

BRIEF SUBMISSION TO THE HOUSE COMMITTEE ON JUSTICE AND HUMAN RIGHTS: REVIEW OF THE PROTECTION OF COMMUNITIES AND EXPLOITED PERSONS ACT

Shift Calgary, HIV Community Link

Our Work

Shift, a program of HIV Community Link since 2009, is a rights-based and harm reduction program for adults currently or formerly involved in sex work. HIV Community Link has deep roots in social justice, community mobilization, and activism; Shift follows suit in supporting the rights of the sex work community. Among many other services, Shift supports current or former sex workers with basic needs, case management, safety, testing for sexually transmitted and blood borne infections (STBBI's), advocacy, and education. Shift is accessed by individuals with diverse experiences in sex work, ranging from exploitation to full autonomy and choice and as such, we are familiar with the spectrum of needs of sex workers.

Position

Research and anecdotal reports find that The Protection of Communities and Exploited Persons Act (PCEPA) has not been successful in its objectives to protect those who sell their own sexual services and to reduce the demand for prostitution. PCEPA, as an end-demand Nordic style model of regulation, is in violation of the same rights as the previous laws on prostitution, and effectively makes sex work hidden, underground, and dangerous.¹ A growing body of research is in support of the decriminalization of prostitution and other sexual services. The aforementioned grounds, in addition to anecdotal reports from community members, inform Shift's stance against PCEPA and our support for the decriminalization of sex work.

Impacts of PCEPA

Criminalization of Clients

PCEPA aims to 'protect those who sell their own sexual services by addressing the demand side of sex work.'² However, the real-world effects of PCEPA on those who sell sexual services have been detrimental and have increased unsafe working conditions.³ After the implementation of PCEPA, sex workers are less able to negotiate terms, conditions, and boundaries with clients who fear being criminalized, thus increasing risk of STBBI transmission in addition to increasing risk of violence.³ As a result of end-demand legislation, clients have been lead to fear arrest,

¹ Sandra Ka Wong Chu and Rebecca Glass, "Sex Work Law Reform in Canada: Considering Problems with the Nordic Model", *Alberta Law Review*, 51, no.1 (2013), 101-124.

² *Bill C-36: Protection of Communities and Exploited Persons Act*, Department of Justice, Government of Canada. [Fact Sheet – Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act \(justice.gc.ca\)](https://www.justice.gc.ca/eng/1525/1525.html)

³ Elena Argento, Shira Goldenberg, Melissa Braschel, Sylvia Machat, Steffanie 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), 1-10.

which in turn creates a rushed negotiation process in more secluded areas.⁴ Although the laws are intended to reduce demand altogether, the demand remains and thus sex workers are put in precarious situations. PCEPA does not account for the negative impacts that criminalizing clients has on sex workers. Sex workers are not safer as a result of PCEPA, but rather need to compromise their safety in order to continue their work.

Research in Sweden, which has similar laws to PCEPA, has shown a decline in client numbers on strolls following end-demand legislation, which in turn results in greater competition for clients, lower prices, and the erosion of bargaining power on the part of sex workers.⁴ This decline in the number of clients on stroll is not a measure of the effectiveness of the legislation, but rather is the result of transactions taking place in more secluded (and dangerous) areas in order to avoid law enforcement.⁶

A client of Shift, who has worked as a street-based sex worker, reports that street-based sex workers have been pushed out of visible areas into secluded industrial areas and to online platforms which makes the work invisible. “Invisibility is dangerous” she says. Additionally, this client expresses how the public sentiment against sex work increases the hostility from communities towards sex workers, adding to the already precarious working environment.

While the goal of PCEPA’s criminalization of clients is to reduce the purchase of sex, legal approaches to sex work are not associated with whether or not clients pay for sex.⁵ There is no legal approach that can effectively reduce demand. If demand cannot be addressed, then it is imperative that the workers meeting that demand are able to do so in a safe manner. A client of Shift reports “sex work is the world’s oldest profession. We have always been around”.

