

LAW MATTERS

Law Matters is one of a series of 5 brochures for people working in the sex industry. The others cover *Security, Health, Money, and Dancing Matters*.

Law Matters provides basic information on:

- ★ The laws tied to sex work;
- ★ Advice for when you come into contact with police; and,
- ★ Tips for reducing your chances of being targeted.



Sex Trade Advocacy and Research
Défense du travail du sexe et projet de recherche

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Information in the brochures comes from research conducted with escorts, masseuses, street workers, dancers, and doms in Toronto and Montreal from 2001 to 2003. In Canada you can buy and sell sexual services legally, but it is hard to do your work without breaking the law. You can reduce the chance of coming into contact with police by knowing what is illegal and what makes you more likely to be a police target. **Select the tips that work best for you or modify them to meet your needs.**

THERE ARE THREE LEVELS OF LAW

- The *Criminal Code of Canada* (CCC)
- Provincial Laws
- Municipal Bylaws

CRIMINAL CODE OF CANADA (CCC)

The CCC outlines what is illegal in Canada. It overrides all provincial laws or municipal bylaws.

Places and activities bringing you in conflict with the law:

1. Public Places (s.213 “communicating”, s.173 “indecent act”, s.167 “indecent performance”)

In a *public place* it is illegal to negotiate paid sex and/or engage in sexual activities. A *public place* is one the public has access to, or that is open to the public/public view (e.g., hotel lobbies, bars, cars, street corners, etc.). It may include pay and cell phone conversations.

It is also illegal in a public place to be part of an *indecent, immoral or obscene* performance (s.167). What is *indecent, immoral or obscene* is decided when a case goes to court. Dancers are most likely to be charged under s.167 or s.173.

2. Third Party Activities (s.212 “procuring”)

This applies to the activities of anyone who introduces a person into prostitution (*procuring*), sets up a date between a sex worker and a client, and/or makes money from a sex worker (*procuring* and/or “*pimping*”). Illegal acts include:

- Directing, bringing someone to, and/or confining or hiding someone in a *bawdy house* (see “In-call Services” for definition of a *bawdy house*).
- Encouraging, forcing or attempting to force someone to engage in sex work in or outside of Canada.
- Controlling, directing or influencing the movements of a person (including by drugging them) to get them to engage in sex work.

While you may live totally or partly on the money you earn as a sex worker, it is illegal for others to do so.

3. In-call services (s.210 & s.211 “bawdy house”)

A *bawdy house* is a place where sexual services or *indecent acts* (see #1 above for definition of *indecent acts*) regularly occur (e.g., brothels, dungeons, massage parlours, strip clubs, homes or business locations of sex workers). A *bawdy house* can be a place where one or a number of sex

workers provide sexual service. You can be charged if you:

- Are found, work, or live in a *bawdy house*.
- Take, offer to take, or direct someone to a *bawdy house*.
- Are in full or partial charge or control of a *bawdy house*. This is the more serious of the charges under s.210.

4. Sexually Transmitted Infections (STIs) (s.268)

If you have HIV/AIDS or an STI that could put a sexual partner at **significant risk of serious bodily harm** the law requires you to tell them and get their consent before engaging in sexual acts with them. Some sex acts are more risky than others. For more legal information go to the Canadian HIV/AIDS Legal Network website www.aidslaw.ca. See *Health Matters* for more general HIV/STI information.

PROVINCIAL LAWS

Each province can make laws to control anything that occurs within its borders. Provincial laws therefore can differ from province to province. They deal with a number of things including: roads and traffic, public places, social assistance, places of work (e.g., building codes, fire safety, job related health and safety issues, etc.). Enforcement patterns often vary.

Provincial laws and sex workers:

- Police can use traffic laws (e.g., interfering with traffic, stopping a moving vehicle) to harass workers.
- If your landlord suspects or knows something illegal is being done on the premises, you can be evicted.
- The court can close a place where in-call services occur.

- If you drop used condoms, needles, or broken glass, etc. in a public place, you may be charged with littering.
- If you are on social assistance, you are required to report any money you earn, even from sex work (see *Money Matters*).
- Laws dealing with places of work (e.g., building codes, fire safety, job related health and safety issues, etc.) can protect indoor workers who are working legally. But:
 - They are difficult to enforce.
 - They only apply to employees, not independent workers/contractors (see *Money Matters* for definitions of these terms).
 - They require you to give your name.
 - It is hard to find out where to file a complaint.
 - The problem usually has to be **really bad** before action will be taken.

MUNICIPAL BYLAWS

These laws vary from city to city and can be used to license sex workers or sex work businesses (e.g., escort, exotic dancing, body rub) or zone where such businesses (e.g., escort service offices, massage parlours, strip clubs) are located. You can still be charged with crimes even if you have a licence.

Municipal bylaws can:

- Restrict who gets a license. Working without one can result in bylaw charges. When new to a city or type of work, it is a good idea to check (anonymously!) with the local licensing office to see if a license is needed.
- Restrict where places such as body rub parlours, strip clubs and escort agencies are located.
- Potentially provide protection for indoor workers (e.g., cleanliness and safety of work place) but are difficult to enforce.
- Result in either increased or decreased police harassment, depending on the political climate.

LEGAL ASSISTANCE OR ADVICE

Below are 4 sources of legal assistance. In addition, some community and sex worker organizations can provide you with counsel and support and some have lawyers available.

