

Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation

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Sex Work Law Reform

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In the *Bedford* decision in December 2013, the SCC held that the living on the avails provision violates sex workers' constitutionally protected right to security of the person. The SCC ruled that that the law is overbroad in that:

The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (such as controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards).ⁱ

Section 212(1)(j) of the Criminal Code targets the third parties that sex workers work with, hire and work for. Anyone who provides goods or services directly related to, or whose income is contingent on, a sex worker's work. These individuals are often discussed without a context of exploitation, and not within the context of the services or help they provide to sex workers.

These third parties are often referred to as 'pimps'. This label does not, however, reflect the range of relationships sex workers have with those they work for, with or hire including personal assistants, drivers, security, web designers, agents, and worksite providers as well as owners, managers and receptionists of outcall agencies (e.g., escort agencies) or in-call establishments (e.g., brothels and massage parlours).

Many female sex workers are also third parties. Some run small brothels where they and a few colleagues provide services. Others help out at their place of employment (e.g., answering the phone and booking calls for an escort agency, locking up at the end of a night in a massage parlour). These women are vulnerable to being criminalized under laws that make working with third parties a crime.

Laws Against Third Parties:

Section 212(1)(j) is intended to protect sex workers from harm and exploitation; however, in practice the laws are detrimental to sex workers because they decrease safety and security, deny sex workers access to labour protection and criminal justice redress and increasing the likelihood of arrest and conviction:

- Criminalization of third parties means street-based sex workers cannot hire third parties to provide services that increase their safety (for example paying a friend to record license plate numbers of clients, and or acting as security at the outdoor location where they provide services). It also undermines independent indoor sex workers' ability to hire drivers, security persons and assistants.
- Criminalization prevents the use of safety and security mechanisms that protect sex workers, such as when agencies or third parties screen clients, produce bad date lists, collect and verify of client information, match clients to workers, provide a deterring presence, on-site or on-call security persons and drivers. This was noted by *Supreme Court Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paragraph 142.

ⁱ <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

- Some sex workers do not have the resources to work as indoor independents (which necessitates stable housing, credit in order to place advertisements and rent hotel rooms, reliable access to the Internet to answer emails etc.). For these sex workers, working for a third party at an agency or incall establishment is the only alternative to working on the street. Indoor sex work is considered more desirable for many sex workers because it is generally safer, there is a reduced risk of being criminalized and they are less vulnerable to social judgment and stigmatization.
- Criminalization limits sex workers' access to the justice system. Sex workers are hesitant to report victimization to the police when they fear that they and/or their employer may be charged with prostitution-related offences. Of course, if the acts are not reported, the aggressors will not be held to account. This not only means that sex workers are denied access to criminal justice redress but also that predators may continue to prey on sex workers.
- Criminalization pushes the sex industry into the shadows where labour exploitation can flourish. At the same time, it denies sex workers the ability to resolve workplace conflicts and unfair labour practices.
- When clients and/or third parties are criminalized, sex workers are de facto excluded from Employment Standards Legislation. Unlike other workers, they have no recourse when they are wrongfully dismissed or discriminated against at work. Nor can they draw on Occupational Health and Safety Legislation to pressure employers to respect workplace health and safety standards.

Laws Against Exploitation

In addition to being harmful, s. 212(1)(j) is also redundant:

There are adequate general Criminal Code provisions to criminalize and prohibit the types of egregious behaviours that are, in some cases, associated with 'pimping' including the prohibition of kidnapping and forcible confinement (CC s. 279), organized crime (CC s. 467.11- 467.13), physical assault (CC s. 265, 267, 268); sexual assault (sections 271, 272, 273), intimidation (CC s. 423), extortion (CC s. 346); theft (CC s. 322), harassment (CC s. 264) and human trafficking (CC s. 279.01).

Almost thirty years ago the Fraser Committee (1985) drew attention to the outdated and stereotypical assumptions about sex workers that are embedded in CC s. 212(1):

Prostitution is seen as something extraordinary which requires unique legislation. Laws which are designed to control activities such as extortion, fraud, blackmail or intimidation in normal businesses, are seen to be inadequate with respect to prostitution. [...] This legislation reflects the thinking of earlier generations which saw prostitution and related activities as immoral, the people engaged in these activities as truly depraved or of sub-normal intelligence, and always, the danger of innocent women being seduced into the business. (p. 388)

Third parties are not in and of themselves exploitative. Criminal laws mean that third parties employing sex workers are not accountable under labour or other laws, and are therefore more likely to mistreat sex workers. Taking all necessary steps to ensure a safe working environment puts third parties and sex workers at risk of being criminally charged. Similarly, not taking all necessary steps to ensure a safe working environment also puts third parties and sex workers at risk of violence. Striking this balance in a criminalized environment creates tension and makes it difficult to improve working conditions. Decriminalization of third parties is therefore necessary to ensure safer working spaces for sex workers.