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**A Brief to the Standing Committee on Justice and Human Rights House of Commons: Review of the Protection of Communities and Exploited Persons Act**

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**Expertise and Qualifications**

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I identify as a cis woman of Mi'kmaq and French ancestry, born and raised in Newfoundland & Labrador and currently living in Victoria, BC. I hold a Bachelor's of Arts in Education, a second Bachelor's of Arts in Sociology, a Masters in Sociology and a PhD in Sociology. I am currently a Scientist at the Canadian Institute for Substance Use Research and Professor Emerita of Sociology at the University of Victoria. My current top priority is to reduce barriers to social inclusion of sex workers in Canadian society. I have worked in this field for nearly 25 years, conducting peer-reviewed social science research before and after PCEPA, much of it funded by Canada's premier health research funding agency, Canadian Institutes of Health Research. My research has focused on documenting the lived and living experiences of sex workers across Canada and abroad, and the intersecting factors determining their safety, health and social inclusion.

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I identify as a cis woman of Chinese and British ancestry, born and raised a Treaty 7 person in Southern Alberta. I hold a Bachelor's of Science in Geology, a Masters of Science in Hydrogeology, and a PhD in the Social Dimensions of Health. I am currently a Research Affiliate at the Canadian Institute for Substance Use Research and post-doctoral student of Dr. Cecilia Benoit. My background in natural sciences informs my research on how colonial policies influence the health and wellness of marginalized populations including Indigenous and non-Indigenous youth who use substances, Indigenous people living with HIV, people living with disabilities, and sex workers.

**Position**

As our research has demonstrated prior to and after the Protection of Communities and Exploited Persons Act (PCEPA), the primary reason people engage in sex work is for financial need combined with less favourable employment options. Indeed, money is an overarching motive for beginning any job and this holds true as well for entry into sex work (Benoit, Ouellet, et al., 2017; Benoit, Smith, et al., 2021). Some sex workers explicitly say they started sex work to help lift their children out of poverty while others state it is to pay for their education. The limits of the job market to offer workers sustainable incomes are also strong factors that lead people to enter sex work.

This nuancing of the numerous and complex economic factors for selling sexual services is a crucial insight into how agency can be exercised by sex workers, even under conditions of financial constraint (Benoit, Ouellet, et al., 2017; Benoit, Smith, et al., 2018; Orchard et al., 2021). From this perspective, sex work is a livelihood strategy and, as with other personal service workers in precarious employment in Canada's current economic opportunity structure, understanding sex work as work does not mean that labour

exploitation does not occur in the occupation. Research demonstrates that sex work involves several hierarchies of exclusion that increase vulnerability to labour exploitation, similar to the labour exploitation that disadvantaged workers face in precarious jobs, such as retail and restaurant work (Benoit, 2021; Benoit, Jansson, et al., 2018; Benoit, Smith, et al., 2021; McCarthy et al., 2018). The most prominent of these hierarchies of exclusion are: childhood and adult economic vulnerability, inequities based on gender, race, sexuality and restrictive welfare, and educational, health and legal systems (Benoit, Smith, et al., 2021). In this conceptualization, labour exploitation is normative for the majority of workers across capitalist markets.

Sex workers state that their work has a number of advantages over the other jobs within their reach (Benoit, Smith, et al., 2021). Thirty-five percent of the 218 people in sex work we interviewed from six census metropolitan areas in 2012–13 - Victoria, Montréal, St John’s, Kitchener-Waterloo-Cambridge, Calgary and Wood Buffalo (Fort McMurray) - said they were also currently employed outside of sex work. All people interviewed had worked in other jobs outside of sex work some time in their adult lives. Out of the 13 categories for occupational history asked in the study, most sex workers had worked or were working in insecure part-time or part-year jobs with no formal educational requirements. These included serving food, preparing food, cashier, retail salesperson, light-duty cleaner, reception and home care (Benoit, Smith, et al., 2021).

