



Joint Written Brief to the House of Commons Standing Committee on Justice and Human Rights

Review of the *Protection of Communities and Exploited Persons Act*

Presented by Pivot Legal Society and PACE Society

Introduction

1. Sex workers' autonomy, health, and well-being must be at the centre of this committee's report.
2. People with lived and living experience (PWLLE) of sex work are the true experts on the law's real impacts and consequences. Their voices must be forefronted in (much needed and long overdue) legislative change.
3. In addition to the voices of organizations and individuals that do sex work and support sex workers, there is a scholarly consensus that the criminalization of sex work causes harm to sex workers.¹
4. Evidence from Vancouver² indicates that 72% of sex workers interviewed reported no improvements in their working conditions or safety with the Protection of Communities and Exploited Persons Act while 26% reported increased harms. **The current laws are not working.**

¹ Platt, Lucy, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi, and Anna-Louise Crago. "Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies." *PLoS medicine* 15, no. 12 (2018): e1002680.

² Machat, Sylvia, Kate Shannon, Melissa Braschel, Sarah Moreheart, and Shira M. Goldenberg. "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada." *Canadian journal of public health* (2019): 1-9.

Pivot Legal Society and PACE Society are located on stolen lands of the x̣ʷməθkʷəỵəm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətaʔl (Tsleil-Waututh) peoples. We are grateful to Indigenous Peoples for their continuous relationship with their lands and are committed to learning to work in solidarity as accomplices in shifting the colonial default.

The current laws and their negative impacts

Communication and Material Benefit – ss. 213, 286.1, and 286.2 ***Negative Impacts on Sex Workers***

5. PCEPA has tangible, negative consequences for sex workers. These impacts include:
- a. Pushing sex workers to more isolated areas by eliminating most safer public areas to work as they are too close to school grounds, playgrounds, daycare centres, parks, and/or religious institutions or anywhere where persons under the age of 18 can reasonably be expected to be. There is no clarity around what “next to” means in practical terms and it sends the message that sex workers cause social harm by their presence, which and increases stigma against them.
 - b. Clients pressuring sex workers to rush transactions to avoid detection by law enforcement. This leaves the sex worker with little time to negotiate with a client or assess safety of a particular client, as well as little time to consult a bad date sheet.³
 - c. Lack of time prevents sex workers from properly screening clients, including by telephone or internet, and from discussing the terms of transactions with clients and thereby clearly negotiating consent to sexual relations including the use of safer sex and harm reduction supplies such as condoms.⁴
 - d. Increasing police presence, surveillance and harassment. As the report *The Perils of ‘Protection’* found, under PCEPA, sex workers have experienced “increasingly pervasive, unsought and disproportionate surveillance from law enforcement, who employ an array of laws (criminal, immigration, human trafficking, municipal and others) to monitor, interrogate, investigate, harass, detain, ticket, arrest, charge and deport sex workers” and this harm is disproportionately done to BIPOC, migrant, and trans sex workers.⁵ Criminal and police records can impact a person’s life for years (for example, in employment and child welfare systems).

³ Krüsi, Andrea, Katrina Pacey, Lorna Bird, Chrissy Taylor, Jill Chettiar, Sarah Allan, Darcie Bennett, Julio S. Montaner, Thomas Kerr, and Kate Shannon. "Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study." *BMJ open* 4, no. 6 (2014): e005191.

⁴ Lyons, T., Krüsi, A., Pierre, L., Kerr, T., Small, W., & Shannon, K. (2017). Negotiating violence in the context of transphobia and criminalization: The experiences of trans sex workers in Vancouver, Canada. *Qualitative health research*, 27(2), 182-190.

⁵ Canadian AIDS/HIV Legal Network. "The Perils of ‘Protection’: Sex Workers’ Experiences of Law Enforcement in Ontario". (2019).

- e. “John” sting operations tending to push the sex industry further underground to protect sex buyers from detection by law enforcement. This has the effect of increasing risks for sex workers.⁶
- f. Fear of potential blackmail or being caught in a police sting leads clients to refuse to call or text from a traceable cell phone or provide screening information to sex workers.⁷
- g. Lack of time to negotiate payment up front can lead to sex workers being robbed of payment.
- h. Increasing stigma against sex work by indicating there is something inherently wrong or immoral in paying a consenting adult for sexual services. In a Metro Vancouver study⁸, under end-demand criminalization (2015-2018), there was a 41% reduction in access to health services compared to before PCEPA (2010-2013). Over those same time periods, there was also a 21% reduction in access to community-led support services.

