



Stronger Together: Solidarity Organizing and Exploitation Prevention

Submission to the Standing Committee on Justice and Human Rights Review of the Protection of Communities and Exploited Persons Act

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Background: Problems and Solutions

“Each time a woman stands up for herself, without knowing it possibly, without claiming it, she stands up for all women.”

~ Maya Angelou (*The New York Times*, July 23, 2007)

Legal problems and legal objectives

According to Supreme Court of Canada's decision in *Canada v. Bedford*, the problem at issue with Canada's former prostitution laws was that the violence sex trade workers face “does not diminish the role of the state in making a prostitute more vulnerable to that violence.”¹

The first paragraph of the Preamble of the *Protection of Communities and Exploited Persons Act* (PCEPA) that replaced those former prostitution laws, states that the Parliament of Canada has grave concerns about inherent exploitation in prostitution and the risks of violence posed to sex trade workers.²

The Department of Justice Canada's Fact Sheet on PCEPA states that one objective of these new laws is **to protect those who sell their own sexual services.**³

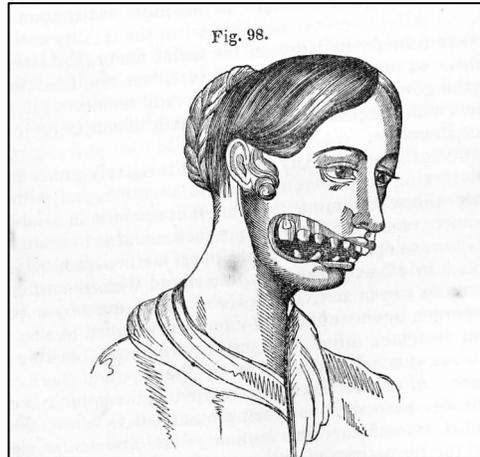
Solidarity organizing counters exploitation and promotes safety

"I not only have the right to stand up for myself, but I have the responsibility. I can't ask somebody else to stand up for me if I won't stand up for myself. And once you stand up for yourself, you'd be surprised that people say, 'Can I be of help?'"
~ Maya Angelou, *O Magazine*, December 2000

1888 – Match Stick Girls Strike, London
Solidarity organizing has a long history of success; when people can band together, they are able to end exploitation of their labour and improve safety and health conditions for their work. One such early example is the Match Stick Girls Strike of 1888.⁴



Women and girls in London's East End worked 14-hour days, under incessant exploitation, with extremely low pay and facing excessive fines issued simply for being late, dropping a match or talking to others. Matchmakers were chronically exposed to deadly white phosphorous vapours. "Phossy jaw" was the slur cast on matchmakers, referring to 'phosphorous necrosis of the jaw.' The rotting disease often continued to spread to the brain and a painful and horrific death. Removal of the jaw was not uncommon but did not necessarily prolong life.



Well-known socialist, Annie Besant exposed the conditions at the Bryant & May matchstick factory in an article titled, "White Slavery in London." Furious factory owners terminated workers who refused to sign a statement refuting the article. As a result, 1,400 women and girls went out on strike.⁵ The strike lasted for three weeks and the owners conceded to some of the matchmakers' demands.

Annie Besant continued to push for the use of red phosphorus instead, which was much safer than white phosphorus but also much more expensive.

Later, the Salvation Army took up the cause and set up a matchstick factory near Bryant & May. It was bright and well ventilated and they paid the girls and women a third more wages, provided tea breaks and used red phosphorus. Salvation Army matchboxes cost three times the price, but with the growing awareness people willingly paid it. Within 10 years, Bryant & May stopped using white phosphorus and the Salvation Army eventually sold their factory to them. By 1906, the use of white phosphorus was made illegal in Britain.⁶

1995 – ‘Unstoppable Women’s Synthesis Committee,’ Kolkata

A modern-day solidarity organizing success story takes place in Sonagachi, the large brothel district in Kolkata, India. At the time, the growing AIDS crisis cast prostitutes as vectors for the spread of HIV. In February 1992, epidemiologist Dr. Smarajit Jana, from All India Institute of Hygiene and Public Health went to Sonagachi to conduct research in HIV intervention. He recruited a team of peers from among the prostitutes to provide HIV prevention education. Their research revealed larger issues that fuelled HIV infection rates – including a lack of civil rights, police harassment, extortion from local thugs, a lack of education for their children, a lack of access to financial services and more.



Photo of Dr. Smarajit Jana (centre, holding megaphone) at protest rally.

