

Law & the Human Rights of Sex Workers in the Age of HIV/AIDS



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Outillons-nous : Femmes et travail du sexe
11 March 2004

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Legal Network's New & Emerging Issue 2003/2004



"Prostitution, Criminalization & Vulnerability to HIV/AIDS"

- Sex workers in Canada have been stigmatized as vectors of HIV transmission.
- Sex workers are vulnerable to contracting HIV because of the violence and discrimination they face.
- Some sex workers' lives are characterized by involvement with the street, poverty, racism, alcohol and drug use, and negative attitudes towards sexual identity.
- In Canada and many other countries, prostitution is criminalized in ways that likely promote the oppression of sex workers and impede the fight against HIV/AIDS.

Legal Network's New & Emerging Issue 2003/2004



"Prostitution, Criminalization & Vulnerability to HIV/AIDS"

- Purpose of project is to analyze law-based responses to prostitution identifying those that minimize vulnerability to HIV infection among sex workers, and those that do not.
- Underline the linkage between respect for human rights and dignity, and the public health goals of reducing HIV transmission and empowering individuals and communities to respond to HIV/AIDS.
- Recommendations will focus on concrete measures to protect, fulfill and promote the human rights of sex trade workers thereby lessening their vulnerability to HIV infection.

Human Rights



What are human rights?

- All people have human rights because they are human.
- Human rights cannot be waived or taken away.
- Governments are obliged to respect, protect, and fulfill these rights.
- Fulfilling a human right means that governments have to take steps – pass laws, make regulations, set up programs, provide funding – to realize the right.
- Focus on ameliorating the situation of the least advantaged in a given society.

Human Rights



Where do Human Rights come from?

- United Nations International Bill of Human Rights
 - Universal Declaration of Human Rights
 - International Covenant on Economic, Social and Cultural Rights
- Charter of Rights & Freedoms
- Quebec Charter of Human Rights & Freedoms

Human Rights



Human Rights in the context of prostitution & sex work

– Universal Declaration of Human Rights

- All human beings are born **free and equal in dignity and rights**.
- Everyone is **entitled to all the rights** and freedoms, **without distinction** of any kind, such as race, colour, ... other status.
- Right to **life, liberty and security of person**
- All are **equal before the law** and are entitled without any discrimination to **equal protection of the law**.

Human Rights



Human Rights in the context of prostitution & sex work
– Universal Declaration of Human Rights

- Protection from **arbitrary interference with his privacy, family, home** or correspondence, nor to attacks upon his honour and reputation.
- **Right to freedom of movement and residence** within the borders of each State.
- Freedom of **peaceful assembly and association**.
- **Right to work, to free choice of employment, to just and favourable conditions of work** and to protection against unemployment.
- Right to **form and to join trade unions** for the protection of his interests.

Human Rights



Human Rights in the context of prostitution & sex work

- International Covenant on Economic, Social and Cultural Rights
- Right to the enjoyment of the **highest attainable standard of physical and mental health.**
 - The improvement of all aspects of environmental and industrial hygiene;
 - The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - The creation of conditions, which would assure to all medical service and medical attention in the event of sickness.

Health & Human Rights



- Health is a “state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity” (World Health Organization).
- The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. It is inseparable from the enjoyment of other human rights.
- Promotion and protection of human rights and promotion and protection of health are fundamentally linked.
- When human rights are not promoted and protected, it is harder for people to enjoy health.
- In the context of HIV/AIDS, when human rights are not promoted and protected, the impact of the epidemic on individuals and communities is worse.

Sex Work (focus on prostitution)

Who ?

- Men, women, transgendered / transsexual, children, (im)migrants, gay / lesbian, bi-sexual, heterosexual, Aboriginal, drug users, HIV positive, HIV negative....
- Some people identify as sex workers or prostitutes, many don` t.

How many ?

- Nobody knows for certain. "Visible" sex work is just the tip of the iceberg.

Sex Work (focus on prostitution)

Where ?

- Street (sidewalks, parks, "sur le pouce"), bars/hotels/clubs (erotic), bars/hotels/clubs (non-erotic), escort agencies, massage parlours, bathhouses and public washrooms, classified ads and other advertising, brothels...
- Significant regional differences.

Why ?