Participants mentioned four themes related to work quality when comparing sex work with the other jobs they had done or were currently doing. Three themes were favourable - job satisfaction, money, control/independence. One theme was unfavourable - sex work stigma (Benoit, 2021; Benoit, Maurice, et al., 2019). As noted above, a major reason participants said they preferred sex work was the money. Financial motivations were central to participants’ decisions to continue in sex work, in addition to or instead of other jobs available to them that tended to bring in less income than sex work. Two-thirds of participants said that the money earned through sex work was a critical work quality benefit compared with other jobs in their reach. This was especially true for those with limited formal education and training, and because of this, sex work was less economically exploitative than other jobs (Benoit, Smith, et al., 2021). The majority of participants in this study also said they derived more personal satisfaction and fulfilment from sex work compared to their other jobs. They also reported a comparatively high level of control over their sex work tasks, including that they usually were in charge of scheduling appointments and time with clients. In other words, unlike many other low-wage personal service jobs available to them, many of the people in sex work in this study enjoyed greater freedom deciding when, where and with whom they would provide services.

The negative feature of sex work compared to their other jobs was sex work stigma, which they saw as embedded in society’s punitive laws and regressive social policies (Benoit et al., 2016; Benoit, Jansson, et al., 2017, 2018; McCarthy et al., 2021). As these research findings demonstrate, and as I have pointed out in my other published scholarship, in my testimony in 2018 before the Standing Committee on Justice and Human Rights and confirmed by other scholars, the empirical evidence demonstrates that sex work is a viable way for some people to make a living. I disagree with the conclusion stated in Bill C-36’s Technical Paper, that “[p]rostitution is an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place...”. This is not the case in the real world, when we put this moral reasoning to an empirical test and ask diverse samples of sex workers themselves what they think.

By criminalizing sex work (including criminalizing of selling and buying of sexual services, communication for the purposes of participating in the exchange of sexual services, and the use of third parties), people who sell sexual services are denied their livelihood strategy and pushed deeper into precarity and poverty. Furthermore, government interference, stigma, harassment and discrimination towards sex workers is worsened.

### **Impacts of PCEPA**

*Compromised safety, security, and health working in indoor and outdoor/public spaces.*

Sex workers face problems keeping safe and secure and are challenged in accessing non-judgmental protective and health services (Benoit, Smith, Jansson, Magnus, et al., 2019). Research done before PCEPA and since its enactment shows criminalization of sex work inevitably multiplies and worsens these problems for sellers (Benoit, Unsworth, et al., 2021). At any one time approximately half of the people selling sexual services interviewed for our studies state they were working independently and providing services to clients in pre-arranged off-street locations such as hotel rooms or homes. Approximately a quarter were working in some type of “managed” location (e.g., escort agency, massage parlour). The remaining quarter were working in outdoor locations. This being said, most participants reported trying out different work locations/sex markets concurrently and over time (Benoit, Smith, et al., 2021). Along with other researchers, I avoid using binary categories such as outdoor/indoor or on street/off street because these categories fail to illustrate the wide range of locations where people negotiate and deliver sexual services.

Research shows before PCEPA people in sex work had much lower confidence in police than other Canadians (Benoit et al., 2016; Benoit, Unsworth, et al., 2021; Crago et al., 2021). According to data from the Canada-wide general survey, 31% of Canadians said they had a great deal of confidence in police, 54% of the population said they had quite a lot of confidence, and only 15% responded that they did not have very much confidence (13%) or no confidence (2%) in police. Comparatively, out of the 218 participants from our national study, only 7% said they had a great deal of confidence in police, 30% said they had quite a lot of confidence in police, 37% stated that they did not have very much confidence, and 26% said that they had no confidence at all (Benoit et al., 2016).

Of the participants in our national study who reported incidents of victimization while working in the sex industry in the previous 12 months, only 22% of them said they had contacted the police at least once and just 16% of the whole said that at least one police report was filed in connection with their victimization (Benoit et al., 2017). There were similar findings in our recent post-PCEPA Victoria study (Benoit, Unsworth, et al., 2021). Of those who reported an incident of victimization in sex work in the previous 12 months, only 20% had contacted the police at least once and just 15% of the whole said they filed at least one police report. Rates of reporting were even lower for more disadvantaged participants, including those who identified as Indigenous, non-binary and Trans (Benoit, Unsworth, et al., 2021).

Studies of people in sex work point to multiple factors contributing to low rates of reporting victimization to police. The most prominent theme involves negative past experiences with police, which includes police-perpetrated physical and sexual assault against sex workers; police misconduct (such as delayed responsiveness to calls for help) and stigma/discrimination towards sellers. These negative interactions have

all been found to be contributing factors in decreasing their confidence/trust in police, which then result in not reporting violence to law enforcement (Crago et al., 2021; Goldenberg et al., 2020; McBride et al., 2019).

