-based process.

Rationale: People in the sex trade require the same consideration and compensation for time and earnings loss as those in other industries. However, myths, generalizations and assumptions about risks in sex work could result in prohibitively high employer premiums unless the industry classification is based on unbiased data.

Health & Safety Programs and Training

Recommendation 15: Sex work employers should be encouraged to base their health and safety programs and training on existing guidelines developed by sex worker-led organizations. Occupational health and safety inspectors and boards/tribunals should similarly reference these established guidelines in their workplace assessments.

Rationale: Occupational health and safety laws require employers to develop health and safety programs in consultation with workers and to train workers accordingly. There exists a large body of health, safety and training resources created by people working in the sex industry, which should serve as a guideline for employers' program and training design and for inspectors' investigations.

Drug and Alcohol Use

Recommendation 16: An employer should not be permitted to exclude a sex worker from new or continuing employment solely on the basis of the use of alcohol or other drug.

Rationale: Government regulations or company policies that outright prohibit people who use drugs or alcohol from working in sex work businesses would undermine those workers' health and safety and would be discriminatory. Such restrictions would severely limit drug- or alcohol-using sex workers' capacity to work indoors, including

Policies that outright prohibit people who use drugs or alcohol from working in sex work businesses would undermine those workers' health and safety and would be discriminatory.

working with others who provide direct or situational security. For sex workers who defy such restrictions and use in secrecy, occupational health and safety impacts would include increased stress and isolation. Indeed, for workers with drug or alcohol dependencies, not maintaining their usual level of use can lead to decreased functionality and actually impede their health and safety in the workplace.

Any action taken to address the impact of a worker's substance or alcohol use on their occupational health and safety (and on that of other workers) should be based on hazardous behaviours and not on use alone. Governments and employers must take care to comply with human rights, privacy, employment and occupational health and safety laws and related court/tribunal rulings on workplace drug and alcohol policies and practices.

In fact, in virtually all provinces and territories, substance and alcohol dependencies are considered disabilities under human rights codes and as such are prohibited grounds for discriminatory practices such as blanket rejection of workers who use. Instead, employers are generally required to accommodate the disability up to the point of undue hardship on the part of the employer.

Intoxication is a particular health and safety consideration in the context of sex work as it relates to the capacity to consent to sex. Although intoxication is an element that a court may evaluate when determining whether a complainant had the capacity to consent to sex – and indeed, intoxication *may* impact a person's capacity to consent – it is false to automatically assume that sex workers who use drugs or alcohol are intrinsically incapable of consenting to sell or trade sex.

Employment Standards Legislation

In a legal context wherein employers and commercial sexual enterprises are criminalized, the employer-worker relationship is *de facto* illegal and workers in the sex trade are deprived of basic labour and employment protections. Under a criminalized system, sex workers report substandard and/or exploitative work conditions such as excessive hours, unpaid wages, unclear job expectations and arbitrary terminations. Absent criminalization, employment standards legislation provides an existing and effective mechanism for preventing or redressing employment rights violations.

Absent criminalization, employment standards legislation provides an existing and effective mechanism for preventing or redressing employment rights violations.

While each province and territory has its own employment laws, they are based on the same foundational principles and share the following high-level objectives:

- Reducing exploitation, especially for the most vulnerable workers (such as those without the protection of unions, professional associations or other bodies);
- Establishing and upholding a general set of employment standards; and
- Protecting employers from unfair competition based on poor treatment of workers (which in turn drives standards down).

These principles are well-aligned with those required to improve working conditions of people in the sex trade.

Although the specific details may differ, all provincial and territorial employment standards legislation and accompanying regulations set out minimum standards or entitlements in key areas such as minimum wage, termination, complaints process, overtime pay, eating and rest breaks, etc.

Our recommendations address these shared objectives and general elements and assume, as with other industries, that in a decriminalized environment, employment standards legislation will apply automatically to all sex workers who work for someone else as an employee. Employment standards laws do not apply to individuals with the negotiating power and autonomy associated with self-employment and independent contractor status.

Entitlements

Recommendation 17: Sex workers should not be classified as an employee group that is fully or partially exempted from employment standards entitlements; any exemptions should only be made in comprehensive collaboration with sex workers.

Rationale: It is common in employment standards legislation for employees in certain industries to be exempted from some or all of the minimum entitlements. Such exclusion is generally based on factors such as the employees' perceived bargaining power and autonomy, existence of self-regulatory bodies or unions, and the nature of the work/workplace. Given that sex workers do not currently enjoy significant bargaining power (including through unionization), they should not face exclusion from basic employment protections. Any future deliberations on this matter should involve the meaningful participation of sex workers.

Contracts and Consent

Recommendation 18: Employment standards legislation (or regulations) should explicitly state a version of each of the following stipulations:

a) A person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.

b) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if they do not consent, or withdraw their consent, to providing a commercial sexual service.

Rationale: Under the sexual assault provisions of the *Criminal Code*, a person has the right to deny or withdraw consent to sexual activity. Without a person's consent to engage in sexual activity, this sexual activity constitutes sexual assault. The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if they do not consent, or withdraw their consent, to providing a commercial sexual service. Although this is a fact in criminal law, affirming it in employment standards legislation will provide clarity and set expectations for all parties.

Right to Refuse to Provide Services, Termination and Just Cause

Recommendation 19: Employment standards legislation should reflect the principle and requirement of consent, and hence the right to refuse to provide sexual services. Refusal to provide or complete specific sexual acts should not constitute just cause for termination.

Rationale: Existing legislation on sexual activity and consent already exempts sex workers from being required to provide a sexual service, regardless of the terms of an employment contract. Consequently, failure to provide sexual services should not constitute "just cause" as defined in employment standards legislation or at common law.

Existing legislation on sexual activity and consent already exempts sex workers from being required to provide a sexual service, regardless of the terms of an employment contract.

Age Minimums

Recommendation 20: Age minimums in the sex trade must not fall below those of criminal age of consent laws, and should be informed by existing provincial/territorial employment and occupational health and safety legislation. The minimum threshold should be in congruence with labour laws in a given jurisdiction, and no higher than 18 years of age.

Rationale: In some provinces/territories there are certain industries that are subject to age minimums. This is determined by an evidence-based assessment of the relative risks of the labour. In a decriminalized environment, provinces and territories would need to establish a minimum age in the sex trade for sex work based on consultations and evidence.

If age minimums in the sex trade are established, they must comply with criminal law provisions on age of consent for sexual activity. However, any age minimum should not be so high as to exclude youth from basic employment protections should they be working *de facto* in the industry.

It is vital that youth in the sex trade are not made vulnerable to labour exploitation through well-intentioned yet exclusionary age minimums. It is equally important that provincial and territorial age minimums do not prevent youth from working in off-street venues, where their health and safety can be optimized.

Im/migrant people working in the sex industry

Recommendation 21: There should be no employment standards or other provincial/territorial legal prohibition on employment of an im/migrant or foreign national in sex industry businesses. (A necessary companion to this recommendation is a repeal of s. 183(1)(b.1), s. 196.1(a), s. 200(3) (g.1), and s. 203(2)(a) of the *Immigration and Refugee Protection Regulations*).

Concern about potential trafficking of im/migrant workers does not justify excluding these workers from employment protections: to the contrary, working within a legal framework reduces vulnerability to trafficking and other abuses.

Rationale: Im/migrant workers across industries are commonly subjected to poor working standards, including excessive working hours and low pay. Because the *Immigration and Refugee Protection Regulations* prohibit all foreign nationals from working in the sex industry – including individuals with valid work permits – im/migrant sex workers have even less bargaining power to deal with these poor working conditions, leading to possible labour exploitation.

Provinces and territories typically have specific protections for temporary foreign workers/foreign nationals in their employment standards or related legislation. Employment standards entitlements would offer basic protections and standards, to the benefit of im/migrant sex workers and, by extension, domestic sex workers. Concern about potential trafficking of im/migrant workers does not justify excluding these workers from employment protections: to the contrary, working within a legal framework reduces vulnerability to trafficking and other abuses.

Complaints Processes

Recommendation 22: Sex workers must have equal access to statutory complaint mechanisms to address contraventions of employment standards legislation. A complainant's status as a sex worker must remain confidential and available to parties.

Rationale: As with employees in other industries, sex workers must have the opportunity to file claims under employment standards legislation. Stigma and fear of discrimination could create barriers to sex workers reporting violations or filing claims. Therefore, policies of Ministries of Labour should restrict information about a complainant's status as a sex worker to those parties whose roles require that information.

Confidentiality and Employee Records

Recommendation 23: Provincial/territorial Ministries of Labour should take measures to ensure that sex workers' personal and employment information is kept confidential, as required by employment standards and privacy legislation. Workers should never be penalized for referring to their occupation as "consultant", "personal services" or another broad category in Records of Employment, tax forms or other documents.

