



Submission to the House of Commons Standing Committee on Justice and Human Rights: Review of the *Protection of Communities and Exploited Persons Act* (PCEPA)

Submitted to:

House of Commons Standing Committee on Justice and Human Rights
44th Parliament, 1st Session

Submission Date: February 25, 2022

Queer Ontario (QO) welcomes the opportunity to provide our perspective to the Standing Committee on Human Rights on the current regulatory framework for prostitution (sex work) in Canada. Queer Ontario, founded in 2009, is a provincial network of gender and sexually diverse individuals and their allies who are committed to questioning, challenging, and reforming the laws, institutional practices, and social norms that regulate queer people. Our predecessor organization, the Coalition for Lesbian and Gay Rights of Ontario (CLGRO), founded in 1975, has worked in coalition with sex workers and other groups calling for the decriminalization of laws regulating sex work since the 1980s (Warner 2010; Brock, 2009; Kinsman 1996). Queer Ontario released its first [Policy Statement on Sex Work](#) in 2011 to coincide with the International Day to End Violence Against Sex Workers, founded in 2003 and commemorated on December 17 every year. Working with a loose coalition with sex worker organizations, including Maggie's Toronto Sex Workers Action Project over the years, QO has supported the decriminalization of sex work as a core principle of our own vision of critical queer liberation. There are clear links between the criminalization and regulation of queer bodies, spaces and practices under the bawdy house laws and arrests for so-called "public" sex, for instance, and the criminalization and regulation of sex workers both historically and currently.

Queer Ontario, along with sex worker activists and their allies, welcomed the Supreme Court of Canada's (SCC) decision of 20 December 2013 in *Canada v. Bedford*, which struck down as unconstitutional three major prostitution-related *Criminal Code* statutes: keeping, transporting, or being an inmate of a common bawdy house (§210 and 211); procuring or living on the avails of prostitution (§212); and communicating for the purposes of prostitution (§213). Indeed, the SCC found, in a rare unanimous decision, that these laws both negatively impacted the health and safety of sex workers, and contravened their rights to life, liberty and security of the person guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*. This decision was clear that Canadian law, in criminalizing sex work, had seriously undermined sex workers' right to safety and security, and was thus partly responsible for rendering sex workers vulnerable to violence. In light of the Robert Picton murders, the ongoing disappearance and murders of Indigenous women and girls in disproportionate numbers, the assaults and disappearances that sex workers face generally, including the recent murders of mostly Asian massage parlor workers in Atlanta, it is again clear that a new legal model – one that foregrounds decriminalization and removes barriers that impede the ability for sex workers to benefit from the safety, security, autonomy, rights and responsibilities of any other legitimate worker or small business enterprise – is needed.

Considering the goal just described, QO and sex worker organizations and their allies stand opposed to the new legal framework that was introduced by the previous Conservative Government after the *Bedford* decision and effectively rushed through Parliament. The resulting new law, Bill C-36, or the *Protection of Communities and Exploited Persons Act* (PCEPA), has done little to advance the explicit legal intent of the SCC decision in *Bedford*, to enhance the safety of sex workers and decriminalize key practices that put sex workers at risk of arrest. Instead, many provisions under PCEPA – despite rendering sex work legal – directly re-criminalize many activities that sex workers employ in the course of their work, and most concerning, it makes the purchasing of sexual services a crime, thus placing the clients of sexual services in legal jeopardy (HIV Legal Network, 2014; CASWLR, 2019).

PCEPA is a retrogressive legal framework that effectively criminalizes the consumers or clients of sex workers. Criminalizing the *purchase* of sexual services by adults violates sex workers' right to safety by making both working and living conditions more dangerous. The harms caused by the laws struck down in *Bedford* are in large part reproduced in the PCEPA and this is unconstitutional. If it is legal for sex workers to pursue their trade as a legitimate business, then the criminalization of their clients – which amounts to interfering with their livelihood – stands to violate labour laws as well as their individual rights to health, safety, and the right to a legal livelihood.

PCEPA has failed both the letter and spirit of the *Bedford* decision by neglecting to remove Criminal Code and other legal impediments to the rights, safety, and security of those who work in the sex trade. Queer Ontario encourages the Standing Committee on Justice and Human Rights to foreground the perspectives and active participation of sex workers, sex worker organizations, such as Maggie's and Butterfly, and their allies as the leading voices of authority in the present review of the PCEPA. Along with the disability activist movement, which adopted the slogan *Nothing About Us Without Us*, sex workers need to be substantively included in decisions that affect their lives and livelihood.

Queer Ontario endorses and supports the progressive legal framework advanced by a coalition of sex workers and their allies, The Canadian Alliance for Sex Work Law Reform (CASWLR), and the extensive working documents they have produced (CASWLR, 2017). Additionally, the vexing arena of Human Trafficking needs more critical attention. Queer Ontario insists on a separation between consensual sex work, and coerced forms of work. Sex work has often been conflated into the topic of human trafficking or sex trafficking, which does not address the real needs of migrant sex workers and those working and living under precarious status. We support the work and perspectives of Butterfly: Asian and Migrant Sex Workers Support Network and encourage legislators and the public to seek out their extensive public education on this topic (Butterfly, 2021). A highly regarded researcher of human trafficking is York University professor Kamala Kempadoo. Her academic research and published books on human trafficking form an extensive body of critical research; an important conference held at York University on human trafficking has also made their proceedings available online (Kempadoo and Davydova, 2012) and would provide this Committee with a range of valuable information on these issues.

