



# The sex workers are coming!

By

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Within the next year, our Supreme Court may very well strike down Canada's prostitution laws as unconstitutional because they place sex workers at risk of violence and abuse. Are we ready for full decriminalization? Or will society's fear of the legal vacuum lead to a panicked rush to pass new legislation to criminalize or control sex work?

Most people know little or nothing about actual sex workers or the reality of their lives because they've been fed negative and false stereotypes from movies and TV, sensationalistic news stories, "do-gooder" organizations that purport to rescue trafficked sex slaves, and various self-appointed "experts" whose views are informed mostly by shoddy research and propaganda.

The true experts on sex work have been speaking out more and more, however, and people are finally starting to listen to them. The Internet and social media have given these experts a public platform for their voices. In recent years, their tireless organizing and activism have built up a strong and cohesive movement that advocates the full decriminalization of sex work. They've done extensive research, written reports, published books, developed occupational guidelines, created networks within the industry, hosted conferences, delivered countless speeches and workshops, established working relationships with police and community groups, acted as consultants and negotiators, served on various committees, promoted law reform, lobbied every level of government, and launched court cases.

Who are these formidable experts? Hopefully you guessed the answer -- sex workers themselves.

This article will attempt to explain what sex workers want and need in a post-decrim world and what they *don't* want or need, according to their own voices and writings. It won't explain the well-established harms that the criminal laws pose to sex workers -- for that, see [here](#) [8], [here](#) [9], and [here](#) [10]. It won't bust common myths and stereotypes about sex workers -- for that see [here](#) [11], [here](#) [12], and [here](#) [13]. And it won't refute the misguided opposition to sex worker rights and decriminalization -- for that, see [here](#) [14], [here](#) [15], and [here](#) [16].

First, some background: on June 12 this year, the Supreme Court of Canada is scheduled to hear arguments in *Attorney General of Canada v. Bedford*. In this case, the court will decide the fate of three laws in Canada that criminalize key activities in sex work: keeping a common bawdy house (a brothel), living on the avails of prostitution, and communicating in public for the purpose of prostitution -- the "communicating" law. (Exchanging sex for money is not itself illegal in Canada.) Former sex workers Terri-Jean Bedford (a dominatrix), Amy Lebovich, and Valerie Scott won their case at the

Ontario Superior Court with the [2010 Himel decision](#) [17], which struck down Canada's prostitution laws as unconstitutional because they prevented sex workers from taking measures to protect their safety. ([Here's a summary](#) [18] of the Himel decision.) The federal and provincial governments appealed and won a partial victory when the Ontario Court of Appeal reinstated the communicating law, while letting stand the lower court's decision to strike down the other two laws. The federal government then appealed to the Supreme Court of Canada to restore the "bawdy house" and "living on the avails" laws, while Bedford et al. filed a cross-appeal, requesting that the Supreme Court also strike down the communicating law.

Sex workers in Canada are cautiously optimistic that the Supreme Court of Canada will uphold the original Himel decision and strike down all three prostitution laws. Sarah, a sex worker from Ontario, says: "The arguments in favour of throwing the laws out are easy to support, while the arguments against would always be ideological. I'm hopeful they'll make the right decision, but you never know." Vancouver sex worker and long-time activist Susan Davis says: "The court doesn't have the leeway to look at morality, they have to base their decision on fact. We've been saying for years that the [abolitionist] data is absolutely useless, the Ontario decision said it too, and we don't see that changing." Nikki Thomas, a Toronto sex worker and Executive Director of [Sex Professionals of Canada \(SPOC\)](#) [19] says: "I don't think the Supreme Court has much legal basis to uphold the laws." But Thomas doesn't really trust the Court and its reasoning in some past decisions, so she's "prepared for any eventuality." Sex worker Jennifer Allan (who runs [Jen's Kitchen](#) [20] in Vancouver) thinks the court may be cautious and strike down the laws one by one, not all at once. "Although the court takes into consideration constitutional rights and safety to some extent, they are also judged by public opinion, and they know the general public in Canada isn't ready for full decrim." On the other hand, Allan expressed a lot of confidence in the ability of sex workers to influence the police, legislators and policymakers. "We've come a long way. They now listen to us. The [Pickton case](#) [21] really opened the doors for all this to happen." Valerie Scott, a former sex worker with SPOC and one of the plaintiffs in the Bedford case, is also unsure of how the court might rule, but says: "I think the country is ready for decrim. I remember back in 1990, people would have nothing to do with sex work. Now I'm walking my dog in the park and people come up and shake my hand and say 'Really hope you win!' That's a very big difference for me -- walking down the street and getting thumbs up from people."