- Income (high, modest, subsistence), drugs, survival, chosen career, lack of choice, sense of power, powerlessness ...
- These reasons are not water-tight. Sex workers may have different reasons at different points in their life, or engage in sex work for a mix of reasons.

Sex Work & HIV/AIDS. Is there a link ?



- Definitely a link in the popular perception, since the early days of the HIV epidemic.
 - Sex workers seen as “vectors of transmission” of HIV.
- Sex workers are one of the most (if not the most) stigmatized groups in Canadian society.
 - The HIV epidemic has added to the stigmatization of and discrimination experienced by sex workers.

Sex Work & HIV/AIDS. Is there a link ?

- Highly problematic to say sex workers / prostitutes “vulnerable” to HIV infection
 - People become HIV-infected through high-risk behaviours, not by virtue of identification with a particular group.
 - So risk of infection has a great deal to do with a person`s physical and psychological situation in life.
 - Sex workers are safer sex “professionals” and educators – teach clients and insist on condom use.
 - Economic incentive to stay HIV-negative and otherwise healthy.



Sex Work & HIV/AIDS. Is there a link ?

- Some research on sex work and HIV is unreliable, and scientifically suspect.
- Nonetheless, research indicates that HIV-positive sex workers often infected as a result of behaviours in their non-commercial life (sharing of injection drug equipment, unprotected intercourse with partners & significant others).
- The small amount of funding available to sex worker organizations and service organizations is tied to HIV education & prevention.
- It may be that the HIV epidemic has taken energy and focus away from organizing for sex worker rights.

Impact of Laws on Sex Work & HIV/AIDS?



Criminal Law

- Prostitution is not, and never has been, illegal in Canada.
- However, the majority of activities surrounding prostitution are illegal under the Canadian Criminal Code.

Impact of Laws on Sex Work & HIV/AIDS?

Procuring ("pimping") (Criminal Code 212)

It is illegal for a person to do many of the usual activities associated with pimping, such as living off money made by prostitution, arranging for prostitution to take place, "recruiting" prostitutes, offering another person`s services as a prostitute.

Bawdy-Houses (Criminal Code 210)

It is illegal to keep or be found in a "common bawdy-house". A "common bawdy-house" means a place that is kept or occupied by one or more persons for the purpose of prostitution. It is also illegal to transport or direct any person to a common bawdy-house.



Impact of Laws on Sex Work & HIV/AIDS?

Communicating (Criminal Code 213)

Communications for the purposes of engaging in prostitution or sexual services is illegal when carried out in public or open to public view. It is illegal to stop or attempt to stop a vehicle, impede the free flow of pedestrian or vehicle traffic, or to stop any person or, in any manner, to communicate or attempt to communicate with that person.

Criminalization of HIV Exposure

People living with HIV/AIDS may face criminal charges of **assault, aggravated assault (and attempts of either)** and **common nuisance** for engaging in activities that have a significant risk transmitting HIV [Supreme Court of Canada in *Cuerrier* and *Williams* decisions].

Impact of Laws on Sex Work & HIV/AIDS?

Other Federal, Provincial & Municipal Laws

- Immigration & Refugee Protection Act – criminal laws regarding prostitution pose danger to becoming “landed” or remaining in Canada.
- Provincial and municipal laws also effect sex work and sex workers.
 - In some parts of Canada, municipalities license and regulate massage parlours, adult entertainment and escort services.
 - Municipalities also control zoning.
 - Municipal by-law offences.
 - Offences under provincial highway and traffic legislation.

Impact of Laws on Sex Work & HIV/AIDS?

Impacts – Theoretical

- Difficult to assess the true epidemiology of HIV infection among sex workers as a whole.
- Theoretical projections are often based on specific vulnerable communities, identified as being at risk for HIV infection.
- The risks of HIV infection from sex work theoretically related to the criminalization of sex trade.
- “Criminalization” refers to the use of coercive measures in settings where sex work is illegal or regulated, as well as related precarious working conditions that make sex workers more vulnerable to infection.

Impact of Laws on Sex Work & HIV/AIDS?