A large proportion of sex workers before and after the new criminal code change mentioned above believe that the police do a poor job ‘treating sex workers fairly’ and ‘being approachable’ and ‘easy to talk to.’ These findings were corroborated by my qualitative analyses of their experiences with police and their perceptions of them, where the themes of stigma and discrimination were dominant (Benoit, Smith, et al., 2021). Conversely, a New Zealand-based qualitative research study asked people who sell sexual services (n=34) and ‘key informants/support agencies’ (n=11) including 4 police officers (n=4), about how decriminalization affected street based workers. The study found that the decriminalization shifted the balance of power by removing the risk of arrest and by legislating specific worker rights (Armstrong, 2017). Reinforcing what other studies have found (Argento et al., 2020; Hall et al., 2020; McBride et al., 2019), many sellers who were interviewed also said they avoided seeking necessary healthcare due to past discrimination when seeking health care and ongoing concerns about discrimination.

Given the failure/inability of protective and health care providers to provide non-judgmental services, people who sell sexual services post PCEPA have developed their own strategies to protect their safety, security, and health while working in indoor and outdoor/public spaces (Benoit, Belle-Isle, et al., 2017; Bungay & Guta, 2018; Jiao et al., 2021). The most popular strategies included having access to cell phones, screening clients, getting money upfront, and avoiding intoxication while working. Some sellers also filled out ‘bad date’ reports found on the websites of community organizations which are concerned with reducing violence against women and other marginalized groups (Benoit, 2020). Safety measures such as these are difficult to coordinate and maintain in a criminalized context.

People in sex work also provided and received varying forms of support from their peers in the forms of both instrumental and affective supports (Benoit, Belle-Isle, et al., 2017). Instrumental support included information sharing about the sex industry and safety strategies, as well as more concrete forms of support, such as facilitating a coworkers’ ability to work and earn money and advising how to screen clients (Benoit, Belle-Isle, et al., 2017; Benoit & Unsworth, 2021b). Sellers and clients in my own and colleagues’ studies report that most of their interactions are free of conflict. While an explicit goal of PCEPA’s provisions that criminalize the purchase of sexual services is to reduce or eliminate the demand, thereby reducing or eliminating sex work, the actual outcome of criminalizing clients is to reduce sellers’ capacity to clearly negotiate the terms and conditions of the service they are willing to provide. It is this lack of ability to communicate clearly that contributes directly to increased exposure to harm for people in sex work. The ability to negotiate over the terms and conditions of the sexual services offered and sought before meeting in person is linked to workers feeling more autonomy over sexual health practices and feeling more empowered compared to those whose first encounter with clients is face-to-face (Benoit, Smith, et al., 2021).

By criminalizing the negotiation of sexual services, potential clients are very hesitant to share details about themselves to sellers (Benoit, Unsworth, et al., 2021). This makes it very difficult for sellers to conduct a thorough screening and enact other precautionary measures before accepting someone as a client. Relatedly, current criminal laws create difficulties for those who sell sexual services to enforce service standards with their clientele because of the limited ability to obtain contact information. Other Canadian research

conducted post-PCEPA reflects similar concerns regarding a lack of safety and a reduced ability to screen clients, due to fear of police scrutiny (Landsberg et al., 2017; Machat et al., 2019).

In short, criminal provisions related to sexual services between consenting adults cause great harm to sex workers. The decriminalization of sex work would allow the people in sex work to access standard labour protections and regulations so that they receive the same level of non-judgmental protection and health care as other residents of Canada.

*Reduced ability to work in association with others in indoor and outdoor/public spaces.*

Across studies, sex workers state that criminal laws governing sex work in Canada have a negative impact on sex workers' capacity to work together and their occupational rights, including their right to association (Benoit et al., 2016).

As noted above, research shows people who sell sexual services do not work in one sector but rather work in different work locations/sex markets concurrently and over time (Benoit, Smith, Jansson, Healey, et al., 2019). We thus advise against using binary categories such as outdoor/indoor or on street/off street because they do not illustrate the wide range of locations (home, hotels, motels, studios, bars, vehicles and parks) where participants negotiate and deliver sex services.