Rationale: Employers are required to collect and maintain personal information (e.g., name, date of birth, address) to manage the employment relationship. Generally, sex workers' personal information would be protected under employment standards legislation as well as private-sector privacy legislation, which vary across provinces/territories. However, the stigma and discrimination sex workers encounter necessitate careful discharge of privacy obligations on the part of employers and government agents.

Unionization and Professional Associations

Recommendation 24: Sex workers should enjoy the right to form workplace associations or to unionize and be covered under existing industrial relations legislation, including protections to prevent reprisal for joining or being a member of a union.

Rationale: Unionization and professional associations provide greater labour protection than that which is afforded by employment standards legislation. Professional associations also uphold employment standards for workers without employee status. Sex workers should have the right to form such associations as well as the right to collective bargaining.

Public Health

Public health issues often arise when the regulation of sex work is considered. In particular, concern for and policies related to the control of communicable diseases is invoked. Because sex workers' *occupational* health and safety needs are often misunderstood, sex workers and allies are concerned that fear-based policies adopted in the name of *public* health, including possible mandatory requirements, may drive the regulation of sex work.

Each province and territory has some sort of principal public health statute (and accompanying regulations), with the authority for implementing and enforcing the law falling under the purview of the provincial/territorial Minister of Health and the province's local health authorities, usually headed by a medical officer of health (or similarly-titled position). The provincial/territorial public health law usually authorizes and mandates various public health services, as well as the collection of information about health risks in the province, and also authorizes public health interventions to address health risks – which can include orders against people or establishments to take steps to address those risks. Each provincial/territorial government also funds and delivers health services to protect and promote the health of residents, including public health programs of various kinds, from influenza vaccinations to harm reduction programs to general educational initiatives. In some settings, provincial/territorial public health authorities can mandate that all local or regional health authorities implement certain minimum services and programs across the province.

Municipalities, exercising the authority granted to them by provincial laws, also seek to protect and promote public health in their locales by adopting and enforcing bylaws of various kinds,[35] and by implementing programs and services of various kinds.

This section looks specifically at some of the *public health* issues that arise in discussions about sex work – and specifically the control of communicable diseases, particularly sexually transmitted infections (STIs). Of course, there are also *occupational* health and safety issues that are important for sex workers in the course of their work; protection against STIs is one such concern. These are dealt with below in the section on Occupational Health and Safety.

Mandatory Health Checks, Interventions or Treatment

Recommendation 25: There should be no mandatory health interventions imposed on sex workers, including, but not limited to, testing for sexually transmitted and blood borne infections (STBBIs), pre-exposure prophylaxis (PrEP) for HIV, or treatment for STIs.

Rationale: Mandatory STBBI testing, prevention and treatment of sex workers raises human rights and public health concerns.

Mandatory testing is often based on fear and on misperceptions of sex workers as vectors for HIV and other STBBIs that are not based in evidence. As UN agencies and sex worker groups have noted, sex workers across the world have been fighting against mandatory health checks as they "have historically been used to control and stigmatize prostitutes, and since adult prostitutes are generally even more aware of sexual health care than others, mandatory checks for prostitutes are unacceptable unless they are mandatory for all sexually active people."[36] Mandatory testing has also proven to be a massive

35 For instance, regulating smoking in various places; setting sanitary standards for restaurants; prohibiting or limiting the use of pesticides; licensing of various kinds of businesses, etc.

36 World Health Organization, UNFPA, UNAIDS, Global Network of Sex Work Projects. December 2012. Prevention and Treatment of HIV and Other Sexually Transmitted Infections for sex Workers in Low and Middle Income Countries: Recommendations for a Public Health Approach. www.nswp.org/sites/nswp.org/files/WHO%20prevention%20treatment%20HIV%20STI%20sex%20workers_0.pdf

Mandatory testing is often based on fear and on misperceptions of sex workers as vectors for HIV and other STBBIs that are not based in evidence.

policy failure because it also acts as a barrier to HIV prevention as well as not being cost-effective.[37]

Mandatory testing is a coercive and thus unethical medical practice, contrary to the ethical requirement of informed consent to any medical intervention. So too, is any coercive treatment (e.g., with anti-retrovirals for HIV). Coercive medical interventions violate the fundamental human rights to privacy and to bodily and psychological integrity; they cannot easily be justified by the state.

In countries where mandatory health checks (including STBBI testing) are implemented,[38] they often provide the illusion of protecting the public against communicable diseases but in reality, do not provide protection for sex workers, and often expose sex workers to a greater risk of harm in various ways.
This is because mandatory STBBI testing does not encourage responsibility on the part of the client who is equally engaged in a sex act and perpetuates false beliefs about STI transmission, which can lead to sexual encounters posing greater risk. If sex workers are mandated to undergo testing, this can lead to greater pressure from clients for sex without condoms or similar protective measures. In any event, sex workers are still at risk of infection from their clients, who are not subject to any such testing. Establishments should also not be required to report workers who test positive, since this may lead to sex workers being barred from workplaces if they test positive for HIV or other STBBIs, losing employment and hence income. As a result, their livelihood options may be severely reduced by workplaces that discriminate against people living with HIV.

37 Jeffries, E., Fawkes, J., and Z. Stardust. 2012. "Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention." *World Journal of AIDS*. 2, pp203-211. http://www.SciRP.org/journal/wja

38 This tends to be more common in jurisdictions where sex work is legalized and regulated, often unhelpfully, as opposed to being decriminalized.

39 Canadian Public Health Association. December 2014. *Sex Work in Canada: The Public Health Perspective*. www.cpha.ca/uploads/policy/sex-work_e.pdf

40 UNAIDS, *Oral pre-exposure prophylaxis: Questions & Answers*, UNAIDS Reference 2015. www.unaids.org/en/resources/documents/2015/Oral_pre-exposure_prophylaxis_questions_and_answers

41 Global Network of Sex Work Projects, *Briefing Paper: PrEP* (2016). www.nswp.org/sites/nswp.org/files/PrEP%2C%20NSWP%20-%202016.pdf; UNAIDS, *Sex workers' hopes and fears for HIV pre-exposure prophylaxis: recommendations from a UNAIDS consultation meeting*, Johannesburg, 11-12 November 2013. www.avac.org/sites/default/files/resource-files/UNAIDS_Report.pdf.

42 Triple-X Workers' Solidarity Association of B.C. PrEP: Pre-Exposure Prophylaxis. http://triple-x.org/safety/prep/preplinks.html

Mandatory STBBI testing can also result in criminalization in the case of non-disclosure (chiefly with respect to HIV in Canada, but prosecutions have also been pursued in a few cases in relation to other STIs). Mandatory health checks also offer another means for police to harass and detain sex workers (ostensibly to "check their papers" to verify recent testing), and to extort, abuse and assault sex workers, including by threatening ongoing detention and possible charges unless bribes or sexual acts are provided.[39]

PrEP should be available on a voluntary, affordable basis to sex workers who wish to use it to protect themselves

Finally, HIV prevention interventions such as pre-exposure prophylaxis (PrEP) – the use of antiretroviral drugs by those who are HIV-negative to reduce the risk of infection – are an emerging part of the HIV prevention landscape.[40] PrEP holds both potential benefits and risks for sex workers.[41] One major benefit is empowering individual sex workers by giving them another option for protecting themselves against HIV, one which is not reliant on the availability of condoms and compliance by clients in using them. It can also provide an additional means of protection in cases where a condom breaks. Of course, PrEP does not offer protection against other STIs.

There is concern, however, that PrEP could encourage greater client pressure for sex without condoms, or that sex workers could be pressured or required to take PrEP as a condition of employment. In addition, there are potential side effects of antiretroviral drugs and data regarding long-term use of the drugs authorized for sale and use as PrEP remains limited.[42] PrEP should be available on a voluntary, affordable basis to sex workers who wish to use it to protect themselves (and indirectly their clients) against HIV. Sex worker groups should be involved in any policy or program initiatives regarding rolling out access to PrEP.

Health services

Recommendation 26: Governments should increase funding for health services for people involved in sex work, including services for STBBIs. Services should also be rendered more accessible.

Rationale: Health services for sex workers that appropriately address sex workers' needs are holistic in nature and focus not just on sexual health, but also on physical and mental well-being. They involve various points of access, low-barrier programs, and mobile testing clinics, including expanded access to rapid, point-of-care tests, where testing is done immediately. Services and testing must be confidential and where possible anonymous, and respectful of sex workers' privacy and human rights. They must be non-judgmental and non-discriminatory and education must be provided for service providers about working with sex workers. Health services and health care providers must be trained on best practices in effectively meeting the needs of sex workers and must provide up-to-date sexual health information and advice. Above all, services must also be accessible, which means having clinics open at times and locations that are convenient to sex workers, and that provide translation and transcultural services. This requires holistic health care providers that understand the social and structural factors that act as barriers for sex workers in accessing health care. Services should be open to not only sex workers, but clients and third parties. Staff at health services should be provided with education around sex workers' needs.

