

# SAFETY, SECURITY AND THE WELL-BEING OF SEX WORKERS

*A Report Submitted to the  
House of Commons  
Subcommittee on Solicitation Laws (SSLR)*

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

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The views expressed herein do not necessarily represent the views of the Social Sciences and Humanities Research Council of Canada, the National Network on Environment and Women's Health, the official policy of Health Canada, or any of the organizations, partners, or individuals named in this report.

This report was prepared by the academic members of the STAR team along with Maggie's, Stella, the Exotic Dancers Association of Canada (EDAC), and Kara Gillies. It identifies the risks to safety and security encountered in various sectors of the sex industry, some factors that contribute to these risks and the legislation and policies that influence the work environment of those in the industry. Conditions that undermine a worker's ability to maximize safety and security on the job are identified, as are some guiding principles for improving the work environment and for education, advocacy and support.

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**SAFETY AND SECURITY REFER TO:**

- ★ Physical safety on the job
- ★ Securing a safe work environment
- ★ Rights to protection, health and well-being
- ★ Economic security

**SAFETY AND SECURITY ARE ESSENTIAL  
PREREQUISITES TO HEALTH**

## INTRODUCTION

In the early part of the 18<sup>th</sup> century, sex work<sup>1</sup> venues in Canada were predominately street- and brothel based. Since then they have become much more diverse and fluid. In Toronto, for example, sex worker organizations estimate that 5-10% of workers are street-based, divided between 'low' and 'high' strolls<sup>2</sup>, while 90-95% use hotels, apartments, houses, bars, bath houses, massage or body rub parlours, strip clubs brothels. This distribution varies in other cities but nation-wide, less than 20% of sex workers meet their clients on the street (Shaver, 1993; Lowman, 2005). The movement of sex workers between locations makes it difficult to establish stable estimates of location of work and undermines the idea that there is a strict hierarchy across the different types of work. Concerns about money, independence, the weather, and violence influence the day-to-day choices that workers make about where they will work (Benoit & Miller, 2001; Lewis et al., 2005; Jeffrey & MacDonald, forthcoming).

Sexual services may include the provision of sexual gratification using fantasy as in exotic dancing, phone or internet sex, and/or physical contact. There are a variety of ways to organize sex work. One can work independently, with colleagues, or for someone else. In addition, work may be organized on an "in-call" or an "out-call" basis. In the former case, sex workers typically have a fixed location where they receive clients. In the latter, the sex worker goes to the client's home, business, or hotel room. These two dimensions (location and organization), in conjunction with social and legal policies currently in place, interact with gender, stigma, and risk factors to affect the ability of sex workers to secure and maintain control over their environments.

The majority of sex workers are women. Counts from street-based sex work suggest that about 20% of street-based sex workers are men (Shaver, 1993) while a much smaller number identify as transsexual/transgender (TS/TG)<sup>3</sup>. Clients are overwhelmingly men in all sectors of the industry. Exceptions include a small number of women clients who seek out male or female sex workers (primarily escorts or erotic massage providers) and women who are part of a heterosexual couple seeking sexual services.

Unfortunately, public assumptions about sex work and sex workers are most often grounded in impressions of street-based prostitution, the most visible but smallest sector of the industry. Typically these impressions are based on stereotypical images of the women working the low stroll, engaging in survival sex or selling sexual services to support a drug habit. These assumptions tend to reinforce a homogeneous stereotype of sex workers as victims. Sex work venues and sex workers are much more diverse

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1 The term sex worker and sex work are terms used internationally by sex worker organizations. Nevertheless, it is important to recognize that not all people in these occupations identify themselves as sex workers.

2 The term "stroll" refers to the area (street) where street-based workers and their clients meet. The terms "high" and "low" refer to the economic and class differences between the two stroll areas.

3 To our knowledge, research with TS/TG sex workers has only been conducted with male to female (MTF) individuals.

than the street portrait indicates. The majority of sex work occurs off-street, with victimization varying by the location of work. Those working off-street and high strolls are exposed to far less victimization than those working low strolls. Recognizing this is a key component for developing policies to improve the safety and security policies of *all* sex workers.

## THE STUDY

This report is based on a study conducted between 2001 and 2004 that explored how public policies influence the working lives, conditions of work, and the health, safety, and well-being of sex workers operating in diverse venues. The findings and related recommendations were developed by members of a collaborative partnership referred to as STAR (Sex Trade Advocacy and Research) that brought together academics and community partners representing several sex worker organizations (Maggie's, Stella, EDA, and EDAC) and one health unit (Peel Health) (see Appendix B for details). The Social Science and Humanities Research Council of Canada (SSHRC) and the National Network on Environments and Women's Health (NNEWH) funded this project.

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The research involved case studies of sex work in Toronto and Montreal. Toronto and Montreal were selected for four key reasons. First, both have extensive and varied sex work industries. Second, the cities have demonstrated different attitudes toward sexuality and used different strategies to regulate and control sex work. Montreal, in comparison to Toronto, has been a city with a high degree of tolerance for diverse sexualities and public displays of sexual material. In terms of municipal regulation and policing practices, it has been both more and less progressive than Toronto. For example, in the three years following the enactment of the communication law it was more evenly applied to workers and clients in Toronto—where half the charges laid involved clients—compared to Montreal where only 30-40% involved clients. During the same period, however, Montreal applied more severe penalties to first-offender clients than first-offender sex workers (Shaver, 1996a). In the early 1980s, Montreal enacted a bylaw specifically outlawing prostitution but Toronto never did, and Montreal has had a history of using municipal loitering and jaywalking bylaws to regulate street-based prostitution in a much more aggressive manner than has Toronto (Shaver, 1985). Nevertheless, the city of Montreal worked with Stella, other advocacy groups, and residents' associations to develop *Projet Pilot* that embodied a more progressive approach toward street-based sex work. Unfortunately, residents and business owners lobbied the city and the *Projet Pilot*, designed by this collaborative partnership, was never implemented. A local committee in Toronto, consisting of city councilors, Attorney General representatives, the police, the Salvation Army and several social service agencies, took a less progressive approach and set up the first John School diversion program in Canada for clients arrested under s.213 and a similar program (*Streetlight*) was developed for sex workers.

Third, the presence (in Toronto) or absence (until recently in Montreal) of strong prostitutes' rights movements. The Canadian Organization for the Rights of Prostitutes



(CORP) began in Toronto in 1983. Their objectives included the decriminalization of prostitution and an end to the stigma associated with prostitution. Another Toronto organization, Maggie's—The Toronto Prostitutes' Community Service Project—was established and fully active by 1986. Maggie's has had an active presence in that city since then, providing support and referrals for sex workers while educating sex workers, their clients and the general public about safe(r) sex, the law and law enforcement, and sex work. Dancers' associations also filled a need. In 1996 The Exotic Dancers Alliance (EDA) was established in the Toronto region and then in 2000 The Exotic Dancers Association of Canada (EDAC) was formed. In Montreal it wasn't until 1995 that Stella, a community organization for female-identified sex workers, was founded. Since then Stella has been very active in educating sex workers, the lay public, city officials, and policy makers about various aspects of sex work. They also work closely with the Coalition for the Rights of Sex Workers, a more political arm of the organization.

Finally, the comparison between Toronto and Montreal was made possible by the presence of established academic-community partnerships.

The case studies were developed using a qualitative research design consisting of in-depth interviews and review of legal and policy documents. Such a design does not give us the ability to fully control for the social, political, and cultural differences between the cities. Being aware of them, however, helped to inform the interpretation of the commonalities and differences across the two case studies.

### *The Participants*

Interviews were conducted with women, men, and transsexual/transgender (TS/TG) workers; escorts, exotic dancers, masseuses, and street-based workers; those who conduct their work on either an in-call or out-call basis; and those who operate either independently, work for a club or parlour, or use the services of an agency. Relevant laws and policies including the Canadian *Criminal Code*, municipal regulations and bylaws, social service policies, occupational health and safety and labour codes were also reviewed.

Of the 120 workers interviewed, 62 identified as women, 40 as men and 18 as male to female TS/TG. All were over the age of 18 years. Included in the sample were workers who were single as well as those who were cohabiting or married; those with and without children; workers who restricted their income generating activity to only one sex work occupation and others who had experience in several; workers who were dependent on sex work for their total livelihood, and those who also had other sources of income (e.g., paid employment, government assistance). Interviewees were selected using theoretical or purposive sampling to maximize representation of diverse career trajectories, locations of work and work experiences. Key informants included 4 city councillors, 2 employees of the city licensing office in Toronto, 3 police officers, 10 representatives of agencies that work with or provide services to sex workers, and 9 representatives of sex worker/exotic dancer advocacy organizations.

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## *Data Analysis*

There were three stages to the analysis of the interview transcripts. In the first stage interviews were read to extract sections of transcripts that dealt with issues tied to safety and security concerns of workers. In the second, information from interviews was used to place worker concerns within the context of specific work environments and the broader social, political and economic structures. Finally, we created a template of health and safety issues related to both local and broader social contexts and reviewed material to place it within the template.

## THE REPORT

The purpose of this document is to identify some of the risks to safety and security encountered in various sectors of the sex industry, the factors contributing to these risks, and the legislation and policies that influence the work environment of women, men, and TS/TG people in the industry. *Safety and security* are used as over-arching concepts that encompass physical safety on the job, securing a safe work environment, rights to protection, health and well-being, and economic security. The conditions that undermine a worker's ability to maximize safety and security both on the job and in their personal lives are identified, as are some recommendations for improving the work environment and providing education, advocacy and support.

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It is anticipated that this document will stimulate discussion among academics, community members, and collaborative research teams. It will be of particular relevance to federal, provincial, and municipal legislators and policy makers responsible for revising policy and legislation that can make sex work safer. It will also be of interest to Public Health Units and other community organizations responsible for the delivery of programs and services to sex workers, including health promotion, health protection, and disease and injury prevention. Given that there is also a STAR report specific to Exotic Dancing<sup>4</sup>, the focus here is on the risks to workers in other locations (e.g., street-based, escort agencies, massage parlours, workers' homes, etc.).

This document is organized into 6 sections:

- **Background**  
Describes sex work in Canada set within the context of past and current debates, globalization, and recent activity among sex workers, government, and researchers.
- **Law**  
Describes the legal context of contemporary sex work in Canada. This section provides an overview of existing federal, provincial, and municipal legislation that can impact safety, security, and well-being.

