

Public Consultation on Prostitution-Related Offences in Canada
Online submission dates: February 17 to March 17, 2014

Submission by: **Queer Ontario, Toronto, Ontario.**

Date of Submission: March 15, 2014

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

No, the *purchase* of sexual services from an adult should not be a criminal offence. The *Bedford* decision struck down the laws that criminalize sex work in Canada, thus sex workers should be able to conduct their business without the criminalization of their clients. Criminalizing the purchase of sexual services would be tantamount to re-criminalizing sex work and reintroducing the harms of marginalization and stigmatization. Proponents of criminalization claim it reduces the demand for sexual services, but there is no evidence supporting this claim. Moreover, in the wake of the *Bedford* decision, prostitution-related exchanges would be legal; therefore making one side of this exchange illegal would be nonsensical. The criminalization of the purchase of sexual services would once again put sex workers at risk, as it would marginalize the trade, and the Charter-guaranteed protections of life and liberty would once again be threatened for sex workers and their clients.

Criminalizing the *purchase* of sexual services by adults would violate sex workers' right to safety, as it would make working and living conditions more dangerous. The harms caused by the struck-down laws found in the *Bedford* decision would once again be reproduced and would clearly be unconstitutional. If it is legal for sex workers to pursue their trade as a legitimate business then the criminalization of their clients, which amounts to interfering with their livelihood, would clearly violate labour laws and their rights to health, safety and the legal right to pursue a legal business enterprise.

The rehabilitation programs that often accompany criminal sanctions for clients are coercive and counterproductive to sex workers' needs. Prohibiting the sale of sex between adults encourages the infiltration of organized crime, and can encourage some third parties to be exploitive because sex workers have no recourse under the law. Instead, we need to support sex workers and make the industry undesirable to organized crime by promoting an approach that decriminalizes both the selling and purchasing of sexual services.

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

No, adults who sell sex should never be threatened with criminal charges. The *Bedford* decision was unanimous in finding that the criminalization of prostitution was itself the cause of harm to those working in the sex industry. Furthermore, these sex work laws were found unconstitutional as they violated Section 7 of the *Canadian Charter of Rights and Freedoms* that guarantee

protection of life, liberty and security of the person. Criminalization of sex work is harmful since it drives the trade underground, contributes to marginalization and stigmatization, and increases the risk of violence against sex workers by obstructing the establishment of protections, namely, the ability to screen clients and negotiate safer sex. Sex workers would be unable to collaborate with others to improve safety, and would be reluctant to report violence (sexual or otherwise) to police out of fear of arrest. Other risks that criminalization creates include barriers to accessing crucial social and, health services, and, in the case of migrant sex workers, the potential for detention and deportation.

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

Queer Ontario does not support any criminal laws that target prostitution itself. Queer Ontario advocates for the decriminalization of sex work and for the right of sex workers to organize and conduct their business under the legal rights and obligations of any other legitimate business enterprise. Sexual labour and sexual business enterprises should be free from coercion and violence; sex workers should be allowed to work as autonomous businesses and to implement health and safety provisions for their work. Moreover, existing labour and employment laws should be applied, or new ones developed with input from sex workers themselves, to ensure that sex workers are working under safe conditions, have access to employment services and benefits, can pay taxes, and can organize effectively by joining professional associations or labour unions. Sex workers must enjoy the rights and obligations of any other legitimate business in Canada. All local or provincial regulations should respect and protect sex workers' human and labour rights. Municipal regulations, such as nuisance bylaws to protect communities, should be developed in consultation with sex workers.

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

No, there should be no criminal offence for a person to benefit economically from prostitution. Sex work should have the status of any other legitimate business enterprise and sex workers should be free to hire others and form business relationships with third parties that are required to carry out their business effectively and safely. The criminal regulation of third parties would proscribe personal and business relationships that help sex workers work effectively, and which help keep sex workers safe.

Third parties involved in sex work play legitimate roles assisting sex workers with aspects of their work just like in any other legitimate business. The criminalization of third parties increases the risk of exploitation and produces unsafe or coercive workplace practices. Criminal laws against third parties would also prevent sex workers from collaborating for their own safety and security, placing them at greater risk for abuse and exploitation due to their isolation and marginalization.

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

Queer Ontario's public "Policy Statement on Sex Work," dated December 16, 2011 and found here <http://queerontario.org/sex-work/>, states that we advocate for the decriminalization of sex work and for the right of sex workers to organize and conduct their business under the legal rights and obligations of any other legitimate business enterprise. We also oppose attempts to demonize and criminalize the consumers (clients) of sex work services and we support safe, consensual and autonomous conditions for sex workers to conduct their business. Queer Ontario accords dignity and respect to sex workers and their clients and opposes the considerable stigma and sex-negativity that surrounds sex work.

Queer Ontario unequivocally supports the *Bedford* Supreme Court decision that struck down three major prostitution-related offences that criminalized sex work and failed to protect sex workers. The Supreme Court found that the laws negatively impacted the health and safety of sex workers, contravening *Charter* guarantees of life, liberty and security of the person.

We call for all labour, including the sex trade, to be free from coercion and violence. Queer Ontario supports the human rights and labour rights of sex workers, and we support efforts that seek to develop and implement greater health and safety provisions for sexual labour with the active participation and expertise of sex workers themselves.

Queer Ontario supports publicly funded services for sex workers whose marginalization may be compounded by violence, poverty and addiction. Such programs, preferably staffed by sex workers themselves, should operate under a philosophy of care that places the needs, voices and experiences of sex workers first and which encourages them to take control of their own lives in a supportive environment.

Any laws that are created to minimize public nuisance must include the participation of sex workers themselves and cannot do so, the Court found, at the expense of the health, safety and lives of sex workers. We also support the participation of sex workers in the development of public policies, municipal bylaws, community-based research initiatives and public education at all levels of government. Sex workers are experts in their own lives and labour. The participation of sex workers and inclusion of their experiences and knowledge must be actively sought and seriously considered by any and all government initiatives regulating the trade. Sex workers and their organizations have accumulated evidence-based knowledge and expertise on how best to advise governments and police in the area of law reform.

Queer Ontario stands with sex worker organizations in their call to see a "made-in-Canada New Zealand model" approach to prostitution that prioritizes sex workers' input to the law reform process. New Zealand's decriminalization model legitimizes sex work as labour with all the attending rights and obligations as for any other worker under the law, as well as offering protections through occupational health and safety standards. Any new laws must ensure that sex workers' human and labour rights are protected. Queer Ontario strongly supports the inclusion of and collaboration with sex workers and their organizations in any law reform process.

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

On behalf of the organization: Queer Ontario

Queer Ontario is a provincial network of gender and sexually diverse individuals and their allies who are committed to questioning, challenging and reforming the laws, institutional practices, and social norms that regulate queer people. Operating under liberationist and sex-positive principles, we fight for accessibility, recognition, and pluralism, using social media and other tactics to engage in political action, public education, and coalition building.

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