

WHAT TO EXPECT FROM C-36

An info guide to new sex work laws
from the Winnipeg Working Group

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This is an info guide to the new laws about sex work in Canada, put together by the Winnipeg Working Group. In doing this we have used resources from the Canadian Alliance for Sex Work Law Reform, PACE Society (Vancouver), and Maggie's (Toronto). Thank you all!

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THE WINNIPEG WORKING GROUP is a coalition of local sex workers, activists, researchers and health professionals fighting for the reform of Canada's prostitution laws. We are organized as a chapter of the Canadian Alliance for Sex Work Law Reform.

More about us is on page 13. You can also e-mail us at winnipeg.wg@gmail.com

OFFICIAL PARLIAMENT SUMMARY OF BILL C-36

The Parliament of Canada's official summary of the new laws
(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Bill&Doc=C-36&File=19>)

SUMMARY

This enactment amends the *Criminal Code* to, among other things,

- (a) create an offence that prohibits purchasing sexual services or communicating in any place for that purpose;
- (b) create an offence that prohibits receiving a material benefit that derived from the commission of an offence referred to in paragraph (a);
- (c) create an offence that prohibits the advertisement of sexual services offered for sale and to authorize the courts to order the seizure of materials containing such advertisements and their removal from the Internet;
- (d) modernize the offence that prohibits the procurement of persons for the purpose of prostitution;
- (e) create an offence that prohibits communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre;
- (f) ensure consistency between prostitution offences and the existing human trafficking offences; and
- (g) specify that, for the purposes of certain offences, a weapon includes any thing used, designed to be use or intended for use in binding or tying up a person against their will.

The enactment also makes consequential amendments to other Acts.

You can see the complete unabridged text of the new law at:

(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Bill&Doc=C-36>)

WHAT IS BILL C-36?

Bill C-36 was a law introduced by the Canadian federal government to regulate sexual services. On December 6, 2014, it became law, and it's now legally known as the Protection of Communities and Exploited Persons Act (PCEPA) More detail is in the following pages, but the main changes are:

- It is now illegal for clients to buy sex or to talk to someone about buying sex.
- It is now illegal for websites or newspapers to let sex workers advertise sex for sale. Sex workers *themselves*, however, can't be charged with a crime for advertising, only who they advertise with.
- It is now illegal to communicate in public about selling sex if there is the possibility anyone under 18 may be present (in other words, nearly everywhere).
- With some exceptions, it is now illegal for other people in the industry (like drivers, security, agency owners, etc) to receive money that relates to sex work.
- It is *not* illegal to sell sex. The above laws make it very hard for a sex worker to work legally, and there is no way for a client to buy services legally. But you cannot be charged with a crime just for the act of selling sex.

THAT DOESN'T MAKE A LOT OF SENSE

No, it doesn't! This booklet comes from the perspective that these laws are poorly thought out, confusing, and most importantly won't make anybody in the industry any safer. The following pages are dedicated to explaining, in the best detail we can, how the law will work and how workers can best protect themselves.

Please note, however, this document cannot be taken as legal advice.

WHAT EXACTLY IS LEGAL NOW AND WHAT'S NOT?

(Thank you to Sarah Leamon at PACE Vancouver for help with this section!)

CLIENTS:

- It is illegal for a client to purchase sex from a sex worker in all cases.
- It is illegal for a client to communicate about purchasing sex.

COMMUNICATION WITH CLIENTS:

- It is illegal for a sex worker to communicate with clients for the purpose of sex work "in a public place, or any place that is open to public view, or that is next to a school ground, play ground, or day care centre."
- A public place is defined in the law as: "any place where the public have access as of right or by invitation, whether express or implied, including a motor vehicle located on a public road or open to public view."

ADVERTISING:

- It is illegal to advertise sexual services.
- *However*, sex workers themselves cannot be charged with a crime for advertising their own services.
- Instead, whoever is facilitating the advertising (ex: backpage, Shemale Canada) could be charged with a crime.