Anonymous testing for STBBIs is essential because of the stigma that surrounds sex work

Anonymous testing for STBBIs is essential because of the stigma that surrounds sex work. Im/migrant sex workers may fear that their family doctor will learn the details of their sex work and sexual health history. In addition, if the sex worker is not legally permitted to work in the sex industry, there is a fear that identifying themselves may lead to deportation.

Condom Use

Recommendation 27: Condom use should not be mandatory for sex workers and clients.

Rationale: While some sex workers in some settings that mandate condom use find such rules can be helpful in insisting on condom use with clients, others find it cumbersome and dangerous for their working conditions. Sex workers are most concerned about enforcement of *mandatory* condom use and the potential consequences of failure to comply. Law enforcement or outside regulators should never be engaged to control condom use.

Rather than imposing rules on sex workers and clients related to condom use, we recommend investing in sexual health education for the public and visible sexual health education in sex work establishments, as well as ensuring the accessibility of condoms and other safer sex supplies to sex workers as personal protective equipment, in keeping with supporting sex workers to protect their safety in the workplace.

Safer sex supplies and educational materials at sex work sites and establishments

Recommendation 28: Provincial governments should provide educational materials regarding sexual health, including safer sex practices, to sex work sites and establishments.

Rationale: Materials provided should be informed and inspired by the decades of such materials produced by sex workers. Any such material needs to be adapted to a sex work context and offered in multiple languages and across cultures.

Work by sex workers living with HIV

Recommendation 29: People living with HIV have the right to work without discrimination and sex workers living with HIV should enjoy the same right.

Rationale: People who are HIV-positive have the right to be free from discrimination in their workplace. The same basic proposition should apply to those whose work involves providing sexual services. The fact that the work involves providing sexual services does not invalidate this. Rather, the question should be how working conditions can be designed to make the work as safe as possible, for both worker and client. The recommendations already

noted above are aimed at this objective. It should also be noted that many sexual services can be provided by an HIV-positive worker without any risk to clients whatsoever.

Whether there is any legal obligation on a worker who is HIV-positive (or has some other STI) to disclose that fact to a client is currently complicated by the criminal law in Canada; this is addressed in the next recommendation. But there should be no obligation on the part of the worker to disclose their health status to anyone, including a sex work establishment. Establishments should also not be required to report workers who test HIV positive. Otherwise, sex workers may end up being barred from workplaces if found positive for HIV or other STIs, losing employment and hence income. Their options for a livelihood may be severely reduced by workplaces that discriminate against people living with HIV.

Recommendation 30: Owner/operators of sex work businesses should be prohibited from disclosing the health status — including STIs — of sex workers in their establishment. Both clients and sex workers should take reasonable precautions to protect themselves from infection and establishments should facilitate this.

Rationale: Taking reasonable safer sex precautions is the shared responsibility of both the sex worker and the client, as it is any non-commercial sexual encounter. Failure to recognize this promotes the idea that sex workers are vectors of disease. Taking reasonable precautions also renders any disclosure unnecessary and makes any involuntary disclosure of the sex worker's status even more unwarranted. An establishment should have a duty to make safer sex information and materials easily available to workers and clients, but ultimately it is up to the worker and client to agree on the terms of the transaction, and an establishment disclosing a worker's status is an unjustified violation of privacy.

Under current Canadian law, a person with a (known) STI may face prosecution for sexual assault if they do not disclose to a sexual partner before a sexual encounter that poses a "significant risk of serious bodily harm." When this threshold is satisfies remains not entirely defined. Specifically, with respect to HIV, the most recent 2012 rulings from the Supreme Court of Canada states that a person may face criminal prosecution for not disclosing their HIV-positive status to a sexual partner if there is a "realistic possibility" of transmitting HIV.[43]

It is reasonably clear from the Supreme Court's rulings that, at least in the case of penetrative vaginal sex, there is no "realistic possibility" of transmission — and therefore disclosure of HIV-positive status is not required — if the HIV-positive person had a "low" or "undetectable" viral load AND a condom is used. Satisfying just one of these conditions *may* establish the absence of a "realistic possibility" of transmission, but this cannot be said with certainty; there have been conflicting court rulings on this point since the Supreme Court's 2012 decisions.

But what the "realistic possibility" of HIV transmission test means with respect to other sexual activities remains somewhat uncertain. Experience to date suggests a real risk of prosecution in a wide array of circumstances, even ones where there is in fact little risk of transmission. Scientists have raised concerns about the Canadian criminal justice system disregarding the scientific evidence about transmission.[44]

Human rights advocates have also repeatedly outlined multiple reasons why the overly broad use of criminal law for HIV non-disclosure is objectionable, and should be changed in Canada. This includes women's rights advocates (including leading feminist legal academics).[45] Various international bodies including UNAIDS have recommended a much more restricted use of criminal law than

43 For a summary of the current law, see the info sheets prepared by the Canadian HIV/AIDS Legal Network: "Criminal Law & HIV Non-Disclosure in Canada" (2014), online: www.aidslaw.ca/site/criminal-law-and-hiv/ and *R. v Mabior*, 2012 SCC 47; *R v. DC*, 2012 SCC 48 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do ; and https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10010/index.do

44 Loutfy M., Tyndall M. et al., "Canadian Consensus Statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases & Medical Microbiology*, 25(3) (2014): pp. 135-140, online: www.ncbi.nlm.nih.gov/pmc/articles/PMC4173974/ and www.aidslaw.ca/site/wp-content/uploads/2014/06/Canadian-statement.pdf

45 Athena Network, Ten Reasons Why Criminalization of HIV Exposure or Transmission Harms Women, 2009; I. Grant, "The Prosecution of Non-disclosure of HIV in Canada: Time to Rethink *Cuerrier*," *McGill Journal of Law and Health* 5(1) (2011): 7–59; I. Grant, "The over-criminalization of persons with HIV," *UT Law Journal* 63(3) (2013): 475-484; K.S. Buchanan, "When Is HIV a Crime? Sexuality, Gender and Consent," *Minnesota Law Review 99(4) (2014): , 2014: 1231-1342* (online www.minnesotalawreview.org/wp-content/uploads/2015/05/Buchanan_pdf.pdf)*; and see the perspectives articulated in the documentary film Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015), online: www.consentfilm.org/

is currently the case in Canada.[46] In 2013, UNAIDS produced a guidance note providing critical scientific, medical and legal considerations in support of ending or mitigating the overly broad criminalization of HIV non-disclosure, exposure or transmission.[47] This document contains explicit recommendations against prosecutions in cases where a condom was used consistently, where other forms of safer sex were practiced (including oral sex and non-penetrative sex), or where the person living with HIV was on effective HIV treatment or had a low viral load. In November 2016, in its review of Canada, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) echoed this sentiment in their recent conclusion that criminal law should only be used as a tool to address intentional transmission rather than criminalizing non-disclosure more broadly.[48]

All legal and policy responses to HIV should be based on the best available evidence, the objectives of HIV prevention, care, treatment and support, and respect for human rights. There is no evidence that criminalizing HIV non-disclosure has prevention benefits. But there are serious concerns that the trend towards criminalization is causing considerable harm by increasing stigma and discrimination against people living with HIV, spreading misinformation about HIV, undermining public health messaging about prevention, affecting the trust between HIV patients and their physicians and counsellors, and resulting in injustices and human rights violations.[49]

46 UNAIDS/UNDP, *Policy brief: criminalization of HIV transmission*, August 2008; UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Human Rights Council, Fourteenth session, Agenda item 3, A/HRC/14/20, April 27, 2010; Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (July 2012), 24. www.hivlawcommission.org

48 Committee on the Elimination of Discrimination Against Women (CEDAW). November 18, 2016. *Concluding observations on the combined eighth and ninth periodic reports of Canada.* http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_CAN_CO_8-9_25100_E.pdf

49 For a more detailed discussion of the public health and human rights concerns with overly broad criminalization of HIV (and other STIs), see: Global Network of People Living with HIV (GNP+) and HIV Justice Network, Advancing HIV Justice: A progress report of achievements and challenges in global advocacy against HIV criminalisation, Amsterdam/London, 2013 www.hivjustice.net/wp-content/uploads/2013/05/Advancing-HIV-Justice-June-2013.pdf; and Canadian HIV/AIDS Legal Network, Info Sheets: "Criminal Law & HIV Non-Disclosure in Canada" (2014) www.aidslaw.ca/site/criminal-law-and-hiv/

Guidelines around Public Health Initiatives

Recommendation 31: Sex workers should have prior, meaningful input into guidelines related to public health initiatives, public health-oriented policies, guidelines and programs that affect sex workers.