Access to Services

PCEPA hasn’t had its intended impact and has in fact been found to do the opposite. PCEPA has been independently correlated to the reduction of sex workers accessing health services when needed, reduced access to community-led services, and has had no significant impact on whether sex workers access counselling support.⁶ Laws that aim to end the selling of sex contribute to the marginalization and violence that sex workers – women predominantly – experience, despite PCEPA’s intention to support women and to decrease the marginalization of people who sell sex.⁷

According to Brooks-Gordon, Morris, and Sanders (2021), “...criminalization is harmful to sex workers by forging and reinforcing health inequalities, creating contexts for violence and discrimination. Sex workers are disproportionately at risk of violence, sexual, physical and emotional harms, all linked to criminalized frameworks of governance...”⁸

⁴Wong Chu and Glass, “Sex Work Law Reform in Canada”, 101-124.

⁵C. Rissel, B. Donovan, A. Yeung, R.O. de Visser, A. Grulich, J.M. Simpson, and J. Richters, “Decriminalization of Sex Work Is Not Associated with More Men Paying for Sex: Results from the Second Australian Study of Health and Relationships”, *Sexuality Research and Social Policy*, 14, no.1 (2017), 81-86.

⁶Argento et al., “The Impact of End-Demand Legislation on Sex Workers’ Access to Health and Sex Worker-Led Services”, 1-10.

⁷Erica Kunimoto. “A Critical Analysis of Canada’s Sex Work Legislation: Exploring Gendered and Racialized Consequences”, *Inspiring Critical Thought*, 10, no.2 (2018), 27-36.

⁸Belinda Brooks-Gordon, Max Morris, and Teela Sanders, “Harm Reduction and Decriminalization of Sex Work: Introduction to the Special Section”, *Sexuality Research and Social Policy*, 18, no.1 (2021), 809-818.

Constitutionality

PCEPA was introduced after provisions of prostitution laws pre-2013 were deemed unconstitutional on the basis that they prevented implementation of safety measures of sex work.⁹ It ruled that section 7, the charter right to life, liberty, and security of the person, was particularly infringed upon. This charter right continues to be compromised under PCEPA. The criminalization of material benefit from sexual services, advertising sex work, and communicating to provide sexual services create significant barriers in the ability of sex workers to maintain their life, liberty, and security. Screening processes such as obtaining identifying client information has been increasingly difficult due to clients fearing that they will be reported and charged. Shift clients report that they rely on ‘gut feelings’ to evaluate the safety of a transaction. This method, while often effective for our clients, is not reliable nor is it reasonable as anything but a last resort, one that could be avoided with legal protection of people purchasing sexual services.

Further, section 15(1) of the charter, which affords and asserts the right to the equal protection and benefit of the law and prohibits discrimination on many grounds which sex workers embody, is compromised.¹⁰ Prior to the adoption of PCEPA, Won-Chu and Glass (2013) were doubtful that the act would pass at all due to this charter right, further demonstrating that PCEPA infringes on sex workers constitutional rights and freedoms.¹⁰

Decriminalization

International organizations, including Amnesty International, the World Health Organization, and Human Rights Watch, have maintained and affirmed their support for decriminalization.¹¹ Research finds that decriminalization of sex work is the best strategy to reduce the associated harms and encourages policymakers and practitioners to improve public health strategies by supporting a decriminalization policy.¹²

New Zealand remains one of the few nations to have decriminalized sex work to a full extent across jurisdictions, and research from New Zealand has found many positive changes and effects following this decision.¹³ Abel (2014) describes how New Zealand has become a welcoming environment for sex workers across the world, including Canada:

Many sex worker rights activists and academics have visited New Zealand in recent years. While not from Mars, they have come from Canada, the UK, the USA, the Netherlands and Sweden and have all been impressed not only by individual sex worker rights within New Zealand, but also by the very different environment in which sex work

⁹ Kunimoto, “A Critical Analysis of Canada’s Sex Work Legislation”, 27-36.

¹⁰Wong Chu and Glass, “Sex Work Law Reform in Canada”, 101-124.

¹¹Erin Albright and Kate D’Adamo, “Decreasing Human Trafficking through Sex Work Decriminalization”, *AMA Journal of Ethics*, 19, no.1 (2017), 122-126.

¹²Brooks-Gordon, Morris, and Sanders, “Harm Reduction and Decriminalization of Sex Work”, 809-818.