Impacts – Theoretical (cont`d)

- Laws and policies that regulate sex work
 - constitute **direct** structural barriers to HIV prevention and care
 - contribute to abuse, discrimination and stigmatization against persons who prostitute, and thus operate as **indirect** structural barriers to HIV prevention and care
- Belief that reforming the current legal approach to prostitution could have positive impact on the health and well being of sex workers

Impact of Laws on Sex Work & HIV/AIDS?

Impacts – Research

- A US study demonstrated three ways that criminal law and policing affect HIV risk and HIV infection in female street sex workers and people who injected drugs.
 - **directly affect risk** by affecting both the availability of protective equipment (syringes and condoms) and the conditions in which their use is negotiated;
 - **indirectly affect risk** by increasing the vulnerability of sex workers and IDUs to incarceration – the fear and reality of arrest shape many of the activities of those interviewed, including activities related to health; and
 - **indirect impact** because they validate stigma, racism, sexism and oppression thereby reproducing the social inequalities that comprise the more fundamental determinants of HIV risks.

Impact of Laws on Sex Work & HIV/AIDS?

Impacts – Research (cont`d)

- A recent Canadian study examined the potential impact of licensing escort services on the spread of sexually transmitted infections between the USA and Canada.
 - Concludes that licensing of escorts and escort agencies has potential to contribute to HIV prevention through: legitimating escort work, empowering escorts, and enhancing their integration in the community and potential access to community and health services.
 - Authors recommend that there be further study and policy-making in this area from the perspectives of occupational health and safety standards.

Impacts – Feedback from the National Consultation



Sex Work, Canadian Criminal Law & HIV/AIDS: A National Consultation

- Violence and safety main concern of sex workers.
 - Sex work is over-policed – constant threat of arrest, tickets and police harassment contribute to unsafe working conditions.
 - Sex workers under-policed – violence against sex workers (conceived of as “hate crimes”) not taken seriously by police.
- Access to health care another significant concern.
 - Lack of appropriate health services.
 - Discrimination and lack of professional standards.
 - HIV/AIDS education, prevention, care, treatment & support one health concern.

Fundamental Principles of Law Reform

World Charter For Prostitutes` Rights

- Guarantee prostitutes all human rights and civil liberties, including the freedom of speech, travel, immigration, work, marriage, and motherhood and the right to unemployment insurance, health insurance and housing.
- Decriminalize all aspects of adult prostitution resulting from individual decision.
- Regulate third parties according to standard business codes. Special clauses must be included to prevent the abuse and stigmatization of prostitutes (self-employed and others).

Fundamental Principles of Law Reform



- Enforce criminal laws against fraud, coercion, violence, child sexual abuse, child labour, rape, racism everywhere and across national boundaries, whether or not in the context of prostitution.
- Eradicate laws that can be interpreted to deny freedom of association, or freedom to travel, to prostitutes within and between countries.
- Recognize that prostitutes have rights to a private life.

Fundamental Principles of Law Reform



- Prostitutes should have the freedom to choose their place of work and residence. It is essential that prostitutes can provide their services under the conditions that are absolutely determined by themselves and no one else.
- There should be no law discriminating against prostitutes associating and working collectively in order to acquire a high degree of personal security.
- Mandatory checks for prostitutes are unacceptable unless they are mandatory for all sexually active people.

Fundamental Principles of Law Reform



- Support educational programs to change social attitudes that stigmatize and discriminate against prostitutes and ex-prostitutes of any race, gender or nationality.
- Organizations of prostitutes and ex-prostitutes should be supported work for law reform and social change.

Source: World Charter For Prostitutes` Rights – International Committee for Prostitutes` Rights (ICPR), Amsterdam 1985, Published in Pheterson, G (ed.), A Vindication of the Rights of Whores. Seattle: Seal Press, 1989.

Conclusion



Réal Ménard (Bloc MP for Hochelaga – Maisonneuve), introduced a private member`s Bill (C-339) on prostitution reform in December 2002.

The long title of the act was, “An Act to decriminalize activities related to prostitution and to implement measures to assist sex workers and persons with drug addictions”.

Bill C-339 did not progress past first reading. It is still relevant because it demonstrates that Canadian law-makers are not really concerned with the rights and well-being of sex workers enough to consult with sex workers about law reform.

Only time will tell whether the House of Commons Standing Committee on Justice and Human Rights will create room for input by sex workers themselves.

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