Youth Protection and Supports for Youth

Dialogue about the involvement of young people selling or trading sex evokes strong reactions and it is difficult to find agreement on the best policy responses. The vast majority of policy responses to youth who sell or trade sexual services for money in Canada, have been couched in a lens of sexual abuse and exploitation, an approach that, critics note, fails to protect youth engaged in sex work.[50] Policies to address youth who sell or exchange sexual services need a nuanced and more complex rights based approach rather than those based in fear, in order to actually address the lived realities and challenges confronting youth.

What do we know about young people who sell or trade sex?

Estimates vary widely on the number of youth under the age of 18 who sell or trade sex in Canada, and on the proportion of youth relative to adults in the sex trade. The lack of distinction between children and youth in discourse and laws that regulate prostitution provide inaccurate pictures of this. In addition, criminalization and stigmatization make it difficult to collect accurate and representative information about the hidden transactions and the lives of young people who sell or trade sex. The continued use of questionable statistics, and claims around "average age of entry into prostitution" muddles the conversation. In her 2010 decision in *Bedford*, Justice Himel highlighted "misleading or incorrect research" that claims that the average age of entry into prostitution is 14.[51]

50 Jaremko Bromwich, R. 2015. "Maternal Thinking About Adolescent Mothers Engaged in Sex Work" in Bromwich, R. and M. M. Dejong (Eds) 2015. *Mothers, Mothering and Sex Work*. Demeter Press, pp117-131; Bittle, S. 2013. "Still Punishing to 'Protect': Youth Prostitution Law and Policy Reform" in van der Meulen, E., Durisin, E., and V. Love. (Eds). 2013. *Selling Sex: Experience Advocacy, and Research on Sex Work in Canada*. pp279-296; Phoenix, J. 2002a. "In the name of protection: Youth prostitution policy reform in England and Wales. "*Critical Social Policy* 22, 2: 353-75.

51 *Bedford v. Canada* 2010, ONSC 4264 at para. 357 www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html

Young people who sell or trade sex may do so for a variety of reasons, including to survive economic conditions or as a mechanism to form community within street economies.

Young people who sell or trade sex may do so for a variety of reasons, including to survive economic conditions or as a mechanism to form community within street economies. Young people constantly navigate challenges and make decisions that affect their circumstances, regardless of whether they are institutionalized in systems of care for their adolescent life; whether they are in or out of school; what neighbourhoods they are raised in; what their relationships with adults are like; whether they live with older people; and whether they use drugs and/or alcohol.

Young people often sell or trade sex to support themselves after being forced to leave home. The reasons young people leave home are varied. They may experience transphobia, homophobia, abuse and neglect. Indigenous youth are also affected by ongoing colonialism, including forced displacement and relocation, inequality and racism. The reservation system, residential schools, restrictions on mobility, restrictions on land and resource use, police abuse and impunity, and state-sanctioned violence against Indigenous communities are all factors that contribute to historic trauma and continued social, economic and political marginalization for youth.

Young people operate in a wide range of personal, geographic and social situations. They may live in downtown urban centers or rural communities. They may earn money or informally barter for shelter or provisions. They may negotiate in public spaces and/or communicate via various online and mobile devices. They may work in public spaces and/or within the privacy of indoor locations. Some youth sell or trade sex in isolation and independently, some work within the sex industry by concealing their actual age, while others earn money through street economies or other relationships that can sometimes be coercive.

Youth who have fled families, group homes and other institutions are also seeking to create communities for support and survival. Too often youth, who cannot or do not want to live with their family of origin, have very few options available to them that are viewed as "acceptable." Friends and mentors are often removed from their lives if they are not considered to be a good influence. Youth may be sent to foster homes or other facilities they do not feel safe in, and if they run away from these facilities, they may be detained under more restrained conditions. If youth commit crimes when trying to provide for themselves, they may face detention and end up trapped in quasi-criminal systems. In addition, they are confronted with many different challenges, which may include homelessness, racial discrimination, lack of familial support and mental health challenges.

Safe supports are needed for Indigenous and racialized youth, lesbian, gay, trans, Two-Spirit and gender non-conforming youth, and youth who use drugs, who are overrepresented among homeless youth who sell or exchange sexual services.[52] Additionally, employment and educational opportunities as well as peer-led community programming, need to be developed for youth. The lack of adequate jobs for informally skilled workers have excluded many youth from formal employment. This is a key factor in why some youth gravitate towards informal markets, like selling or trading sex.

Provincial Approaches and Guiding Principles

Every province and territory has laws that sanction youth protection authorities to intervene with youth in sex work. These laws include "youth protection" or "child welfare" legislation and in some provinces, "secure care" legislation. These laws grant discretionary powers to youth protection authorities and police to apprehend youth who sell or trade sex. Under these laws, youth who engage in trading or selling sexual services can be detained for "rehabilitation".

Youth in precarious living conditions, who have run away from home or state care, who are facing difficult situations and/or are selling or exchanging sexual services, need access to non-judgmental, harm

52 Miller, C.L., Fielden, S.J., Tyndall, M.W., Zhang, R., Gibson, K. and K. Shannon, "Individual and Structural Vulnerability Among Female Youth Who Exchange Sex for Survival," *Journal of Adolescent Health* 49,1 (July 2011), pp36–41 https://open.library.ubc.ca/cIRcle/collections/facultyresearchandpublications/52383/items/1.0319120; Chettiar, J., Shannon, K., Wood, E., Zhang, R., and T. Kerr, "Survival Sex Work Involvement Among Street-Involved Youth Who Use Drugs in a Canadian Setting," J Public Health (Oxf). 2010 Sep; 32(3): pp322–327. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2924786/; JJ. 2013. "We Speak for Ourselves: Anti-colonial and Self-Determined Responses to Youth People Involved in the Sex Trade" in van der Meulen, E., Durisin, E., and V. Love. (Eds). 2013. *Selling Sex: Experience Advocacy, and Research on Sex Work in Canada.* pp74-81.

reduction-based programs and services. These services must address the youth's assessment of their own needs and goals, as well their assessment of the continuity of care, from childhood to youth to adulthood and from systems of care to independent living. Accessing these services must not render youth vulnerable to the possibility of youth protection enforcement, including potential apprehension or forced interventions.

Principles that should guide supports for youth must include:

- Harm reduction approaches that require authorities to use the least intrusive approach towards youth with an emphasis on preserving their community;
- Recognition that apprehension, detention and rehabilitation are often experienced as antagonistic and often traumatic;
- Recognition that returning youth to their family of origin may not be in their best interest, particularly for those who are abused or experiencing violence in those families – alternative living arrangements must be considered in those situations;
- Approaches that are sensitive to the realities and needs of Indigenous youth;[53]
- Measures and services to help and empower young people; and
- Appropriate and diverse service provision for youth who sell or trade sex.

Youth often describe provincial/territorial programs designed to "rehabilitate" as a form of punishment – not protection.

The age of protection varies between provinces and territories, ranging from 16 to 19 years of age. Federal prostitution legislation, however, defines youth as persons under the age of 18. This has led to disparities in what services youth can access and their level of vulnerability to coercive protection measures. This also raises the question of whether a person may be in need of protection. For example, youth protection legislation should not impose stricter limits on the age in which youth can consent to sex, remunerated or not.

How do youth perceive current approaches?

Youth often describe provincial/territorial programs designed to "rehabilitate" as a form of punishment – not protection.[54] In the context of antagonistic relationships, where law enforcement are perceived as a threat rather than a resource, youth avoid interacting with police and do not perceive themselves to be able to safely and confidently access police. In addition, because many prohibitions attempt to "protect" youth from people known to police or engaged in the criminal justice system, this can lead to youth being cut off from their chosen communities and the criminalization of their relationships.[55] For youth in precarious situations, these relationships can be a crucial network of protections and support.

Youth protection laws and procedures **frequently do not use a harm reduction perspective** and are often focused on detention, forced rehabilitation and institutionalization. Courts applying these laws and local agencies' policies may not take into account the diverse experiences and situations of youth selling or exchanging sex, including their maturity, their needs, or their capacity to exercise agency. Young people trading and selling sex have complex realities, but are too often presented with "one-size-fits-all solutions" that prioritize law enforcement rather than support. **This increases their vulnerability to abuse and exploitation.**

In provinces where secure care-type legislation is enacted, youth are often forcibly detained for "rehabilitation". As one researcher noted, "[w]hile not officially understood as imprisonment, these policies operate under the guise

53 Native Youth Sexual Health Network. 2012. Submission for Canada's 2nd UN Universal Periodic Review. www.nativeyouthsexualhealth.com/canadasecondupr2012.pdf

54 JJ. 2013. "We Speak for Ourselves: Anti-colonial and Self-Determined Responses to Youth People Involved in the Sex Trade" in van der Meulen, E., Durisin, E., and V. Love. (Eds). 2013. *Selling Sex: Experience Advocacy, and Research on Sex Work in Canada.* Pp74-81; Phoenix Anne McKee, "Sex Work is Real Work: One Woman Shares Her Experiences of Sex Work and the Stigma She Faces," Shameless Winter 2011.