Commercial Enterprises and Third Parties – s. 286.2
Negative Impacts on Sex Workers

- 6. “Commercial enterprise” exceptions eliminate managed indoor locations which were found by the SCC in Bedford to be the safest way to conduct sex work.⁹
- 7. Sex workers with fewer resources to afford advertising or setting up a website for themselves, or who lack business skills, are prevented from working for commercial enterprises such as escort agencies or massage parlours which have supportive safety infrastructure, as material benefit in these businesses is prohibited.
- 8. “Commercial enterprise” is not defined leaving sex workers with pervasive anxiety about which activities are criminalized and which are not.
- 9. The law therefore makes it difficult-to-impossible for sex workers to hire people to help with their work due to the valid fears that some individuals have about breaking

⁶ Bieman, Jennifer. “Sex workers, allies lash out at new London police policy to name sex buyers”. London Free Press. February 22, 2019.

⁷ Sterling, Andrea, and Emily van der Meulen. ““We Are Not Criminals”: Sex Work Clients in Canada and the Constitution of Risk Knowledge.” *Canadian Journal of Law & Society/La Revue Canadienne Droit et Société* 33, no. 3 (2018): 291-308.

⁸ Centre for Gender and Sexual Health Equity. “Harms of End-Demand Criminalization: Impact of PCEPA Laws on Sex Workers’ Safety Health and Human Rights”. (2019). See also: Argento, Elena, Shira Goldenberg, Melissa Braschel, Sylvia Machat, Steffanie A. Strathdee, and Kate Shannon. “The impact of end-demand legislation on sex workers’ access to health and sex worker-led services: A community-based prospective cohort study in Canada.” *PLoS one* 15, no. 4 (2020): e0225783.

⁹ 2013 SCC 72 [*Bedford SCC*]

the law. This leaves only less risk-averse people to rely on who are more likely to engage in exploitative practices. Again, this makes it more difficult for sex workers to work in safer indoor locations. A 2019 study¹⁰ found that there was a 31% reduction in access to third parties since the implementation of the PCEPA.

10. Sex workers' personal relationships are assumed to be parasitic which increases stigma against sex workers and increases scrutiny of their relationships. Sex workers are more likely to live in isolation to protect friends and family. In a 2017 study¹¹, sex workers reported uncertainty over what behaviours and groups the laws and law enforcement were targeting and that this was compromising their health and safety.
11. Contrary to popular stereotypes, a 2019 study¹² found that of the third parties interviewed, 68% were current or former sex workers, 88% identified as cisgender women and 12% identified as cisgender men.
12. Commercial enterprises fear keeping safer sex and harm reduction supplies like condoms on site to avoid being identified as a commercial sex enterprise. Lack of access to condoms increases risks of transmission of sexually transmitted infections including HIV.¹³ In a 2020 study of 884 sex workers, 19.1% reported difficulty in accessing condoms where police harassment and end-demand criminalization were identified as contributing to lack of access to condoms.¹⁴
13. Confusion around municipal zoning and licensing requirements leaves commercial enterprises vulnerable to over-policing of these businesses. For example, between 2014 and 2017 there was a 200% increase in notices of non-compliance issued by Municipal Licensing and Standards in Toronto.¹⁵ There is no consistency in how these businesses are regulated.¹⁶

¹⁰ Centre for Gender and Sexual Health Equity. "Harms of End-Demand Criminalization: Impact of PCEPA Laws on Sex Workers' Safety Health and Human Rights". (2019).

¹¹ Benoit, Cecilia, Mikael Jansson, Michaela Smith, and Jackson Flagg. "'Well, It Should Be Changed for One, Because It's Our Bodies': Sex Workers' Views on Canada's Punitive Approach towards Sex Work." *Social Sciences* 6, no. 2 (2017): 52.

¹² Centre for Gender and Sexual Health Equity. "Harms of End-Demand Criminalization: Impact of PCEPA Laws on Sex Workers' Safety Health and Human Rights". (2019).

