

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

Date: February 21, 2022

Author: Dr. Lisa Lazarus, PhD, MPH

I am writing to you in my capacity as a community-based researcher who has been collaborating on sex work-related research in partnership with sex worker organizations, both in Canada and globally, since 2009. There is a large body of research that documents the harms that the legal context creates for sex workers (Armstrong, 2021; Benoit et al., 2017; Benoit et al., 2021; Beyrer et al., 2015; Krusi, D’Adamo, & Sernick, 2021; Shannon et al., 2015; Shannon et al., 2018; Platt et al., 2018). I have been involved in research that has demonstrated the harms that criminalization and stigmatization cause sex workers when accessing health care services (Lazarus et al., 2012) and in securing safe housing in Vancouver’s Downtown Eastside neighbourhood (Lazarus et al., 2011). This evidence predates the Protection of Communities and Exploited Persons Act (PCEPA).

In a landmark 2013 ruling, known as *Canada (Attorney General) v. Bedford*, the Supreme Court of Canada unanimously overturned existing sex work laws after finding they violated sex workers’ constitutional rights under the Canadian Charter of Rights and Freedoms (Supreme Court of Canada, 2013). This case was especially notable as it centred the voices of sex workers (Benoit et al., 2021). However, in 2014, these laws were replaced with the Protection of Communities and Exploited Persons Act (PCEPA), which sought to “end-demand” through the criminalization of clients and the purchase of sexual services, as well as criminalizing communication in a public place next to a school, playground, or daycare centre, receiving financial/material benefits from a person who has engaged in sex work, and advertising to provide sexual services (Department of Justice Canada, 2014). Research since the implementation of the PCEPA has highlighted how end-demand criminalization reproduces the same harms and violations to sex workers’ rights as previous sex work laws (Argento et al., 2020; Benoit et al., 2021; Crago et al., 2021; Krusi et al., 2014; Machat et al., 2019; McBride et al., 2019; McBride et al., 2021).

There is a growing body of evidence of the harms caused to sex workers since the introduction of the PCEPA. Research among sex workers in Vancouver has found that over a quarter (26.4%) of sex workers reported negative changes to their work conditions post-PCEPA, including a reduced capacity to screen clients and reduced access to workspaces and clients, while the vast majority (72.2%) reported no change to their work (Machat et al., 2019). Critically, experiencing negative changes was correlated with being an im/migrant to Canada and having experienced recent physical workplace violence. Sex workers facing high rates of criminalization were also more likely to report negative changes. Machat et al. (2019) note how these findings point to the failure of the PCEPA to support safe working environments for sex workers and may actually cause increased harm for the most marginalized sex workers. Similarly, research has shown that access to health and community-led services has decreased for sex workers since the PCEPA was brought into law (Argento et al., 2020).

Research among third parties who provide services for indoor sex workers found that they provided client screening, security, and sexual health resources for sex workers (McBride et al., 2021); findings that have previously been demonstrated in a review of the qualitative and ethnographic literature that has stressed the occupational and safety protections of indoor work environments and third parties (Goldenberg, Duff, & Krusi, 2015) and in epidemiological analysis on the impact of third parties on sex workers' occupational health and safety (McBride et al., 2019). These protective measures, however, are negatively decreased through third party criminalization under end-demand legislation (McBride et al., 2019; McBride et al., 2021). In qualitative and ethnographic research during a city-implemented end-demand policing strategy in Vancouver, sex workers expressed how police enforcement of clients negatively restricted safety strategies, leading to rushed screenings and displacement to more isolated areas with increased risks of experiencing violence (Krusi et al., 2014). Epidemiological analysis across five cities in Canada post-PCEPA further demonstrated how current end-demand laws compromised sex workers' access to police assistance in safety emergencies (Crago et al., 2021).

Research exploring sex workers' experiences under PCEPA highlighted recommendations to eliminate Canada's laws governing sex work and a call for policies that recognize their occupational health and safety (Benoit et al., 2021). As van der Meulen (2011, p.352) notes, "sex workers are simultaneously the most overlooked and the most important people in the policy equation; sex workers' expert opinions, testimonies, and narratives should be the primary sources of data considered when developing new policy" (in Benoit et al., 2021, p.3). Krusi et al. (2014, p.9) equally stress the failures of the Canadian government "to listen to strong evidence by sex workers, academics and human rights experts that the laws were creating and exacerbating devastating harms to sex workers' safety, health and human rights, including violence, abuse and murder". Research continues to point to the PCEPA reproducing harms to the health, safety, and human rights of sex workers.

Findings from these studies support global calls for the full decriminalization of sex work as critical in order to protect the health and human rights of sex workers. The harms of criminalization have been recognized by numerous multilateral organizations, including the World Health Organization with the UN Population Fund, UNAIDS and the Global Network of Sex Work Projects (2012), UNAIDS (2012), the Global Commission on HIV and the Law (2012; 2018), and Amnesty International (2016), as well as the Canadian Alliance for Sex Work Law Reform (2017).

While this review is long overdue, I urge you to prioritize the voices of sex workers and the evidence-based research that clearly demonstrates the harms caused by the PCEPA. Furthermore, I ask that you respond to the calls by the Canadian Alliance for Sex Work Law Reform, and their 26 member groups from across Canada, for the full decriminalize of sex work, including third parties and clients, and a shift away from a criminal framework towards one of labour and human rights.

Thank you for your consideration.

