

Submission to the Special Rapporteur on violence against women and girls to the Human Rights Council on prostitution and violence against women and girls

FROM THE CANADIAN ALLIANCE FOR SEX WORK LAW REFORM

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MEMBER GROUPS INCLUDE: Action santé travesti(e)s et transsexuel(le)s du Québec (ASTT(e)Q); Butterfly Asian and Migrant Sex Work Support Network; HIV Legal Network; Émissaire; Maggie’s Toronto Sex Workers’ Action Project; Maggie’s Indigenous Sex Work Drum Group; PEERS Victoria; Projet L.U.N.E.; PACE Society; Rézo, projet travailleurs du sexe; Sacred at PEERS; Safe Harbour Outreach Project (S.H.O.P); SafeSpace London; Sex Workers’ Action Program Hamilton (SWAPH); Sex Professionals of Canada (SPOC); Sex Workers’ Action Network of Waterloo Region (SWAN Waterloo); Sex Workers of Winnipeg Action Coalition (SWWAC); Sex Workers United Against Violence (SWUAV); Shift Calgary, HIV Community Link; Stella, l’amie de Maimie; Stepping Stone Halifax, SWANS Sudbury; and SWAP Yukon.

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Background

The Canadian Alliance for Sex Work Law Reform is a group of 23 sex worker rights groups across Canada, led predominantly by sex workers, that provide direct services and supports to thousands of sex workers across the country. Our member groups bear witness every day to the violence, labour exploitation, discrimination and other abuse that sex workers experience. Policies about sex work must be informed by sex workers most impacted by them, to be effective in addressing the root causes of the abuses we face. Our submission details the harms sex workers experience under criminalization, and provides solutions based on experience. Our responses underscore that sex work itself is not violence, but rather the structural and systemic context in which sex workers work that exacerbate and create vulnerability to violence against us.

Types of violence sex workers experience

- Sex workers are subjected to *institutionalized state violence* through criminal, immigration, and municipal and provincial laws and policies governing sex work. This is coupled with high rates of racial and social profiling and surveillance.
- Sex workers experience high rates of *targeted violence* – predators know sex workers are hesitant to report victimization to police or other authorities, for fear that we, or their colleagues and third parties may be surveilled, harassed or charged with sex work offences. Police pose a threat to a sex worker’s livelihood, intimate partnerships, liberty, and physical and mental well-being. Sex workers are targets for violence because we are isolated from community, compounded by racism and transphobia.

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- Sex workers who experience *intimate partner violence* are often reluctant to report because it would draw attention of law enforcement. Abusive partners may take advantage of the criminal context of sex work by threatening to ‘out’ a sex worker or report her workplace, making it difficult for sex workers to leave those relationships. This danger is particularly acute where sex workers fear losing their children.
- *Psychological violence* is perpetuated by other manifestations of criminalization, stigma and discrimination such as the risk of detention and deportation (migrant and racialized sex workers have also reported physical and sexual violence by law enforcement officers while being detained for immigration infractions); reinforced barriers to essential health and social supports, including for sexual health, violence, or trauma; fewer services for sex workers; and impaired mobility.
- Sex workers also face diverse forms of *economic violence*, including the criminalization of our livelihood, rejection from jobs, rentals, or mortgages because of sex work; seizure of funds during criminal investigations; surveillance by financial institutions; and suspension of bank accounts.
- All these forms of violence are compounded for sex workers who experience intersecting forms of profiling, surveillance and discrimination, such as Indigenous, Black, migrant, and trans sex workers.

Who commits violence against sex workers?

- States that enact punitive and discriminatory laws against sex work such as laws criminalizing sex work and immigration laws prohibiting migrant women from sex work.
- Police and law enforcement violate sex workers, not only in the form of arrest and detention, but additional physical, sexual, and verbal violence. Police are emboldened to enter into sex work spaces and violate with impunity, because sex work is criminalized.
- Anti-sex work activists and programs violate sex workers. In many locations, it is nearly impossible for sex workers to access shelters or other emergency housing, sexual assault or domestic violence services, healthcare, or other community-based services without encountering organizations whose primary consideration is forcing women to stop selling sex, often under the guise of dubious feminist theories or religious ideals. Sex workers are often pressured to perform victimhood and abandon their source of income to access basic services.