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<sup>4</sup> Exotic Dancing in Ontario: Health and Safety (STAR, 2004).

- **Safety and Security**  
Describes the specific concerns expressed by sex workers in the two case studies that informed this report. These are covered under four categories: securing a safe work location, physical safety, their differential treatment with respect to their rights to protection, health and well-being, and economic security. The information in this section is based on the research cited in the reference section, on-going research of the STAR team members, and the personal experiences and observations of STAR's community partners.
- **Recommendations**  
Identifies the conditions that restrict our ability to improve the occupational safety, security, and well-being of sex workers. It outlines the principles that must guide the process of change and provides some recommendations for beginning the process.
- **References**  
Lists references used in completing this report.
- **Appendices**  
Appendix A: Resources for policy makers and service providers.  
Appendix B: Members and Mandate of Sex Trade Advocacy and Research

## BACKGROUND

The buying and selling of sexual services between consenting adults, typically referred to as prostitution, has been an issue of social and legal contention in Canada for well over 240 years. Although the debates have waxed and waned over the years and, on occasion, included changes to the *Criminal Code*, enforcement practices have always reflected cultural norms related to gender and public order as well as various forms of sexual moralism.

One of the earliest laws related to prostitution was embedded within the Nova Scotia Act of 1759. It made street solicitation a status offence of “vagrancy” for *women* unable to provide a “good account” of themselves. Disruptive or annoying behaviour was not a prerequisite for detention and once the status of streetwalker was established, conviction followed more or less automatically. The purpose of the law was to provide police with the power to get prostitutes off the streets when necessary, and to alleviate the land use conflicts and problems of public disorder associated with the operation of brothels. Laws such as the Nova Scotia Act were enacted by several provinces and municipalities prior to the passage of the *Canadian Criminal Code* in 1892.

The focus of concern changed in the mid 19<sup>th</sup> century. According to McLaren (1986), national temperance, women's rights, and church organizations created and maintained a climate in which the evils of *white slavery* were very much in the public eye. The objective of these reformers was to abolish the “social evil” of prostitution by punishing the exploiters and by rescuing women and children. More complex provisions designed to protect women from the procurer, pimp, and brothel keeper and to abolish this “social evil” were introduced at Confederation (1867) and during the years just before and after the enactment of the *Canadian Criminal Code* (1892). Although these were extended and strengthened in the decades that followed, there was no decisive change in enforcement patterns: the clients of street workers continued to fall outside the purview of the law, convictions for keepers and frequenters of bawdy houses were sporadic, and conviction rates for procuring were very small. It was the street-based women workers who were most often penalized.

The social purity movement waned in the 1920s and the sex industry carried on for the next 50 years with little public comment. There were no changes to the procuring and street prostitution sections and only minor changes to the bawdyhouse section of the *Criminal Code*.

In 1972, in response to a recommendation by the Royal Commission on the Status of Women in Canada and pressure from women's and civil liberties groups, the vagrancy law was repealed and replaced by a soliciting law which stated that, “every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.” The wording left many details unspecified. A 1978 ruling by the Supreme Court of Canada clarified that soliciting meant conduct that was “pressing and persistent” but did not address the issue of whether the section applied to both sellers and buyers, regardless of gender. According to Lowman (2005), the

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Canadian Association of Chiefs of Police and various municipal politicians felt these changes made it more difficult to regulate (control) street prostitution and increased its visibility in middle-class neighbourhoods. In contrast, the Fraser Committee concluded it was the contradictory nature of the criminal law that was at least partly responsible for creating the street prostitution problem (Special Committee on Pornography and Prostitution, 1985).

In response to the growth in the visibility of street prostitution in middle-class residential neighbourhoods in the late 1970s, the public debate over prostitution was rekindled. Citizens' groups—portraying prostitution as an insidious source of neighbourhood decay or a public nuisance in residential areas—lobbied municipal, provincial, and federal politicians to enact more effective laws to control street prostitution. Municipalities in Montreal, Calgary, Vancouver, Niagara Falls, and Halifax responded by enacting bylaws outlawing prostitution. However, in 1983 the Supreme Court of Canada declared that the Calgary bylaw was *ultra vires*<sup>5</sup>. As a result, the Calgary bylaw and those modeled after it were withdrawn (Shaver, 1985).

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In the early 1980s the Special Committee on Pornography and Prostitution, commonly known as the Fraser Committee, was struck to investigate the social and economic determinants of prostitution. Following a cross-country consultation, the Special Committee recommended a full array of social policies to address the determinants of prostitution and proposed two sets of revisions to the law. One proposed revision shifted the focus back to the public nuisance component of street-based prostitution. The other shifted the focus away from the principled moralism of the “social purity” movement and provided sex workers with a place to work without being subject to criminal offence (Special Committee on Pornography and Prostitution, 1985).

The legislation enacted by the Conservative government in 1985 did not reflect the broader social and legal concerns embodied in the Fraser Committee's recommendations, nor did it shift the focus away from the morality debates. The government simply replaced the soliciting offence with a “communicating law.” This law, still part of the *Criminal Code* (s. 213), makes it an offence to communicate, or attempt to communicate, with any person in a public place, or impede traffic, for the purposes of prostitution. “Any person” includes women and men and both sellers and buyers of sexual services. The key concern of the legislative revision seems to have been the protection of the public and public order.

Follow-up studies commissioned by the Justice Department and released in 1989 concluded that s.213 did not reduce the prevalence of street prostitution in Canadian cities. Instead, its main effect had been to systematically displace prostitution into more dangerous spaces. It also did not lead to substantial changes in enforcement patterns: they continued to be gender, class, and sector biased<sup>6</sup>.

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<sup>5</sup> Ultra vires means out of the scope of power allotted by law. In this context, it means that Calgary (and other municipalities) had acted outside their powers as municipalities when they enacted bylaws outlawing prostitution.

While two Canadian sex worker advocacy groups, BEAVER and CAFE (the Canadian Association of Burlesque Entertainers), had formed in the late 1970s, the early 1980s heralded the rise of several stronger groups in major cities across the country. The Canadian Organization for the Rights of Prostitutes (CORP) began in Toronto in 1983. Their objectives included the decriminalization of prostitution and an end to the stigma associated with prostitution. The Alliance for the Safety of Prostitutes (ASP) was founded in Vancouver in the early 1980s. Both of these groups appeared before the Fraser Committee. Another Toronto organization, Maggie's—The Toronto Prostitutes' Community Service Project—was established and fully active by 1986. Offshoots of Maggie's included the Sex Workers Alliance of Toronto (SWAT) and the Sex Workers Alliance of Vancouver (SWAV). SWAV, founded in 1994, advocates for sex workers' rights to fair wages and to working conditions that are safe, clean and healthy. Stella, a community organization in Montreal for female-identified sex workers, was founded in 1995. Stella's goals, as reflected on their website, are to provide support and information to sex-workers so that they may live in safety and with dignity; to sensitize and educate the public about sex-work and the realities faced by sex-workers; to fight discrimination against sex-workers, and to promote the decriminalization of sex-work. A year later, in 1996, dancers in the Toronto region formed the Exotic Dancers Alliance (EDA) and in 2000 the Exotic Dancers Association of Canada (EDAC) to advocate for a better quality of life and improved working conditions for dancers.

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The 1990s heralded important initiatives in three key areas. Firstly, Canadian sex worker advocacy groups increased their communication with similar organizations around the world regarding a myriad of issues including: fears related to HIV/AIDS; development of a charter of rights for sex workers; support for the migration of sex workers; education of their communities about sex work related issues; as well as initiation of strategies for decriminalizing sex work and making sex work safer<sup>7</sup>.

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Secondly, there was a marked increase in empirically grounded research about sex work from a work perspective. In addition to highlighting the diversity in the industry, this research highlighted sex workers' vulnerability to assault, substandard and unsafe work conditions, the absence of appropriate health and social services to meet their needs, their marginalization or exclusion from mainstream social and community institutions, and the strategies they use to maximize their own safety, security and well-being. In concert with the actions of sex worker advocacy groups, this research has raised awareness of both the direct and indirect impact of public policy on the work, health, and well-being of

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<sup>6</sup> With respect to s.213, for example, data indicated that: male prostitutes were under-represented in the charge statistics; more prostitutes than clients were charged in nine of the ten cities studied; sentences against sex workers were more severe than those received by clients, and clients of low-track strolls were more likely to be charged than those from high-track strolls. During this period, charges under the bawdyhouse section remained low in comparison to communicating offences even though 80-90% of prostitution is not street-based (Shaver 1996).

<sup>7</sup> These organizations include: the Network of Sex Work Projects (NSWP) based in Rio de Janeiro, the International Union of Sex Workers (IUSW) based in London, The New Zealand Prostitutes Collective (NZPC), EUROPAP, a network across 18 Western and Central European countries, the Sex Worker Education and Advocacy Taskforce (SWEAT) based in South Africa, and the Sonagachi Project based in India.

sex workers<sup>8</sup>. Some of the research supported a call for the decriminalization of sex work (e.g., Shaver, 1985; Lowman, 1998).

The third initiative was the revisiting of the issue of sex work by various levels of government. Attempts to develop new approaches typically met with little success in achieving a consensus. The Inter-governmental (Federal/Provincial/ Territorial) working group, set up in 1992 to discuss options for dealing with prostitution, including the involvement of youth, provided in-principle support for social and diversion programming, but could not agree on recommendations for changes to the law (F/P/T, 1998). Nevertheless, the procuring and living on the avails sections were amended in 1997 to discourage the exploitation of youth and trafficking for the purposes of prostitution.<sup>9</sup>

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*Various levels of government  
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sex work.*

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The Federation of Canadian Municipalities also discussed issues related to sex work at several of their meetings. Following these discussions, several municipalities set up licensing for escorts and dancers<sup>10</sup>, while others began utilizing municipal bylaws regulating loitering and jaywalking to control street-based sex workers. Montreal adopted a more progressive approach by recommending that an area of the city be set aside for street-based prostitution (*Projet Pilot*). Included in the plan were strategies to deal with residents' complaints and to connect sex workers in need of assistance with an appropriate social service agency. As mentioned earlier, residents and business owners lobbied the city and the *Projet Pilot* was never implemented.

