

Review of the Protection of Communities and Exploited Persons Act

Submitted by: CEASE: CENTRE TO END ALL SEXUAL EXPLOITATIONⁱ

Members of the Standing Committee, we are thankful for this opportunity to submit our input and recommendations based upon our 25 years of experience. Our Brief addresses these areas:

1. **Canada's responsibilities as a Signatory to the U.N. Palermo Protocol**
2. **Impact on Human Trafficking Cases if PCEPA offences are removed from the Criminal Code**
3. **The Right to Never Have to turn to the Sex Trade and the Right to Resources to Heal and Exit**
4. **Fostering Awareness, Empathy and Community Responsibility**
5. **A Continuum of Experience and Seeking for Convergence where there is Polarization**

This is not the time to discard the vision of the *Protection of Communities and Exploited Persons Act*. It is the time to make changes to improve the legislative tools; increase confidence to report crimes of sexual violence and trafficking to law enforcement; educate our criminal justice system to more fully understand the impact of coercive control, complex trauma, often stemming from childhood/adolescence, and traumatic bonding with perpetrators; and to strengthen our social safety nets. It is important to affirm the human rights of those who identify as sex workers as well as those who do not identify as sex workers and find themselves in the circumstantial sex trade or at the mercy of traffickers and predators. They seek and deserve protection through legislation and a range of community and government services.

Recommendation: Remove S. 213 (1.1). This is the last barrier to decriminalization for individuals who provide sex services. Removing this Section then completely shifts the focus, the responsibility and the accountability towards those who treat individuals as commodities, perpetrate violence, profit from the exploitation of others and/or participate in human trafficking for sexual exploitation.

Recommendation: Keep S.286.2 (material benefit); S.281.3(procuring); S. 2181.4 (advertising). These charges are often laid in cases where there are elements of *human trafficking for sexual exploitation*. This is one way that PCEPA harmonizes with the Human Trafficking offences (see later section of this brief).

The PCEPA vision is to end decades of stigmatization and criminalization of individuals who provide sexual services, regardless of whether they identify as sex workers, are trafficked, or are in the circumstantial sex trade due to poverty and other vulnerable conditions.

Recommendation: Expunge or deem “spent” the criminal records of those women, males, transgender and non-binary persons providing, or being trafficked/pimped to provide sex services who were charged with the old S.213 CC from 1986 – 2013. These summary convictions are now 9 years past the time they were declared non-constitutional by the Supreme Court of Canada, yet for many they are still a burden and a barrier to education, housing and employment. There should be no cost to the persons impacted. They have paid the price for far too long.

Recommendation: Invest in initiatives that address root causes such as poverty and income instability. Passing Bill C-233 is a good place to start (An Act to Develop a National Framework for a Guaranteed Annual Livable Income). Federal-Provincial agreements to make childcare more affordable at \$10 per day are positive steps.

1. Canada’s responsibilities as a Signatory to the Palermo Protocol

Canada is a signatory to the United Nations Convention against Transnational Organized Crime, which includes a protocol to prevent, suppress and punish trafficking in persons, especially women and children (also known as the Palermo Protocol).

When considering the efficacy of the PCEPA legislation, we urge the Committee to address how Canada fulfills Article 9. The PCEPA legislation harmonizes with our Human Trafficking legislation and this enables us to fulfill our responsibilities as a Signatory. Canada should be proud that we have created a Canadian version of the Equality Model, though much remains to be done to reflect true gender equality, equity, and social justice. If our country removes the PCEPA, what mechanisms will Canada put in place to fulfill Article 9. Section 5?

Recommendation: Uphold Canada’s Commitment to the Palermo Protocol Article 9, Section 5 through maintaining the purchasing offence, S. 281.1 of PCEPA. Implement awareness programs and diversion programs.

<p>Prevention of trafficking in persons</p> <p>1. States Parties shall establish comprehensive policies, programmes and other measures:</p> <p>(a) To prevent and combat trafficking in persons; and</p> <p>(b) To protect victims of trafficking in persons, especially women and children, from revictimization.</p>

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

2. Impact on Human Trafficking Cases if PCEPA offences are removed from the Criminal Codeⁱⁱ

CEASE draws from our experience of offering a court advocate and support program funded by the Alberta Justice and Solicitor General Victims of Crime Fund. We support individuals with history in the sex industry when crimes of violence are perpetrated against them.