Effects of criminalization on sex workers

- Research demonstrates that ‘end demand’ and other criminalization regimes, including those that claim to only criminalize clients and third parties in sex work, impose dangerous conditions on sex workers — especially the most marginalized sex workers. They do not stop people from doing sex work, nor do they provide other viable options or resources, but they increase sex workers’ risks of violence, exploitation, and ² other abuse with limited to no access to legal recourse or protections.

- The illegality of sex work in Canada isolates sex workers to situations where we are unable to access protection if subjected to violence, theft, and harassment (Appendix 1). Sex workers operating in all locations are unable to communicate with clients making it more difficult for sex workers to implement safety measures. When clients are criminalized, sex workers attempt alleviate clients' fears of arrest, which often involves reducing our safety measures.
- While third parties are depicted as exploitative, most third parties (some of whom may be sex workers themselves) perform critical and essential services to sex workers, including safety, sexual health, emotional health, indoor workspace, training, and transportation. These safety measures provide an enhanced level of security that alerts clients that there are safety and accountability measures in force. Laws prohibiting third parties mean third parties avoid police detection, which isolates sex workers and decreases safety measures.
- Criminal prohibitions on third parties foster exploitative conditions: third parties are disincentivized from seeking means to improve working conditions because they themselves are criminalized; they undermine workplace safety and security by limiting deterrence of inappropriate client behaviour; discourage explicit discussions between third parties and sex workers about occupational health and safety, terms of employment, and safety practices; and limiting in-call locations, even though these controlled settings are a safer more familiar work environment (Appendix 1). These harms are compounded by immigration prohibitions against migrant sex work, which also fuel targeted violence and abuse against migrant sex workers, who are reluctant to seek help from police or other authorities for fear of deportation.
- Personal relationships are often captured by third-party criminal provisions and intimate relationships are often read by law enforcement as inherently exploitative. Sex workers seeking help for domestic violence are often confronted with police officers and prosecutors more interested in "exiting" sex workers and arresting our partners as "pimps" rather than hearing our reports about intimate partner violence. When seeking assistance from community-based services, such as IPV shelters, sex workers are often rejected on the basis that our relationships are not legitimate. This approach not only harms sex workers, it also deprives all women of nuanced analyses about financial and work-related elements of abuse, power dynamics, stigma, and how abusers target their victims.

Consent in Sex Work

- Rape myths and misconceptions are often advanced by advocates of 'end demand' regimes, asserting that sex workers lack the capacity, autonomy and agency to make informed decisions about deciding to do sex work.
- Sex workers exercise agency, decision-making capacity, and the ability to meaningfully refuse or consent to sex even under conditions of economic constraint and limited options. For people who face structural inequalities related to gender, race, class, barriers to other labour markets, and immigration policies - money, resources, stability, and autonomy through sex work is important and can improve quality of life.

- One fundamental principle of sexual autonomy is the right to communicate and establish clear, explicit, affirmative, and ongoing consent to sex. Courts around the world have established that the ability to decide — and communicate — when, how, with whom, and under what specific conditions one engages in specific sexual acts is fundamental to one’s autonomy, integrity, and equality. Yet, laws criminalizing sex work create conditions which impede sex workers’ capacity to clearly communicate, negotiate, and establish terms and boundaries in person, remotely, or through advertising, by undermining full and explicit conversations between sex workers and clients or third parties.
- Notably, the Supreme Court of Canada ruled in *R v. Barton* that courts should “dispel a number of troubling stereotypical assumptions about Indigenous women who perform sex work, including that such persons: are not entitled to the same protections the criminal justice system promises other Canadians; are not deserving of respect, humanity, and dignity; are sexual objects for male gratification; need not give consent to sexual activity and are “available for the taking”; assume the risk of any harm that befalls them because they engage in a dangerous form of work; and are less credible than other people” (Appendix 1). This consultation is a prime example of those myths weaponized against sex workers to justify further repression against us.

