

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300

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August 1, 2014

Ms. Shaila Anwar
Committee Clerk, Senate Committee is the Legal and
Constitutional Affairs Committee
lcjc@sen.parl.gc.ca

Prostitution Bill a Step in the Wrong Direction

Dear Ms. Anwar,

In June, Justice Minister Peter MacKay presented an anti-prostitution bill that he claimed was not anti-prostitute. According to the Minister, the target of the Protection of Communities and Exploited Person Act, was “the perpetrators, the perverts, [and] the pimps.” In reality, sex workers, if this bill becomes law, face arrest, violence and violations of their human rights, including security of person and freedom of expression.

The proposed law would criminalize communicating for the purposes of selling sexual services in public, buying sexual services, advertising sexual services and benefitting from the sale of sexual services. These provisions, which MacKay has suggested will protect sex workers, will, in fact, do the opposite. Criminalizing communication will result in sex workers being arrested, especially women working on the street, who are disproportionately Aboriginal, poor, and transgender. Criminalizing communication also severely limits sex workers’ abilities to take life-saving measures such as screening clients. Last year in a landmark ruling, the Supreme Court of Canada unanimously recognized this concern, stating that for sex workers on the street “communication is an essential tool that can decrease risk.”

Criminalizing clients will also harm sex workers by forcing them to work in more dangerous and isolated locations to find clients seeking to avoid arrest. In 2012, the Missing Women Commission of Inquiry, which although rightly criticized for procedural inadequacies, forcefully described the consequences resulting from these laws: “The fear of police harassment or arrest leads prostitutes to rush transactions, jump into cars quickly, and move to dark or more isolated areas. The rushed transaction denies the sex worker the time to innately sense whether a client is a ‘bad trick,’ and moving to a darker, isolated area puts her in a more dangerous environment.”

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Criminalizing clients will also make it impossible to open safe refuges for sex workers on the street to take clients to, such as Grandma's House, opened in the Downtown Eastside of Vancouver by the Aboriginal sex worker Jamie-Lee Hamilton at the height of the Pickton serial murders. As the Supreme Court again unanimously recognized: "For some prostitutes, particularly those who are destitute, safe houses such as Grandma's House may be critical."

The conservative government purports to draw inspiration from the "Nordic model" which seeks to criminalize clients but not sex workers. Yet the model is not as successful as the government contends and international health and human rights agencies and experts, including UNAIDS, the World Health Organization (WHO), and the UN's expert on Health, have all concluded that criminalizing sex work and the activities surrounding sex work threaten sex workers' health and rights. In December 2012, UNAIDS, WHO and the UN Population Fund called for governments to work toward decriminalizing sex work and removing unjust laws and regulations against sex workers.

Last year Human Rights Watch adopted a similar policy in regards to adult, consensual sex, favoring the decriminalization of sex work. We came to this decision after conducting decades of research on abuses against sex workers in more than a dozen countries around the world, including in the United States, and working closely with sex worker organizations and their representatives.

We found that where sex work was criminalized, sex workers are reluctant to report violence and abuse. After looking at evidence from around the world, we concluded that criminalizing other aspects of sex work can also lead to harm, for example when the law restricts the ability of sex workers to communicate with clients, to work in a safe indoor setting and to hire or engage others to ensure a safe work environment.

To be sure, decriminalizing sex work would not eliminate all of the risks of violence and exploitation that sex workers may face. However, decriminalization allows sex workers to organize to prevent and address human rights abuses, including trafficking, and to obtain justice. New Zealand, where sex work was decriminalized in 2003, is a helpful reference. Since the law was reformed, authorities have not detected a single case of trafficking in the sex trade despite multiple investigations. Research has found that sex workers' ability to refuse clients and to report abuse to police had greatly increased under decriminalization.

Far from assisting "exploited persons" or "protecting communities," this bill is a step backward for human rights, and especially women's rights, in Canada.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Amon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph Amon,
Director, Health and Human Rights Division
Human Rights Watch