

Qs & As

Prostitution Criminal Law Reform: Bill C-36, the *Protection of Communities and Exploited Persons Act* In force as of December 6, 2014

FREQUENTLY ASKED QUESTIONS (FAQ)

Q1 Is prostitution a legal activity?

A1 No. The effect of Bill C-36 is to criminalize prostitution. Prostitution is a transaction that involves both the purchase and the sale of sexual services. Bill C-36's new offence that prohibits purchasing sexual services makes the prostitution transaction illegal. This means that purchasing sexual services is illegal and businesses that profit from the prostitution transaction are also illegal.

Q2 Can a person purchase sexual services?

A2 Purchasing sexual services and communicating in any place for that purpose is now a criminal offence for the first time in Canadian criminal law. A person convicted of this new offence may be sentenced to up to 5 years imprisonment if prosecuted on indictment, and 18 months if prosecuted by summary conviction. Mandatory minimum fines also apply, including higher mandatory minimum fines if the offence is committed in a public place that is or is next to parks, schools, religious institutions or places where children can reasonably be expected to be present. A person convicted of purchasing sexual services from a person under the age of 18 years may be sentenced to up to 10 years imprisonment. Mandatory minimum penalties of 6 months imprisonment for a first offence and one year for subsequent offences also apply.

The new purchasing offence applies to transactions that take place over the Internet, such as paying someone to provide a sexual service in front of a webcam.

Q3 Can a person sell sexual services?

A3 The new prostitution laws do not criminalize the sale of sexual services. They also protect those who sell their own sexual services from criminal liability for any part they may play in the prostitution offences that prohibit purchasing sexual services, advertising those services, receiving a material benefit from the prostitution of others or procuring others for the purpose of prostitution.

This means that the new laws do not prevent sellers from taking certain safety measures, should they continue to sell sexual services. These safety measures include selling sexual services, whether independently or cooperatively, from fixed indoor locations, hiring legitimate bodyguards who do not engage in exploitative behaviour and negotiating safer conditions for the sale of sexual services in public places that are not near school

grounds, playgrounds or day care centres. Communicating for the purposes of selling sexual services in public places that are or are next to school grounds, playgrounds or day care centres is a criminal offence with a maximum penalty of 6 months imprisonment.

However, purchasers of sexual services are always criminalized for their role in the prostitution transaction. The new prostitution laws are intended to reduce both the purchase and the sale of sexual services.

Q4 The new purchasing offence prohibits “obtaining sexual services for consideration”. What is a “sexual service” and what does “obtaining a sexual service for consideration” mean?

A4 A “sexual service” is a service that is sexual in nature and whose purpose is to sexually gratify the person who receives it. “Obtaining a sexual service for consideration” involves an agreement for a specific sexual service in return for payment or another kind of consideration, including drugs or alcohol. It doesn’t matter whether payment is made by the person who receives the sexual service or by another person.

Activities that amount to “obtaining a sexual service for consideration”, if a person pays for them, include: sexual intercourse; masturbation; oral sex; lap-dancing, which involves sitting in a person’s lap and simulating sexual intercourse; and, sado-masochistic activities, provided that the acts can be considered to be sexually stimulating or gratifying.

Q5 Can a person advertise the sale of their own sexual services?

A5 The new advertising offence criminalizes advertising the sale of sexual services. But the new laws also protect from criminal liability a person who advertises the sale of their own sexual services. This means that the offence applies to people who advertise the sale of others’ sexual services, including in print media, on websites or in locations that offer sexual services for sale, such as erotic massage parlours or strip clubs.

The offence also applies to publishers or website administrators, if they know that the advertisement exists and that it is in fact for the sale of sexual services.

The new laws also allow the court to order the seizure of materials containing advertisements for the sale of sexual services, as well as their removal from the Internet, regardless of who posted them.

Q6 Can a person manage, work for, or otherwise participate in, a business that offers sexual services for sale?

A6 Receiving money or any other material benefit from the prostitution of others in the context of a commercial enterprise that offers sexual services for sale is a criminal offence. Such a commercial enterprise necessarily involves third parties who profit from the sale of others’ sexual services. This means that it is illegal to earn money, for

example, by managing or working for a commercial enterprise, such as a strip club, massage parlour or escort agency, knowing that sexual services are purchased there.

But the new law protects from criminal liability people who receive money from the sale of their own sexual services. If the business does not involve anyone other than sellers of sexual services, who keep only the earnings from the sale of their own sexual services, and people who provide legitimate goods and services to them, the business is not a commercial enterprise. In these circumstances, the only person who commits an offence is the purchaser of sexual services.

Q7 Can a person live with another person who sells sexual services?

A7 The new laws do not prevent people who sell their own sexual services from entering into legitimate family relationships on the same basis as anyone else. This means that a family member or roommate of a person who sells their own sexual services does not commit an offence, unless the family member or roommate exploits the person who sells their own sexual services.

Q8 Can a person sell goods or services to people who sell their own sexual services?

A8 The new laws do not prevent people who sell their own sexual services from entering into legitimate business relationships on the same basis as anyone else. This means that a person who receives money for providing goods or services to a person who sells their own sexual services does not commit an offence as long as the goods or services are offered to the general public on the same terms and conditions and there is no exploitation.

If the person who receives money for providing goods and services to a person who sells their own sexual services does not offer the goods or services to the general public, but the amount of money received reflects the value of the good or service provided, no offence is committed as long as the person who provided the goods or services does not encourage the other person to sell sexual services and there is no exploitation.

Q9 Can a person accept gifts or other things from people who use the earnings they made from selling their own sexual services to buy them?

A9 The new laws do not prevent people who sell their own sexual services from interacting with others on the same basis as anyone else. This means that a person who receives gifts or other things from a person who sells their own sexual services does not commit an offence, as long as there is no exploitation.

Q10 Why do the new laws make prostitution illegal, instead of legalizing prostitution and regulating it?

A10 Recent international studies show that jurisdictions that have decriminalized or legalized prostitution have larger sex industries and higher rates of human trafficking for sexual

exploitation than those that seek to reduce the incidence of prostitution. This means that legalizing and regulating prostitution would result in more people being subjected to prostitution. Research shows that the majority of those who sell their own sexual services are women and girls and marginalized groups, such as Aboriginal women and girls, are disproportionately represented. Research also shows that prostitution is an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place, both from purchasers of sexual services and from third parties.

Bill C-36's reforms target those who create the demand for sexual services, and those who capitalize on that demand. This approach is intended to protect the vulnerable people targeted by prostitution, the communities in which prostitution is practised and society itself, by sending a strong message that everyone is entitled to dignity and respect. Prostitution allows men, who are primarily the purchasers of sexual services, paid access to female bodies. Condoning a clearly gendered practice by legalizing and regulating it would demean and degrade the human dignity of all women and girls. The human body is not a commodity to be bought and sold.

For more information on the law reform implemented by Bill C-36 and the research on which it is based, please see:

<http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/index.html>.