Queer Ontario advocates for the decriminalization of sex work and for the right of sex workers to organize and conduct their business in possession of the full range of legal rights extended to any other legitimate business enterprise. Sexual labour and sexual business enterprises should be free from coercion and violence; sex workers should be allowed to work as autonomous businesses and to implement health and safety provisions for their work. Moreover, existing labour and employment laws should be applied, or new ones developed with input from sex workers themselves, to ensure that sex workers are working under safe conditions, have access to employment services and benefits, can pay taxes, and can organize effectively by joining professional associations or labour unions. Sex workers must enjoy the rights and obligations of any other worker or legitimate business in Canada. All local or provincial regulations should respect and protect sex workers' human and labour rights.

Queer Ontario recognizes that the decriminalization of sex work is one necessary step in the process of sex work becoming a fully integrated and destigmatized activity in local community and urban civic life. In addition to Criminal Code reform, municipal regulations, such as nuisance or zoning bylaws, long used by residents' and business associations to curb sex work activity from urban areas, would require revision. These bylaws and other municipal regulations that affect sex workers would require undergoing a process of revision with the active and meaningful participation of sex workers and sex work organizations having a seat at the table. Sex workers have always been part of our communities and their voices and participation in our neighbourhoods and in civic matters that affect their lives should be heard and respected.

In addition, Queer Ontario supports publicly funded services for sex workers whose marginalization may be compounded by violence, poverty, and addiction. Sex workers who are vulnerable often face multiple and compounding forms of oppression involving racism and racialization, trans* feminine or queer, history of trauma, housing, or food insecurity, and/or homelessness, substance use, persistent criminalization, pathologization including psychiatrization, systemic mental health neglect or emotional overwhelm, undocumented or insecure status, Indigenous sex workers, all need specific wrap-around programs, preferably staffed by sex workers themselves. These services should, ideally, operate under a philosophy of care that places the needs, voices, and experiences of sex workers first and which encourages them to take control of their own lives in a supportive environment.

The decriminalization of sex work is of primary importance for advancing the well-being of individuals with disabilities, who may require assistance in self-pleasuring or to engage in consensual sexual relations with chosen others. A coalition of individuals with disabilities together with sex workers have formed a group, Equitable and Accessible Sexual Expression (EASE), to raise awareness about the need for expanding assistive care to include erotic pleasure and have engaged in training sex workers to work with people with disabilities.

Queer Ontario stands with sex worker organizations in their call to see a "made-in-Canada New Zealand model" approach to prostitution that prioritizes sex workers' input to the law reform process. New Zealand's decriminalization model legitimizes sex work as labour with all the attending rights and obligations as for any other worker under the law, as well as offering protections through occupational health and safety standards. Any new laws must ensure that sex workers' human and labour rights are protected.

Finally, we feel that it is notable that lesbian, gay, bisexual, trans, and queer, plus (LGBTQ+) communities, especially gay, bi or men who have sex with men (MSM) individuals have an important relationship to erotic sociality (bathhouses, sex parties, etc.) and especially the products of commercial sexual labour in the form of lesbian, trans, or gay male pornography that they can enjoy privately. Studies have shown that the use of erotic entertainment (such as legally available porn) among non-heterosexual individuals forms a crucial part of identity formation, offering one of the very few spaces in the culture where queer individuals can see their desires and forms of sexual behaviour enacted without shame (Burger 1995; Waugh & Arroyo, 2019). Male-identified individuals who have sex with men for commercial reasons are also widely accepted within the LGBTQ+ community, and many have a passing familiarity with sex work, may know individuals involved in commercial sex in its many aspects, or are themselves the

legal consumers of entertainment or products that employ sexual labour (erotic dancing, stripping, porn, webcam modeling, etc.). To this point, we feel it is notable that among Queer Ontario's currently elected Steering Committee, composed of seven elected members, two of us have been involved in sex work historically either as a primary or supplemental source of income.

In conclusion, Queer Ontario supports the repeal of PCEPA and calls for the full decriminalization of sex work in keeping with the SCC decision in *Canada v. Bedford*. QO supports the rights of sex workers to organize and conduct their business in possession of the full range of legal rights extended to any other legitimate business enterprise. But, most of all, Queer Ontario underscores the need for this Committee to ensure that the lived experience of sex workers and their perspectives on sex work are centered, integrated, and understood in the review of the PCEPA that you are presently undertaking.

About Queer Ontario:

Queer Ontario is a provincial network of gender and sexually diverse individuals — and their allies — who are committed to questioning, challenging, and reforming the laws, institutional practices, and social norms that regulate queer people. Operating under liberationist and sex-positive principles, we fight for accessibility, recognition, and democratic pluralism, using social media and other tactics to engage in political action, public education, and coalition-building. We also aim to build critical dialogue, political capacities, and liberationist perspectives within queer communities.

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