Legal Aid:

Each province has its own government-funded program. Information is available at:

| Canada: www.canlaw.com/legalaid/aidoffice.htm | |
|--|--|
| Alberta | www.legalaid.ab.ca |
| British Columbia | 1-866-577-2525 |
| Manitoba | 1-800-261-2960 |
| New Brunswick | 1-506-633-6030 |
| Newfoundland | 1-709-753-7860 |
| North West Territories | 1-867-873-3130 |
| Nova Scotia | 1-902-420-6583 |
| Ontario | 1-800-668-8258 |
| Prince Edward Island | 1-902-368-6043 |
| Quebec | 1-514-864-2111 |
| Saskatchewan | 1-800-667-3764 |
| Yukon | 1-800-661-0408 (ext. 5210) |

Legal Clinics:

Universities with law schools often have clinics to help the public. Law students, supervised by lawyers, staff them. Look in the white pages for the university contact numbers.

Private Legal Clinics:

Some cities have clinics specializing in certain areas of law that will assist you for a small fee. To find these clinics look in the yellow pages under lawyers.

Private Lawyers:

Some lawyers will take your case on a pro bono (no fee) basis. If paying for a private lawyer, see if you can set-up a payment plan before hiring them. In some cases you can deduct lawyer fees on your income tax form. Consult a tax adviser to see if you qualify (see *Money Matters* for more tax information).

WHEN APPROACHED BY THE POLICE

Tips if you are approached by the police. See what works best for you:

- Stay calm, be polite, and avoid confrontation. Don't fight or swear, even if the police are rude to you.
- You have to identify yourself to the police if you are:
 - Under arrest.
 - Driving a car. You must provide your driver's license, registration and proof of insurance. Police can make you take a breath test if they think you have been drinking.
- Even when not legally required to identify yourself, the police may respond negatively if you refuse to do so. Workers have been charged with *obstruction of justice/police officer, public mischief*, etc. for refusing to identify themselves or for giving a fake name.
- It is a good idea to note badge numbers, names, licence plates, police car numbers and witnesses. If asked, police must give their name and badge number (even if you aren't arrested).
- Police can search you and your stuff and bring you in for questioning if they believe you are committing or about to commit a crime.
- If you are under arrest:
 - The police must say why and read you your rights.
 - You must provide your legal/correct name, address and date of birth.
 - Expect to be charged with a number of things. The police often over charge to increase the chances that one charge will stick.
 - The police can search you.
 - Only women officers can do a full body search on a person with female genitalia. Insist on an officer appropriate for your search.
 - You have a right to a lawyer, even if you have no money. Police must give you the local legal aid number.
 - You have the right to remain silent (except for identifying yourself). **Say nothing until your lawyer arrives.** Anything you say (confession, informing on others, etc.) may be used against you.
- You can be arrested:
 - With or without a warrant. A warrant is one or more pieces of paper that legally allows police to arrest you and/or search your home.
 - You have a right to see the warrant. It should have your name on it, a description of the charge, and be signed by a judge.
 - If the warrant involves a search of your home, you can ask to see the warrant before letting the police in. You can also follow police around and make note of what they do and what they take. Your notes could be useful if you believe they did something out of line. Don't be intimidated by them.
 - If you are formally accused of a crime.
 - If you are caught committing a crime (e.g., soliciting in a public place) a warrant is not needed.
 - If you have consumed too much alcohol or drugs, or if the police have reason to believe you are committing or about to commit a crime (a warrant is not needed).
 - If there is an outstanding warrant for your arrest.

GENERAL TIPS

Here are some general tips for helping avoid police attention. See what works best for you:

- Keep a low profile. The more visible you are, the more likely you will be a target. If you are on the street, are high, noisy, etc. you may draw more attention to yourself.
- Develop a relationship with neighbours where you work. Being sensitive to their concerns (e.g., littering, used condoms, etc.) might help reduce complaints.
- Keep up on who is being targeted. Police attention to illegal acts (e.g., lap dancing, massage parlours, street prostitution, etc.) goes up and down over time and is often tied to local politics, events, and moral panics (e.g., complaints, crack downs, etc.).
- Figure out when police change shifts. This can give you a break when you are working on the street.
- Do off-street or out-call work. Providing out-call work, even for an agency, is legal. In-call service, including full-body massage with manual

release, is illegal.

- Keep in mind that a private place is one where there is no risk of being seen.
- Avoid negotiating in a hotel lobby/hallway, strip club (especially in the main bar), on the street, etc.
- Be discreet. When advertising, be careful when giving prices and types of services.
- Be cautious when referring customers to other workers, bringing a second worker with you, or arranging for one to join you for sexual activities. You can be charged with procuring even if you aren't getting money for making the arrangements.
- Become familiar with your rights.

This brochure is meant to provide only basic legal information. It is not meant to replace legal advice. If you might be in trouble with the law contact a lawyer. See "Trials of the Trade" available at www.walnet.org and the "Triple X Guide" available at www.chezstella.org for more law information.

*Aussi disponible en français.
www.uwindsor.ca/star*

The views expressed herein do not necessarily represent the views of SSHRC, NNEWH, the official policy of Health Canada, or any of the organizations, partners, or individuals named in this brochure.

More information is available from project partners:



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E-mail: mtaylor@peelandplay.com
Web: www.livegirlproductions.com



Phone: 416-964-0150
E-mail: maggies@bellnet.ca
Web: www.maggiestoronto.org



Phone: 905-799-7700
Web: www.peelregion.ca



Phone: 514-285-8889
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