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# Policy Brief 17

RETHINKING POLICY ON GENDER, SEXUALITY, AND WOMEN'S ISSUES

# INCORPORATING HARM-REDUCTION PROVISIONS IN LEGISLATION TO IMPROVE THE WELL-BEING OF SEX WORKERS

BY AMANDA NGUYEN

Some of the Canadian law's provisions may push some sex workers into the street sector, which is associated with lower prices, greater violence, and health risks.

BY AMANDA NGUYEN

# INCORPORATING HARM-REDUCTION PROVISIONS IN LEGISLATION TO IMPROVE THE WELL-BEING OF SEX WORKERS

*New Canadian legislation aims to criminalize the buying of sex, in order to reduce and eventually end prostitution, but evidence shows that spillover effects would create additional risks for sex workers. Changing the legislation to legalize and regulate sex services would be best for sex workers. Since that may not be possible immediately, instituting harm-reduction provisions would help women who are adversely affected by the current bill.*

IN 2014, CANADA enacted the Protection of Communities and Exploited Persons Act, the country's first legislation to criminalize the purchase of commercial sex. The law criminalizes anyone who receives "a material benefit... from the commission of an offence" or aids in the advertisement of sexual services, including newspaper personal ads and online advertising companies. The penalties include cash fines and up to five years of prison time for purchasing sex and up to 10 years for procurement.<sup>1</sup>

However, since the legislation aims to end the trade of commercial sex, it does not include funding for programs to protect the safety of women who continue to work in the sex industry. Instead, the Canadian government has pledged \$17 million over the next five years to fund programs to help sex workers exit the market.<sup>2,3</sup>

## CRITIQUE

While the Protection of Communities and Exploited Persons Act attempts to eliminate the commercial sex market, evidence suggests that such a policy creates potential health and safety risks for women who remain in the sex industry. Because of the complex structure of the informal market for commercial sex, it is imperative that policymakers consider the spillover effects of the current legislation. Without perfect enforcement, criminalizing buyers does not eliminate demand, as has been shown in the case of Sweden and other countries with similar policies and thriving underground markets for commercial sex.<sup>4</sup> As long as the underground economy persists, sex workers will continue to be at risk for exploitation, sexually transmitted infections (STIs), and other abuse.<sup>5,6</sup>

Although condom use can mitigate the health risks of commercial sex work, surveys consistently document an earnings premium for unprotected sex, which can be interpreted as a compensating wage differential for increased STI risk.<sup>7</sup> Criminalizing the purchase of commercial sex reduces demand and thereby lowers the market price. In order to recoup lost earnings, sex workers may reduce condom use and engage in riskier acts that increase STI rates among sex workers and the general population.

Measures against facilitating advertising may also have unintended consequences. Outcall sex workers who travel to clients' locations increasingly use advertising and review websites to build a customer base and aid screening.<sup>8</sup> Obstructing this channel of communication makes it more difficult for sex workers to vet customers and protect themselves against violence and sexual assault.

In terms of both time and expenditure, the law's provisions against third-party advertising services make it much more costly for sex workers to communicate with clients. For instance, a sex worker may now need to invest in creating a website, bearing additional legal risks for advertising commercial sex services. Thus, the increased cost is likely to push some indoor sex workers into the street sector, which is associated with lower prices, greater violence, and health risks.<sup>9,10</sup>

## RECOMMENDATIONS

Rather than criminalizing buyers, policymakers should decriminalize and regulate voluntary sex work, similar to the legal regime in New Zealand. Furthermore, policymakers should criminalize and strictly enforce unregulated activity, i.e. the street sector, to ensure that women are not exploited in the commercial sex market.

However, legalization alone is not enough to ensure that sex workers are protected. Introducing work safety regulations such as regular STI testing can greatly improve working conditions for sex workers. Thus, it is equally important to consider public policies that could alleviate the issues faced by sex workers. As proposed by the International Harm Reduction Development program, these are known as "sex work harm reduction" policies.<sup>11</sup> Through health education, sex workers not only learn how to prevent STIs but also gain the knowledge to empower themselves to negotiate the terms of their work, including use of condoms. In India, the Frontiers Prevention Program—a community-based health education intervention—increased condom use and reduced STIs among sex workers.<sup>12</sup> Similar educational empowerment campaigns in the Dominican Republic, Thailand, and South Africa were also successful.<sup>13</sup>

Maintaining channels of communication for screening, advertising, and sharing advice on the Internet could also increase the safety of commercial sex workers.

Overall, the current legislation's focus on reducing and eventually ending prostitution may actually create additional risks for sex workers. The legalization of sex work—or at least the incorporation of funding for harm-reduction strategies—could help reduce the risks of sex work for female sex workers.

*Amanda Nguyen is a Ph.D. candidate in the Department of Economics at UCLA. Prior to attending UCLA, she received her B.A. in Economics from UC Berkeley, where she also served as president of the university's UNICEF Campus Initiative chapter. Inspired by her experience working with a global humanitarian organization, she decided to pursue economic research as a means to alleviate poverty and improve living standards*

for traditionally marginalized groups. Her primary fields of study are public finance, health, and development economics. Current research projects include studying the optimal regulation of illegal markets, the effects of public health insurance on labor supply, estimating the long-term health effects of government transfer programs, and evaluating health interventions targeted towards sex workers in developing countries.

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