55 For instance, Youth protection agencies can apply to courts for orders prohibiting contact between a youth and an individual who is believed to cause the youth to be in need of protection. Failure to comply with such an order could result in a fine, imprisonment or both. For example, Saskatchewan's *Child and Family Services Act* states: "Any person who contravenes a protective intervention order … is guilty of an offence and liable on summary conviction to a fine of not more than $25,000 or to imprisonment for a term of not more than 24 months or to both fine and imprisonment." *The Child and Family Services Act*, Chapter C-7.2, s. 81(2).

of protection and/or secure care-type legislation, and what is effectively tantamount to incarceration of adolescents for involvement in sex work – or even suspected and unproven involvement – or socially frowned upon expressions of sexual agency remains legal."[56] Criticisms of this kind of legislation include concerns about the protection of a youth's legal rights (e.g., lack of procedural protections to challenge apprehension orders). Secure care type legislation can also drive youth underground, further from social supports. Laws that authorize the apprehension of youth into secure care also encourage a conflation of youth involvement in sex work with sexual abuse or sexual exploitation (in which the age of consent is disregarded). These laws are also rarely informed by youth yet are claimed to be motivated by a desire to protect them.

56 Jaremko Bromwich, R. 2015. "Maternal Thinking About Adolescent Mothers Engaged in Sex Work" in Bromwich, R. and M. M. Dejong (Eds) 2015. *Mothers, Mothering and Sex Work.* Demeter Press. pp117-131.

As highlighted in the section on federal laws, the removal of criminal provisions around sex work is a first step to guaranteeing that the human rights of youth who engage in sex work are respected. This should be followed by legislative reform of youth protection systems – to ensure that provincial/territorial agencies tasked with applying youth protection legislation are less seen by youth as a tool of repression and control and regarded rather as a system of support.

While comprehensive legislative reform of youth protection systems is outside of the scope of this document, it is clear that such reform is necessary to protect youth who sell or exchange sex. Below we offer some guidance for such reforms on a provincial level.

Relationships with Police

Recommendation 32: Once a report or file has been opened concerning a young person (as defined in applicable provincial/territorial law), that young person in question should be immediately provided with complete information about the circumstances and the procedures involved, as well as proper legal representation. Youth protection workers and courts should use the least intrusive approach when investigating these matters and when making decisions about their course of action.

Rationale: Antagonistic relationships between youth and law enforcement are a primary reason for youth's vulnerability to violence and exploitation. Fear of detainment can lead youth to isolate themselves, to refuse to use services that could help them and to feel further alienated from social institutions. Interactions with youth protection agencies are extremely stressful for families and for the youth whose freedom depends on those agencies. Youth protection investigations should be as transparent and respectful as possible and youth should be provided with all relevant legal information so they can make informed decisions regarding what they disclose and how much they collaborate. There should be accessible opportunities to appeal any decision they disagree with. The principles of continuity of care and stability are important, e.g., the least disruptive approach should be taken when there are issues requiring intervention. This principle should be extended to valuing the preservation of communities and other relationships that youth have, including chosen relationships and relationships formed through street-based communities.

Fear of detainment can lead youth to isolate themselves, to refuse to use services that could help them and to feel further alienated from social institutions.

Recommendation 33: Youth protection agencies must not forcibly detain youth who sell or exchange sexual services in "protective safe houses" or other detention facilities. Instead, a harm reduction approach, one that considers the youth's human rights and unique circumstances, should be used. The threshold for taking a young person into custody or protection should be significantly higher than it currently is and only used in cases where serious risk of imminent harm cannot be reduced through less intrusive measures. Selling or exchanging sexual services should not warrant the use of such an exceptional and coercive level of intervention.

Rationale: The power of youth protection authorities to intervene and involuntarily apprehend and detain youth into "secure care" – whether via youth protection or secure care legislation – drives youth further into isolation and away from social supports.

From a human rights perspective, any form of involuntary, non-criminal detention is highly concerning. Researchers note that, "measures taken to alleviate the social problem of sexual exploitation and abuse of young adolescent women and girls both can be and need to be sufficiently nuanced to appreciate that state action which coercively confines these young Canadians in a manner that is tantamount to incarceration is counterproductive and oppressive."[57]

Some provinces have further sanctioned police and youth protection agencies by enacting youth protection legislation that includes sex-work specific provisions. Such legislation is often written from a sex work prohibitionist perspective and is in line with goals to "abolish" the sex industry as a whole. In Alberta, the *Protection of Sexually Exploited Children Act* gives greater discretionary powers to apprehend and forcibly detain youth who are suspected of selling or exchanging sexual services in "protective safe houses", regardless of their situation.[58] Between 1999 and 2003, more than 700 youth were apprehended under this legislation which also created offences prohibiting any interference with youth protection agencies or law enforcement when carrying out their duties under the Act. The provinces of Saskatchewan[59] and Manitoba[60] have similar legislation. Parliamentarians in Ontario have introduced the *Saving the Girl Next Door Act*, which creates a new tort of human trafficking and defines "child" as any person under the age of 19 — an approach which is inconsistent with federal legislation. In some provinces, forced detention of youth is also part of legislation aimed at youth who use drugs.

Recommendation 34: Restrict police powers to prohibit the apprehension of youth who sell or exchange sex, in the absence of explicit instructions from youth protection authorities.

Rationale: Youth protection services and law enforcement agencies sometimes work closely together, particularly in cases when youth protection services require assistance to apprehend a youth in need of protection. While in many cases this relationship can serve the well-being of youth, it has also been used to profile and target youth who have run away from home, resulting in their detention or involuntary return to a home. In provinces where the age of protection is lower than the age of majority, missing person reports are sometimes used to leverage law enforcement powers to track youth.

Partnerships between local police and Youth protection services have also resulted in raids on sex work establishments for cases of suspected trafficking. For example, the *Quebec Youth Protection Act* states: "If there is reasonable cause to believe that the security or development of a child is in danger on any of the grounds [including sexual abuse], the director or the Commission … may, to ensure the protection of the child or of another child, report the situation to the Director of Criminal and Penal Prosecutions or to a police force without it being necessary to obtain the consent of the person to whom it relates or an order of the tribunal."[61] This is especially worrisome in a context where involvement in sex work is regularly redefined as "trafficking" in order to leverage greater police powers and resources. This means increased surveillance of sex

In the context of antagonistic relationships, where law enforcement are perceived as a threat rather than a resource, youth avoid interacting with police and do not perceive themselves to be able to safely and confidently access police.

57 Ibid, p129.

58 *Protection of Sexually Exploited Children Act*, RSA 2000, Chapter P-30.3.http://www.qp.alberta.ca/documents/Acts/P30P3.pdf

59 The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act, Chapter E-8.2, 2002.http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/e8-2.pdf

60 *The Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94, 2011. http://web2.gov.mb.ca/laws/index.php

61 *Quebec Youth Protection Act*, chapter P-34.1, section 72.2. http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/P-34.1

62 See, for example, section 79(6) of Ontario's *Child and Family Services Act*, R.S.O. 1990, CHAPTER C.11: "Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 42 (1)."

63 See, for example, s. 2(9) of Alberta's *Protection of Sexually Exploited Children Act*: "Notwithstanding subsection (1), if a police officer or director has reasonable and probable grounds to believe that a person is a child and that the child's life or safety is seriously and imminently endangered because the child is engaging in prostitution or attempting to engage in prostitution, the police officer or director may apprehend and convey the child to a protective safe house without an order." http://www.qp.alberta.ca/documents/Acts/P30P3.pdf

work establishments when there is no evidence that underage prostitution is occurring. This has pushed sex work establishments into more clandestine locations and away from services and supports.

Police may be additionally emboldened to act without any previous input from a youth protection authority.[62] In some cases, they can detain youth who are simply suspected of selling or exchanging sexual services and justify immediate action and transfer to youth protection custody.[63] Once apprehended and detained, youth must often endure various court proceedings in order to be released.

In the context of antagonistic relationships, where law enforcement are perceived as a threat rather than a resource, youth avoid interacting with police and do not perceive themselves to be able to safely and confidently access police. This increases their vulnerability to abuse and exploitation.

Relationships with Social Services

Recommendation 35: Access to social services for youth who sell or exchange sex should be separate from youth protection enforcement. Mandatory reporting obligations for social service providers should not place service providers in situations where they cannot create meaningful relationships with youth.

Rationale: Resources designated for the policing of youth must be diverted to community-led, culturally competent and non-judgmental social services that center the individual experiences and self-determination of young people, including those who sell or exchange sexual services. It is vital to follow the harm reduction approach of meeting each individual where they are at and fostering their empowerment.

Youth should be empowered to seek out help without having to enter the youth protection system. Social service providers should be able to assist youth without being forced to put them in conflict with law enforcement or youth protection agencies. Youth need to be able to access government-run agencies without fear of detention or of their conversations with service providers being used in the context of youth protection enforcement.