In addition to these initiatives, a number of cities set up *John School* diversion programs for clients arrested under s.213<sup>11</sup>. The ideology underlying such programs portrayed clients as immoral or "villains" in need of rehabilitation. Fischer et al. (2002) point out that the selection of mostly lower socio-economic class and minority group clients soliciting street-based sex workers for diversion, reinforced class and sector biases. The end result of such programming is that "due process" rights of individuals are eroded since picking diversion over court is an automatic admission of guilt. Diversion programs for sex workers such as *Streetlight* in Toronto are subject to similar critiques.

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John School diversion  
programs.*

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Violence against sex workers increased dramatically in the 1990s, especially against street-based workers. Lowman & Fraser (1996) make the case that the increase

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<sup>8</sup> See the reference section at the end of this discussion paper.

<sup>9</sup> An Act to Amend the Criminal Code (Child Prostitution, Child Sex Tourism, Criminal Harassment and Female Genital Mutilation) Bill C-27, 35<sup>th</sup> Parliament, 2<sup>nd</sup> Session, in force 26 May 1997.

<sup>10</sup> See Maticka-Tyndale & Lewis (1999) and Lewis & Maticka-Tyndale (2000) for a discussion of the problems associated with such municipal bylaws.

<sup>11</sup> The program is offered to first time offenders who will have the charges dropped after successfully completing a day of "John School." The first school to be established in Canada was in Toronto in 1996. The school day includes a number of presenters, each giving a formal presentation of the risks and harms of street prostitution from their own perspective. Presenters include, among others, a vice-squad officer who talks about the violence and victimization related to prostitution, a community representative who speaks about the harmful impact of street prostitution on residential life, an ex-prostitute [ex-sex worker] who speaks about the myths and harms related to street-based prostitution, and a representative from Sex and Love Addicts Anonymous (SLAA) who talks about "sex addiction."

was a direct consequence of the communicating legislation. Not only did it displace sex workers, it set in motion a “discourse of disposal” leading to an increase in stigmatization, discrimination, and violence against sex workers (Lowman 1998).

Since 2000 there seems to have been a shift away from the notions of principled moralism and the discourse of disposal. Media attention to the large number of women from Downtown Eastside Vancouver reported missing or murdered has contributed to shifting the public discourse toward a greater focus on the safety of sex workers. Several initiatives have resulted.

The work of the Law Commission of Canada on the vulnerable worker, including the sex worker, represents one such initiative. The Commission’s report recommends revision of laws to recognize a broader range of work and to include provisions to protect the well-being of workers. In 2002, the Law Commission funded a study specifically of work in the sex industry as part of this initiative (Bruckert, Parent & Robitaille 2003).

The work being undertaken by the House of Commons Subcommittee on Solicitation Laws (SSLR), struck in February 2003, is another initiative motivated by the reports of the situation in Vancouver. Its mandate is to review the solicitation laws in order to improve the safety of sex workers and communities overall, and to recommend changes that will reduce the exploitation of and violence against sex workers.<sup>12</sup> In response to this initiative, the Canadian HIV/AIDS Legal Network held a two-day consultation with researchers, activists, sex workers and their advocacy groups to develop recommendations regarding sex work, Canadian Criminal law, and HIV/AIDS.

In another key initiative, Pivot, a Vancouver advocacy group for marginalized populations, released a report charging that the harms experienced by sex workers make the laws surrounding the criminalization of sex work unconstitutional. The report recommends the repeal of these laws in order to improve the safety of sex workers (Pivot 2004).

Notably, at their 2004 national convention, the Canadian Union of Public Employees (CUPE) passed a resolution supporting the decriminalization of sex work. They have taken the position that sex work is a form of work and called upon the Canadian Labour Congress to investigate the possibility of sex workers obtaining union representation. They have been working with the Canadian Guild of Erotic Labour and have argued that it is only fair that sex workers “get the recognition and protection given other workers, including a minimum income, social security, sanitary and healthy workplaces, freedom from discrimination, harassment, violence, and coercion, and the right to union representation” (CUPE 2004).

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<sup>12</sup> Parliament was prorogued in December 2003 and as a result the Standing Committee ceased. It was reinstated in January 2005 and heard from witnesses through to the end of May. The Canadian HIV/AIDS Legal Network is preparing a report for the committee: *Sex, work, rights: reforming the Canadian criminal laws on prostitution* (2005)



What is needed now is a full examination of the occupational health and safety challenges as they occur within all sectors of the sex industry. Recent initiatives, such as this report and those outlined above, have been focussing on this larger context and the opportunities it provides for maximizing the safety, security, and well-being of workers. It is hoped that others will follow.

## THE LAW

### SEX WORK LEGISLATION

Although sex work is not illegal in Canada, federal, provincial, and municipal legislation place a number of limitations on the way in which sex work can be conducted.

#### *Federal Legislation*

The *Criminal Code* (1985) places limitations on sex work by making it illegal to: keep, be an inmate of, or be found in a common bawdy-house (s.210); provide directions or transport someone to a bawdy-house (s.211); procure or live on the avails of prostitution (s.212); communicate in a public place for the purpose of prostitution (s.213); and purchase sexual services from someone under 18 years of age (s.212 (4)). In addition, some sex work related activities and forms of sex work (e.g., exotic dancing, street prostitution) leave workers open to charges of obscenity (s.163), engaging in an immoral theatrical performance (s.167), performing an indecent act in a public place (s.173), and public nudity (s.174). These statutes have a different impact on the various forms of sex work:

- The prohibition on public communication (s.213) most directly affects street prostitution;
- Provisions related to bawdy-houses (s.210) make in-call work and sexual contact in strip clubs or massage parlours illegal;
- The sections related to obscenity, theatrical performances, or public nudity (s.163, s.167, s.173 and s.174) are most often applied to exotic dancing; sections related to indecent acts in a public place are most often applied to exotic dancing and street-based work;
- The prohibitions against procurement and living on the avails (s.212) limit the use of strategies that make escort work safer (such as “bringing a friend along on a date” or open labour-management negotiations). Our partners also argue that such prohibitions undermine sex workers well-being because they may leave their partners or spouses open to charges if they are co-habiting.

In addition to the provisions specifically directed at sex work, HIV positive sex workers (or their clients who are HIV positive) are open to charges under section 268 of the *Criminal Code* if they deliberately deceive a sexual partner regarding their HIV status, or do not disclose that they are HIV-positive and engage in contact that has a significant risk of transmitting the virus (e.g., vaginal or anal intercourse without a condom). To date, this law has only been applied to HIV. However, the Supreme Court of Canada noted that it could be extended to other STIs that *constitute a significant risk of serious harm*.<sup>13</sup> Sex workers and clients are also open to charges under the *Controlled Drugs and Substances Act* if they are found in possession of illegal drugs.

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*Sex work is not illegal in Canada, however, Federal legislation places a number of limitations on the way in which sex work can be conducted.*

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<sup>13</sup> R. v. Cuerrier, [1998] 2 S.C.R. 371; (1998) S.C.J. No 64 (cited in Quick Law)

## *Provincial Legislation*

There are five types of provincial legislation that are applicable to sex workers: labour legislation regarding occupational health and safety, worker's compensation for injuries that occur while at work, minimum standards in employment legislation, crime victim compensation legislation, and provincial highway traffic legislation. The applicability of the first three types of legislation depends on the legal relationship involved—whether people are considered employers, employees, independent contractors, or workers under the law. Thus, the rights of sex workers depend in large part on the way in which they exercise their profession. When they are self-employed or operate as independent contractors—as many sex workers do—they generally do not qualify for protections afforded to employees and are thus excluded from Acts or sections of Acts which use the terminology of employer-employee. Even if a relationship were found to be that of employer-employee, the current criminalization of that relationship through the procuring laws would likely make employment standards difficult to apply. There are provisions in some Acts and sections of Acts allowing self-employed workers and independent contractors to pay into worker's compensation, pension plans, or for private medical insurance. Workers' compensation, for example, provides for the possibility of self-insurance if the industry itself is not excluded from coverage. To our knowledge nothing in the Quebec legislation would prevent a street-based worker from applying for coverage under section 18 of the AIAOD (Quebec compensation Act). Ontario, however, will allow self-insurance only if the industry is explicitly covered. The occupations where sex workers are found are not among the listed industries. Thus sex workers, along with a large number of other service workers (e.g., bank tellers, insurance company employees) are excluded. Even where options are available, very few sex workers are aware of them and none that we interviewed took advantage of them.

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*There are five types of provincial legislation that are applicable to sex workers.*

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A fourth type of provincial legislation does offer some protection. If we focus specifically on rights arising from situations of assault, or criminal acts causing death, injury, or material damage to the worker, some limited protection may be available for sex workers under the Crime Victim's Compensation Act.<sup>14</sup> In Quebec and Ontario, crime victims' legislation provides for state funded benefits to victims of certain crimes listed in the Act (similar legislation exists in most provinces). This list covers many of the most common causes of disability shared by sex workers such as assault, sexual assault, robbery with violence. Benefits are payable to the victim for the duration of the disability, for permanent disability, and for health care expenses, including psychotherapy. The law specifically excludes from coverage those victims who have committed a *faute lourde* precipitating the crime.<sup>15</sup> In lay terms, this means that victims of crime who are deemed to have contributed in some manner to their own injuries will not be compensated. In some cases this exclusionary clause has been applied to sex workers because of the nature of their work, while in other cases exceptions have been made, depending on the circumstances of each case. In Quebec, for example, such exceptions have been more

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<sup>14</sup> In Quebec, LIVAC: Loi sur l'indemnisation des victimes d'actes criminels. In Ontario: Compensation for Victims of Crime Act.

<sup>15</sup> Faute lourde is a complex legal concept drawn from Civil law that is broadly similar to gross negligence.

likely in the case of exotic dancers than other types of sex workers. Appeal decisions have acknowledged that dancing involves a risk of violence, but that risk is not considered inherent to the work of exotic dancing and therefore is deemed to be unpredictable. The risk of violence to street prostitutes, on the other hand, is deemed to be inherent to the work and therefore predictable (cf. Lippel et al., 2002).