Dr. Jana's AIDS prevention peer project which promoted the use of condoms, began to fight for more rights for prostitutes in order start to address the bigger issues. In doing so, they began to reorient popular attitudes about sex, work and choice. They initiated discussion in the press and media and changed the word "prostitute" to "sex worker." "Respect, Reliance and Recognition" was their motto.

In July 1995, a new organization with 12 sex-worker stakeholders was founded, called the Unstoppable Women's Synthesis Committee (Durbar Mahila Samanwaya Samiti or DMSC). Its goal was to promote solidarity organizing. In November 1997, DMSC hosted India's first national convention in Kolkata, attended by more than 3,000 sex workers. In 1999, DMSC took over the STD/HIV intervention program known as the "Sonagachi Project," and began using this model in other red light areas in West Bengal. This unique association also advocated for women's rights and organized community action boards to prevent and report human trafficking.

DMSC formed a sex workers' financial co-operative called "Usha" (meaning "Light"). The Government of West Bengal changed the language in the co-operative laws to include sex workers (previously only housewife's co-operatives were allowed). DMSC helped members obtain government voter identification cards that entitled members to health insurance and social welfare benefits. By 2007, the co-operative had grown to 5,000 members and Usha used their collective savings to provide micro-loans for members to the tune of \$280,000 USD, breaking the monopoly of moneylenders. By 2012, DMSC had a membership of 65,000 from 48 branches across the state of West Bengal.^{7,8,9}



Around 600 sex workers from Durbar Mahila Samanwaya Committee marched on May Day eve (April 30, 1998) for workers' rights to be recognized including the right to constitute a self-regulatory board to prevent exploitative practices rampant in different red light areas of Kolkata. Photo by Suvnedu Chatterjee.

By making sex workers collaborative partners instead of being simply targets of state intervention, DMSC reduced HIV infection rates in Kolkata's largest brothel districts to less than one percent. DMSC has been designated a best practices program by the World Bank. Dr. Jana passed away in 2021, but his work and DMSC solidarity organizing has grown into the All India Network of Sex Workers and is recognized by the Supreme Court of India to represent hundreds of thousands of sex workers, through 19 associations across 13 Indian states.^{10,11}

PCEPA – Legal obstacles to solidarity organizing

“Make every effort to change things you do not like. If you cannot make a change, change the way you have been thinking. You might find a new solution.”

~ Maya Angelou, *Letter to My Daughter*, 2008

Many people who sell their sexual services consider their practice as “employment.” For example (contrary to popular misconception) the majority pay income tax by reporting

to Revenue Canada. Research in Ottawa in June and July 2021, found that of 282 survey respondents who reported full-time or part-time employment in sex work, almost 70 percent reported filing income tax in 2019.¹²

Who is – and who is not – breaking the law?

The Justice Department's PCEPA Fact Sheet explains the Criminal Code Section 286.2, "Material Benefit Offence" this way: It is against the law "to earn money by owning, managing or working for a commercial enterprise, such as a strip club, massage parlour or escort agency, knowing that sexual services are purchased there." However, those who sell sexual services are not breaking the law if they "work together cooperatively and pool resources to pay for legitimate goods or services, provided that they keep only the earnings from the sale of their own sexual services."¹³

More specifically, protection from prosecution under the subsections about material benefit from sexual services is void if a person has promoted those sexual services. The Criminal Code (S. 286.2(4)(d) states those subsections "do not apply to a person who receives the benefit in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, **if they did not counsel or encourage that person to provide sexual services** and the benefit is proportionate to the value of the service or good."¹⁴

In addition, the Justice Department's PCEPA Fact Sheet explains Section 286.4 "Advertising Offence" to mean that prohibited advertising is defined as "the sale of another person's sexual services, including in print media, on websites or in locations that offer sexual services for sale, such as erotic massage parlours or strip clubs." This applies to "publishers or website administrators, if they know that the advertisement exists and that it is in fact for the sale of sexual services."¹⁵

With regard to exceptions to S. 286.2 and S. 286.4, S. 286.5 "Immunity — material benefit and advertising" specifies that: "No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services."¹⁶

What about forming unions or professional associations?