¹³ Anderson, S., Jia, J., Liu, V., Chettiar, J., Krüsi, A., Allan, S., Maher, L. & Shannon, K. "Violence prevention and municipal licensing of indoor sex work venues in the greater Vancouver area: narratives of migrant sex workers, managers and business owners." *Culture, health & sexuality*, 17(7), 825-841. (2015)

¹⁴ Goldenberg, Shira, Ruchi Liyanage, Melissa Braschel, and Kate Shannon. "Structural barriers to condom access in a community-based cohort of sex workers in Vancouver, Canada: influence of policing, violence and end-demand criminalisation." *BMJ Sexual & Reproductive Health* (2020).

¹⁵ Armstrong, Helen. "What's Toronto the Good got against sex work?". Now Toronto. April 9, 2019.

¹⁶ Kelland, Ariana. "Unregulated St. John's Massage parlours a concern for police chief". CBC News. March 12, 2019.; "New rules for Regina massage parlours focus on protecting vulnerable sex workers". CBC News.

Procuring – s. 286.3

Negative Impacts on Sex Workers

14. This section:

- a. Reduces connection between sex workers and makes it more difficult to share information about bad dates due to fears this will be perceived as exercising direction and influence.
- b. Makes it difficult to share safer work practices including sexual and reproductive health care information by sex workers and support organizations due to fears this will be perceived as exercising direction and influence.
- c. Makes it impossible for two or more sex workers to work together at a location as sex workers acting as third parties (such as booking clients or administrative tasks) will be criminalized for exercising control, direction, and/or influence.

Advertising – s.286.4

Negative Impacts on Sex Workers

15. These laws stymies boundary setting by sex workers due to requiring vague advertisements to avoid the law. This means that sex workers are no longer able to be specific about services offered, and sexual and behavioural boundaries. Without clearly defining services offered, cost, and more, disagreements and misunderstandings are more likely and may lead to violence.
16. Sex workers who lack the resources to work independently and advertise for themselves can no longer have someone advertise their services which reduces their opportunities to work in safer indoor locations.
17. The elimination of online advertising spaces removes online spaces where sex workers can connect with one another, share bad date reports, and sexual health information.
18. It also reduces online access to service providers, including health care providers, as online advertising sites no longer wish to take ads that explicitly refer to the sex industry.

Limited immunity – s. 286.5

Negative Impacts on Sex Workers

19. This section of the law explicitly grants immunity to sex workers and says that they will not be prosecuted which reinforces the understanding that the acts described are wholly illegal and sex workers are simply in a special category in regard to them. This is an extraordinarily unusual formulation in criminal law, where immunity is normally granted on a case-by-case basis, most frequently to encourage participation in a prosecution. It is worth emphasizing that the law makes an otherwise legal activity –

consensual sex between adults – a crime when money or something of value is exchanged, even if coercion of any kind is absent and neither party experiences any physical, emotional, or psychological injury.¹⁷

20. Because sex workers are implicated in a criminal activity (their work), this can lead to harmful impacts that extend beyond arrest and prosecution for sex work-specific offences. These harms, such as eviction, detention, interrogation, search and seizures, and deportation, are not ameliorated by the immunity from prosecution in s. 286.5.

Our Recommendations

A. Repeal the laws that criminalize adult sex work.

We recommend repealing all criminal laws that prohibit the purchase or sale of sexual services by adults and that limit adults selling sex from working with others in non-coercive situations. This includes the PCEPA and provisions such as Section 213(1)(a) and (b) which were not constitutionally challenged in Bedford.

B. Don't conflate trafficking and sex work.

Sex work (the consensual exchange of money for sexual services) is not trafficking, and trafficking laws should not be used as a reason to investigate sex workers and sex work businesses.

C. Repeal Immigration and Refugee Protection Regulations, s. 183(1)(b.1).

This regulation prohibits anyone with a work permit in Canada from working in “businesses related to the sex-trade such as strip clubs, massage parlours or escort services.” This regulation does not prevent violence or exploitation in the sex industry and leaves migrant workers with no access to police or labour protections in situations that do not meet the definition of human trafficking. It also leaves migrant sex workers constantly vulnerable to immigration detention and deportation.

