

Reports call for end to harms caused by Criminal Code prohibitions surrounding prostitution

The sale of sexual services between consenting adults is legal under Canadian law, yet the Criminal Code prohibits many activities related to prostitution and the sex trade. As a result, many people who work in the sex trade come into conflict with the law. In recent reports, two Canadian organizations have called for the repeal of the current Criminal Code prohibitions on activities related to the sex trade. Pivot Legal Society's report, "Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws," was released in March 2004.¹ The Conseil permanent de la jeunesse, a 15-member advisory panel to the Québec government, released "Prostitution de rue: avis" in April 2004.²

Voices for Dignity

The backdrop of the Pivot report is the reality of over 60 missing (and numerous tortured) women sex trade workers in Vancouver, many of whom were from Vancouver's Downtown Eastside (DTES), home to Pivot. Voices for Dignity is based on affidavits from 91 current and former sex workers living and/or working in the DTES, 81 of whom were female and 10 male, ranging in age from 22 to 62. The report presents evidence of sex workers regarding their experiences, opinions, and beliefs with respect to the Criminal Code prohibitions of keeping a common bawdy house,³ procuring,⁴ and communicating for the purposes of prostitution.⁵

With one exception, the sex workers interviewed demanded that the bawdy-house law be repealed, so that sex workers who choose to work indoors, under safe and clean conditions, can do so. With one exception, those sex workers who addressed the communicating law demanded that it be repealed. They criticized it as ineffective and as creating dangerous working conditions as a result of enforcement. Overall, "the affidavits highlight many ways in which Canada's sex trade laws worsen the

already harmful conditions under which sex workers live, add to the stigma of their employment and social position, and support the inference that sex workers are less worthy of value than other members of society."⁶

Voices for Dignity describes the complex interplay among a host of factors, including poverty, housing, violence, health, addiction, and law enforcement. For example, the report cites how a Vancouver Police Department crackdown aimed at displacing the drug market from the DTES led to the arrests of sex workers, both those involved with drugs and those who were not; forced sex workers to work in unsafe locations; and likely exacerbated the health and social problems stemming from illicit drug use.⁷ The report also highlights the interconnectedness of injection drug use, communicable diseases (such as HIV/AIDS and hepatitis C), and the lack of accessible health care among the sex workers who swore affidavits.

The report takes the sex workers' affidavits as evidence of harm suffered by sex trade workers as a result of the Criminal Code provisions related to prostitution, and argues that these provisions violate rights enshrined in the Canadian Charter of

Rights and Freedoms. According to the authors, sex workers' rights to freedom of expression, life, liberty, security of the person, and equality are all unjustifiably infringed by the relevant Criminal Code provisions, and so the provisions should be repealed. Voices of Dignity ends with a "call to action," a call that goes beyond the decriminalization of the sex trade to include: (a) consultations with sex workers on the reform of legislation, health and social services, and policing practices; and (b) the development of public education campaigns to promote sex workers' social citizenship and human rights. The

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report received national media attention,⁸ and was the subject of favourable public comments by Irwin Cotler, Minister of Justice.⁹

Prostitution de rue

The Conseil de la jeunesse's Prostitution de rue report has much in common with Voices of Dignity. The Conseil's report, grounded in extensive background research,¹⁰ gives voice to those affected and focuses on the complex dynamics of stigmatization and vulnerability involved in street prostitution. Like the Pivot report, it received national media attention.¹¹ The Conseil consciously avoided the ideological issue of whether prostitution by young adults (over 18 years old) was employment or exploitation,¹² instead suggesting directions for improvement of the situation of youth street-based sex workers. The report's recommendations are presented in four sections: (1) preventing entry to street prostitution; (2) mechanisms to improve the situation of those who choose to engage in prostitution; (3) aid to those who want to leave street prostitution; and (4) further research related to specific themes.

Among other recommendations, the report calls on the Québec government to (a) launch an information campaign to draw attention to the discrimination, violence, and stigmatization faced by street-based sex workers;¹³ and (b) encourage public services to adopt non-discrimination policies regarding marginalized peo-

ple.¹⁴ Significantly, as a means to help people who inject drugs, and to decrease nuisance in communities, the report recommends that the government explore the possibility of a safe injection facility.¹⁵

Prostitution de rue points out the unsatisfactory results of the Criminal Code prohibitions, including the way in which police repression increases the vulnerability of street-based sex trade workers:

[TRANSLATION] In attempting to avoid the eye of the police, those involved in street prostitution are being exposed to less safe practices. They are more isolated, spend less time negotiating with customers, don't seek help when they are victims of criminal behaviour, etc. Nevertheless, like any other citizen, prostitutes are entitled to the protection of the police.¹⁶

The report calls on the government of Québec to lobby the federal government to decriminalize adult prostitution,¹⁷ and to evaluate the implementation and impact of the decriminalization of prostitution.¹⁸

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¹ Pivot Legal Society Sex Work Subcommittee. *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*. Pivot Legal Society: Vancouver, 2002, available via www.pivotlegal.org [hereinafter *Voices for Dignity*.]

² Conseil permanent de la jeunesse. *Prostitution de rue: avis* April 2004, available in French via the Conseil's website, www.cpj.gouv.qc.ca [hereinafter *Prostitution de rue*.]

³ Criminal Code, RSC 1985, c C-46, s 210 makes it a criminal offence to keep or be found in a common bawdy house. Section 211 makes it an offence to transport a person to a common bawdy house.

⁴ *Ibid*, section 212 makes it a criminal offence to control or influence another person involved in prostitution, to live with or habitually be in the company of a prostitute, or live off of the avails of prostitution.

⁵ *Ibid*, section 213 makes it a criminal offence to stop or attempt to stop any motor vehicle, impede the free flow of pedestrian or vehicular traffic, or to stop or to attempt to stop any person or in any manner attempt to communicate with any person, for the purposes of prostitution.

⁶ *Voices for Dignity*, supra, note 1 at 2.

⁷ *Ibid* at 24.

⁸ J Armstrong. Repeal prostitution laws, report urges. *Globe and Mail*, A8, 2 March 2004.

⁹ Press Release. Minister of Justice supports new Pivot report on sex trade. Pivot Legal Society, 2 March 2004; and personal communication with Katrina Pacey, co-Executive Director of Pivot and one of the report's authors.

¹⁰ Conseil de la jeunesse. *Vue de la rue: Les jeunes adultes prostitué(e)s – Rapport de Recherche*. April 2004, available in French via the Conseil's website, www.cpj.gouv.qc.ca.

¹¹ R Seguin. Sex trade laws must change, Quebec study says. *Globe and Mail*, A5, 27 April 2004.

¹² However, the Conseil is clear that prostitution for those under 18 years old raises the issue of sexual exploitation.

¹³ *Prostitution de rue*, supra, note 2, recommendation 10.

¹⁴ *Ibid* at recommendation 12.

¹⁵ *Ibid* at recommendation 23.

¹⁶ *Ibid* at 17.

¹⁷ *Ibid* at recommendation 13.

¹⁸ *Ibid* at recommendation 29.