The laws clearly do not contemplate solidarity organizing. This raises troubling questions: Do these laws stand directly in the way of sex workers forming or running their own unions and associations?¹⁷ Or, when sex workers professionally associate, does that entity have immunity? Unions typically collect dues from their members; professional associations collect fees. Both groups routinely hire staff to perform the organization's business administration, including but not limited to: recruiting members, invoicing and collecting membership dues, training and professional development, and

advertising and promoting the industry generally as well as the benefits of membership. Arguably, these organizations by their nature would counsel and encourage members to provide their services.

Also, who would be subject to prosecution and who would be immune? The members? What about the board of directors? Their employees? What about members' contributions to collective benefits such as extended health and dental insurance, life insurance, pensions, group savings plans, financial hardship relief funds and so on?

Fundamental freedom to associate

Canada's Charter of Rights and Freedoms Section 2(d) guarantees freedom of association. Section 1 of the Charter qualifies that this freedom is "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." *The Charter of Rights and Freedoms: A Guide for Canadians* explains also that, "rights cannot be absolute; they must be qualified in order to protect the rights of others."

Here lies our legal conundrum: Do Criminal Code sections 286.2 "Material benefit from sexual services" and 286.4 "Advertising sexual services" prevent *de facto* people who sell sexual services from forming unions and professional associations? It would seem an exception has not been made for these organizations to collect fees for providing membership services, including co-operative advertising and promoting the sexual services industry generally.

Is this violation of the freedom to associate justifiable under Section 1 of the Charter?

Canadian legal precedent supports solidarity organizing

Two laws that obstruct or prevent workers from forming a union have been ruled unconstitutional. *Dunmore v. Ontario* 2001 SCC 94 ("Exclusion of agricultural workers from statutory labour relations regime") states:

"The purpose of s. 2(d) of the Charter is to allow the achievement of individual potential through interpersonal relationships and collective action. This purpose commands a single inquiry: has the state precluded activity because of its associational nature, thereby discouraging the collective pursuit of common goals?

"Trade unions develop needs and priorities that are distinct from those of their members individually and cannot function if the law protects exclusively the lawful activities of individuals. The law must thus recognize that certain union activities may be central to freedom of association even though they are inconceivable on the individual level."¹⁸

Imposing positive obligations on government to extend protective legislation to unprotected groups

A Guide to the Law of Organizing in British Columbia explains the implications of *Dunmore v. Ontario* 2001:

“Dunmore cracked the door open for expanding the scope of the right of freedom of association to cover certain collective activities that have no individual analogue. In addition, the majority in Dunmore concluded, in some circumstances, that section 2(d) freedom may impose positive obligations on government, for example, to extend protective legislation to unprotected groups of employees. At issue in Dunmore was the exclusion of agricultural workers from Ontario’s labour relations statute. Noting the “profound connection between legislative protection and the freedom to organize,” the majority concludes that without the benefits of protective legislation such as the Labour Relations Act, 1995, exercising the right of association in Ontario’s agricultural sector was “all but impossible.” The exclusion of agricultural workers from the Labour Relations Act, 1995 “substantially interferes with their fundamental freedom to organize” and, thus, breached section 2(d). After concluding that the breach was not justified under section 1 of the Charter, Bastarache J. found that what was required of the State was:

“...at a minimum a regime that provides agricultural workers with the protection necessary for them to exercise their constitutional freedom to form and maintain associations. The record shows that the ability to establish, join and maintain an agricultural employee association is substantially impeded in the absence of such statutory protection and that this impediment is substantially attributable to the exclusion itself, rather than to private action exclusively. Moreover, the freedom to establish, join and maintain an agricultural employee association lies at the core of s. 2(d)... I conclude that at minimum the statutory freedom to organize in s. 5 of the [Labour Relations Act, 1995] ought to be extended to agricultural workers, along with protections judged essential to its meaningful exercise, such as freedom to assemble, to participate in the lawful activities of the association and to make representations, and the right to be free from interference, coercion and discrimination in the exercise of these freedoms.”¹⁹

Recommendation: The solution to our conundrum

The government has a duty to ensure that marginalized workers have a right to solidarity organizing. The Justice Committee, when contemplating this omission through its review, must amend the laws to ensure that the freedom to establish, join and maintain an association and the statutory freedom of solidarity organizing is guaranteed for those who sell sexual services in Canada.

I’ve learned that making a “living” is not the same thing as making a “life.”

~ Maya Angelou

Triple-X Workers' Solidarity Association of British Columbia

"Standing together to determine the terms of Triple-X work."

Triple-X Workers' Solidarity Association of B.C. is a registered non-profit association in British Columbia since February 2012 (Society Incorporation Number: S-0059449; Federal Business Number: 830870309BC0001).