If consensual adult sex work is fully decriminalized in Canada, the question then becomes -- what's next? Prostitution abolitionists and some legislators have been calling for the Nordic approach, which involves criminalizing only the clients and treating all sex workers as victims. But that approach has failed in Scandinavian countries, and [it won't work in Canada either](#) [22]. Sex workers also fear that the federal government might try to criminalize sex work itself, which would put them in an even worse situation, or that local governments might enact regulations that don't protect the rights and safety of sex workers or address their concerns.

What are those concerns? What do sex workers need and want? It's a long list, but several key themes have emerged after years of discussions and research by sex workers.

### **1. Listen to sex workers and take them seriously.**

They are the experts on the sex industry because they run it or work in it. "[Nothing about us without us](#) [23]" is the

catchphrase of the global sex worker rights movement. Sex workers must be the leaders in discussions on law and policy reform. They must be at the table when any committee or group discusses what to do about sex work or how to help sex workers. Any research done on sex work must consult sex workers and respect their guidelines for [ethical research](#) [24].

## 2. Full protection under existing laws.

These include labour and employment law, family law, income tax law, business law, immigration law, criminal law, human rights law, and the Charter of Rights and Freedoms. (See Pivot Legal Society's landmark report on this topic: [Beyond Criminalization](#) [25], a sex worker-led initiative that relied on interviews and discussions with sex workers.) Sex workers want access to benefits afforded to other workers, including workers' compensation, employment insurance, and income assistance. They want to pay taxes without worrying about being audited or exposed because of their occupation. They want to raise their children without fear of losing custody because of their job. If they're a victim of violence, they want to be able to call the police and get justice, instead of risking arrest or assault by the very people who are supposed to help them.

But the reality for sex workers in the current criminalized environment is quite different, especially for survival sex workers on the street, a large proportion of whom are Aboriginal. Jennifer Allan, an Aboriginal herself, went on a cross-country tour in 2012 to raise awareness about [survival sex workers](#) [26], visiting sex workers, support agencies, and police Vice Units in various cities. "Winnipeg was the worst. They have 83 missing and murdered women and it's called the 'Morality Unit' not the Vice Unit. I waited 45 minutes but they refused to meet with me and told me to call the RCMP. So I called the RCMP and one officer said, 'We have no interest in that.'" Needless to say, full protection under existing laws is impossible if police can't even be bothered to enforce homicide laws when sex workers are murdered. Vancouver's Missing Women's Inquiry showed the ugly reality of the systemic sexism and stigma that runs deep in some (if not all) Canadian police departments. The police need mandatory training on how to prosecute crimes against sex workers, refrain from discriminatory policing, and respond to community complaints in ways that don't harm sex workers. Also needed are special police liaisons to address concerns of sex workers, and community partnerships with police, sex workers, and local groups and businesses affected by sex work.

## 3. Funding for and access to social services and other life resources.

Sex workers need occupational health and safety training, affordable housing, front-line support for street workers, legal advice, business and financial training, counselling, employment training and other services for those who want to leave the industry, and more. The frameworks are already in place because sex workers have developed them. Stella, a Montreal sex worker group, has published a "Working Conditions" guide called [ConStellation](#) [27]. [Trade Secrets](#) [28] is a comprehensive occupational health and safety manual written by and for sex workers. [Opening the Doors](#) [29] is a preliminary report by the BC Coalition for Experiential Communities that explores ways to build transparency and accountability into the industry through various measures, such as requiring businesses that employ sex workers to provide them with information and resources to protect their safety and rights. Finally, the comprehensive Report of the Missing Women Commission of Inquiry, [Forsaken](#) [30], offers a variety of recommendations, many of them stemming directly from sex worker demands, including funding for front-line services to workers, better public transit in northern communities, equality-promoting measures, safety enhancement initiatives, violence prevention for Aboriginal and rural women, and much more.

## 4. Dignity, respect, and non-discrimination.

Jennifer Allan says the biggest challenge is the stigma against sex workers and society's negative attitudes. She compares the fight for gay rights with the fight for sex worker rights. "It's only now in the last 15 years that gay people are celebrated, not shunned. It took a lot of education and time. We'll have to do the same for sex workers -- educate police, politicians, the public, and victim services." Of course, it's almost impossible to even begin addressing the stigma and discrimination against sex workers until the laws that criminalize them are repealed. Fear of arrest or social disapproval often keeps sex workers from being public about their work, but to reduce stigma, "The primary thing is visibility and ending the silence," says Nikki Thomas.

"It's really hard for the public to relate to sex workers. Most people feel the stereotype is totally reflective of the job and they don't want to have that stereotype disturbed. That's why the visibility aspect is so critical to our overall efforts."