Prior to 1989, sex workers in Quebec were automatically excluded from crime victim compensation because their work was understood as being linked to a criminal element of society involving drug dealers or organized crime and therefore ineligible for coverage (Lippel et al., 2002). In successful appeals made after 1989, several decisions have explicitly acknowledged that prostitution is not an illegal activity and therefore not excluded as such. However, in the majority of cases both before and after the 1989 ruling, prostitution is cited as inherently risky or dangerous. The assumption that prostitution involves inherent risk has been used as a reason to deny claims (Lippel et al., 2002). This position:

- Undermines the risk-management strategies engaged in by sex workers (e.g., checking for alternate exits, hiding their money, working with a friend, noting license plate numbers) since use of these strategies may be interpreted as recognition of the inherent risk involved in sex work and willingness to place oneself at risk. Of note is that this position is not taken with other workers such as outreach workers or street nurses who adopt similar risk-management strategies.
- Undermines sex workers' access to compensation.
- Is grounded in ignorance of the complexity of the work environment.
- Reinforces and legitimates existing stereotypes and stigmatization of sex workers.

Crime victim's legislation will need to be tested in the context of the recent interpretation of section 268 of the *Criminal Code* by the Supreme Court of Canada. The Supreme Court ruled that individuals have a legal duty to disclose their HIV-positive status to sexual partners before initiating contact that poses a significant risk of transmitting the virus (e.g., vaginal, or anal intercourse without a condom). In a 1992 Quebec case that came to our attention, the Victim's Compensation Board denied a claim made by a sex worker's surviving dependent(s) because her murder by a regular client was judged to have been provoked by her disclosure that she was HIV-positive. In the opinion of the réviséur:

[...] a person who offers sexual services while admitting to being HIV positive demonstrates a gross and complete indifference towards her own physical integrity and that of others. Furthermore, given the state of medical knowledge, revealing this fact to a client constitutes, according to the Bureau de révision, a provocation sufficient to elicit a response on the part of the person to whom this revelation is being made and who finds himself confronted with the possibility of being infected. [The victim's] behaviour lead in a probable and predictable manner to a reprisal, and

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*The assumption that prostitution involves inherent risk has been used as a reason to deny crime victim compensation claims.*

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*The Supreme Court ruled that individuals have a legal duty to disclose their HIV-positive status to sexual partners before initiating contact that poses a significant risk of transmitting the virus.*

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this reprisal, though contemptible in the face of the criminal law, is not improbable or disproportionate in regards to the *faute lourde* on the part of the victim.<sup>16</sup>

Provincial highways traffic legislation can also have an impact on or be used against street sex workers. For example Ontario's Highway Traffic Act, RSO 1990 c H8, section 177(2) stipulates that, "No person, while on the roadway, shall stop, attempt to stop or approach a motor vehicle for the purpose of offering, selling or providing any commodity or service to the driver or any other person in the motor vehicle." Section 177(1) is also relevant: "No person, while on the roadway, shall solicit a ride from the driver of a motor vehicle other than a public passenger conveyance." In Quebec, the Highway Safety Code RSQ c C24.2, section 448 makes a similar stipulation: "No pedestrian may stand on the roadway to solicit transportation or to deal with the occupant of a vehicle." In Montreal and Toronto, similar provisions have been put in place at the municipal level and police and courts may use either or both municipal or provincial provisions in regulating street-based work.

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*Provincial highways traffic legislation can also have an impact on or be used against street sex workers.*

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### ***Municipal Legislation***

Municipal bylaws also affect sex work. Zoning bylaws regulate the location of homes and businesses and restrict the type of business that can be conducted in certain areas. These are used to regulate the location of massage parlours, strip clubs, escort agencies, and in some cases prostitution strolls. When such zoning bylaws place sex work establishments in areas of a municipality where there are high crime rates, poor public transit, and little public activity, the well-being and safety of sex workers is affected.

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*Municipal bylaws also affect sex work.*

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Municipal bylaws regarding vehicular traffic that limit the interactions between a pedestrian and the occupant of a vehicle, or re-route traffic by establishing one-way streets that interfere with the activity on the stroll, also have an impact on the ability of sex workers to maintain secure and comfortable work locations. In addition, our community partners in Montreal reported that municipal bylaws regarding loitering and jaywalking were disproportionately used against sex workers, thus undermining their rights as citizens.

Although licensing schemes in Canada do not recognize sex work *per se*, some cities use licensing bylaws to regulate escort work, exotic massage or body rub, as well as exotic dancing.<sup>17</sup> Depending on the municipality involved, clubs, owners, and workers may be required to hold municipal licences. Licensing eligibility rules vary from city to city, but typically include: a minimum age; absence of a recent record of having committed various federal offences such as those related to prostitution, fraud, drug use, violence, or organized crime; and, a minimum residency requirement. Eligibility is

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<sup>16</sup> Me Lise Collin, réviseure, Bureau de révision IVAC/Civisme, 0722-250-8, 9 juin 1992, p.4.

<sup>17</sup> Although Montreal doesn't license businesses or individuals involved in exotic dancing and massage, Toronto does have bylaws pertaining to exotic massage or body-rub and exotic dancing or adult entertainment. See City of Toronto Municipal Code Chapter 545, Articles XXXII. Some other municipalities such as Windsor, Calgary, Edmonton, Winnipeg, and Victoria also license escorts and escort agencies.

established through a police background check. Licensing bylaws do not *permit* sex work to occur but may control the conditions of work by regulating whether independent work is possible and whether out-call work may be arranged from home. Licensing regulations create a set of “quasi-legitimate” sex work occupations and control who has the “legal” right to work in them by controlling who may hold a license.

Sex workers interviewed as part of this study expressed a variety of concerns related to municipal licensing:

- Bylaws imply tolerance for sex work; however, that tolerance is highly precarious since licenses may be revoked at any time and the criminal laws still apply.
- Until recently in Toronto, and continuing in municipalities outside Ontario, license fees have been discriminatory: set several times higher than fees for other municipally licensed occupations such as taxi drivers or hair dressers.<sup>18</sup>
- Limits placed on who may be licensed interfere with the ability of sex workers to select a form of work that may be safer for them (such as escort work or exotic dancing) if they have a criminal record related to prostitution.
- When police are responsible for enforcing the licensing bylaws they have access to and may use the private information provided as part of licensing in criminal investigations without having to obtain a warrant.
- Bylaws undermine the safety and comfort of workers by isolating them in zones of tolerance that are unsafe and far from amenities.
- Bylaws restrict labour-management practices, including safety measures (e.g., operators screening clients for workers) and provision of occupational health and safety information and supplies (e.g., safer sex materials) since owner/operators have to pretend there is no sex work involved.
- Inspections and enforcement of bylaws related to sex work are conducted disproportionately to other forms of licensed work.
- The limited knowledge sex workers have of bylaws and penalties for bylaw infractions make it difficult for them to defend or affirm their rights.

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*Sex workers have a variety of concerns related to municipal licensing.*

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More information on the risks and consequences of such practices is available in Lewis and Maticka-Tyndale (2000) and Maticka-Tyndale and Lewis (1999).

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<sup>18</sup> Compare old Toronto Bylaw No. 20-85 with the new code: City of Toronto Municipal Code Chapter 545, Article XXXII. See also Lowman (2005: Appendix A).

## SAFETY AND SECURITY

As indicated earlier, current estimates identify only a small proportion of the sex industry (10-20%) as street-based with the majority (80-90%) dispersed across other venues. These venues include in-call work (conducted in brothels, parlours, and independently) and out-call work (visiting the client's home, hotel, etc.). This section outlines issues associated with sex work security across the diverse venues where sex work is conducted. As defined earlier in this report, safety and security refer to physical safety on the job; securing a safe work environment; rights to protection, health and well-being; and economic security. Those factors that interfere with safety and security are addressed in this chapter. Our key findings are three-fold:

- Street-based venues hold the greatest risk;
- Perception of risk varies by sector; and,
- Diversity exists within and across work locations.

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*This section outlines issues associated with sex work security across the diverse venues where sex work is conducted.*

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### SECURING A WORK LOCATION

The ability of sex workers to secure and maintain control over their environment is affected by two dimensions of the work: the location where the work occurs or is originated (street-based, in a sex work/sex worker's establishment (in-call), or at the client's place (out-call)) and the organization of the work (working independently, with colleagues, or for someone else). In addition, gender and perceptions of stigma and risk interact with these dimensions. This section reviews the concerns that both the sex workers we interviewed and our community partners expressed with respect to their physical safety and their differential treatment when in need of protection or legal recourse.

#### *Physical Safety*

The physical safety of individuals working in the sex industry depends upon the location and organization of the work and the extent to which the work environment can be made secure. For the purposes of this report we have chosen to address these issues as they pertain to specific sectors of the sex industry: street-based work, in-call work (brothel, parlour, independent), and out-call work (visiting the client's home, hotel, or other location).

Threats to safety come from working conditions, as well as from clients, the public, and the police encountered in the working environment. Both the public and the police use harassment and violence to monitor sex workers' behaviour. Street-based workers are subject to constant attention, scrutiny, and harassment. Women and TS/TG workers in particular reported bottles, food and insults being thrown from passing cars. People living in the neighbourhoods where they worked harassed them and threatened to call the police or to assault them in their attempts to "chase them from the area." While workers in other venues were less likely to report being exposed to such campaigns, they

were still subject to what they described as inquiries and harassment by hotel staff, “nosey neighbours,” and “busy-body taxi drivers.”

Fear of homophobic and transphobic violence was a common complaint among men and TS/TG workers. The social hostility that exists toward sex workers, combined with that toward gays and those who do not fit neatly into either of the binary gender categories, create a dangerous work environment. TS/TG workers in particular reported feeling targeted for violent attacks because of their looks and the locations where they worked.

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*The social hostility that exists toward sex workers creates a dangerous work environment.*

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In contrast to street-based workers, sex workers who were operating in other venues were relatively invisible and therefore less likely to be harassed or assaulted by the public. There was no easily identifiable location where members of the public or the police could find them. The primary way to access them was by responding to an advertisement in a newspaper, the yellow pages, or on-line. Independent in-call and out-call workers, who had a list of regular clients, relied little on advertising to do their work and seemed to feel the farthest removed from the potential for harassment, violence, and victimization. They were also the workers who were the least concerned with police intrusion into their lives.