¹³ Gillian Abel, “A Decade of Decriminalization: Sex Work ‘Down Under’ but not Underground”, *Criminology and Social Justice*, online publication (February 14, 2014), 1-13, DOI: 10.1177/1748895814523024

happens. New Zealand sex workers, unlike those in most other countries, although arguably still stigmatized to some degree, certainly have citizenship rights.¹⁴

Decriminalization has not led to an increase of the purchase or demand for sexual services.¹⁵ Research has shown that demand cannot be manipulated, and that instead, decriminalization is the framework that allows for the safest environment for sex workers and maintains their human rights and respect.¹⁶

Human Trafficking

Human trafficking is often, if not always, brought up in conversations surrounding sex work. Human trafficking is a real concern and has detrimental and debilitating effects on individuals and on communities. With this in consideration, research shows that human trafficking is not decreased with the presence of end-demand legislation - instead, by pushing sex work underground and rendering it invisible, it becomes increasingly difficult for outsiders to notice the signs and differences between sex work and trafficking, thus harming both sex workers and people being trafficked.¹⁷

In their 2019 report on trafficking in Calgary, the Action Coalition on Human Trafficking Alberta (ACT) concludes that the conflation of sex work and trafficking leads to the misuse of anti-trafficking initiatives, which simultaneously exposes sex workers to further isolation and marginalization while attention and outrage are no longer expressed towards actual instances of violence and trafficking.¹⁸ This finding shows that the current legislation not only harms sex workers, but minimizes the experience of people being trafficked and who have survived trafficking.

Criminalizing sex work leads to sex workers being at higher risk of becoming trafficked because it allows traffickers to use the criminalized situation of the sex worker against them, in addition to sex workers being less willing to contact law enforcement out of fear of being charged.¹⁷ Despite PCEPA granting sex workers immunity, there is a lack of trust between sex workers, survivors of trafficking, and law enforcement. This leads to decreased reporting when someone is truly being exploited, which then creates an environment where exploitation is more likely to occur.¹⁷

At Shift, sex workers report being the community best equipped to understand when trafficking is occurring. Experiences with clients and each other, along with a firm understanding of consent and the continuum of sexual exchange, creates a strong knowledge base to turn to. In the fight

¹⁴ Abel, "A Decade of Decriminalization", 1-13.

¹⁵ Rissel et al., "Decriminalization of Sex Work Is Not Associated with More Men Paying for Sex", 81-86.

¹⁶ Brooks-Gordon, Morris, and Sanders, "Harm Reduction and Decriminalization of Sex Work", 809-818.

¹⁷ Albright and D'Adamo, "Decreasing Human Trafficking through Sex Work Decriminalization, 122-126.

¹⁸ Amy Norman and Alisa Tukkimaki, *Community Perspectives on The Landscape and Realities of Human Trafficking in Calgary*, (2018), Final Report for Action Coalition on Human Trafficking Alberta.

against trafficking, it is imperative that sex workers are not only heard and listened to, but are granted the rights, liberties, and safety that will allow them to work while reporting exploitation when it occurs.

Conclusion

Shift is in support of repealing PCEPA in favour of decriminalization on the basis of research findings and our experience running a program to support sex workers for the past 13 years. PCEPA has not been found to reduce the demand for adult services, nor has it been found to protect sex workers. Decriminalization has been put forward by sex workers, researchers, and global human rights organizations as the best policy to ensure the safety of communities and individuals alike.

We are humbled and honoured to have been able to provide this brief to the committee today. We are all fighting for the safety, respect, and human rights of our communities, and we hope that the input provided by us and by others will inform a decision that will allow us to reach that goal together.

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Shift is a harm-reduction and rights-based program for people currently or formerly involved in sex work. Shift meets clients where they are at and offers support and services appropriately. Shift works with clients towards identified goals which may or may not include leaving sex work or continuing sex work in a safe way. As a harm-reduction program, we believe that there are risks associated with all activities in life, and as such, it is a right to be able to engage in these activities in the safest manner possible.

Shift is a program of HIV Community Link, an agency that began as AIDS Calgary Awareness Association in 1983. Today, HIV Community Link aims to reduce transmission, engage communities, and empower choices.

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