ABOUT THE WINNIPEG WORKING GROUP

Our mission statement is as follows:

The Winnipeg Working Group is organized as a chapter of the Canadian Alliance for Sex Work Law Reform. It is a coalition of sex workers, activists, researchers, health care professionals, and allies from Winnipeg who joined forces to challenge the view in Manitoba that all sex work is exploitative. The WWG defends the position that approaches to prevent violence and protect the human rights of sex workers must be informed and directed by sex workers themselves, focused on harm reduction, and evidence-based. Our current focus is on mobilizing against the proposed sex work law reform, namely Bill C-36.

The WWG advocates full decriminalization of adult consensual sex work. This human and labour rights and harm reduction framework requires that both sex workers and their clients not be criminalized. To be a member or participate in this group, you must support this position.

The WWG is an advocacy group; we are not here to discuss or debate people's ideas about sex work.

If you would like more information about us, please contact us through any of the following:

E-mail: winnipeg.wg@gmail.com

Facebook: <http://www.facebook.com/WinnipegWG>

Twitter: @WinnipegWG

RESOURCES

Local Confidential Health Services

Sage House @ Mount Carmel Clinic
(For medical care and help with assistance, housing, and more.)
Drop-ins on Tuesdays 1-6:30 PM, Fridays 1-5 PM
886 Main St
(204) 943-6379

Street Connections
496 Hargrave St
(Nursing care, safe sex supplies, safe drug supplies)
Evening van schedule at www.streetconnections.ca or call (204) 981-0742

Nine Circles Community Health Centre
705 Broadway
(HIV/STI prevention, testing, and care)
www.ninecircles.ca
(204) 940-6000

Klinik Community Health Centre
(STI testing, counseling, Transgender Health Clinic)
870 Portage Ave
(204) 784-4090 ---
CRISIS LINE: (24 hours): 1-888-322-3019
SEXUAL ASSAULT CRISIS LINE (24 hours): 1-888-292-7565
MANITOBA SUICIDE LINE (24 hours): 1-877-435-7170

Online sex worker resources

We Got This! Safe Calls, Screening and Buddy Systems for Sex Workers
by Juliet November
<http://bornwhore.com/2013/08/30/we-got-this-web-version/>

Library at Maggie's Toronto Sex Workers Action Project
<http://maggiestoronto.ca/resources>

Library at POWER (Prostitutes of Ottawa/Gatineau Work, Educate and Resist)
<http://www.powerottawa.ca/powerdocs.html>

MATERIAL BENEFITS AND THIRD PARTIES:

- It is illegal for any third parties to receive "financial or material benefit" that came as a result of somebody else selling sex.
- This part of the law was designed to criminalize pimps. However, in practice it also makes it illegal to be hired by a sex worker (such as dedicated drivers or security), or to hire a sex worker in a consensual and legitimate arrangement (such as someone who runs an escort agency)
- There are four exceptions to this part of the law where a third party receiving "financial or material benefit" from sex work can't be charged with a crime:
 - a) The person is in a legitimate living arrangement with a sex worker (*ex: roommate, partner*)
 - b) The person receives the benefit as the result of a legal or moral obligation owed by a sex worker (*ex: child, family member living outside the home*)
 - c) The person receives the benefit for a good or service they provide on the same terms to a sex worker as they would to the general public (*ex: taxi driver, website designer*)
 - d) The person receives the benefit for a good or service they *don't* provide on the same terms to the public *but* they offer to a sex worker alone, so long as they did not counsel or encourage a sex worker to sell sexual services or charge them an inflated rate (*ex: a friend agrees to babysit for you but doesn't babysit for anyone else*)

- There are *also* further exceptions to these, which more or less follow existing criminal law. Even if someone falls into one of the above categories, they can be charged if they:

- (1) Used, threatened to use or attempted to use violence, intimidate or coercion towards a sex worker,
- (2) Abused a position of power or authority in relation to the sex worker (i.e. landlord, lawyer)
- (3) Provided a drug, alcohol or other intoxicating substance to the sex worker for the purpose of aiding or abetting that person to perform sex work
- (4) Engaged in any other criminal offense in relation to the sex worker
- (5) Received the benefit in the context of a commercial enterprise that offers sex work (i.e. receptionist at a massage parlor that offers sexual services, waitress at a strip club that offers sexual services, owner of an escort agency that offers sexual services)

HOW WILL THESE NEW LAWS BE ENFORCED?