D. Create appropriate provincial laws and municipal bylaws in consultation with sex workers.

Decriminalizing sex work would not necessarily mean that there are no restrictions on sex work – however, the boundaries on sex work should be developed with sex workers, who are the true authorities in their lives and work. Ensuring that sex workers have access to the protections afforded all other workers by provincial employment standards and

¹⁷ Belak, B., and Bennett, D. *Evaluating Canada's Sex Work Laws: The Case for Repeal: Let's Open the Discussion*. Pivot Legal Society, 2016.

occupational health and safety legislations, along with other laws regulating provincial businesses, could help to eliminate workplace injustices. Using municipal bylaws created through community dialogue processes that prioritize a human rights approach to when and where sex work takes place is essential, because using criminal sanctions only serves to reinforce stigma.

E. Invest in non-judgmental support services for sex workers.

Funding to support exiting programs should never have been prioritized above funding to meet sex workers' needs, as it was through PCEPA. Evidence from Sweden has shown that when social service provision is contingent upon sex workers exiting the sex industry, harm reduction activities are curtailed. This undermines sex workers' access to information and safer sex supplies, and reduces contact between sex workers and service organizations. Sex worker unionization in commercial sex businesses should be encouraged.

F. Invest in supports for low income sex workers – whether they want to do sex work or not.

Poverty, discrimination, and stigma are constants in the lives of many sex workers. Using criminal laws to deny people their income sources is not the way to ensure genuine autonomy. Instead, like all people experiencing poverty or discrimination, low-income sex workers need access to benefits, safe and affordable housing, and culturally appropriate educational opportunities and health services, which in some cases may include mental health supports and harm reduction services. More funding should also be made available to support transitioning and skills training programs run by current or former sex workers who best understand the challenges.

G. Recognize the complex realities of Indigenous Peoples who sell and trade sex.

Narratives about Indigenous people in sex work tend to focus on their overrepresentation and the violence they face. Indigenous sex workers Pivot has worked with say this is due to their lack of economic opportunities and the fact that sex work is an occupation that does not require formal training. Indigenous people across Canada also have a great diversity of experiences and may use sex work as a way of resisting the colonization of their communities perpetuated through displacement from lands and the repercussions of the genocidal residential school system. Across Canada, funding for education and supports for Indigenous people on- and off-reserve are grossly inadequate. Provincial systems for youth-in-care, also disproportionately Indigenous, often do not meet their needs. As a result, Indigenous youth often struggle to support themselves when they try to escape abusive circumstances. The federal government should increase broad-based supports. This would position Indigenous people to decide whether they want to participate in the sex industry, and if so, under what conditions.

H. Learn from other jurisdictions.

New Zealand provides a model for decriminalization of sex work that was developed in consultation with sex workers and that respects and promotes their human rights and safety. New Zealand fully decriminalized sex work in 2003 and instituted a system that places much of the control over the conditions under which sex work takes place in the hands of local municipalities. Over the past decade, research has suggested that this legal regime has resulted in sex workers having greatly enhanced control over the conditions of their work, including their ability to refuse clients and to insist on condom use. We recommend an improvement on the New Zealand laws by ensuring that migrant sex workers can work legally. Because New Zealand has a unitary legal system that is different from Canada's federal system, decriminalization in Canada would necessarily look somewhat different. Furthermore, care would need to be taken to ensure that municipalities do not enact bylaws that replicate the harms of the criminal laws. Any law reform program should only be undertaken with the direct involvement and input of sex workers, who are the experts in their own health and safety.

I. Work on undoing the stigma that surrounds sex work.

The greatest commonality between sex workers in Canada is the stigma they face. Most sex workers live in fear that their work will be revealed to family and neighbours. This stigma perpetuates conditions that have allowed predators to murder, sexually assault, rape, and abuse sex workers with impunity. Education is also needed to dismantle negative stereotypes about sex workers, but **law reform is essential**. Changing the law would be a first step towards undoing the stigma and accepting sex work as an occupation and people who do sex work as full members of our communities.

About Pivot Legal Society

Pivot works in partnership with communities affected by poverty and social exclusion to identify priorities and develop solutions to complex human rights issues. Our work is focused in four policy areas: police accountability, drug policy, homelessness, and sex workers' rights.

About PACE Society

PACE Society is a peer-driven organization located in the Downtown Eastside of Vancouver that provides support, advocacy, and education by, with, and for current and former sex workers of all genders.

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