

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

Submitted by Action Canada for Sexual Health and Rights. February 25, 2022.

Action Canada for Sexual Health and Rights (“Action Canada”) is a registered Canadian charity with the mission of advancing and upholding sexual and reproductive health and rights in Canada and around the world. Action Canada is the legal amalgamation of three organizations: Canadian Federation for Sexual Health (formerly the Planned Parenthood Federation of Canada), Canadians for Choice, and Action Canada for Population and Development. As such, Action Canada has more than 50 years of institutional experience with sexual and reproductive health and rights. Our vision is for all people everywhere to have full control over, and to decide freely upon, all matters related to their sexuality, reproduction, and gender, including their reproductive and sexual health.

Action Canada advances its mission through (i) advocacy towards domestic and international legislative and policy reform; (ii) accessible sexual and reproductive health information; (iii) the promotion of publicly funded comprehensive sexuality education; and (iv) support to people and organizations working to advance sexual and reproductive health and rights.

Action Canada understands that choice, bodily autonomy, and consent are central tenets of human rights related to sexuality, reproduction, and gender. Our work is rooted in intersectional feminism and human rights, and we aspire to centre communities and movements that are marginalized or face systemic oppressions. It is through this lens that we are addressing the harmful impacts of the Protection of Communities and Exploited Persons Act (PCEPA) and recommend its repeal.

Individually and collectively, the criminal code sanctions introduced through PCEPA effectively recriminalized sex work and re-established the harms and rights violations of the pre-Bedford laws. This submission will focus on the impact of the third-party laws on the most marginalized people who sell or trade sex.

The blanket prohibition on “material benefits” in the context of a “commercial enterprise” disproportionately harms racialized, migrant, and lower-income women. Among people who sell or trade sex, it is typically the more economically and socially privileged who have the resources to establish and manage their own businesses, whether independently or as cooperative endeavours, and create safe spaces to work. For those with fewer resources, escort agencies and massage parlours provide or cover the cost of essential infrastructure and administration. This includes providing vital safety measures such as screening callers and providing physical security services, as well as rental premises, hotel rooms, booking and advertising. These are expenses that many people who sell or trade sex find prohibitive, especially those who are racialized, live in poverty or in low-income circumstances, are migrant workers, or face other barriers or oppressions.

Action Canada is concerned about the potential exploitation of people who sell or trade sex, especially those who have been made vulnerable to exploitation by racism, colonization, transphobia, poverty, and other intersecting systems of oppression. The criminalization of third parties further marginalizes the most oppressed by removing necessary safety and administrative supports noted above and by promoting police surveillance and intrusions in their lives. Policing can be its own form of violence,

especially for Black and Indigenous persons who sell or trade sex and are already subjected to racist and colonial carceral practices. Migrant women, people who use drugs, and 2SLGBT people are also disproportionately harmed by the policing presence promoted by the third-party laws.

Further, the criminalization of third parties, especially those deemed “commercial enterprises,” prevents the application of labour and employment laws, human rights codes, and occupational health and safety regulations to many sex work spaces. This opens the door to increased exploitation and removes the health and safety measures and protections guaranteed to all other workers in Canada.

Action Canada recognizes that many people who sell or trade sex may decide to do so because they have limited options for supporting themselves and their families. We further recognize that agency and bodily autonomy are not invalidated when decisions are limited to a narrow range of options.

We submit that while increasing options can support individuals, decreasing options does not. In fact, decreasing or eliminating options heightens vulnerabilities and worsens circumstances. In the same way that restricting abortion does not limit the number of abortions (and in fact increases the number of unsafe abortions), attempting to restrict or eliminate sex work is not an effective protective measure. Criminalizing sex work related activities does not decrease the number of people who sell or trade sex; it removes health and safety protections and increases vulnerability and risk of exploitation.

We draw on our vast experience with reproductive rights in making this analysis. At its most basic, each person has the right to choose whether to continue or terminate a pregnancy. Though the number of choices is limited, it is within this narrow set of choices that a decision to continue or not is valid. The same argument must be made for people who sell or trade sex, regardless of their individual circumstances or the system of oppressions they face.

In the case of reproductive rights, we note that people choose to continue or terminate pregnancies for multiple reasons, including some who choose to terminate because they are in severely constrained circumstances (such as living in poverty) that make a pregnancy untenable. We do not claim that people in such circumstances have no agency. We do not deny them the right to an abortion and to bodily autonomy. And we do not criminalize them or their abortion providers. The same right to decide upon one’s own body must also hold true in the decision to sell or trade sex, despite limited options, systemic oppressions, or difficult life situations.

Action Canada asserts that all States, including Canada, have an obligation to create enabling environments for the exercise of choice and bodily autonomy by all persons. These environments are advanced through livable wages, affordable housing, universal daycare, and food security, amongst other measures—not through the criminalization of sex work. Criminalization does not provide safety or security to people who sell or trade sex or vulnerable populations. Enabling environments and universal social systems do.

Criminalization is not the answer.