For the most part, it's unclear. The degree to which individuals are charged with crimes will depend on how individual police departments and governments wish to interpret the law, and the degree to which those charges stick will depend on individual courts. Much of C-36 is, obviously, incredibly murky.

There is some encouraging news from other parts of the country. Reports from police departments in Vancouver and Montreal are saying they will not make enforcing the new laws a top priority. The premiers of British Columbia and Ontario have voiced concerns over the law, and in Ontario's case, submitted to their attorney general to review its constitutionality.

Unfortunately, there has been no official response from any official body one way or the other here in Manitoba.

The police are only allowed to enter and search your location with a warrant; however, there are some instances where the police can search your location without a warrant. These include: with your permission, situations where the police are chasing a suspect and the suspect enters your home, as well as, when the police believe someone is in immediate danger (i.e. responding to a 911 call), they have reason to believe evidence of a crime will be destroyed, or they are arresting you or someone who lives in your residence.

You have the right to deny police entry, but they may force entry if they have a warrant or reasonable cause based on any of the above factors. Additionally, they may force entry regardless of whether their reasonable cause is valid, and they may detain you while they conduct their search. If this happens remain silent and get out of the way.

Regardless of whether you are arrested or not, request to call or speak with a lawyer, especially if you believe the search was unlawful or that the police did not have reasonable cause to search your location.

If the police obtain evidence during the search and ask you about it, remain silent. There are many factors that can make a legal search unlawful for breaching the Charter. For example, if the police do not carry out the search in a reasonable manner i.e. by pushing you out of the way for no reason, or the reasonable cause they are relying on to search your location is in fact un-reasonable. If this is the case there is a chance the evidence they find will not be used against you in court and you do not want to admit to anything. Anything you say can be used against you.

In most cases it is important to assert your rights with respect to police powers; however, not providing ID or denying police entry can result in police misconduct. The police may force their way in, tackle you to the ground etc. If this happens contact a lawyer immediately. Again, cooperating with the police is a valid strategy to minimize harm.

A GUIDE TO YOUR RIGHTS WHEN DEALING WITH POLICE

From Maggie's Toronto Sex Workers Action Project
(http://maggiestoronto.ca/news?news_id=115)

Under the Canadian Charter of Rights and Freedoms, you are protected from arbitrary and unreasonable exercise of police power, such as illegal searches and unlawful intrusions into our privacy.

Please note: these are formal rights. There may be a myriad of factors that influence a workers desire or ability to assert their rights in any given situation. Further, while these rights are in place for a reason, fully cooperating with the police is a valid strategy to minimize harm. We encourage workers to get informed as to what their rights are, using the info in the best way they see fit.

Identification: you are not required to provide any information, including your name or address, to police unless you are under arrest, driving a car, or being issued a ticket for breaking a by-law. As well, you have the right to remain silent. If you are stopped or the police show up to your home you can provide them with ID if you want to be polite, but it is not required by law.

You can ask, "Am I free to go?" If the answer is no, then ask, "Am I under arrest?" If you are under arrest you have the right to call or speak with a lawyer. As well, can inform the police of your right to remain silent by saying, "I want to remain silent."

Small talk is ok, but do not provide them with any information or answer questions, even if you think it will help you case or get you off. The best course of action is to go through the arrest process and allow a lawyer to provide information regarding your side of the story in court.

If the police show up to your location you have the right to privacy

Location includes: a residence, private office, hotel room or trailer.

WHAT IS A "SEXUAL SERVICE"? IS BDSM A SEXUAL SERVICE? FETISH WORK THAT DOESN'T INVOLVE GENITAL CONTACT?