References

- Argento, E., Goldenberg, S., Braschel, M., Machat, S., Strathdee, S. A., & Shannon, K. (2020). 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*(4), e0225783.
- Amnesty International. (2016). Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers. Retrieved from: <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3040622016ENGLISH.pdf>
- Armstrong, L. (2021). 'I can lead the life that I want to lead': Social harm, human needs and the decriminalisation of sex work in Aotearoa/New Zealand. *Sexuality Research and Social Policy*, *18*(4), 941-951.
- Benoit, C., Jansson, M., Smith, M., & Flagg, J. (2017). "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*(2), 52.
- Benoit, C., Unsworth, R., Healey, P., Smith, M., & Jansson, M. (2021). Centering sex workers' voices in law and social policy. *Sexuality Research and Social Policy*, *18*(4), 897-908.
- Beyrer, C., Crago, A. L., Bekker, L. G., Butler, J., Shannon, K., Kerrigan, D., ... & Strathdee, S. A. (2015). An action agenda for HIV and sex workers. *The Lancet*, *385*(9964), 287-301.
- Canadian Alliance for Sex Work Law Reform. (2017). Safety, Dignity, Equality: Recommendations for Sex Work Law Reform In Canada. Retrieved from: <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>
- Crago, A. L., Bruckert, C., Braschel, M., & Shannon, K. (2021). Sex workers' access to police assistance in safety emergencies and means of escape from situations of violence and confinement under an "end demand" criminalization model: A five city study in Canada. *Social Sciences*, *10*(1), 13.
- Department of Justice Canada. (2014). Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act. Retrieved from: https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_f/c36fs_f_eng.pdf
- Goldenberg, S. M., Duff, P., & Krusi, A. (2015). Work environments and HIV prevention: a qualitative review and meta-synthesis of sex worker narratives. *BMC Public Health*, *15*(1), 1-15.
- Global Commission on HIV and the Law (UNDP HIV/AIDS Group). (2012). HIV and the Law: Risks, Rights & Health. Retrieved from: <https://hivlawcommission.org/report/>
- Global Commission on HIV and the Law (UNDP HIV/AIDS Group). (2018). HIV and the Law: Risks, Rights & Health Supplement. Retrieved from: <https://reliefweb.int/sites/reliefweb.int/files/resources/HIV-and-the-Law-supplement-FINAL.pdf>

Krüsi, A., D’Adamo, K., & Sernick, A. (2021). Criminalised interactions with law enforcement and impacts on health and safety in the context of different legislative frameworks governing sex work globally. In *Sex Work, Health, and Human Rights* (pp. 121-140). Springer, Cham.

Krüsi, A., Pacey, K., Bird, L., Taylor, C., Chettiar, J., Allan, S., ... & Shannon, K. (2014). Criminalisation of clients: Reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study. *BMJ Open*, 4(6), e005191.

Lazarus, L., Chettiar, J., Deering, K., Nabess, R., & Shannon, K. (2011). Risky health environments: Women sex workers’ struggles to find safe, secure and non-exploitative housing in Canada’s poorest postal code. *Social Science & Medicine*, 73(11), 1600-1607.

Lazarus, L., Deering, K. N., Nabess, R., Gibson, K., Tyndall, M. W., & Shannon, K. (2012). Occupational stigma as a primary barrier to health care for street-based sex workers in Canada. *Culture, Health & Sexuality*, 14(2), 139-150.

Machat, S., Shannon, K., Braschel, M., Moreheart, S., & Goldenberg, S. M. (2019). Sex workers’ experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada. *Canadian Journal of Public Health*, 110(5), 575-583.

McBride, B., Goldenberg, S. M., Murphy, A., Wu, S., Braschel, M., Krüsi, A., & Shannon, K. (2019). Third parties (venue owners, managers, security, etc.) and access to occupational health and safety among sex workers in a Canadian setting: 2010–2016. *American Journal of Public Health*, 109(5), 792-798.

McBride, B., Shannon, K., Murphy, A., Wu, S., Erickson, M., Goldenberg, S. M., & Krüsi, A. (2021). Harms of third party criminalisation under end-demand legislation: Undermining sex workers’ safety and rights. *Culture, Health & Sexuality*, 23(9), 1165-1181.

Platt, L., Grenfell, P., Meiksin, R., Elmes, J., Sherman, S. G., Sanders, T., ... & Crago, A. L. (2018). Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS Medicine*, 15(12), e1002680.

Shannon, K., Crago, A. L., Baral, S. D., Bekker, L. G., Kerrigan, D., Decker, M. R., ... & Beyrer, C. (2018). The global response and unmet actions for HIV and sex workers. *The Lancet*, 392(10148), 698-710.

Shannon, K., Strathdee, S. A., Goldenberg, S. M., Duff, P., Mwangi, P., Rusakova, M., ... & Boily, M. C. (2015). Global epidemiology of HIV among female sex workers: Influence of structural determinants. *The Lancet*, 385(9962), 55-71.

Supreme Court of Canada. (2013). *Canada (Attorney General) v. Bedford*. Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>.

UNAIDS. (2012). UNAIDS Guidance Note on HIV and Sex Work. Retrieved from: https://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf

van der Meulen, E. (2011). Sex work and Canadian policy: Recommendations for labor legitimacy and social change. *Sexuality Research and Social Policy*, 8(4), 348-358.

World Health Organization, UNFPA, UNAIDS, Global Network of Sex Work Projects. (2012). Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low and Middle Income Countries: Recommendations for a Public Health Approach. Retrieved from:
https://apps.who.int/iris/bitstream/handle/10665/77745/9789241504744_eng.pdf?sequence=1&isAllowed=y