Sellers note that laws before Bedford and after enactment of PCEPA leave them without a secure lawful place to work in close proximity to colleagues (Benoit, Unsworth, et al., 2021). They are denied access to legal indoor managed workplaces, such as in-call escort agencies or brothels, which enhance safety in all its aspects for those workers who did not have a place of their own to work independently. Sex workers describe indoor managed workplaces as sites where they are more able to learn skills from co-workers, and have access to staff who carefully screen clients, record pertinent information, and secure the work environment, including increasing security by having someone in hearing distance next door should the sex worker need help (Benoit, Unsworth, et al., 2021). Other sex workers point out the need for a one-stop multi-purpose centre providing a safe workplace to negotiate and deliver sexual services and also access wrap around services to meet sex workers' physical, emotional, spiritual and mental health needs (Benoit, Unsworth, et al., 2021).

Criminalization causes harm to people who sell sexual services because it prevents them from using third parties for protection and stops them from forming their own associations and communities to look out for one another. Criminalizing receiving a financial or other material benefit from the purchase of sexual services (the "material benefit provision") makes it illegal for commercial enterprises offering sexual services for consideration to operate, thereby depriving sex workers of a workplace where they can associate with likeminded colleagues. The ability to legally congregate in the safety of a brothel, massage parlor, or their own homes and to hire staff to protect them from predators and abusive clients expands sex workers' rights and increases their safety at work.

*The impugned provisions have worsened stigma and increased police surveillance.*

Before giving the research evidence, it is important to note that PCEPA and its Preamble includes words and phrases that are inherently stigmatizing toward sex workers. Emotive phrases such as “exploited persons” and “victims” and “women’s bodies as commodities” are trademarks popular in the media that portray negative views of all sex workers, reducing them to the caricature of helpless victims without complexity or agency.

Stigma is a social attribute or mark that separates individuals from others based on socially given judgments. Stigmas are deeply discrediting and reduce the bearer from a complete accepted person to a tainted and discounted one. The consequences of stigmatization are far-reaching, including discrimination in employment and when seeking health and protective services. People in sex work are commonly constructed as deviant “others” and routinely denied social rights enjoyed by stigmatizers. Derogatory labels—such as prostitute, whore, and hooker—are systematically used to describe them in laws, social policies, the media, everyday interactions, showing the common nature and prevalence of these marks of disgrace (Benoit, Jansson, et al., 2018; Benoit, Maurice, et al., 2019; Benoit & Unsworth, 2021a). Recognizing stigmas beyond the personal level—in other words, as a “personal tragedy” or form of individual “deviance”—allows for exposure of the powerful structural mechanisms of social control that underlie cultural norms of shame and blame. This is vital to understanding how stigma plays out in the daily lives of sex workers. Such knowledge is crucial for understanding the negative impact of punitive laws on their human rights and the need for evidence-based destigmatization policies and programs. The policies and programs need to be informed by “the experts” – those with the lived and living experience of sex work stigmatization – in order to be successful (Benoit, Jansson, et al., 2018).

In our multi-city Canadian study, sex workers’ mean score on the Perceived Devaluation-Discrimination scale – which measures how negative attitudes are perceived by people who are stigmatized - was 4.8 on a six-point scale, which is higher than reported by people with mental health conditions (4.2), people who are legally-blind (3.4) and outreach workers providing services to people in sex work (3.3) (Benoit, Smith, et al., 2018). In our post-PCEPA study, sellers reported that stigma continues to persist, particularly when accessing police, health, and social services that are available to the public at large (Benoit, Unsworth, et al., 2021).

I agree with other researchers that the criminalization of sex work is a reflection of pervasive societal stigma inflicted on those who sell sexual services in Canada and elsewhere (Hall et al., 2020; Johnson & Porth, 2021; Lazarus et al., 2012). Criminalization of sex work legitimizes stigmatization, compounds sex workers’ antagonistic relationships with law authorities, and increases aggressive law enforcement surveillance. New Zealand has taken a different approach. Its legislature bases policies on evidence from a diverse sample of sellers and has a genuine involvement of its national support organization. In 2003 the country made a policy decision to take sex work out of its criminal code and regulate the industry within a public health and safety framework (Abel, 2014; Armstrong, 2017). Recent research demonstrates that stigma has lessened for people in sex work in New Zealand and their access to non-judgmental protective and health services has improved with the recognition of sex work as a legitimate occupation (Abel & Ludeke, 2021).

Based on the weight of the evidence, criminalizing sex work (including criminalizing of selling and buying of sexual services, communication for the purposes of participating in the exchange of sexual services, and the use of third parties) between consenting adults legitimizes and furthers the stigmatization of those who

sell sexual services and its aforementioned negative consequences. This in turn compounds their antagonistic relationships with law authorities.