The law does not clearly define what a sexual service is exactly. We are largely without information on this front, which means that situations will be handled on a case-by-case basis. For example, if a sex worker is listing their services for various BDSM acts, they could still be arrested or charged. It would be up to the sex worker to plead whether or not the acts they were committing were sexual acts or not, and for the court to decide what is and isn't a sexual act. The information here is very vague and really would need to be challenged in court.

There has been some information given, in that lap dances in strip clubs and masturbation in massage parlors constitutes a sexual act. Beyond this, each instance brought forward to the courts will be handled on a case-by-case basis.

IS THERE ANY WAY FOR SEX WORKERS TO ADVERTISE?

Yes and no, and also no. That is to say, any organization that distributes advertisements for sex work (and knows they are sex work ads) is guilty of an offence and could be charged. Back pages, and escort websites are rejecting ads or shutting down outright because of C-36.

A sex worker is still allowed to advertise his or her own services, according to C-36, it's just any third-party sites involved (like Backpage) who the law targets. Specifically, if a sex worker created their own internet website with appropriate 18+ warnings and no assistance (anybody paid to help build a website, for example, would be guilty under the law) this type of advertising seems to be allowed.

COMMUNICATING FOR THE SALE OF SEXUAL SERVICES — WHAT DOES THAT MEAN?

Basically it means anytime negotiations with clients are taking place. C-36 makes it a crime to communicate for the sale of sexual services in “a public place, or any place that is open to public view, that is or is next to school grounds, playgrounds, and daycare centres.” *Yes, this technically means most spaces.* There is no note in the law to describe the distance required to be classified as “next to” school grounds, playgrounds, and daycare centres.

WILL FRIENDS OR FAMILY BE CULPABLE FOR NOT REPORTING A RELATIVE OR FRIEND WHO THEY KNOW IS A SEX WORKER, OR WORKS WITH OR IS A CLIENT OF SEX WORKERS?

Selling of sex is technically not illegal under C-36. Many facets of it are illegal, but being a sex worker is not explicitly illegal. Living off the avails of prostitution and purchasing sexual services, however, are crimes. Knowing that someone is living off the avails of prostitution and not reporting it would fall under the criminal code and could result in charges related to being an accomplice, depending on the situation.

HOW DOES C-36 AFFECT PROFESSIONS SUCH AS STRIPPING, PERFORMING IN PORN OR CAM MODELING? ARE SEEKING THOSE ACTS ILLEGAL?

C-36 will affect professions such as stripping and cam modelling, potentially. All of this is up to the discretion of the courts and what is considered a “sexual service”. Porn performers and producers seem so far to be left out of this bill remain bound to restrictions around obscenity, performer age, and consent. C36 contains a clause on voyeuristic content, which would be a non-consent situation.

WILL PEOPLE WHO WORK FOR COMPANIES THAT EMPLOY SEX WORKERS (EX: SOMEONE WHO DOES DATA ENTRY FOR AN ESCORT AGENCY OR SOMEONE WHO IS A PRODUCER FOR A PORN COMPANY) BE OPEN TO PROSECUTION?

Folks that work for a company are not the company themselves. This ties into business and corporate law. If the company in question is incorporated, then the corporation is culpable. If the company is a sole proprietorship or a partnership, then the legal ramifications fall on the sole proprietor or partners. It is difficult to say, however, where the convictions would go on a case-by-case basis. Porn does not seem to be addressed by C-36.

IF A SEX WORKER HAS A SOCIAL MEDIA ACCOUNT, COULD THEY BE PROSECUTED UNDER THE RULES ABOUT ADVERTISING?

Social media sites being culpable for advertisements by sex workers is easily avoided by the social media sites themselves. All they need to do is include a note in their Terms of Service to suggest that sex workers may not use their service as a means to advertise sexual services. In general, large social media companies are not assumed to know what is being posted on their sites at all times – their terms of service generally absolve them of this responsibility.

The trouble is, of course, that social media sites could possibly move toward including a prohibition of advertising of the sale of sexual services as a way to avoid culpability. This would lead to deletion of sex worker profiles.