Criminal Code provisions targeting third parties, in the context of mandatory reporting obligations under youth protection legislation, place community-based workers in difficult positions, where it can be difficult to offer services to youth who sell or trade sexual services, thus furthering their isolation.

Privacy and Personal Information

Recommendation 36: Ensure that youth under 18 have access to the data and information stored about them, with the goals of enabling their full participation in decisions about their lives and ensuring their right to privacy is respected.

Rationale: Youth under 18 should know how they are discussed within social services and law enforcement agencies so that that they can better participate in these discussions. They should additionally have the ability to amend any inaccurate information in their personal records. Further, youths' privacy should be guaranteed at all times, and their private information should not be shared between agencies and institutions in ways that violate provincial or federal privacy laws. When a youth under 18 has run away and been reported as a missing person, media should not be allowed to discuss the circumstances of their disappearance or their possible involvement in the sex trade. This type of public disclosure can have far-reaching consequences throughout their adult lives and should be prohibited.

Meaningful Consultation with Youth

Recommendation 37: Ensure youth under 18 who sell or exchange sexual services are meaningfully consulted in the development of policies.

Rationale: Young people have the right to meaningfully contribute to and influence all matters that affect them, including policies that relate to their access to housing, health and social services, as well as forcible detention in criminal justice or protective care facilities. Financial and other accommodating supports need to be provided to ensure that youth with diverse experiences are consulted, including youth who are single mothers, Indigenous, criminalized, racialized and LGBTQ2s+.

Holistic Responses for Youth

Recommendation 38: Address the root causes of youth poverty and support the need or desire for independent living arrangements through appropriate social supports that are not based in the youth criminal justice system or coercive youth protection agencies.

Rationale: Investing in resources for marginalized youth communities, including financial supports, housing, education, occupational training, mental health and substance use services, will reduce the vulnerability of youth at risk of selling or exchanging sexual services. Safe supports are needed for Indigenous and racialized youth, as well as lesbian, gay, trans and gender non-conforming youth, who are overrepresented among homeless youth who sell or exchange sexual services.[64] Additionally, employment and educational opportunities as well as peer-led community programming need to be developed for youth. The lack of adequate jobs for informally skilled workers have excluded many youth from formal employment, which is a key factor in their gravitation towards informal markets.

64 JJ. 2013. "We Speak for Ourselves: Anti-colonial and Self-Determined Responses to Youth People Involved in the Sex Trade" in van der Meulen, E., Durisin, E., and V. Love. (Eds). 2013. *Selling Sex: Experience Advocacy, and Research on Sex Work in Canada.* Pp74-81

3. OTHER GENERAL RECOMMENDATIONS

Collaboration Across Jurisdictions

Recommendation 39: There should be collaboration and cooperation between federal, provincial/territorial and municipal governments to ensure that human rights are at the core of the application of legislation, and that where jurisdiction is shared, there are agreements regarding delegated power and cost sharing.

Rationale: One way the federal government can exercise power is through fiscal management and accountability to ensure consistency and fairness in the application of legislation, as well as support to sex workers. Federal/provincial/territorial working groups should be developed to create guidelines and best practices. Sufficient funding is required for this work, particularly in the first five years after legislative change. Working groups must include people working in the sex industry and those who are not operating from a perspective of prohibition. Sex workers and their organizations should have the freedom to determine priorities appropriate to the region.

Periodic Legislative Review

Recommendation 40: Governments should objectively review and analyze legislative outcomes including their impact on sex workers, with meaningful involvement of and consultation with a diversity of sex workers from a diversity of regions.

An assessment of legislative outcomes should not factor in shifts in morality, but rather prioritize measurable, concrete lived experiences, including whether or not the people for whom legislation seeks to "protect" are actually being protected.

Rationale: In March 2014, when the Conservative government announced its public consultation to inform the *Protection of Communities and Exploited Persons Act*, it surveyed *all* Canadians. This meant that the perspectives of individuals who were never affected by criminal prostitution provisions as well as people who held very biased, uninformed and non-evidence based perspectives about sex work, were assigned the same value as the views of sex workers and those with expertise on the subject. In order to engage in meaningful consultation, governments should ensure that the legislation's "targets" are involved (i.e., those that experience the impacts of that legislation on a daily basis). Legislative review and reform must involve meaningful participation and consultation with sex workers, as they are most affected or potentially affected by such legislation.

An assessment of legislative outcomes should not factor in shifts in *morality*, but rather prioritize measurable, concrete lived experiences, including whether or not the people for whom legislation seeks to "protect" are actually being protected. Concerns about the impact of sex work on communities can best be dealt with at the local level through dialogue and public education.

Meaningful consultation involves recognizing the reasons why communities are "hard to reach" and accommodating those circumstances to ensure that policy is informed by those most affected. Governments must implement mechanisms to ensure that racialized and Indigenous people who sell or trade sex, lesbian, gay, trans, Two-Spirit and gender non-conforming sex workers, im/migrant sex workers who risk deportation, sex workers who use drugs, sex workers living with HIV, and sex workers who live in poverty can also participate meaningfully in law reform discussions and speak to the harms of criminalization without being exposed to further harms created by stigma and discrimination associated with selling or trading sex or related to others aspects of their lives or identities.

Review of sex work law reform must also involve ongoing, rigorous, objective research and monitoring of legislation.

Review of sex work law reform must also involve ongoing, rigorous, objective research and monitoring of legislation. This should include research on the impacts of municipal and other laws being used against sex workers, since sex workers are in conflict with multiple regulations and legal powers. Monitoring of law reform should therefore include not just monitoring of criminal law but also of municipal laws and other ways that sex workers are placed in conflict with the law.

Public Education and Training

Recommendation 41: Provinces and territories, in collaboration with sex workers, should provide public education about sex work, the impacts of criminalization, and human rights as they apply to sex work.

Rationale: Sex work is controversial because of the ways societies are conditioned to think about bodily autonomy, sexuality, gender, race and class, and other ways people are situated. Public perspectives are heavily influenced by dichotomous and sensationalized media reports, films, portrayals of sex work itself as violence, and a general assumption that femininity implies vulnerability. The *Protection of Communities and Exploited Persons Act* also framed all sex workers simultaneously as victims and as criminals, rather than focusing on sex workers' human rights.

Government Supports and Programs

Recommendation 42: Governments should provide support and funding specific to sex workers living in poverty or other situations of disadvantage, without discrimination. Equally this support should not be dependent on "exiting" or transitioning from sex work.

Evidence from Sweden has shown that, under an "end demand" regime, when social service provision is contingent upon sex workers exiting the sex industry, peer support activities are curtailed, undermining sex workers' access to information and safer sex supplies.

Rationale: Law reform is a small part of the work that Alliance members and other sex worker rights groups do with sex workers. Much of the time sex worker rights groups are working with sex workers around other issues they face including poverty, homelessness, displacement and colonization, transphobia, racism, drug use, and mental health. Sex workers who face interacting forms of marginalization, are also facing multiple forms of discrimination. This requires government investment in resources for housing, education, occupational training, mental and other health services and child-care. This support is also best received when it is non-directive, non-ideological, non-judgmental, from a harm reduction perspective and led by peers (i.e., other sex workers).

"Exiting" from, transitioning or moving in and out of sex work also requires appropriate support, due to the stigma around sex work and resulting discrimination. Criminal records also prevent sex workers from obtaining other types of employment. Supports that focus on or are driven by a mandate to encourage "exit from the sex industry" – or that do not help increase safety for individuals that are not exiting the industry – provide a limited understanding of sex workers' various and multiple needs as well inadequate supports and services.

Evidence from Sweden has shown that, under an "end demand" regime, when social service provision is contingent upon sex workers exiting the sex industry, peer support activities are curtailed, undermining sex workers' access to information and safer sex supplies. Since Sweden criminalized the purchase of sex, Swedish social service agencies have reported less contact with sex workers, making it much harder to provide important services to people working in the sex industry.[65]

65 Chu, S. K-H and R. Glass. 2013. "Sex Work Law Reform in Canada: Considering Problems with the Nordic Model". Alberta Law Review, 51:1 pp101-124. www.albertalawreview.com/index.php/ALR/article/viewFile/59/59

Recommendation 43: Governments must ensure that sex workers can access (non-sex work-specific) public services, programs, and benefits that are offered to all individuals living in poverty or other situations of disadvantage, without discrimination or non-solicited emphasis on their experience in sex work.

Many sex workers experience stigma, discrimination and arbitrary treatment when it becomes known to services providers that the person seeking support has sex work experience.

Rationale: Although some sex workers may want specific supports that emphasize or consider their experience related to sex work (see previous recommendation), many sex workers want access to government supports and programs that are unrelated sex work. In addition to association with sex work, poverty, homelessness, drug use, perceptions of race and age, the continued impacts of displacement, isolation and colonization, all act as structural barriers for people who sell or trade sex to receiving quality social, health and other institutionalized services.[66]

Many sex workers experience stigma, discrimination and arbitrary treatment when it becomes known to services providers that the person seeking support has sex work experience. In addition to providing education to social service providers, it is vital that sex workers have the same opportunity to access non-discriminatory supports as other members of the public.