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### ***Street-based Work***

Street-based workers develop multiple strategies to reduce potential risks while at work. Many of those we interviewed reported working with a friend who watched out for them by noting the license plate number of the cars they got into. Most workers also reported using their intuition and learning to assess clients based on appearance and other screening strategies. These included checking the backseat to make sure there were no hidden passengers, checking for the presence or absence of door handles and lock release buttons, assessing the risk if more than one person was in the car, and finalizing the details of the transaction before entering the car. Others chose to restrict the location of their work and minimize their risk by avoiding isolated locations and, in some cases, cars. Some created solidarity with fellow workers by sharing information about clients, police, and events on the stroll when first arriving at work and when returning from dates. On nights when the police had a very active presence, some would go to the strip clubs to “pull dates.” Many referred to the “bad date” list in their area on a regular basis.<sup>19</sup> In spite of such precautions street-based workers interviewed as part of the research noted a number of paradoxes they faced in trying to maintain or maximize their safety while simultaneously minimizing their chances of being arrested:

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*Street-based workers develop multiple strategies to reduce potential risks while at work.*

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<sup>19</sup> In Montreal *Stella's Bulletin* (a monthly publication) includes a section entitled “Bad Tricks and Aggressors.” Stella’s list includes a description of bad clients, bad police officers (those with a reputation of being disrespectful, aggressive or abusive toward sex workers), and other perpetrators who prey on sex workers. In Toronto, Maggie’s has a “Bad Trick List” for street workers and a “Bad Call List” for indoor workers. The street list is distributed by outreach workers and through their drop-in service. The list for indoor workers is available at Maggie’s and through some of the advertising representatives at local papers where workers advertise, and circulated electronically through email contacts. Maggie’s list doesn’t distinguish between bad clients and perpetrators who prey on sex workers and their information about police is circulated informally rather than via a list.



- Work location: working in an isolated area discouraged attention from police and residents but increased risks from bad dates and other aggressors; working in a well-lit, populated area discouraged bad dates but often led to unwanted attention from police and residents; moving into strip clubs to “pull dates” reduced the risk of arrest but often increased tensions with exotic dancers.
- Client screening: screening and striking an agreement with a client were important for maximizing safety, but the time they required, as well as the time required for fellow workers to note a license plate number elevated the risk of arrest, particularly when police attention was highest (generally following residential complaints or in preparation for special events). In such conditions workers and clients were compelled to quickly leave the stroll in order to avoid arrest.
- Sharing of information: sharing information between sex workers was described as a form of solidarity. Sharing = knowledge = empowerment = access to resources and an increased ability to make choices. Thus when police practices and zoning policies made it difficult for sex workers to communicate with each other, it undermined workers’ abilities to exchange information, a key factor in this safety formula.
- Laws: the exchange of sex for money is not illegal in Canada. However, indecency laws make it unlawful to provide sexual services in a public place (such as a car), and bawdyhouse laws make most private venues illegal as well. This lack of legitimate work venues was described as contributing both to stress and risk of arrest.

The sex worker’s day is arduous (e.g., standing in high heels for 5-8 hours), the waiting period between dates is often substantial, and in winter it can be cold. Workers reported that they often relied on coffee shops, bars or other off-street locations to warm up, get rest, use a telephone or public restroom, and have a coffee, a drink or even a meal. When securing their work environment, workers often checked for telephone booths and planned easy exit routes, identified the locations of bars, restaurants, and other businesses that were open and friendly. An open and friendly establishment not only provided workers with shelter and a place to rest, they were also places where workers could meet and share information. Some establishments in Montreal have a history of providing sex workers with cupboards or shelves where they can leave their walking shoes, umbrellas, sweaters etc.<sup>20</sup> Access to such locations was important to the sex workers we interviewed as they provided them with necessary facilities, a space for “time out” from work, and contributed to maintaining their health and safety. Consequently:

- When these establishments become the centre of police attention, the working environment becomes less secure.
- When municipalities and local police identify zones of tolerance—areas where it is felt that commercial sex activity will not disturb residents or businesses—they are often located far from amenities such as transportation, restaurants, public

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*Access to coffee shops, bars and other street locations provided sex workers with necessary facilities, a space for time out from work and contributed to maintaining their health and safety.*

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<sup>20</sup> This service was also reported by sex workers and observed by researchers conducting fieldwork for Shaver in Montreal in 1991.

telephones, and other facilities, further jeopardizing the security and comfort of the working environment. It also limits opportunities for information sharing.

- When judges or police impose "boundaries" on workers' release that prohibit them from working in the area in which they were charged or arrested, this may force workers into new neighbourhoods, isolating them from friends and colleagues, regular clients (who maximize both physical and economic security) and familiar services and facilities that provide opportunities for information sharing and enhance their security.

### *Other Sex Work Venues*

While other venues are not free from threats to safety, escorts and masseuses generally considered their work environment to be safer since it eliminated the risks of negotiating on the street and the perils of unwanted public attention.

### In-Call Work

When providing sexual services on an in-call basis clients come to the worker's home or work space. Workers we interviewed said that providing services in a familiar space helped to shift the power to them. It was their space, they were familiar with the "ins" and "outs" of the space, and the client was not. Despite some of the safety advantages offered by in- and out-call venues, workers providing in-call services still raised concerns:

- When working independently from home, it could be difficult to separate private life from work life. Potential stalkers or overly eager clients could increase feelings of stress and insecurity.
- Some neighbours willingly come to a worker's aid in an emergency when clients become rude, disrespectful, or aggressive; others cause problems with the landlord or police, including threats of eviction or arrest.
- Taking in-calls may be empowering and increase the control workers exercise over their environment, but in-call work is unequivocally illegal since it contravenes s.210 (see section on Federal Legislation and the *Criminal Code* of Canada).
  - Working with colleagues increases security; however, sharing of sex-work premises may open individual workers to procuring, as well as bawdy-house charges. Multiple workers also increase business traffic, increasing the likelihood of attracting the attention of police, neighbours, or the landlord.
  - Municipal bylaws can create security challenges; for example, in the City of Toronto it is illegal for licensed Body Rub Parlours or Holistic Health Centres to lock their public-access doors. The city councillor interviewed for this project described this provision as enhancing sex workers' safety by making it easier for them to leave and facilitating police access to the site. However, police access also provides for increased surveillance and potential arrest.

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*Workers we interviewed said that providing services in a familiar space helped to shift the power to them.*

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## Out-Call Work

Much of the sex industry is based on out-call services (whether working independently, collectively, or for an agency). Out-call work can be done without violating the *Criminal Code*, but not without risk to safety or security. Many workers operating in this manner reported being especially careful to let others know where they were going, when they arrived at the client's location, and when they left. Some of the escorts we spoke with developed their own list of places around town such as tourist rooms, hotels, and motels where they felt secure, and encouraged clients to meet them in these *known* destinations instead of in a location chosen by the client. Male escorts also made use of *known* saunas and bathhouses as places to meet clients. Several risks remained, in spite of such precautionary strategies:

- It is difficult to assess the safety of the destination before hand, even when it is a known location.
- The client may not be alone when the worker arrives.
- Exit routes may not be easily identifiable or accessible.
- Workers may be filmed without their knowledge; creating the potential for conflict or violence should the camera be detected by the worker. In addition to the shock of being filmed without consent, further risks ensue for the worker if the film becomes public and the worker is "outed" to family and friends, or if the film is put on a pornographic website.

Screening clients was described as equally important across all sectors of the industry but varied by venue. Strategies developed for talking with clients on the phone or in hotel lobbies and hallways were venue-specific. Before responding to a call, for example, it was not unusual for a worker to get a call-back number and place a call to the number to ensure that the original call was actually from a client. In the process it was also important for the worker to ascertain whether the call involved an individual or a "party situation." For the most part, in-call and out-call workers were cautious when advertising their services and careful when negotiating prices and types of services. On occasion, when responding to a client's request, independent workers referred clients to another worker or arranged to have a colleague join in the sexual transactions. In addition to satisfying the client, the latter strategy provided more protection for the worker. Despite these precautions, such negotiations involved legal risks since much of what could be done to make the job safer was illegal. For example, it is unsafe to meet a client without finalizing the details and often safer to bring along a friend, yet these actions may place a worker in violation of the *Criminal Code* since:

- Making arrangements with clients in public spaces including via cell and payphones, in hotel lobbies, hallways, and bars violates section 213 of the *Criminal Code*.
- Making referrals or bringing along a friend may be seen as procuring, therefore violating section 212 of the *Criminal Code*.

In addition to being aware of how their work may violate the *Criminal Code*, escorts and masseuses must also be aware of regulations imposed by municipal bylaws that affect their work. For example, while bylaws require workers to submit to license

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*Out-call work can be done without violating the Criminal Code, but not without risk to safety and security.*

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*Screening clients was described as equally important across all sectors of the industry but varied by venue.*

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inspections, the workers interviewed in earlier research described being required to submit to being photographed or fingerprinted by the officers inspecting their licenses. Neither of these are allowed in regular license inspections and constitute a form of harassment of workers.<sup>21</sup>

Like many other working people, escorts are frequently unable or unwilling to work independently and prefer to work with or through an agency. Escorts who worked with or used the services of an agency typically relied on cell phones, agency screenings, and check-ins, and drivers to provide security protection. Nevertheless, many reported that relying on others to provide these services diminished their control over their environment, especially if the agency could not be relied on to provide appropriate protection. Escorts reported that such situations included:

- Agencies that did not adequately screen their clients.
- Agencies that did not provide a driver who would wait or return for the worker within a specific pre-determined time period.
- Undue pressure from the agency manager or owner to meet a client, or go to a destination the worker felt was unsafe.
- Limited worker-control over the pace of work. This was of particular concern to escorts in both Montreal and Toronto who spoke of spending their time in a car with a driver and two or three other escorts waiting for incoming calls.

Professional associations, unions or other forms of labour organizing could assist in maximizing worker control and security, as could the development of codes of conduct and grievance procedures. However, the criminalization of both sex work establishments and third-party involvement in sex work present barriers to such initiatives.

### *Rights to Protection*

Some sex workers we spoke with, as well as owners, managers, and others in the sex industry felt that they were treated differently when reporting their own victimization than were workers or business owners in other industries. Workers and agency owners reported being “laughed at” and told, “What did you expect, doing what you do” when seeking out police assistance. Such treatment made workers reluctant to call for assistance or to report crimes. The “it’s just a whore” mentality of some police officers and/or the belief on the part of sex workers that this would be the response to their complaints, resulted in few seeking assistance. A number of issues exacerbated this problem including:

- The limited knowledge many sex workers had of their rights or of what to do should these rights be violated. Lacking such knowledge undermined their ability to insist on respectful and appropriate responses by police.
- Even with knowledge of their rights, the marginal and quasi-criminalized status of sex work, undermined their ability to seek protection under the law.
- Police knowledge and training about the nature of sex work and its associated risks were inadequate, thus increasing the likelihood of inappropriate and disrespectful responses to those involved in the sex industry.

