

UNDERSTANDING YOUR RIGHTS
SEX WORKERS
A RESOURCE FOR ASK WELLNESS



Wellness Society

ASKWELLNESS.CA

Streets → **Homes** → **Health** → **Employment**

ABOUT

This resource was made in collaboration with ASK Wellness Society and Pro Bono Students Canada (PBSC), Thompson Rivers University Law School Chapter.

It was made to provide information to the service recipients of ASK Wellness Society who would like to know more information surrounding their legal rights on sex work. This report was created by Marina Nichols and Will Wang in March 2022; at the time this was written, the information in this document was up to date. While the law is constantly evolving, please ensure the information is up to date as it applies to you.

DISCLAIMER

PBSC at the Faculty of Law, Thompson Rivers University, cannot provide legal advice. This document contains a general discussion of certain legal and related issues only. It is not legal advice. Please consult a lawyer if you require legal advice. Please know that the law is constantly changing and the information may become outdated at any time.



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Sex Work: When we refer to sex work in this document, we mean the exchange of sexual services between consenting adults for money or goods.¹ And we are primarily talking about sex workers who engage in sex work.

Prostitution: While we recognize the social stigma surrounding the word prostitution, it is still the term used in Canadian criminal law today.² Prostitution is defined as a transaction that involves both the purchase and the sale of sexual services.

Q: Is Prostitution Legal in Canada?

Answer: No. Prostitution is illegal in Canada today, but it is the purchase of sexual services along with a few other aspects that make prostitution illegal. Selling sexual services is not criminalized in Canada. By criminalizing prostitution, the government's objectives are to reduce and abolish it.

Explained: After the *Bedford* decision, our government was given one year to make changes to our criminal law on prostitution. It led to a prostitution law reform, and the introduction of the *Protection of Communities and Exploited Persons Act* (Bill C-36) (in force since December 6, 2014). Below are some of the important changes to the **Canadian Criminal Code** (the **Code**):

- Prostitution means a transaction that involves **both the purchase and the sale** of sexual services. Purchasing, or any other form of exchanging value for sexual services, is now illegal (section 286.1 of the **Code**).
- Selling sexual services is not criminalized. This means that the new laws do not directly prohibit sex workers from engaging in sex work (i.e., selling sexual services).

¹ https://www.cpha.ca/sites/default/files/assets/policy/sex-work_e.pdf

² https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_25/page-1.html

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- Communicating with anyone to purchase sexual services in any place (including over the internet) is now a criminal offence (section 286.1 of the **Code**).
- 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.
- Advertising the sale of sexual services is a criminal offence (s.286.4). But those who advertise the sale of their own sexual services do not face criminal liability (s. 286.5(2)). Publishers, website owners, and other people who have platforms or places where an advertisement may be posted can be criminally charged if they knowingly advertise sexual services.
- Receiving money or anything in exchange for the sexual service of others within a commercial enterprise that offers sexual services for sale is a criminal offence. Sex workers themselves are not prosecuted for receiving money for their sexual services (s. 286.2 of the **Code**).
- A family member or roommate of someone who is a sex worker does not immediately commit a crime by being in a relationship (familial or business), as long as they are not exploiting the person who is a sex worker. This applies to accepting gifts from someone who is a sex worker as well, provided there is no exploitation (s. 286.2(4) of the **Code**).³

³ <https://www.justice.gc.ca/eng/rp-pr/other-autre/c36faq/>

Q: Was Prostitution ever Legal in Canada?

Answer: yes, but it's complicated.

The Legal History

In 2013, our highest court, the Supreme Court of Canada, ruled in a case called ***Canada (Attorney General) v Bedford***, [2013] 3 SCR 1101 [***Bedford***]⁴ that several provisions of the ***Criminal Code*** on prostitution at that time violated Section 7 of the ***Canadian Charter of Rights and Freedoms***⁵. Section 7 states:

Everyone has the right to **life, liberty and security of the person** and the right **not to be deprived thereof** except in accordance with the principles of fundamental justice.

Our Supreme Court found that our criminal law at the time violated the right to security of the person because it prevented sex workers from taking reasonable measures to protect their safety and to make their work environment safer. While our criminal law was meant to target only those who exploited sex workers, it also prevented sex workers from hiring receptionists, bodyguards, and drivers, who help make sex work safer. The criminal law also prevented sex workers from working in a fixed, trusted place, and left sex workers with no choice but to work in secluded and unsafe areas.

What Happened After this Court Case? A change in the law.

This decision forced the Canadian Government to change our criminal law to what we have now. The ***Code*** no longer violates section 7 of the Charter. Prostitution became illegal in Canada at this time, because purchasing sexual services became a criminal offence, though selling sexual services is not illegal.

⁴ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

⁵ <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>

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This case also sent across a very clear message: the safety and security of sex workers are in every way equally worthy of protection in our society. And even though prostitution is illegal, sex workers still have rights and access to help. Sex workers should reach out to the police or local organizations such as ASK Wellness Society if they become exposed to danger, violence, or other risks.

Why do the new laws make prostitution illegal?

The objective of criminalizing prostitution was to reduce it, as some international studies showed that legalizing prostitution would result in more people being subjected to sexual exploitation. Some research also showed that prostitution is dangerous and increases the risk of violence and psychological harm to those participating in it.⁶ The majority of people who sell their sexual services are women and girls of marginalized groups. The new laws criminalize those who create a demand for sexual services (the purchasers) and acknowledge the importance of sex workers' safety.⁷

Q: What are my Rights?

- 1) You have a right not to be deprived of your ability to make decisions that enhance your personal safety.
- 2) You have a right to report to the police or a trusted authority if your personal safety is at risk.
- 3) You have a right not to be subjected to violence, exploitation, or abuse from anyone. You do have a voice and people who will listen.

Q: Will the Law Change?

Answer: The short answer is that we are unsure.

Explained: Even with the legal changes mentioned above, some may feel that our legal system is still a long way from allowing sex workers to work safely.

⁶ <https://www.justice.gc.ca/eng/rp-pr/other-autre/c36faq/>

⁷ *Ibid.*

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There is some hope for change on the horizon. A recent court decision in Ontario called **R v. Anwar** [2020], OJ No 820 (QL), ruled that the advertising offences in the **Code** (section 284.4) violated freedom of expression under s. 2(b) of the **Charter**. And this case may serve as a catalyst for future change in the criminal law like the **Bedford** decision. The **Canadian Alliance for Sex Work Law Reform** also advocates vigorously for reform in this area.⁸

For more information, the following resources may be helpful:

- <https://sexworklawreform.com/>
- https://www.pivotlegal.org/sex_workers_rights
- https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/
- <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html#sec2>

Q: What if Something Bad Happens While I am a Sex Worker?

Answer: You can receive help and support, and you can take action against someone who harms you.

Explained: The current prostitution laws can be hard to navigate and understand, and you may be afraid to ask for help. But anytime you encounter a negative experience while engaged in sex work, you should reach out for help. Your safety and security are important. You should always report violence, mistreatment, and abuse of yourself or others. You can do this anonymously to protect your identity. One of the easiest ways to do that is through the Bad Date Report (explained below).

Q: What is a Bad Date Report and Why Should I Complete One?

Answer: A way sex workers can safely report anything bad that happens.

⁸ <https://sexworklawreform.com/>

Explained: A Bad Date Report is a system where violence can be reported by sex workers anonymously. A Bad Date Report can also be called Bad Date and Aggressor Reporting, or BDAR. The term “bad date” refers to a situation where a sex worker encounters violence or an incident of theft, refusal to pay for services, or any other mistreatment. You can fill out a Bad Date Report after any negative encounter that you do not want others to experience. The system was created to keep sex workers safe by allowing others to report their experiences to share with others as a warning.

You should complete a report because they help other sex workers to avoid aggressors and bad dates. You will remain anonymous when you fill out a report, so you do not need to worry about getting in trouble for simply filling out a report. Through reporting and sharing these bad experiences, you can become aware of the predators in the community for yourself and help protect others.

Q: How Can I Complete a Bad Date Report?

Answer: In-person at ASK Wellness Society (another community outreach service) or online.

Explained: You can file a bad date report online or in person at ASK Wellness Society. It is a simple one-page report that helps to explain the event and identify the aggressor. If the report is filled out online, it can be emailed to ASK Wellness Society. In Kamloops, the form can be sent to t.cozens@askwellness.ca.

You may be asked if you want the report to be on the Aggressor Alert or if you would like to make a statement to the police, these are both optional and anonymous.

The Aggressor Alert is an ASK Wellness Society report that can be shared with an organization in the Okanagan giving a brief description of the incident.

The police report is called a third-party statement and it is taken through an ASK Wellness Society representative. No names are taken in the police report.

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