Recommendation 44: Governments should provide support and provide resources to peer-led (where possible) sex worker rights organizations that provide front line services to people in the sex industry.

Services need to begin from an empowerment approach and not one that carries with it an ideology to exit the industry.

Rationale: In 2014 when *The Protection of Communities and Exploited Persons Act* was enacted, the government announced that $20 million dollars would be directed towards projects that focus specifically on "exiting" services. This excluded supports for many sex worker rights organizations that are underpinned from a philosophy of empowerment and harm reduction, that do not require sex workers to take a particular action, or that is not dependent on a change in one's circumstances to access services or support.

Research has demonstrated that non-judgmental and peer-led services are more successful at helping people identify and implement healthier and safer ways of living and working.[67] Services need to begin from an empowerment approach and not one that carries with it an ideology to exit the industry.

Policing

Sex workers' fear of detection and arrest or harassment from police is one of the main factors contributing to violence against sex workers and unhealthy working conditions. Certain communities of sex workers are profiled and over-surveilled by police – particularly Indigenous women who sell and trade sex, racialized sex workers and people who work on the street.

When the *Protection of Communities and Exploited Persons Act* was implemented, police forces across the country took different positions concerning their use of discretion in enforcing the law.

The Vancouver Police Department (VPD) has adopted the boldest and most effective response to prostitution to date in Canada. Released in 2013, the VPD's *Sex Work Enforcement Guidelines*[68] highlight the impacts of law enforcement on sex workers and ensure that sex work between consenting adults is not an enforcement priority. Instead, the

66 Shannon, K., Rusch, M., Shoveller, J., Alexson, D., Gibson, K., and M.W. Tyndall. "Mapping violence and policing as an environmental-structural barrier to health service and syringe availability among substance-using women in street-level sex work." *Int J Drug Policy.* 2008 Apr;19(2):140-7. www.ncbi.nlm.nih.gov/pubmed/18207725

67 Stella, l'amie de Maimie. 2014. Créer des trajectoires gagnantes pour l'implication des paires en prevention des ITSS: Que nous dissent les experiences montréalaises? http://issuu.com/pulpandpixelcreative/docs/creer_des_trajectoires_gagnantes

68 Vancouver Police Department. January 2013. *Sex Work Enforcement Guidelines.* http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf

VPD "views situations involving violence, exploitation, youth, other criminal associations (e.g., street crimes or gang affiliations) or human trafficking as being high risk and therefore a priority for intervention for the safety of the workers and the community." These guidelines are an attempt to address the often-antagonistic relationship between police and sex workers and can serve as a model for discussions among law enforcement agencies across provinces. The *Guidelines* are also a first step in recognizing that not all sex work is violence.

Recommendation 45: Sex worker-designed training for police should be mandatory as part of diversity training.

Rationale: In its final report, *Forsaken,* the BC Missing and Murdered Women Inquiry (MMIW) recommended that police be required to undergo sensitivity training, and that further, this training should be prepared and conducted by people with the relevant lived experience. As the report outlined: "Members of marginalized and vulnerable communities, including women who have been engaged in the survival sex trade, intravenous drug users, as well as representatives of Aboriginal communities, must be involved in developing training modules and in delivering some aspects of this training."[69] Such training has been developed in Vancouver and is offered to new police recruits in municipal police forces. To date, the national RCMP has not acted on this recommendation.

Recommendation 46: Police should not be permitted to engage in initiatives (including the application of laws unrelated to sex work) to unjustifiably remove and displace sex workers from public spaces.

Rationale: In some provinces, sex workers are still charged criminally for communicating for the purposes of prostitution (s. 213.1). In addition, they are charged with offences that are unrelated to sex work, including jaywalking, loitering, drug use or possession. Police should not be permitted to engage in initiatives merely intended to further the objective of removing or displacing sex workers from the streets and other public spaces.

Recommendation 47: Provinces and territories should ensure that their cities, local police and community services adopt "Access (To City Services) Without Fear" policies throughout Canada.

Rationale: In 2013, Toronto became the first city to adopt an "Access Without Fear" policy that provides sanctuary for non-status or undocumented im/migrants.[70] Vancouver followed suit in 2015.[71] These policies ensure that anyone accessing city services will not be asked to provide their immigration status, thus reducing the fear of deportation. If these policies could be extended to police agencies, im/migrant sex workers would be more empowered to report violence, exploitation and abuse to police. Access Without Fear policies could also reduce discrimination and profiling of im/migrant communities.

Police services should not enforce immigration laws, especially when they carry out investigations related to sex work, trafficking and other municipal laws, as well as when sex workers are the victims of crime.

Police services should not enforce immigration laws, especially when they carry out investigations related to sex work, trafficking and other municipal laws, as well as when sex workers are the victims of crime. Police should not share information or involve CBSA in policing matters. All police forces should adopt Access Without Fear policies so that all residents can access services and support from police without fear that their immigration status will put them at risk.

Recommendation 48: Nuisance-based complaints made against sex workers should be resolved using the least intrusive method possible.

Rationale: Nuisance-based complaints against sex workers often result in their displacement or arrest to placate residents. Moving sex workers from one neighbourhood to another does not solve issues concerning public nuisance. In responding to complaints, priority should be placed on ensuring the safety and security of all community members, which

Moving sex workers from one neighbourhood to another does not solve issues concerning public nuisance.

69 Missing Women Commission of Inquiry. November 2012. *Forsaken: The Report of the Missing Women Commission of Inquiry.* www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/recent-inquiries

70 Toronto, 2105, Access Without Fear Policy www.toronto.ca/legdocs/mmis/2015/cd/bgrd/backgroundfile-85779.pdf

71 Vancouver, 2016, Access Without Fear Policy http://council.vancouver.ca/20160406/documents/pspc3.pdf

includes sex workers. For example, the Vancouver City policy directs all departments to take a unified approach to any issues involving sex work and to resolve issues in a non-discriminatory manner.[72]

Recommendation 49: Bylaw officers should be trained on the realities of sex work and bylaw enforcement that engages police should proceed with respect for sex workers' rights to privacy and well-being.

Rationale: Bylaws officers often assume that there is an inherent danger in sex work. This often results in an overuse of police resources to enforce bylaws. These bylaws are also used as an additional mechanism to penalize sex workers. Because some sex workers in massage parlours do not differentiate between bylaw officers and police officers, this can have negative effects on their relationships with police and their willingness to report violence. Bylaw officers require training on the realities of sex work. In addition, police should accompany bylaw officers only when there are valid and serious safety concerns for the bylaw officers. Police should act in a manner that is proportional to the risk presented.

72 City of Vancouver. September 2015. *Sex Work Response Guidelines*. http://vancouver.ca/files/cov/sex-work-response-guidelines.pdf

Member Groups/Stakeholder Descriptions

Action Santé Travesties et Transexuel(le)s du Québec (ASTTeQ) (Montreal) aims to promote the health and well-being of trans people through peer support and advocacy, education and outreach, and community empowerment and mobilization. We understand the health of trans people and our communities to be interrelated to economic and social inequalities, which have resulted in trans people experiencing disproportionate rates of poverty, un(der)employment, precarious housing, criminalization and violence. We believe in the right to self-determine our gender identity and gender expression free from coercion, violence and discrimination. We advocate for access to health care that will meet the many needs of our diverse communities, while working collectively to build supportive, healthy and resilient communities. www.astteq.org/

BC Coalition of Experiential Communities (Vancouver) The British Columbia Coalition of Experiential Communities (BCCEC) is a consortium of sex worker activists who work to eliminate the oppressive systems and forces that create harm for individuals in the sex industry. We support diverse perspectives and experiences in the sex industry however we do not support enforcement or rehabilitation models that promote the continued criminalization of sex workers or perpetuate sex worker dependency on social programs. https://bccec.wordpress.com/

Angel's Angels (Hamilton) is a sex worker advocacy group consisting of male, female and Indigenous sex trade workers and our supporters. We believe that sex trade workers' rights should be respected under the Canadian Charter of Rights and Freedoms. We work towards an end to all prejudice and stigma against sex trade workers, to assist workers with resources, and, safety plans for our work. www.angelsangels.ca/

Butterfly (Asian and Migrant Sex Workers Support Network) (Toronto) is composed of migrants, sex workers, and allies including social workers, legal professionals, and health professionals. Butterfly provides support to Asian and migrant sex workers as well as advocating for their rights and self-determination. The organization is founded upon the belief that sex workers are entitled to safety, dignity and justice. Butterfly supports all Asian and migrant sex workers, regardless of their immigration status, gender, race, or sexual orientation. We believe that Asian and migrant sex workers should receive the same respect and rights as other workers. We provide 24/7 hotline, outreaching, trainings, legal and medical supports. www.butterflysw.org/