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*Workers and agency owners reported being “laughed at” and told, “What did you expect, doing what you do” when seeking out police assistance.*

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<sup>21</sup> For more information on the risks and consequences of such practices in municipalities that license such establishments and/or sex workers, see Maticka-Tyndale & Lewis (1999).

Others we interviewed, mostly escorts, masseuses and dancers, reported they had little or no contact with the police and felt they were not in a position to speak about police and court matters. Despite their lack of experience, these workers tended to be reluctant to call the police if they had a problem. They feared becoming the *target* of a police investigation, even when they were the complainants.

While negative stories about the police were common in our research, there were also reports of the police acting in a non-discriminatory, respectful manner. From interviews conducted with sex workers, it was clear, however, that more work is needed for them to feel they have adequate access to police services. Based on interviews with police officials, it appeared that there was only a limited commitment to improving the relationship between police services and the sex worker community

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## HEALTH AND WELL-BEING

The sex workers we interviewed emphasized the importance of maintaining their health and well-being. Many shared similar concerns related to general health care, avoiding accidents and injuries, maintaining safer sex practices, and coping with the fear of being stigmatized or assaulted. The need for health and social services varied by industry sector as did the ease with which sex workers were able to access these services. This section reviews the concerns expressed by the sex workers and raised by our community partners with respect to health and well-being.

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*The need for health and social services varied by industry sector as did the ease with which sex workers were able to access these services.*

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We interviewed 10 representatives of agencies that work with or provide services to sex workers and 9 representatives of sex worker advocacy organizations. The services provided by these agencies included general HIV/STI prevention such as condom distribution and needle exchanges; Hepatitis A and B immunization both on-site and through outreach clinics in strip clubs; the provision of basic needs such as food, housing, emergency shelters and clothing; detoxification programs; health clinics; and emergency hospital care. There are services specific to sex workers (e.g., Séro Zéro and Stella in Montreal and Maggie's and EDAC in Toronto) that provide drop-in centres for their clientele and/or organize special events specific to industry sectors or current issues. Stella in Montreal and Maggie's in Toronto also distribute literature on how to stay safe and healthy while working (see appendix A). EDAC and Peel Health work together to provide referral and outreach services to dancers. There are also services that sex workers can access, but that were not designed specifically for them (e.g., Auberge Madeleine, Passages, and the Clinique du Quartier Latin in Montreal; Meal Trans at the 519 Community Centre; temporary housing, shower facilities, and a health clinic at the 416 Drop-in Centre in Toronto).

Not all the sex workers we interviewed used the services available through these official *helping* agencies. Those who did, however, often spoke of difficulties accessing quality care. For example, the TS/TG workers we interviewed were frequent users of the services. The majority reported feeling their gender made them "unemployable," a view confirmed by their use of government pensions designed to provide permanent, long-

term support for the disabled. Housing was also a big concern for the TS/TG workers we interviewed, especially in Toronto. Many left or were thrown out of their family homes when their gender-identity was revealed. Once on the street, it was particularly difficult for them to find a safe place to stay. They needed money in order to get a place to stay but they needed a permanent address in order to be eligible to receive their disability cheques. According to one of our community partners, conditions now allow for cheques to be picked-up through drop-in centres or directly deposited and this works well for some. However, a lack of shelter space for TS/TG individuals remains a serious, persistent issue.<sup>22</sup> When there are no beds for TS/TG women in women's shelters, their only options are either going to a shelter for men, where they risk verbal, physical and sexual harassment and assault, or sleeping on the streets with its associated hazards.

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*A lack of shelter space for TS/TG individuals remains a serious, persistent issue.*

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Our findings (see Lewis et al., 2005) also indicate that health issues, particularly with respect to physical injury, was more precarious for women and TS/TG workers than for male workers and for street-based than for other workers. Those who considered themselves to be addicted to drugs and/or alcohol, or in need of emergency shelter, food, or free vaccines and condoms, for example, were more likely to be working in a street-based venue.<sup>23</sup> Their concerns regarding access to these services were often tied to the disjuncture between the operating hours of the service agencies and their working schedules. For example, some reported having to leave shelters at an early morning hour when they wanted to rest, or being unable to obtain condoms or clean syringes during the very early and very late hours of the day—when they were most likely to need them. Others expressed a need for services to be more widely dispersed throughout the city, and for more street nurses, shelters and detox centres. Some escorts and dancers we interviewed also identified a need for a greater variety of services including those related to their overall well-being. These included legal aid, job training for those wanting to leave the industry, and services for male sex workers.

In the face of this commentary it is important to recognize that many of the street-based workers and the majority of the escorts, masseuses, and dancers we interviewed had little contact with service agencies. They relied on their own doctors and the walk-in clinics and hospitals accessed by most Canadians.<sup>24</sup> Nevertheless, they joined voices with other sex workers and their advocacy groups when it came to identifying two central barriers to accessing quality health care services:

- The lack of a respectful, non-judgmental, and caring environment in which they felt comfortable.
- The difficulty in finding providers who were knowledgeable about the specific and unique health care needs of sex workers.

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*Two central barriers to accessing quality health care services are: The lack of a respectful, non-judgmental, and caring environment in which they feel comfortable and the difficulty in finding providers who were knowledgeable about the specific needs of sex workers.*

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<sup>22</sup> During the period of this study (2000-2004), only one female shelter in Toronto area had a space to accommodate male-to-female members of the TS/TG population.

<sup>23</sup> Other researchers have reported similar findings (Benoit & Miller 2001; Jackson et al. 1992).

<sup>24</sup> Shaver's studies with street-based sex workers in Montreal and Toronto showed that only 10% of those interviewed accessed such services; the rest relied on their own contacts (Fieldnotes 1993-1994).

A respectful, non-judgmental, and caring environment is a key to quality health care. Sex workers need to be completely open with health professionals about the type of work they do. Being judged or lectured about the risks of the job—even when done in a caring manner—often discourages sex workers from returning, even when they are in need of services. However, being open with health professionals about their work and using a Medicare card was considered to be at odds by several sex workers we interviewed. A male escort argued that he did not like to do both because the card gave his real name and birth date and, as he noted, “who is to know who will access this information.” Therefore, he avoided disclosing his work to health professionals and restricted his questions to his general and sexual health.

The difficulty of finding knowledgeable service providers was most often evidenced when sex workers were describing the treatment they received. For example, some women sex workers, in describing detox centres, spoke negatively of “closed therapies”/“thérapies fermées” that forced radical changes and enforced rigid social norms not adapted to their needs and that left them without any forms of social or moral support following the therapies. Others felt health professionals should be more in tune with sex workers’ vulnerability to STIs, hepatitis, cervical cancer, and other pertinent sexual health issues such as access to HIV testing when condoms break. There were a few workers who argued that many sex workers simply needed general services such as moral and mental-health support, help with child-raising, and access to general support networks, but that these were often not forthcoming because of the negative attitude to the work they were doing.

What was evidenced in this research was that it was the sex workers and representatives from the advocacy organizations who provided the most appropriate and relevant information about staying healthy and eating well while on the night shift, avoiding accidents and injuries, dealing with alcohol and drugs, and living with stigma and marginalization.<sup>25</sup> Thus, it is essential that both the *official* helping agencies and the general health delivery system adequately recognize the variety of health issues faced by sex workers and take steps to provide them with more effective and timely services.

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*The variety of health issues faced by sex workers need to be recognized and steps taken to provide them with more effective and timely services.*

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## ECONOMIC SECURITY

In addition to the importance of maintaining health, well-being and physical security, the sex workers we spoke with also emphasized the importance of economic security. The organization of their work, federal and provincial laws and policies, and municipal bylaws were identified as key issues that could have negative impacts on economic security. This section reviews the concerns expressed by the sex workers we interviewed and our community partners with respect to economic security.

There are economic costs tied to the organization of sex work in the *Criminal Code*. Although the exchange of sex for money is not illegal, many activities associated with sex

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<sup>25</sup> Refer to Appendix A for a list of resources regarding this information.

work make workers subject to arrest, detention, and criminal charges. This has economic repercussions for workers in the form of fines, lost income while under arrest or being held in detention, and costs of a legal defence.

Workers who wish to avoid such problems can choose to operate legally by working on an independent out-call basis. This is, however, one of the most costly forms of sex work. Costs include advertising, supplying transportation either by having one's own vehicle or paying a driver, and time lost to travel. Travel time affects potential income because business/calls are lost while travelling and higher fees need to be charged for out-calls to make up for out-call related expenses. In cities where workers are licensed (neither Toronto nor Montreal license escorts), there is the added cost of the license.

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*Operating legally by working on an independent out-call basis is one of the most costly forms of sex work.*

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The direct cost of obtaining a licence is not the only aspect of licensing that has an impact on economic security. Licensing opens workers to charges of tax evasion under the Income Tax Act if they do not file income tax returns. While all workers are required to file income tax returns, it is difficult for the Canada Revenue Agency (CRA) to track violations of independent workers since there is no record of their work. Licensing records and the records that licensed escort agencies and massage parlours are required to keep of the activities of their workers, however, create a public record of either an intention to work or the work actually done. These are accessible to the Canada Revenue Agency (CRA). When a licensed worker fails to file tax returns it can result in tax evasion charges under the Income Tax Act and the economic consequences of fines and/or prison time.

Licensing records are also available to the police. Since police are aware that the licensed individuals and venues are actually engaged in or facilitating the exchange of sex for money, there is the potential for police investigations and the risk of being charged with bylaw infractions and criminal code violations. Income tax files can be used in such cases to identify and seize assets, and help secure a conviction (e.g., evidence of working at a bawdyhouse). They can also be used as evidence of licensing violations.

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*Income tax files can be used to identify and seize assets and help secure a conviction (e.g., evidence of working at a bawdyhouse).*

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Besides these direct effects on economic security, the status of sex work in Canada also creates two paradoxes that have an indirect impact on economic security. First, since the organization of most forms of sex work involves violating some aspect of the *Criminal Code*, workers are discouraged from saving or investing to avoid having their savings and investments used as evidence in criminal cases. Second, the proceeds of crime legislation enables the state to seize workers' assets if they are charged with violations of the *Criminal Code* such as keeping a common bawdy house (s.210) or procuring. Seizure may include workers' investments, homes, cash, and vehicles. Thus, sex workers are unable to access the long-term economic security produced by savings and investments.