We **recommend** the Special Rapporteur urges states to:

- Immediately repeal all sex work–specific criminal laws.
- Remove immigration regulations that prohibit migrant sex work.
- Stop law enforcement raids, detentions, and deportations of sex workers and the implementation of anti-trafficking, anti-sex work, and immigration laws in the name of protection.
- Fund and support programs/services that are developed by sex workers, and particularly underfunded Indigenous, Black, racialized, and migrant sex worker groups.

Repealing criminal sex work offences and immigration laws and policies that prevent sex work is in line with recommendations made by numerous UN Special Procedures and agencies:

- As recently as 2023, the UN Working Group on Discrimination Against Women and Girls concluded that the *criminal law*, and specifically criminalizing clients and the broad criminalization of third parties “leads to the violations of the sex workers’ right to private life, right to housing and the right to non-discrimination.” This has been recognized by numerous human rights and legal organizations, numerous UN agencies (see below), Amnesty International, the International Commission of Jurists (Appendix 1). They concluded that the decriminalization of sex work, including the decriminalization of clients and third parties, “holds the 4 greatest promise to address systemic discrimination and violence and the impunity for the violations of sex

workers' rights. It also constitutes the approach best suited to enhancing their rights to health and other socio-economic rights, freedom from torture, inhuman or degrading treatment, right to private life, and freedom from discrimination" (Appendix 1).

- The UN Special Rapporteur on the Right to Health described the negative ramifications of criminalizing third parties such as brothel owners, explicitly calling for the decriminalization of sex work, and spoke out against the conflation of sex work and human trafficking (Appendix 1).
- The previous UN Special Rapporteur on Violence Against women (VAW) noted the need to ensure that "measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers" (Appendix 1).
- UN Women expressed its support for decriminalizing sex work, acknowledging the conflation of sex work, sex trafficking, and sexual exploitation leads to "inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights" (Appendix 1).
- Twelve UN entities, including UN Women, UNICEF, OHCHR and ILO, recommended that States review and repeal laws that criminalize or otherwise prohibit sex work (Appendix 1).
- UNAIDS has set as a primary objective that "less than 10% of countries criminalize sex work, possession of small amounts of drugs, same-sex sexual behaviour, and HIV transmission, exposure or non-disclosure by 2025" (Appendix 1).
- In 2023, the Special Rapporteur on Contemporary Forms of Slavery recognized the danger in conflating sex work with violence and human trafficking, and called for full decriminalization of sex work as one measure to prevent violence against sex workers (Appendix 1).

APPENDIX 1

1. See, for example, J. Levy and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers,” *Criminology & Criminal Justice* 1–15 (March 31, 2014); P. Östergren and S. Dodillet, “The Swedish Sex Purchase Act: Claimed success and documented effects,” paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges, The Hague, Netherlands, March 3-4, 2011; and U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012.
2. Canadian Alliance for Sex Work Law Reform, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.
3. R v. Barton, SCC 2019 SCC 33, [2019] 2 S.C.R. 579 para 201 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17800/index.do>
4. International Commission of Jurists, *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* available at: https://icj2.wpenginepowered.com/wpcontent/uploads/2023/03/8-March-Principles-Report_final_print-version.pdf
5. Mandate of the Working Group on discrimination against women and girls, *Eliminating discrimination against sex workers and securing their human rights*, 2023.
6. 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*, UN Doc. A/HRC/14/20, 2010; 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*, UN Doc. A/HRC/23/41, 2013.
7. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc. A/HRC/26/38/Add.1, 2014.
8. UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.
9. UNAIDS, UNHCR, UNICEF, WFP, UNDP, UNFPA, UN Women, ILO, UNESCO, WHO, OHCHR, IOM, *6 Joint United*

10. *Nations Statement on Ending Discrimination in Healthcare Settings*, available at <https://www.unaids.org/en/resources/documents/2017/ending-discrimination-in-health-care-settings>, p.3.
11. UNAIDS, 2025 AIDS TARGETS, <https://aidstargets2025.unaids.org/>
12. Report from the Special Rapporteur on Contemporary Forms of Slavery, September 2023. <https://www.ohchr.org/en/press-releases/2023/09/canada-anchor-fight-against-contemporary-forms-slavery-human-rights-un>