You may have noticed that the things sex workers want and need tend to correspond with what all human beings in a

civilized society want and need. But because their livelihood is criminalized, sex workers often don't have access to the normal legal protections and social benefits that other Canadians take for granted. As Sarah says in [this article](#) [31], after listing the basic needs for her own safety and well-being: "Turns out people with bodies basically all need this shit all the time. Fun Game: while you're trying to access these things, tell your doctors, nurses, communities, etc. that you're a whore. See how much access you have then." It is a blight on our society that we treat sex workers as something less than human, undeserving of the rights and life essentials that the rest of us take for granted. That won't change until their work is decriminalized. As for those who want to abolish sex work, Valerie Scott would like to remind them of the "two reasons you can't stop it: sex and money. Those two things are more powerful than any government, any army, or any religion in history."

Here's what sex workers *don't* want:

### **1. Exorbitant licensing fees for sex workers or businesses that employ sex workers.**

Municipalities should charge the same fees that would apply to any business, and individual workers should not have to obtain licenses or permits at all. "We won't be able to afford the fees, but organized crime will," explains Valerie Scott. I can see them [municipalities] easily doing a \$15,000 a year fee. That gets into the realm of protection money. It's like, did Tony Soprano get a job at City Hall?" She said it also "gives the city the right to come in and nail you for different bylaw infractions, [like in Saskatoon](#) [32]." When sex workers can't afford license fees to work legally, they're subject to frivolous police harassment and fines, and if they end up working for shady operators willing to pay five-figure "protection money" to the city, workers risk exploitation and abuse.

### **2. Municipal regulations enacted without sex worker input.**

Popular social "solutions" to prostitution usually make things even worse for the workers. The most common ones are mandatory health checks for sex workers, confining workers to "red light districts," and compulsory registration of individual workers. But sex workers are not "vectors of disease" and probably know more about sexually transmitted diseases and how to prevent them than the average doctor -- because it's their business. Sex work cannot be contained into one area, since most sex workers prefer to operate independently out of their homes or in their own communities. However, some sex workers don't mind the idea of having several sex work zones in different parts of the city for those who want to use them, while most workers are agreeable to zoning regulations that keep their businesses away from residential areas or schools -- so long as they are not shunted to industrial zones or other isolated areas where they're more vulnerable to violence. In particular, street sex workers need to be in commercial districts so they can be around other people for safety and to access support services. Finally, many sex workers don't want their names in a government database in case of negative consequences due to stigma. In countries with a [mandatory registration requirement](#) [33], the majority of sex workers simply disappear underground, where they suffer higher rates of violence and have little or no access to social services. Not a single municipal regulation on sex work should be discussed or passed without meaningful consultation with the experts.

"The sex industry has created the will for change," says Susan Davis. "We've stated our position and put ourselves on the table. So they can't make decisions without including us." Davis is confident that's the case for Vancouver at least, where she and other advocates convinced the police in 2007 to stop enforcing the communicating law, and more recently, to use [alternative measures](#) [34] to handle nuisance-related complaints against survival sex workers. "I don't think they will go back on their word, they see the logic, they see the goal of helping achieve sex workers' safety." Davis also notes that Vancouver sex work organizing has become stronger over the years, and as a result: "We hear less and less from the abolitionists. They're not on any of the committees where things are happening. People here know what their brand of policies will bring, and no one wants to risk the lives of those affected." But in places where sex work organizing is not so strong, people do buy into abolitionist propaganda, she said, citing the Prairie and Maritime provinces in particular (except for Halifax). Predation of sex workers remains high in several cities in these provinces, because punitive enforcement measures continue to marginalize and endanger them.

"When I listen to people describe the absolute horrors they went through [in sex work], the thing that bothers me the most is that it didn't have to be that way," says Nikki Thomas. "They didn't have to end up that way. It's the laws and other conditions in the industry [that caused it]." We should agree that sex workers don't need criminal laws that only put them in

harm's way, as established by the Ontario Himel decision. Thomas added, "We don't need bodyguards, cops, licenses, or health checks. We just need the ability to work with each other and look out for each other." And from Sarah: "The work of organizing the sex industry has already been done. When the law is out of our way, we can do what we're already doing well, without this constant pushback" from laws, police, and society.

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*Photo: Jenn Farr/Flickr*

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[To the would-be sex work abolitionist, or, 'ain't I a woman'?](#) [15]

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Why are we still having the "feminists vs. sex workers" debate? Ideally, the real location of the debate would be between feminists and an external patriarchal force. Instead, it's within feminism.

### related\_item3

[Prostitution laws knocked down](#) [41]

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Katrina Pacey from Pivot Legal Society talks about the Ontario Superior Court decision to legalize prostitution.

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