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*Sex workers are unable to access the long-term economic security produced by savings and investments.*

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The second paradox is tied to filing tax returns. All Canadian residents are required to file income tax returns and pay taxes on all income. As commented earlier, this



expectation holds for sex workers. For sex workers, however, there are distinct risks to filing tax returns. The greatest risk comes from CRA sharing their tax information with members of the criminal justice system since such information can be used as the basis for a criminal investigation. Such an investigation may result in criminal charges, arrest, imprisonment and seizure of assets. This makes it difficult to claim work related expenses that may be used as evidence in criminal investigations (e.g., rent or mortgage on a place of work that may be deemed a bawdyhouse (s.210)). Some workers attempt to deflect the attention of CRA and the criminal justice system by listing a different occupation on their tax returns. Yet doing so contravenes the tax act and may also open them to charges.

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*For sex workers there are  
distinct risks to filing tax  
returns.*

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## RECOMMENDATIONS

This section outlines guiding principles and recommendations for the modification of existing legislation to improve the safety and security of sex workers.

The research findings presented in this report illustrate the role of *Criminal Code* statutes in setting the framework within which other policies affecting sex work occupations must operate. These include programmes and policies of provinces, municipalities, police, employers, managers, agents, health units, social service and labour sectors. They also bring to the forefront the role of Canadian public policy, in particular Canadian criminal law and the criminal justice sector, in impeding the development of healthy public policy regarding sex work. Two problems emerge.

The first problem is that existing legislation relevant to the concerns that sex workers have for their safety, security, health and well-being is not uniformly or appropriately applied. In some cases, police and public attitudes and behaviour toward sex workers result in workers receiving inadequate protection under the law. In other cases it is the workers' lack of knowledge of the laws and their rights as citizens that undermine their access to protection.

The second problem is that the approach taken to sex work in the *Criminal Code* is such that strategies which many sex workers use to maximize their safety and security on the job contravene the *Code* or jeopardize their rights to crime victim's compensation. Thus, "safer" ways to conduct sex work are criminalized while many "riskier" ways are not; or, if a sex worker takes action to increase her/his safety s/he is likely to be denied victim's compensation if s/he is a victim of crime. In addition, selective enforcement of some criminal statutes such as those related to street-based work in comparison to others such as those related to other work venues, along with municipal licensing bylaws regarding exotic dancers, escorts, masseuses, agencies and parlours, exacerbate the situation. They create a two-tiered system: a generally tolerated off-street industry and an "outlawed" street-based one. To be effective, legal and social policy must address all sectors of the industry, acknowledge that sex work is a private matter between consenting adults, and allow sex work establishments to be regulated and licensed through the same mechanisms as other businesses.

Although legislative review is clearly needed, it will not suffice to improve the situation for sex workers. The role of public attitudes and opinion and the stigma attached to sex work also operate to produce a negative impact on the safety, security and well-being of sex workers. Thus, social and economic changes are also necessary to improve their safety and security. Community-based organizations are in the best position to assist in designing and implementing programmes that provide education, advocacy and support.

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*Social and economic changes are also necessary to improve sex workers safety and security.*

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## GUIDING PRINCIPLES FOR CHANGE

Our research was based on a population health promotion framework (Epp, 1986; Lalonde, 1974). This sets our focus on how the local operation of law, institutions, social organization and culture influence sex work. Given the close relationship between human rights and health and the struggles that sex workers have had in ensuring their human rights are protected, much of our focus within this project has, necessarily, turned to human rights. The guiding principles for change which we outline here echo those set out on the international agenda by the Network of Sex Work Projects (Wolffers & van Beelen, 2003; Bidman & Doezema, 1997) and the Pivot Legal Society in their report *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws* (2004). We recommend that five principles guide the development of new social, legal, and economic policies designed to improve the security, safety, and well-being of sex workers. New social, legal and economic policies must ensure that:

- Sex workers receive the protection, respect, and opportunity to fully exercise their rights under the law afforded to all Canadians.
- Sex workers, sex worker advocacy groups, and other community organizations providing services to sex workers are consulted in formulating legal and policy changes that affect their lives.
- All sectors of the sex industry (not just street-based work) are considered in formulating changes in law and policy.
- Legal, social and economic reforms undertaken at the federal, provincial, and municipal levels of government are gender-neutral and attentive to socio-economic differences.
- Systems are developed to facilitate the drafting of municipal, provincial, and federal legislation to ensure they operate in a complementary rather than contradictory manner.

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*We recommend that five principles guide the development of new social, legal, and economic policies designed to improve the security, safety, and well-being of sex workers.*

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## RECOMMENDATIONS FROM OTHER CANADIAN RESEARCH INITIATIVES

Our research was not designed to evaluate the merits of different legal approaches to sex work. However, the problems associated with the current legal structure are clearly evident in our data. Decriminalization, and the attendant possibilities of approaching prostitution as work, would provide sex workers with the same types of protections to their safety and security available to other workers. Five initiatives—described earlier in this report—each of which recommended decriminalization, are worth returning to here.

The Fraser Committee Report (1985) argued that sex workers were responsible adults who should be given leeway to conduct their business in privacy and dignity. The report recommended a liberalization of the bawdyhouse section of the criminal code (s.210) making it possible for two adults to use their residence for the “purpose of prostitution” and for small licensed and regulated “prostitution establishments” to operate. This report represents the first significant attempt in Canada to develop a comprehensive analysis of, and strategy for, the regulation of sex work.

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*Decriminalization, and the attendant possibilities of approaching prostitution as work, would provide sex workers with the same types of protections as other workers.*

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John Lowman (1998), in concluding his analysis of prostitution law reform in Canada, argued that we should “repeal all the prostitution laws and start over.” He argued then, and just recently before the House of Commons Subcommittee on Solicitation Laws (SSLR) (2005), that we need to get on with the more important business of harm prevention and harm reduction by funding the social service, economic, education, and other programs that might make a difference.

In another key initiative, Pivot (2004), produced a report based on affidavits from sex workers. The report argued that the affidavits provided evidence that the harms experienced by sex workers under current legislation made the laws unconstitutional. Law reform is therefore imperative because “the laws violate the basic human rights of sex workers.” Thus the report demands the repeal of criminal laws surrounding sex work as an essential step to improving the safety of sex workers.<sup>26</sup>

It is also clear from the findings of the Law Commission of Canada that the law should recognize a broader range of work (including sex work) and provide greater support to promote the well-being of all those who engage in work. This position is also reflected in the position taken by the Canadian Union of Public Employees (CUPE): sex work is a form of work. Thus, it is only fair that sex workers “get the recognition and protection given other workers, including a minimum income, social security, sanitary and healthy workplaces, freedom from discrimination, harassment, violence, and coercion, and the right to union representation.” As mentioned earlier, CUPE has called upon the Canadian Labour Congress to investigate the possibility of sex workers getting union representation.

Our findings add to this research by identifying the numerous ways in which legislation at all three levels of government reduce the ability of sex workers to manage their own safety, security and well-being, reinforce and maintain the stigma and marginalization of sex workers, and undermine the recognition of sex work as a business.

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*Legislation at all three levels of government reduces the ability of sex workers to manage their own safety, security and well-being.*

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## FEDERAL LEGISLATION

As a means to start the process toward change in federal legislation, we recommend that the SSLR expand its focus to examine all of the *Criminal Code* statutes pertaining to sex work (not just those pertaining to “communication” as outlined in Section 213).<sup>27</sup> Amendments and changes to all sections should be designed to reduce the exploitation of and violence against sex workers and improve their over-all safety, security, and well-being.

To this end, in addition to using the *Guiding Principles* outlined above, we recommend that the Standing Committee examine the implications of, and ultimately

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<sup>26</sup> Specifically they recommend the repeal of Sections 210, 211, 213 and only certain subsections of Section 212.

<sup>27</sup> The original motion M-192 focused on solicitation. It is clear from the Parliamentary debate over M-192 and in the SSLR hearings that the Subcommittee’s mandate includes a review of Sections 210, 211 and 212 of the Criminal Code, not just Section 213.

recommend the repeal of the following sections of the *Criminal Code*:

- section 210 that criminalizes in-call work;
- section 211 that criminalizes providing directions or transporting someone to a bawdy house;
- section 212 that makes it difficult for a worker to increase security by being accompanied by a friend on a date or working for or with other people as well as maintaining secure personal relationships;
- section 213 that criminalizes all street-based work.

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*Some existing laws related to prostitution must be repealed and others modified.*

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We also recommend modification of:

- sections 173 (engaging in indecent acts) and 174 (public nudity) that have resulted in an expansive interpretation of “public space,” to include areas that are well out of the public “eye” and that would normally be considered private.

Sex workers who are the victims of crime should not be held responsible for their victimization because of the actions they take to protect themselves or because of the nature of their work. Thus, the Standing Committee should also examine the limited application of existing laws that could well be used to protect sex workers more effectively from many of the dangers they face. Uniform application of the following laws to all Canadians would also bolster efforts to eliminate the stigma and marginalization typical of public, police, and court responses to sex workers.

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*The Standing Committee should examine the limited application of existing laws.*

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- criminal harassment (s. 264);
- uttering threats (264.1);
- assault (s. 265);
- assault with a weapon or causing bodily harm (s. 267);
- aggravated assault (268);
- sexual assault (s. 271);
- sexual assault with a weapon, threats to a third party or causing bodily harm (s. 272);
- aggravated sexual assault (s. 273);
- forcible confinement (s. 279(2));
- kidnapping (s. 279);
- theft (s. 322(1));
- robbery (s. 343);
- extortion (346(1));
- intimidation (s. 423(1)).

This would make it easier for sex workers to come forward with a complaint.

Consideration needs to be given to how legislation and proposed legislative changes pertaining to sex work interface with legislation and policy at the provincial and municipal level. Extra effort needs to be made to ensure that convergence between all levels of government is maximized and that proposed changes to federal law do not lead to a situation where provincial or municipal governments may impose regulations which continue to threaten the safety, security and well-being of sex workers.

## PROVINCIAL LEGISLATION

Provincial labour and workplace legislation has limited application to sex work and sex workers. There are several reasons for this. As mentioned earlier, when sex workers are self-employed or operate as independent contractors (as many do), they generally do not qualify for protections afforded to employees. Thus they are excluded from Acts or sections of Acts that use the terminology of employer-employee. Even if a relationship were found to be that of employer-employee, the current criminalization of that relationship through the procuring laws would likely make employment standards difficult to apply. Where provisions do exist allowing independent workers and self-employed contractors to pay into worker's compensation and pension plans, sex workers are either unaware of them or do not take advantage of them. However, the main obstacle to sex workers benefiting from provincial legislation is the limitation on the ability of sex workers to choose where they work, with whom they work, or to be open about their work activities because of the criminal law.