*The harms created by criminalizing sex work is exacerbated for those of Indigenous background.*

The intersection of stigmas linked to sex and race result in avoidable harms to Indigenous people in sex work, in both their work and personal lives (National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada), 2019). This reality is compounded by the criminalization of adult sex work, which is considered by some researchers as a form of colonial violence (Hunt, 2015). The PCEPA can be seen as a continuation of Canada's colonial laws embedded in settler and Indigenous communities across Canada that perpetuate racist stereotypes about Indigenous women, such as either victims or hypersexualized. These racist views suppress their traditions, languages and spirituality, and destroy their families and communities. This historical context of violence and trauma has created the structural disadvantage that Indigenous people face today, including those in sex work, leaving them poorer, with worse health and less protection than other Canadians and much more likely to disappear and be murdered (Benoit et al., 2009, 2015; Benoit & Shumka, 2009; National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada), 2019).

There can be little doubt that Canada's current laws exacerbate the structural disadvantages that Indigenous sex workers face. Banning the sale and purchase of sexual services does not change the reality for Indigenous sex workers. They are still in need of money for themselves and their families and thus continue to meet clients. At the same time they remain reluctant to seek protective services when victimized (Benoit, Jansson, et al., 2017).

To improve the health, safety and rights of Indigenous people in sex work in Canada full decriminalization would include the legal purchase of sexual services, the use of a third party for safety, and communication for the purpose of participating in the exchange of sexual services. Indigenous sex workers also need adequately funded legal, safe, clean indoor spaces to work, as many whom have insecure housing or are without the resources to operate an independent sex work business. Long term, sustained funding should be provided for sex worker organizations to set up and run these indoor spaces (Benoit, Unsworth, et al., 2021).

*Intersections of race, health, and/or gender negatively affect the ways in which sex workers are impacted by the impugned provisions.*

The harms created by criminalizing sex work are also aggravated for other sellers with complex lives. Similar to their over-representation in other precarious jobs, cis women make up anywhere between 75-80% of adults who sell sexual services (Benoit, Smith, et al., 2021). In our studies sellers are further overrepresented by people who identify as Trans or non-binary and as non-heterosexual in their personal lives. They are also more likely to be collecting income assistance and to report a disability.

As noted above regarding Indigenous sellers, Canada's current laws exacerbate the structural disadvantages that cis women, non-binary and Trans people, poor Canadians, people with disabilities and immigrant

workers already face daily in our country (Orchard et al., 2021). Banning the sale and purchase of sexual services makes their lives harder and leaves them less safe.

By criminalizing sex work (including criminalization of selling and buying of sexual services, communication for the purposes of participating in the exchange of sexual services, and the use of third parties), people with complex lives who sell sexual services are denied their livelihood strategy and pushed deeper into precarity and poverty and exposed to further stigmatization and discrimination and have less protection than other Canadians. Decriminalization would improve the health and safety of sex workers, especially those disadvantaged because of their gender, race, social economic position, disability and migrant status (Benoit, Smith, et al., 2021; Benoit, Unsworth, et al., 2021).

## **Conclusion**

It is something as a myth that people who sell sexual services in Canada enter the activity against their will. The evidence shows that they decide to begin sex work for reasons similar to reasons why people enter other jobs. There is no doubt that for some, especially for the more disadvantaged, sex work can be their most realistic way of making a living. Evidence shows that sex work is one of many employment options for low-skilled workers. Many sex workers hold multiple precarious jobs. The autonomy sex work presents them in terms of job satisfaction, money and independence makes it a favourable alternative to other forms of employment within their reach.

Despite these advantages, sex work stigma creates risk to workplace safety and hinders sex workers' access to non-judgmental protective and health services. PCEPA has reinforced stigma and discrimination against them, exacerbating precarity in personal safety, economic stability, job security, and health status. People who sell sexual services are very conscious of the stigmatization of sex work in our society and embedded in PCEPA, both in the Preamble and provisions, which encourage negative depictions of sex workers and what they do to earn a living. It is ironic that PCEPA, which purports to help "exploited sex workers", enhances and enables that very exploitation.

Criminalization of sex work undermines sex workers' security, safety and physical and mental health across their work locations. In this regard you might say sex workers avoid seeking help from police and health providers because of the punitive laws and accompanying stigma surrounding their work. The impact of the legislation inevitably has a greater impact on Indigenous people in sex work who are overrepresented in sex work, and who are often already stigmatized due to their race. The same can be said for sex workers who are members of other disadvantaged groups.

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