These crimes of violence include: Trafficking in Persons offences (TIP, forcible confinement, kidnapping, receiving a material benefit, withholding documents); PCEPA offences (procuring, receiving a material benefit, advertising) Sexual Assault offences (aggravated, weapon); Physical Assault offences (choking, weapon, bodily harm; threats) crimes of intimidation and other offences. Over 40% of our Advocate work is with those where there are significant elements of *human trafficking for sexual exploitation* and 60% is with those who have been the victims of other horrific violence.

For this Brief, we only reviewed files where there were significant elements of “*human trafficking for sexual exploitation*”. We supported individuals in 31 cases from 2015 – 2021:

- 27 individuals (23 women and 4 girls) traumatized through violence and commercial sexual exploitation associated with human trafficking.
- 32 offenders (multiple perpetrators in several cases) who caused deep harm.
- 21 TIP charges laid (S. 279.01 (1)) and 7 other HT offences: 279.2; 279.02; 279.03.
- 24 PCEPA charges laid (S. 286.02; 286.03; 286.04).
- 27 additional charges in the Sexual Assault, Physical Assault, Domestic Violence sections.
- 2 did not want to report to law enforcement they just wanted to leave the sex trade
- 3 S. 279.01 charges were not laid by law enforcement

There are 21 concluded cases and 10 cases pending in court 2022 - 2023, including exploiters of minors.

To date, there is only one guilty conviction of S. 279.01 and two cases where the accused were found not guilty of human trafficking, but, guilty of other crimes against the women and youth. 13/21 concluded cases resulted in convictions on other offences. In several cases, the women were too afraid to come to court, so the charges against the perpetrators were dismissed.

While it is discouraging that perpetrators were not held accountable under the Human Trafficking charges, it is encouraging that most were held accountable for the harm they generated through other Criminal Code Charges, including PCEPA charges.

This is one reason why it is vital to keep the PCEPA charges. Often the threshold for proving human trafficking “beyond a reasonable doubt” is too high; the requirement of mandatory minimums is a factor for the Crown, the Defense and the Judiciary or the HT charge is stayed in exchange for guilty pleas on other charges, thus sparing the person from having to testify. They hold traffickers accountable on other charges because there is clear evidence that the individuals suffered significant harm.

3. The Right to Never Have to Turn to the Sex Trade and the Right to Resources to Heal and Exit

This describes many persons who are in the middle of the spectrum, neither autonomous sex workers with high negotiating power and high control of their working environment nor trafficked persons. This call to uphold these rights speak to the realities of gender inequality, gender-based violence, social inequality, historic discrimination against Indigenous, Black, 2SLGBTQIA+ persons, impact of complex trauma, intergenerational trauma, FASD, other mental and physical health conditions, racism, discrimination and poverty.

Surely we as a society can do better for girls, boys, women, 2SLGBTQIA+ persons, Indigenous persons and immigrants of all heritages to prevent the financial pressure points that cause some to turn to the sex trade where they experience trauma and crimes against them. Here are examples of efforts to relieve these financial pressures in other jurisdictions:

Hawaii, February, 2022. We learned of a 1 year pilot project to provide \$2000 monthly to those with histories of sexual exploitation and sex trafficking. This is an inspiration and another legislative tool. “A Bill for an Act Relating to the Right to Exit the Sex Trade”

<https://www.capitol.hawaii.gov/session2022/bills/SB3347 .pdf>

This second story is an example of action municipalities can take. Compton, California initiated a basic income program. This article includes a story of what a difference this makes for a young woman who was trafficked at one time in her life. <https://capitalandmain.com/how-comptons-experience-with-universal-basic-income-is-unfolding>

Bridging the Affordability Gap

<https://edmontonsocialplanning.ca/2021/06/28/bridging-the-affordability-gap/>

During the pandemic, CEASE received a small grant and invited 5 women to identify the pressure points in their monthly budgets. CEASE was able to invest approximately \$5,000 per person to assist them with paying rent, utility and communication bills. Participants were asked if a basic income would make a difference in their lives. Here are their responses.

“I wouldn’t have to turn to the sex trade if there was a basic income.”

“A basic income would mean no judgment and make life easier.”

“A basic income would make life better for single women.”

“Sex work would, or could, no longer be an option.”