Persons can become members of the Triple-X Workers' Solidarity Association of B.C. if they have agreed to the direct exchange of sexual stimulation for financial compensation within the last six months and they intend to continue to work in the Triple-X industry. The full list of Triple-X membership criteria as defined in our Constitution, Bylaws & Policies are available on our bylaws webpage: <https://triple-x.org/about/bylaws.html>.

As of June 2018, the Triple-X certification mark was registered with Innovation, Science and Economic Development Canada (Certification Mark No. 1,774,304). Section 2 of the Defined Standard ensures that members have provided Triple-X with proof of age (18 years of age or older) in the form of government-issued identification or affidavit by a guarantor. Section 3 stipulates that members have signed the Triple-X form agreeing that they consider themselves a Triple-X worker and agreeing to provide Triple-X services for financial compensation. Triple-X services involve sexual stimulation that may or may not involve physical contact.

Section 4 of the Defined Standard for certified workers ensures:

"... that they are qualified to: a) assess risks for sexually transmitted infections (STIs); and b) ensure best practices in STI prevention are followed appropriate for the service provided according to BC Centre for Disease Control guidelines."

In our role to provide education regarding sexual health and safety, Triple-X examines and analyzes federal and provincial public health policies for potential implications on the sex industry. Triple-X also organizes and co-sponsors Vancouver's Red Umbrella March for Sex Work Solidarity, held annually since 2013.

Notes

1. "The impugned laws negatively impact security of the person rights of prostitutes and thus engage s. 7. The proper standard of causation is a flexible "sufficient causal connection" standard, as correctly adopted by the application judge. The prohibitions all heighten the risks the applicants face in prostitution — itself a legal activity. They do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky — but legal — activity from taking steps to protect themselves from the risks. That causal connection is not negated by the actions of third-party johns and pimps, or prostitutes' so-called choice to engage in prostitution. While some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so. Moreover, it makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence."
(Canada (Attorney General) v. Bedford, File No.: 34788. 2013: June 13; 2013: December 20. p. 1105)
2. "Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it."
(The Protection of Communities and Exploited Persons Act, 2014. Preamble, Para. 1.)
3. "Its overall objectives are to: 1. Protect those who sell their own sexual services."
Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act Fact Sheet. In force as of December 6, 2014, Department of Justice Canada
https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/c36fs_fi_eng.pdf
4. "English Factory Laborers Were Forced To Work With Toxic Chemicals Until Their Faces Became Deformed," Melissa Sartore, *Ranker*, Updated October 31, 2019
<https://www.ranker.com/list/london-matchgirls-strike-phossy-jaw/melissa-sartore>
5. "Meet the matchstick women — the hidden victims of the industrial revolution," Catherine Best, *The Conversation*, March 8, 2018
<https://theconversation.com/meet-the-matchstick-women-the-hidden-victims-of-the-industrial-revolution-87453>
6. Match Girls' Strike and The Salvation Army (Youtube video)
<https://m.youtube.com/watch?v=TGmv9q6j2tg&feature=youtu.be>

7. "Dr. Smarajit Jana, who helped children of sex workers to progress through football, passes away," The Bridge Desk, *The Bridge*, May 8, 2021
<https://thebridge.in/football/smarajit-jana-football-develop-children-sex-workers-passes-away-21378>
8. "Epidemiologist Smarajit Jana passes away," Shiv Sahay Singh; Jagriti Chandra, *The Hindu*, May 10, 2021
<https://www.thehindu.com/news/national/other-states/epidemiologist-smarajit-jana-passes-away/article34528012.ece>
9. Durbar Mahila Samanwaya Committee (DMSC)
https://en.wikipedia.org/wiki/Durbar_Mahila_Samanwaya_Committee
10. "A voice for sex workers: Smarajit Jana nudged governments, aid agencies, NGOs and activists into respecting the choices made by sex workers," *The Indian Express*, May 11, 2021
<https://indianexpress.com/article/opinion/a-voice-for-sex-workers-dr-smarajit-jana-hiv-aids-7311047/>
11. "Revolutionary changes closely followed the organisation's inception. A study released ten years after the Durbar began its work stated, "In India, HIV seroprevalence rates among sex workers have ranged from 50–90% in Bombay (Mumbai), Delhi, and Chennai. However, HIV rates of only 10% have been observed among sex workers in Calcutta (Kolkata), a city on the drug route into the heart of India and one of the most impoverished urban areas in the world. Condom use has risen in Calcutta (Kolkata) in recent years, from 3% in 1992 to 90% in 1999, compared with steady rates of low condom use among sex workers in other cities in India."
 "65000 Sex Workers Advocate For Rights Like Never Before, Thanks To One Heroic Doctor," Divya Sethu, *The Better India*, January 21, 2022
<https://www.thebetterindia.com/273849/hero-smarajit-jana-durbar-collective-helps-kolkata-sex-worker-get-rights/>
12. "Sex, taxes & COVID-19: How sex workers navigated pandemic relief efforts," *The National Post*, The Canadian Press, December 14, 2021. (Ryan Conrad, SSHRC Postdoctoral Fellow, Cinema & Media Studies, York University, Canada and Emma McKenna, SSHRC Postdoctoral Fellow, Criminology, L'Universite d'Ottawa/University of Ottawa)
<https://nationalpost.com/pm-news-pmn/sex-taxes-covid-19-how-sex-workers-navigated-pandemic-relief-efforts>
13. "This offence criminalizes receiving money or other material benefit from the prostitution of others in exploitative circumstances, including in the context of a commercial enterprise that offers sexual services for sale. This means that it is illegal