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*Criminal law interfaces with provincial legislation to limit the ability of sex workers to choose where they work, with whom they work, or to be open about their work activities.*

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When reviewing provincial legislation with the aim to arrive at healthy, rights-based policies, we recommend the development of legislation and policies that:

- Acknowledge sex work as work. This would facilitate the use of labour and work-place legislation to improve the work conditions and workplace benefits of sex workers.
- Facilitate systems of sex-seller self-employment, cooperatives, or non-profit management systems in appropriate locations.
- Ensure the sex industry operates under the same health and safety rules as other similar businesses.
- Ensure that the sex industry not be subject to punitive rules merely because sex is the business.

New Zealand leads the way in recognizing sex work as work. When their Prostitution Reform Bill was being considered, Justice and Electoral Select Committee members recommended that health and safety guidelines be developed for the sex industry. The main agency responsible for workplace health and safety, the Department of Labour's Occupational Safety and Health Service (OSH), took the lead in developing the document: *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (OSH, 2004). The Prostitution Reform bill passed into law in June 2003. Since then "the sex industry operates under the same health and safety rules as any other New Zealand industry".<sup>28</sup> The Guide—based on consultations with stakeholders, the New Zealand Prostitutes Collective (NZPC), self-employed sex workers and owners/operators of commercial sex establishments, the Ministry of Health, police and other government organizations—covers a broad range of topics and is relevant to all New Zealand sex workers, regardless of their location or mode of work (i.e., whether employers, employees, employee organizations, self-employed persons, persons in control of the work place, and sellers and suppliers of plant [tools, equipment] for use in the work

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*New Zealand leads the way in recognizing sex work as work.*

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<sup>28</sup> Cited in a *Press Release* on July 29, 2004. Both the press release and the guide are available on the OSH website: <http://www.osh.dol.govt.nz/order/catalogue/235.shtml>

place). The New Zealand model should be given serious consideration for its applicability to sex work in Canada.

Another provincial based policy that must be reviewed is Crime Victim's Legislation. Changes are needed to this legislation to ensure that sex workers are not penalized for using risk-management strategies appropriate to their work. When reviewing the legislation, consideration should be given to

- The specific conditions of the work environment, differentiating between predictable risks and appropriate precautions, similar to those taken by other workers (e.g., health and social service workers who make home visits), and gross negligence.
- The way in which the Supreme Court's interpretation of section 268 of the *Criminal Code*—obliging individuals to disclose their HIV-positive status before having contact that presents a significant risk of transmitting the virus—interfaces with the notion of *faute lourde*.

## MUNICIPAL BYLAWS

There are variations in current licensing practices in different parts of the country as well as differences in opinion about whether bylaws licensing certain forms of sex work have a positive or negative impact on sex workers. When reviewing licensing bylaws, municipalities must find a balance between the two positions and ensure that the legislation adopted enhances the ability of sex workers (licensed or not) to conduct their work as safely and securely as possible. So as not to create any undue conflict, every effort should be made to facilitate concordance between municipal bylaws, provincial statutes, and federal acts.<sup>29</sup>

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*Every effort should be made to facilitate concordance between municipal bylaws, provincial statutes, and federal acts.*

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When reviewing municipal zoning bylaws, consideration should be given to the issue of whether existing or proposed bylaws or bylaw changes undermine risk-management strategies already adopted by the sex worker community or whether they create quasi-criminal or punitive regimes through the use of fines or penalties that may conflict with a provincial or federal Act or regulation already in place. In order to arrive at healthy municipal policies, changes should result in bylaws that:

- Avoid interfering with sex workers' ability to properly screen their clients;
- Ensure that zones of tolerance for street-based workers (if adopted) are in safe spaces, close to amenities and services;
- Do not undermine the risk-management strategies used by workers, regardless of location;
- Are applied in a non-discriminatory manner.

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<sup>29</sup> A municipal bylaw is without effect to the extent of any conflict with provincial or federal acts (Ontario Municipal Act, 2001 (Conflicts: Section 14 (a) & (b))).

## EDUCATION, SUPPORT AND ADVOCACY

Issues of risk and security on the job, as well as experiences of stigma and discrimination, vary by the gender and the social location and organization of sex work. Advocacy, support and education are essential to facilitating necessary change. Targets for education about the factors that increase or decrease risks to the safety and security of sex workers include:

- Legislators and law makers at the federal, provincial and municipal level.
- Police and others charged with law and bylaw enforcement.
- Sex workers and their organizations.
- The public.

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*Advocacy, support and education are essential to facilitating necessary change.*

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Sex worker organizations have been actively involved in such education and also in providing support to workers. Such organizations are in the best position to design and help implement educational strategies specific to the needs of sex workers.

The increased knowledge and understanding of the sources of risk for Canadian sex workers gained from this research has led to the following four recommendations. Each relates to the provision of education, information and support that could help increase on-the-job safety and security. It is strongly recommended that sex workers and sex worker organizations be included in:

- Providing education and training for criminal justice personnel and legislators at all three levels of government regarding all sectors of the sex trade and the correlation between risk-management techniques and safer work venues.
- Educating police on how best to provide police services to marginalized populations such as sex workers.
- Introducing police/community liaisons to facilitate better police/sex worker relations.
- Developing public education campaigns designed to dispel myths and misunderstandings about sex work and sex workers.

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*Sex workers and sex worker organizations must be included in the development of education and training tools for legislators, police and the public.*

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For legislation and bylaws to be effective, workers must be well informed about the laws related to their job and to employment more generally. It is recommended that:

- All levels of government make funding available for the further development of information brochures and seminars through local sex worker organizations designed to educate sex workers about: the laws related to their work; how to protect themselves from legal, health and safety risks; economic security issues; their rights as citizens; and options available to them when their rights are violated.
- All levels of government make funding available to sex workers' organizations to educate, support, and advocate for sex work and sex workers.
- All levels of government provide programs and support for sex workers wanting alternative or supplementary jobs.

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*Legislation and bylaws must inform sex workers about the laws related to their job and employment more generally.*

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## CONCLUSIONS

The sex work industry continues to flourish around the world, even in countries with policies designed to curtail or eliminate it. Rather than achieving the specific objective, such policies tend to have a negative impact on the lives of sex workers by curtailing their ability to manage their own safety, security and well-being; by reinforcing and maintaining their stigma and marginalization; and by undermining the recognition of sex work as work or a business. In Canada, criminal law and the criminal justice sector impede the development of healthy public policy regarding sex work. Existing legislation is not uniformly or adequately applied to address the needs and concerns of all sex workers in all sectors of the industry. It also makes it difficult for sex workers to take actions to increase their safety and security on the job. To be effective, legal and social policy should:

- Address all sectors of the industry.
- Acknowledge that sex work is a private matter between consenting adults.
- Allow sex work establishments to be regulated (and potentially licensed) through the same mechanisms as other businesses.
- Regulate sex worker establishments without imposing excessive controls that undermine rights and security; deny access to large numbers of workers.

Legislative review is one area in need of attention. Legislative change in and of itself, however, will not be sufficient to improve the situation for sex workers. Such changes must be combined with social policy changes, including education, support and advocacy, as other factors (e.g., public attitudes and opinion; the stigma attached to sex work) also have a negative impact on sex workers' lives. Community-based organizations are in the best position to assist in designing and implementing programmes that provide education, advocacy and support.

The goal of this report is to motivate policy makers to correct the injustice inherent in the situation faced by Canadian sex workers. The evidence from this and other research in the area is clear on what steps need to be taken to improve the safety, security, and well-being of these workers. It is now the responsibility of the Ministers of the various levels of government to take appropriate action.

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*In Canada, Criminal law and the criminal justice sector impede the development of healthy public policy regarding sex work.*

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*Legislative change must be combined with social policy changes, including education, support and advocacy.*

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*The goal of this report is to motivate policy makers to correct the injustice inherent in the situation faced by Canadian sex workers.*

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R. v. Cuerruer, (1998) S.C.J. No 64 (cited in Quick Law)

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*City of Toronto Municipal Code Chapter 545. Licensing Article XXXII*. (June 20, 2002).

*Compensation for Victims of Crime Act*, R.S.O. 1990, c. 24

*Criminal Code*, R.S.C., 1985, c. C-46

## APPENDIX A: RESOURCES

There are a number of information resources available to sex workers that provide information on: the law; municipal bylaws; their rights; how to reduce the chance of coming into conflict with the law and law enforcement officials; what to do when you do come into conflict with the law; sources of legal assistance; and managing personal security on the job. These will also be useful for law and policy makers interested in improving the conditions under which sex workers operate. They include:

- Sex Trade Advocacy and Research (STAR) Brochures in French and English (available at [www.uwindsor.ca/star](http://www.uwindsor.ca/star))
  - *Dancing Matters*
  - *Health Matters*
  - *Law Matters*
  - *Money Matters*
  - *Security Matters*
- *Trials of the Trade* (a Maggie's document available at [www.walnet.org](http://www.walnet.org))
- *XXX Guide* (a Stella document available in French and English at [www.chezstella.org](http://www.chezstella.org))

### OTHER USEFUL RESOURCES INCLUDE:

Benoit, C. & Millar, A. (2001). *Dispelling myths and understanding realities: Working conditions, health status, and exiting experiences of sex workers*. BC, Canada: Prostitutes, Education, Empowerment and Resource Society (PEERS). Available at: [www.peers.bc.ca](http://www.peers.bc.ca)

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Network of Sex Work Projects (NWSP) (1997). *Making sex work safe: A practical guide for programme managers, field workers and policy makers*. London, UK: Network of Sex Work Projects. Available at: [www.nwsp.org/](http://www.nwsp.org/)

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## APPENDIX B: SEX TRADE ADVOCACY AND RESEARCH (STAR)

[www.uwindsor.ca/star](http://www.uwindsor.ca/star)

### WHO WE ARE:

Community partners, researchers and students working together to improve the health, safety and well-being of sex workers through research, information, programmes and policies.

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[www.exoticdancerscanada.com](http://www.exoticdancerscanada.com)

Maggie's  
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