



Brief to the Standing Senate Committee on Legal and Constitutional
Affairs regarding its study of Bill C-36, the *Protection of
Communities and Exploited Persons Act*

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ASTT(e)Q : Who we are

ASTT(e)Q (Action Santé Travesti(e)s et Transsexuel(le)s du Québec) is a project of CACTUS Montréal, a community organization working to improve the health and safety of injecting and inhaling drug users, sex workers and trans people. Founded in 1998, ASTT(e)Q aims to promote the health and well-being of trans people through peer support and advocacy, education and outreach, and community empowerment and mobilization. We understand the health of trans people and our communities to be interrelated to economic and social inequalities, which have resulted in trans people experiencing disproportionate rates of poverty, un(der)employment, precarious housing, criminalization and violence. We believe in the right to self-determine our gender identity and gender expression free from coercion, violence and discrimination. We advocate for access to health care that will meet the many needs of our diverse communities, while working collectively to build supportive, healthy and resilient communities.

Who we work with

ASTT(e)Q works with a wide range of trans people, some of whom are sex workers. Many of the people who use our services moved to Montreal due to the absence of services adapted to the needs of trans people in their home town or region, or because their life was at risk there. Unfortunately, ignorance and fear of trans people persists in Montreal and Canada more broadly. People who use our services are regularly barred access to housing, employment and social and health services because they are trans. They are harassed on the street. They face administrative and economic barriers that prevent them from completing their gender transition on a social, physical and/or legal level. In such a context of precarity and repeated rejection on the labour market, many trans people make a conscious choice to do sex work to earn a living and/or to complete their transition process.

ASTT(e)Q reaches trans sex workers through activities in our space, as well as through outreach work in the street, in bars and in massage parlours. We provide sex workers with safer-sex supplies (roughly 23000 condoms distributed in 2013), tips and referrals to appropriate services on request, and information about how sex workers and their clients can stay healthy.

How Bill C-36 would harm trans sex workers if adopted

ASTT(e)Q considers that sex workers have the right to work in safety and with dignity. If adopted, Bill C-36 would directly harm trans people who work in the sex industry. We address the specific elements of the Bill and their expected impact in the following pages.

Provision 213.1 “Communicating to provide sexual services for consideration”

This section of the law makes it a crime to communicate “with any person – for the purpose of offering or providing sexual services for consideration – in a public place, or in any place open to public view, that is or next to a place where persons under the age of 18 can reasonably be expected to be present”.

Impact on trans sex workers: Due to poverty, transphobia, racism and/or language barriers that make it difficult for them to access indoor spaces to work in, many trans sex workers continue to work on the street. This element of the law would force them to work in more isolated areas where they would be at greater risk of violent attacks by clients and other individuals motivated by transphobia or hatred of sex workers. Trans sex workers are particularly vulnerable to harassment and violence on the street because they are often visible as trans people, and because many members of the general public assume that all trans women are sex workers. Many trans women experience harassment by law enforcement officers on the street accusing them of practicing sex work. Banishing sex workers to uninhabited areas would further isolate trans individuals who are already likely to be isolated due to discrimination, transphobia, poverty, and language or cultural barriers. It also feeds the stigmatization of sex workers and indirectly of trans people, by sending the message that they are not suitable to be seen by the general public or to occupy public space.

Provision 286.1(1) Obtaining Sexual Services for Consideration

This section of the bill criminalizes anyone who purchases or communicates in order to obtain sexual services.

Impact on trans sex workers: By criminalizing the purchase of sexual services, this provision will make it more difficult for trans sex workers to reach their clients, thus forcing them to take greater risks in seeking out and accepting clients, and hampering their ability to collect information that would allow them to screen for bad clients. The criminalization of clients would make clients far more reluctant to help a sex worker in a situation of violence or coercion for fear of arrest. This provision will further isolate trans sex workers, who tend to be more isolated and to have restricted access to support services to begin with due to ignorance and transphobia.

Provision 286.2 “Material Benefit from Sexual Services”

This provision criminalizes those who gain material benefits from sex work.

Impact on trans sex workers: This element will prevent trans sex workers from working together to establish safer working conditions. As stated above, trans sex workers tend to be more isolated and are visible targets for violence. Trans sex workers rely on each other to share tips and information to identify bad clients and means of protecting oneself from them, tips on how to negotiate consent and safer sex practices, as well as information on where to access trans-inclusive health and social services. By criminalizing collaboration amongst workers in the sex industry, this provision will weaken support networks and ties that trans sex workers have established to help ensure their safety, health and dignity.

Provision 286.4 Advertising Sexual Services

This provision proposes to ban any advertisement of sexual services. As indicated above, the ban on communicating in public in spaces where minors might be present makes working on the street more difficult and dangerous for sex workers. This new element of the law would make it much more difficult for sex workers to work safely indoors as well, since it criminalizes anyone who operates a platform through which sexual services are advertized, such as newspapers, web-sites and phone services.

Impact on trans sex workers: This element could have a huge impact on trans sex workers who rely on advertising on the internet and in newspapers to reach their clients. By making it more difficult to reach clients, the provision will force trans sex workers to take greater risks in reaching and screening clients and in negotiating conditions with them. If trans sex workers resort to using web sites that are hosted in other countries to advertise their services in response to this ban, their ability to use on-line forums to share site-specific advice and information concerning bad clients and trans-specific resources would be affected. Once again, this provision would further increase the isolation of trans sex workers and put them at greater risk of violence.

Conclusions and recommendations

By proposing to criminalize clients, third parties and advertising, and to banish outdoor sex work to uninhabited areas, this bill further stigmatizes sex workers and indirectly, trans people, feeding hatred and misunderstanding. Though Bill C-36 aims to protect vulnerable people from exploitation and violence, it in fact directly attacks those individuals who are most vulnerable. If adopted as law, the proposed bill C-36 would make trans sex workers more vulnerable to violence, discrimination and isolation by pushing them further into the margins of society and criminalizing modes of communication and support that they might otherwise use to help them stay safe and healthy.

If there is a sincere desire to address violence experienced by sex workers, it is essential that they be invited to the table to discuss and help develop programs and solutions that actually take their realities and needs into consideration. More effective means of addressing violence and exploitation would include investment in affordable housing, education of health-care and social service providers so that they can meet the basic needs of trans people, and dismantling the administrative and legal obstacles that prevent trans people from living their lives in harmony with their gender identity.

Trans sex workers are not victims. They are courageous individuals who manage to live their lives and to express their gender identity despite significant pressures to do otherwise.