to earn money by owning, managing or working for a commercial enterprise, such as a strip club, massage parlour or escort agency, knowing that sexual services are purchased there. Since the new law protects from criminal liability those who receive money from the sale of their own sexual services, the material benefit offence does not apply to sellers of sexual services, including when they work together cooperatively and pool resources to pay for legitimate goods or services, provided that they keep only the earnings from the sale of their own sexual services."

"Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act Fact Sheet. In force as of December 6, 2014," Department of Justice Canada

https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/c36fs_fi_eng.pdf

14. *Criminal Code of Canada*, (S. 286.2(4)(d)), "Material benefit from sexual services: Exception"
15. "The offence also applies to publishers or website administrators, if they know that the advertisement exists and that it is in fact for the sale of sexual services. The new laws also allow the court to order the seizure of materials containing advertisements for the sale of sexual services, as well as their removal from the Internet, regardless of who posted them." However, the new laws protect from criminal liability a person who advertises the sale of their own sexual services.
"Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act Fact Sheet. In force as of December 6, 2014," Department of Justice Canada
https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/c36fs_fi_eng.pdf
16. "No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services."
Criminal Code of Canada, s.286.5 "Immunity — material benefit and advertising"
17. "B.C. sex workers' association says federal law kills membership drives," Charlie Smith, *The Georgia Straight*, July 16, 2020
<https://www.straight.com/living/bc-sex-workers-association-says-federal-law-kills-membership-drives>
18. "In order to establish a violation of s. 2(d) of the Charter, the appellants must demonstrate that their claim relates to activities that fall within the range of activities protected by s. 2(d) of the Charter, and that the impugned legislation has, either in purpose or effect, interfered with these activities. In this case, insofar as the appellants seek to establish and maintain an association of employees, their claim falls squarely within the protected ambit of s. 2(d)."

“In 1994, the Ontario legislature enacted the Agricultural Labour Relations Act, 1994 (“ALRA”), which extended trade union and collective bargaining rights to agricultural workers. Prior to the adoption of this legislation, agricultural workers had always been excluded from Ontario’s labour relations regime. A year later, by virtue of s. 80 of the Labour Relations and Employment Statute Law Amendment Act, 1995 (“LRESLAA”), the legislature repealed the ALRA in its entirety, in effect subjecting agricultural workers to s. 3(b) of the Labour Relations Act, 1995 (“LRA”), which excluded them from the labour relations regime set out in the LRA. Section 80 also terminated any certification rights of trade unions, and any collective agreements certified, under the ALRA. The appellants brought an application challenging the repeal of the ALRA and their exclusion from the LRA, on the basis that it infringed their rights under ss. 2(d) and 15(1) of the Canadian Charter of Rights and Freedoms. Both the Ontario Court (General Division) and the Ontario Court of Appeal upheld the challenged legislation.”

Dunmore v. Ontario 2001 SCC 94

19. *A Guide to the Law of Organizing in British Columbia*, Second Revised Edition - October 15, 2016. Leo McGrady, QC; Sonya Sabet-Rasekh pp. 143-146
<https://mcgradylaw.ca/pdfs/Law%20of%20Organizing%20Revised%202nd%20ed%20October%2015%202016.pdf>