Canadian HIV/AIDS Legal Network envisions a world in which the human rights and dignity of people living with HIV or AIDS and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support. The Canadian HIV/AIDS Legal Network promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. www.aidslaw.ca

Émissaire (Longueuil) est un organisme d'éducation et de promotion en matière de santé sexuelle. Nous agissons en répondant aux besoins de différentes populations via des programmes d'éducation à la sexualité. Nous mobilisons les acteurs-clés à s'unir et à prioriser des actions et des interventions dans le domaine de la santé sexuelle. http://emissaire.ca/

FIRST is a feminist advocacy group for sex worker rights and the full decriminalization of sex work in Canada. FIRST is a national group based in Vancouver. http://firstadvocates.org/

Maggie's Toronto Sex Workers Action Project (Toronto) is an organization run for and by local sex workers. Our mission is to assist sex workers in our efforts to live and work with safety and dignity. We are founded on the belief that in order to improve our circumstances, sex workers must control our own lives and destinies. We welcome workers of all genders from all areas of the sex trade – street-based sex workers, exotic dancers, escorts, pornography actors, phone sex operators, professional dominants and submissives, erotic massage workers, web cam workers, and others – to join us in our fight to control our own bodies, sexuality and working lives. Maggie's mission is to provide education, advocacy, and support to assist sex workers to live and work with safety and dignity. We are founded on the belief that to improve our lives, sex workers must take the power to control our own destinies. That is why Maggie's exists first and foremost as an organization for sex workers, which is controlled by sex workers. http://maggiestoronto.ca/

Migrant Sex Workers Project (Toronto) is a grassroots group of migrants, sex workers, and allies who demand safety and dignity for all sex workers regardless of immigration status. We are creating tools that migrant sex workers use to protect themselves against human rights violations, educating the public about the dangers of anti-trafficking and advocating to change policies that hurt and exploit migrants in the sex trade. www.migrantsexworkers.com/

PIECE (Prostitutes Involved, Empowered, Cogent, Edmonton) is a peer-led group that has been in operation for three years. PIECE offers counsel to indoor and outdoor sex workers, connecting people with organizations that can assist with various situations. As a pro-decriminalization advocacy group, PIECE focuses on municipal and federal laws, speaking to groups and media and politicians when opportunities arise.

Providing Alternatives, Counselling and Education (PACE) (Vancouver) is located in the Downtown Eastside of Vancouver, BC, Canada. We offer low-barrier programming and support in order to serve Vancouver's most marginalized populations; people who often fall through the cracks due to ineligibility for services that require a fixed address or drug and alcohol abstinence can access our services. In this respect, PACE is on the frontline of support for those in Vancouver who need it most. www.pace-society.org/

PEERS Victoria is a multi-service grassroots agency that was established by, with, and for sex workers in 1995. Through direct service delivery and community partnerships, Peers provides an array of outreach and drop in harm reduction and support services alongside education and employment training for current and former sex workers, in Victoria and on Vancouver Island. www.safersexwork.ca/

Projet L.U.N.E. (Libres, Unies, Nuancées, Ensemble) (Quebec) est un groupe d'appartenance, de reconnaissance et de défense des droits sociaux « par et pour » des travailleuses du sexe (TDS), actives ou non, qui agissent à titre de paires-aidantes. Leurs savoir-faire et leurs expertises sont mis en commun et de l'avant de multiples façons (prises de parole dans l'espace public, sensibilisation, dénonciation des injustices, etc.). Toute femme est la bienvenue, peu importe son histoire, son milieu ou son expérience. www.projet-lune.org/

Rézo, projet travailleurs du sexe (Montreal) est un organisme communautaire montréalais, actif depuis 1991, qui propose aux hommes gais, bisexuels ou ayant des relations sexuelles avec d'autres hommes divers programmes gratuits de prévention VIH/ITSS et de promotion de la santé et du mieux-être dans une optique de santé globale visant à inclure les multiples aspects concernant la santé sexuelle, physique, psychologique et sociale. www.rezosante.org/

Sex Professionals of Canada (SPOC) Sex Professionals of Canada (SPOC) is an entirely volunteer sex worker run activist organization that engages in advocacy and education. We fight for the decriminalization of all forms of sex work in Canada and seek labour rights and occupational health and safety standards defined by sex workers themselves. http://spoc.ca/

Sex Work Advisory Network of Sudbury (SWANS) was formed in 2012 by a group of women with sex work experience from various social, economic and work locations. We are driven by the belief that sex work is work, and all people involved in sex work are valuable, contributing members of our communities. We believe that women must be afforded their human rights to safety both at work and at home, and we know that sex workers are the experts when it comes to working with non-sex working service providers who understand the importance of service accessibility for sex workers. We advocate for women assessing their own needs, harm reduction, recovery, sexual health and holistic wellness. We fully stand behind decriminalization and understand decriminalization to be the only way that trafficking, commercialized exploitation, HIV and violence against sex workers will ever really be challenged and put down for good. www.facebook.com/swan.sudbury

Shift (Calgary) Shift provides support, outreach, education and advocacy services using a harm reduction and human rights based approach, for adults of all genders, currently or formerly working in the sex industry, or who identify as victims of human trafficking or exploitation. The program also serves the greater Calgary community as a resource for vulnerable and at risk populations, as well as social and health care service providers, law enforcement, researchers, advocacy groups, the media, and the general public. www.shiftcalgary.org/

S.H.O.P. (Safe Harbour Outreach Project) (St. John's) exists to advocate for the human rights of sex workers in and around St. John's, Newfoundland. We serve women for whom sex work is an occupation; we also serve women who are in the industry not by choice, who are wishing to exit. We support everyone who identifies as a current or former sex worker, regardless of industry sector area. We firmly believe that sex workers are the experts of their own lives, and everything we do is rooted in that philosophy. http://sjwomenscentre.ca/programs/shop/

Stella, l'amie de Maimie (Montreal) is an organization founded in 1995, run by and for female-identified sex workers in Montreal, Canada. We outreach to trans and female-identified sex workers on the street, in massage parlours, agencies, indoor locations and host an anonymous medical clinic in our locale. Stella promotes empowerment approaches and solidarity by and amongst sex workers as we are committed to ensuring that each of us has a place in society and our human rights should be protected and respected. We provide support, resources and referrals to sex workers so that we may live in safety and with dignity, to sensitize and educate the public about sex work and the realities faced by sex workers; to counter discrimination against sex workers; and to work towards the decriminalization of sex work. http://chezstella.org/

Stop the Arrests! (Sault Ste. Marie) came to fruition due to extremely concerning events that took place in Sault Ste. Marie in 2012, where Sault Ste. Marie Police Service targeted street based 'prostitution' and nine females were arrested under the highly contested anti prostitution laws. The arrests became a full-out police supported, publicly fuelled and media backed witch-hunt. Today STA continues to exist as a loose community group that sex workers can organize under and continue to advocate for the rights of sex workers within the community of Sault Ste. Marie. www.facebook.com/STOP-the-Arrests-in-SSM-on-Sex-Worker-Solidarity-360171000726935/

Strut! (Toronto) is a Toronto based sex worker organizing project. We aim to build power and relationships among those most impacted by the criminalization of sex worker's lives and create more space for activism within Toronto's sex worker communities. Our work and our framework centres Indigenous sovereignty, racial and migrant justice and seeks alternatives to the prison industrial complex. We want to create a world where all people, including people in the sex industry are free, strong, care for each other and get to make decisions about our own lives.

Supporting Women's Alternatives Network (SWAN) (Vancouver) provides culturally appropriate and language specific support and advocacy for newcomer, migrant and immigrant women engaged in indoor sex work. SWAN advocates for sex workers' rights and works to ensure that women engaged in sex work are able to work safely and without discrimination. SWAN celebrates migrant and immigrant women as integral to the sex workers' rights movement. http://swanvancouver.ca/

West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver) àreflects the diversity of the sex working community – it includes women, men and trans-individuals as well as those from different 'classes' and varying capacities and abilities. More specifically, sex workers engaged are multi-literate and culturally diverse. First Nations, Asian, Caucasian, Black workers and those of mixed race are currently invested. We work for the safety and respect of all sex industry workers regardless of their location within the industry; ensure the inclusion of diverse communities, perspectives, capacities and expertise from the sex industry; promote progressive thought, forward thinking and continual positive change for the empowerment and education of sex industry workers and the community at large; keep harm reduction frameworks at the forefront and work toward social justice and social change to increase quality of life in addition to human and labour rights for sex industry workers; and pool resources and work together as a community. www.wccsip.ca/

Winnipeg Working Group is a coalition of sex workers, activists, researchers, health care people, and other allies from Winnipeg who argue that not all sex work is exploitative, and not all sex workers are victims in need of rescue. www.facebook.com/WinnipegWG/