4. Fostering Awareness, Empathy and Community Responsibility: Sex Trade Offender Programs

Those who identify as autonomous sex workers with high negotiating power may have their own clientele and ways to ensure their own safety, while those in the circumstantial sex trade or trafficked are at risk from sex buyers. There is a continuum of individuals who provide sex services and there is a continuum of individuals who buy sex services. This includes those who are curious, lonely, estranged, addicted, entitled, hobbyists and those who prey upon, violate or murder individuals in the sex trade.

CEASE facilitates the Edmonton and area Sex Trade Offender Program for first time offenders charged with S. 286.1. Funds are used to support those healing from the harm they experienced while in the sex industry. The goals of the program are:

- (1) provide accurate information about the laws and STI risks;
- (2) educate about sex trade and sex trafficking dynamics;
- (3) raise awareness about the multiple impacts on themselves, their families, and the broader community;
- (4) encourage empathy for those whose lives have been harmed by their time in the sex trade, and those whose lives were taken through murder.

Two men who are former sex buyers assist with the program. Women who survived their time in the sex industry share their experience. Parents whose daughters were murdered speak. It is a good thing to create spaces for men to reflect upon what it means to be a healthy person and to engage in respectful and consensual relationships. Many attendees have expressed gratitude that the program offered a wake-up call for their lives, which felt out of control.

5. Recognize a Continuum of Experience and Seek Convergence where there is Polarization

We appreciate there are divergent views about the PCEPA legislation. Opponents say the legislation doesn't protect sex workers and increases dangers. Proponents say that the PCEPA legislation creates accountability for the exploitation, violence, degradation and trauma that are present in the sex industry, especially for those with little or no control over their circumstances. We believe it does uphold individual rights, while providing checks and balances for sex industry businesses motivated by profit at the cost of rights and protection of those providing sex services, whether by choice, circumstance or coercion.

Are there any areas of convergence? We hope so, although we acknowledge that it will take a lot of listening to find convergence and build consensus. We know there are some who advocate for full decriminalization, while others advocate for asymmetrical decriminalization focused on accountability through legislation for those individuals and businesses who cause harm.

We acknowledge there are individuals who choose to identify as sex workers. Our understanding of "sex work" is that it reflects those that have high self-determination coupled with high negotiating power and control over their environments. This results in less trauma because there is high control. The term "sex work" does not include everyone, yet it is used as if it does. It is used in overly broad ways to encompass everyone from individuals who provide in-person sexual services for payment and those who do not provide direct sexual services to their customers (cam models, phone sex operators, dominatrix, dancers, other forms of service).

We think it's important to recognize there are many who do not identify as sex workers, yet who engage in exchanging sexual services for survival and circumstantial needs. Some are coerced or forced. There are many for whom consent is highly constrained. It is difficult to name this participation as consensual in the same breath when many have to "endure recurring sexual assault just to survive". It may be a decision to trade sex services, but is it really a choice?

While there is an element of truth in the phrase "don't conflate sex work with sex trafficking", there is also truth in this statement: "don't conflate sex work with commercial sexual exploitation". Vulnerability to sexual exploitation and sex trafficking occurs when persons have no other viable financial options or are in a position of vulnerability and are lured and groomed into the sex trade.

The priority for Canada should be to create protection for those who are highly vulnerable and to create more options for individuals who are in challenging financial circumstances. We can never forget there is a market for under-age girls and boys and young women/gender diverse persons. We know story upon story of individuals, primarily women, who would rather not trade sex services for the basics of life and who long for an improved future for themselves and their families.

Canada can do better. Canada can continue to improve legislation and services.

ⁱ Description of CEASE: Centre to End All Sexual Exploitation

Our vision: a community of hope, respect and transformation for individuals, families and communities affected by sexual exploitation, sex trafficking and social inequality. We offer tools for individuals to create an improved future for themselves and their families through 3 strategies: Heal the Harm; Build for the Future; Inspire Positive Social Change. This includes: financial empowerment, coaching and matched savings; bursaries for further education to lead to a livable income; court support for those who are victims of sexual assault and sex trafficking; system navigation to access housing, social services, file taxes, re-integrate with children; material aid including food security support, eviction prevention, bridging payments for utilities, communications arrears and for health needs.

ⁱⁱ Reference: Crimes related to the sex trade: Before and after legislative changes in Canada

by **Mary Allen** and **Cristine Rotenberg**, Canadian Centre for Justice and Community Safety Statistics <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm>