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Brief from the Direction régionale de santé publique de Montréal

Submitted to the House of Commons Standing Committee on Justice and Human Rights for Its Review of the *Protection of Communities and Exploited Persons Act* (SC 2014, c. 25)

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SUMMARY AND RECOMMENDATIONS

The *Protection of Communities and Exploited Persons Act* (PCEPA), which came into force in December 2014, criminalizes the purchase of sexual services and some other aspects of the way sex work is organized. The objective of the PCEPA is to abolish sex work in Canada. There is no empirical evidence to support the claim that such a legislative regime can eliminate sex work. Instead, it has been shown that the criminalization of any aspect of sex work creates health dangers and increases stigma for sex workers. These avoidable risks are especially well documented for human immunodeficiency virus (HIV) transmission. The recognition of these risks has led many public health authorities to support total decriminalization of sex work. Many international, national and regional commitments have been made to remove legal barriers that harm the health of sex workers and undermine global HIV prevention efforts.

Given the Direction régionale de santé publique (DRSP) de Montréal's mandate of protecting health and creating conditions that enable population health to improve, the DRSP de Montréal is using the House of Commons Standing Committee on Justice and Human Rights review of the PCEPA as an opportunity to make the **following recommendations** to parliamentarians:

- **Ensure full participation of local networks of self-identified sex workers in the current review of the PCEPA and in all subsequent processes.**
- **Account for the significant collateral impact on sex worker health and stigmatization caused by all forms of sex work criminalization during the current review of the PCEPA.**
- **Use evidence to develop laws and measures that support population health and that are consistent with a public health approach.**
- **Maintain Canada's commitment to eliminate HIV transmission as a public health threat by implementing concrete measures to meet the international targets by 2025.**

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INTRODUCTION

The review of the *Protection of Communities and Exploited Persons Act* (PCEPA) by the House of Commons Standing Committee on Justice and Human Rights is another step in the evolution of Canadian law on the criminalization of sex work. The law came into force on December 6, 2014, with the objective to "reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible" (Department of Justice Canada, 2014).

This law, which criminalizes the purchase of sexual services and some other aspects of sex work, is described as a paradigm shift toward the "treatment of prostitution as a form of sexual exploitation" (Department of Justice Canada, 2014). A public health perspective focuses instead on health issues that affect sex workers.[1] By taking an approach based on the determinants of health, the legal environment with which sex workers interact is treated as a social determinant of health that can either benefit or harm the health of these segments of the population.[2]

The Direction régionale de santé publique (DRSP) de Montréal adopts this public health perspective to deliver on its mandate of protecting health and creating favourable conditions for maintaining and improving population health. When it comes to sex workers, the DRSP pursues the goals of preventing infectious diseases, reducing harm and combatting health inequalities.

The DRSP de Montréal views the current PCEPA review as an opportunity to raise awareness among the Standing Committee members about the negative consequences and avoidable health risks for sex workers that are clearly associated with any form of sex work criminalization. These significant impacts, while not limited to the spread of human immunodeficiency virus (HIV), are particularly well documented for it. HIV has has grown to pandemic proportions since the early 1980s despite there being proven solutions that could eliminate HIV transmission as a public health threat.

One of the solutions is the decriminalization of all aspects of sex work. In fact, many bodies, including the United Nations (UN), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO), have expressed support for the creation of legal environments that repeal certain laws, including those that criminalize sex work.[3]

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[1] "Sex worker" is used here to refer to women, men and transgender people who exchange sexual services for money or goods with other consenting adults.

[2] "The determinants of health are every factor that influences population health, without necessarily being the direct cause of specific issues or illnesses. These determinants include individual and collective behaviours, living conditions, and environments. Determinants are spread unevenly across different levels of society, which creates health inequalities. This social gradient in health stems from an uneven distribution of power, resources, goods and services" [translation] (INSPQ, 2017 [in French only]).

[3] UNAIDS is the only joint co-sponsored program in the UN system. The program relies on 11 organizations, including the WHO, the United Nations body dedicated to gender equality and the empowerment of women (UN Women), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the International Narcotics Control Board (INCB), the International Labour Organization (ILO), the United Nations Education, Scientific and Cultural Organization (UNESCO), the World Food Programme (WFP) and the World Bank. The leadership of UNAIDS includes civil society representatives.

Using the well-documented HIV risks as examples, many public health issues linked to sex work criminalization are presented below. Some of the highlights of the scientific literature on the negative impacts of criminalization on the health of sex workers, data that supports decriminalization, and HIV prevention commitments at the international, national and regional levels are discussed. Montreal's commitments are also outlined. Based on this discussion, recommendations for the current PCEPA review are then made.

PUBLIC HEALTH ISSUES LINKED TO SEX WORK CRIMINALIZATION IN MONTREAL

Legal context

On February 8, 2022, the House of Commons Standing Committee on Justice and Human Rights began a comprehensive review of the PCEPA's provisions and operation as required under section 45 of the Act. The PCEPA was introduced in response to the Supreme Court of Canada's landmark ruling in the *Bedford* case on December 20, 2013.[4] When the Supreme Court found that three prostitution-related offences were unconstitutional because of the increased risk of harm to sex workers and because they violated section 7 of the *Canadian Charter of Rights and Freedoms*, which protects the rights to life, liberty and security of person, it gave Parliament one year to respond (Department of Justice Canada, 2014).

Instead of seeking a legislative solution that would recognize the rights and well-being of sex workers by decriminalizing sex work, the government of the day enacted legislation that recreated the same harms that existed prior to *Bedford* through an abolitionist regime (also known as the Nordic Model). By the logic of this law, the best way to protect sex workers from harm is to end prostitution by criminalizing purchasers of sexual services and some other aspects of sex work.

Yet, there is no concrete empirical evidence to support the conclusion that this type of legislation in fact eliminates sex work or improves health outcomes for the various groups of sex workers (Global Commission on HIV and the Law, 2018). Rather, criminalizing the clients of sex workers has been repeatedly shown to "negatively affect sex workers' safety and health" (UNAIDS, 2021a). This conclusion is based on the available Canadian and international scientific findings, which are detailed below, and is also the position of the Canadian Public Health Association (CPHA) (Vogel, 2015; CPHA, 2014). By adopting the PCEPA, which criminalizes some aspects of sex work, Canada implemented a legal framework that UNAIDS considers a step backward in the fight against the HIV epidemic (2020a).

The many provisions implemented in Canada since the PCEPA came into force on December 6, 2014, force sex workers to navigate a criminalized context with recognized significant risks to their safety and health. In Montreal, the hardening of criminal laws has translated into an increase in "sex-trade-related crimes." While the numbers of certain sex-work-related offences decreased steadily between 2010 and 2014,

[4] *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

these figures increased after 2015 (Statistics Canada, 2021). Montreal community organizations have also reported that, since the PCEPA came into force, the increased criminalization has been accompanied by greater harm to the health and well-being of sex workers (see, for example, the testimony of Sandra Wesley of the organization Stella, l'amie de Maimie, during this review, 2022).

Health harms of sex work criminalization

Evidence of a link between HIV infection risk and sex work criminalization

According to international data, women sex workers are 30 times more likely to contract HIV than the general female population. In countries with data on HIV prevalence among sex workers, their rate of infections is up to 20 times higher than that of the general population (UNAIDS, 2021a). The public health scientific literature clearly shows that all sex work criminalization increases HIV infection risk.[5]

In addition to Canadian literature specifically about the PCEPA's impacts on certain determinants of sex workers' health (e.g., Argento et al., 2020), multiple research groups have released high-quality reviews in order to understand and measure the effects of punitive laws on sex worker health. One example is a major systematic review of 134 quantitative and qualitative studies by a group of researchers from the United Kingdom, the United States, Kenya and Canada. This review found that there are extensive harms associated with sex work criminalization. The risk of HIV or another STBBI infection is 87% higher, and the risk of violence against sex workers nearly triples. Some of the reviewed studies covered jurisdictions with laws that specifically target sexual service purchases and activities related to organizing sex work (Platt et al., 2018).

A systematic review by different researchers came to a similar conclusion about sex work criminalization. Examining sex work from the perspective of access to HIV-related health services for women sex workers, this review identified stigmatization and discrimination resulting from punitive laws as two of the most common barriers to obtaining health services (Tokar et al., 2018). Healthcare access is a key determinant of health.

These reviews of published research that meet the highest scientific literature standards include data from numerous Canadian studies and lead the authors to conclude that there is an urgent need to reform sex-work-related laws to eliminate the associated harms.

Adding the voices of self-identified sex workers to these systematic reviews, UNAIDS recently produced two important reference documents to support the *Global AIDS Strategy 2021–2026: End Inequalities. End AIDS* (2020a, 2020b). With the goal of implementing effective, evidence-based public health

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[5] Research on health issues other than HIV, despite being diverse and convincing, are not discussed in this brief. Readers interested in Canadian literature on the link between sex work criminalization and violence against sex workers, for example, can examine the systematic review by Deering et al. from the University of British Columbia (2014). And recent studies with a cohort of women sex workers in Vancouver examined the negative impact of sex work criminalization on overdose risk in the current overdose crisis (Goldenberg et al., 2020).

programs, UNAIDS concluded that optimal HIV outcomes are incompatible with laws and policies that criminalize people who are at high risk of HIV infection, including sex workers (UNAIDS, 2020a). UNAIDS also found the legal environment to be a structural factor that increases HIV stigma and consequently has health and social impacts on members of key populations (UNAIDS, 2020b).[6] The experts underlined the importance of intervening on this structural factor to halt processes that lead to stigma and harmful health impacts.

Decriminalization of sex work to combat sex workers' health risks

A modelling analysis by Dr. Kate Shannon of the University of British Columbia that appeared in a special edition of the prestigious journal *The Lancet* synthesized the findings of 87 quantitative studies on sex workers (2015). This analysis showed that sex work decriminalization was the modelled intervention with the greatest potential impact on sex worker HIV infections. **Decriminalization would avert 33% to 46% of HIV infections among sex workers and their clients in the next decade.** Three years after the initial publication, an update was released (2018). The updated paper found that women, men and transgender sex workers were disproportionately affected by HIV. The authors noted that the findings of the epidemiological model were tied to ongoing barriers created by criminalization.

Since 2016, the WHO has recommended "work[ing] toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers" (2016). The WHO was acting to fulfill its responsibility to strengthen the health care response in the global effort to halt and reverse the spread of HIV that is being coordinated by UNAIDS.

The Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination notes that, as part of an effort to "[r]emove laws criminalizing drug use or possession for personal use, all aspects of sex work, sexual orientation, gender identity, and HIV exposure, non-disclosure and transmission," it is important to routinely review existing laws (UNAIDS, 2020a).[7] These reviews must "compare [existing laws, regulations and policies] with global commitments" and enable local networks of populations being left behind to "monitor the impact of laws and policies on HIV services, advocate for change as needed, and engage in programme and policy development."

Drawing on these recommendations, the lessons learned during the HIV epidemic and the sound scientific findings outlined above, the *Global AIDS Strategy 2021–2026: End Inequalities. End AIDS*, adopted by the UNAIDS Programme Coordinating Board on March 25, 2021, makes the decriminalization of every aspect of sex work a crucial priority for meeting the international goal of ending HIV as a public health threat by

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[6] Certain groups are designated as key populations because of their central importance in combatting the HIV epidemic. These are populations that are especially at risk of HIV. Composed of people with identities and conditions that are stigmatized by society, these groups often have limited access to appropriate services. UNAIDS identifies five main key populations: men who have sex with men, sex workers, transgender people, people who inject drugs, and people in prison and other incarcerated people.

[7] The partnership involves key members of the Global Network of People living with HIV (GNP+), UNAIDS, UN Women and UNDP, with the leadership and technical support of the NGO delegation to the UNAIDS Programme Coordinating Board.

2030 (UNAIDS, 2021b).[8] Canada is serving as a member of the UNAIDS Programme Coordinating Board from 2020 to 2022.

International, national and regional HIV prevention commitments

International commitments

In 2014, UNAIDS set out concrete objectives to focus global efforts to eliminate HIV transmission as a public health threat by 2030. Originally, these objectives were to globally meet the 90-90-90 testing, treatment and viral suppression goals.[9] In 2020, UNAIDS announced new, more ambitious goals of reaching 95-95-95 targets by 2025 (UNAIDS, 2020c).

To meet these objectives, 10-10-10 targets for the removal of social and legal barriers that hinder the fight against HIV have been set.[10] One of the 10-10-10 targets adopted by member states during the UN General Assembly of June 8, 2021, is for less than 10% of countries to have legal environments that limit access to services (UN, 2021). This new emphasis on removing societal and legal barriers is based on the scientific literature presented earlier, but also on studies that model HIV epidemic dynamics, accounting for prevention and treatment interventions and the desire to meet the global objectives (Stover et al., 2021).

National commitments

At the federal level, Canada has provided financial support to UNAIDS since 1996 and is currently serving as a member of the Programme Coordinating Board (Global Affairs Canada, 2021). Canada's formal commitment dates back to December 1, 2015, the World AIDS Day when the Minister of Health announced Canada's endorsement of the 90-90-90 targets. In 2021, Canada renewed its commitment and endorsed the new 95-95-95 targets (PHAC, 2021).

To formally support the UNAIDS and WHO global health strategy for HIV, the Public Health Agency of Canada (PHAC) is tracking its progress in meeting these objectives (PHAC, 2018a). This work has shown that Canada has not met each of the 90-90-90 targets. It also shows no significant drop in Canadian HIV infection levels in recent years.[11]

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[8] The UNAIDS Programme Coordinating Board is composed of representatives of 22 governments from every geographic region, the UNAIDS Cosponsors and five NGO representatives. The board's functions include establishing broad policies and priorities for the Joint Programme, and reviewing and approving plans of action (UNAIDS, 2022b).

[9] The 90-90-90 goals are the following: 90% of people living with HIV will know their HIV status, 90% of people with diagnosed HIV infection will receive appropriate treatment and 90% of people receiving treatment will have viral suppression.

[10] The targets for 2025 are the following: less than 10% of countries will have punitive laws and policies; less than 10% of people living with HIV will experience stigma and discrimination; and less than 10% of people living with HIV, women, girls and key populations will be victims of gender-based inequality and violence.

[11] Data specifically on sex worker HIV incidence and prevalence or the 90-90-90 indicators is not available for Canada or Quebec. Furthermore, no recent 90-90-90 progress estimates are available for Quebec or Montreal. For several years, the Institut national de santé publique du Québec (INSPQ) has been working on a monitoring

Some of the steps required to close the gap between the commitments and the results are described in PHAC's Pan-Canadian STBBI Framework for Action (PHAC, 2018b). This framework states that criminalizing certain behaviours, including the purchase and sale of sex, is a barrier with negative consequences for the mental and physical health of people vulnerable to HIV. The framework identifies one opportunity for action as being to "[r]eview and revise laws […] that affect determinants of health leading to an increased risk of STBBI transmission and/or limit the implementation and operation of effective STBBI-related programs and services." This type of legal change is described as helping to create an enabling environment, which produces "conditions needed to ensure equitable coverage, increase the uptake of services, and improve the quality of health services" (PHAC, 2018b). Note that the CPHA had already called for replacing the PCEPA, which took effect in 2014, when the Liberal government came to power in 2015 (CPHA, 2015).

Montreal's commitments

Since the 2017 launch of "Montréal, ville sans sida," a collaboration between the Ville de Montréal, the DRSP and community groups, the Montreal region has fully committed to the UNAIDS objectives and recommendations. By joining global efforts against HIV through membership in the "Fast-Track cities" network, the Montreal partners have made acknowledging that legal action creates and maintains vulnerability to HIV as one of the common action plan's guiding principles (2018 [in French only]). This common action plan is based on the findings of a broad, nearly year-long consultation with affected individuals and community, academic, municipal and health services stakeholders and is consistent with the objectives set out in the Paris Declaration, *Fast-Track Cities: Ending the AIDS Epidemic*, in its use of "scientific breakthroughs, community activism and political commitment" (2014).

However, to meet the HIV prevention objectives, the Montreal region views aligning relevant municipal, regional, provincial and federal bodies as a real challenge. As regards the health of sex workers specifically, the *Criminal Code* is a federal statute, and this part of the legal framework is under the authority of the federal government, so regional action on this important determinant of health is not by itself enough to protect sex workers.

Montreal public health interventions to prevent HIV

Using an evidence-based, pragmatic approach to HIV prevention that is aligned with best practices and is based on protecting health and combatting social and health inequalities, the DRSP de Montréal focuses on the needs of key populations (Wilson and Halperin, 2008). In Montreal, like other jurisdictions with concentrated epidemics, key populations include gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs and certain migrants.[12] These key populations are

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strategy that would supply this data (NCCID, 2017).

[12] The Montreal communities that are especially vulnerable to HIV are the those with multiple risk factors. For example, among people who use drugs, HIV and hepatitis C rates are higher for those who are involved in sex work

not only the groups most at risk of HIV and some other STBBIs in Montreal, but they also face significant barriers to obtaining services. Interventions targeting these barriers are at the heart of the DRSP de Montréal's 2016–2021 regional action plan (2016 [in French only]).

In practice, the DRSP works on monitoring, protection, surveillance and research, helps adapt screening services to better meet the needs of key populations, operates supervised consumption services, ensures adequate and appropriate protective equipment is available throughout the DRSP's jurisdiction (condoms, sterile injection equipment, etc.), and, for many years now, collaborates with community groups that work with key populations. The DRSP funds some of these community groups to ensure community workers and peers deliver services such as distributing protective equipment, doing community, social and health services outreach work, and supporting individual and group interventions to prevent STBBIs and reduce drug-related harm.

The DRSP de Montréal is also involved in campaigns on issues such as combatting HIV stigma and takes public positions on legislative issues such as the decriminalization of drugs for personal use and non-disclosure of HIV status (Ville de Montréal, 2019; DRSP, 2018a; JUST, 2019). When it comes to the health of sex workers, the DRSP asserts that "the documented negative impacts of the federal legislative changes in 2014 on sex workers include reducing sex workers' power to negotiate, limiting their capacity to work collectively and hindering their access to dedicated services, which directly affects their safety and ability to protect themselves from STBBIs" [translation] (2019).

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than those who are not (Leclerc et al., 2021 [in French only]).

CONCLUSION AND RECOMMENDATIONS

It seems clear that the fight against HIV will be won as much by the creation of legal environments that support the health of vulnerable communities as by medical advances (DRSP, 2018b [in French only]). This fact must guide our common efforts.

On the eve of the International AIDS Conference that will take place in Montreal in 2022, involving representatives from key populations, scientists, health professionals and community leaders from around the world, it is time to turn convincing evidence into concrete measures that will accelerate progress toward ending HIV as a threat to public health by 2030. As the COVID-19 pandemic has demonstrated, halting the progress of this epidemic requires strong collaboration by all levels of government.

Given that criminalizing sex work creates recognized health risks, that criminalizing the purchase of sexual services will not eliminate sex work but instead stigmatize it and do more harm to sex workers' health, and that numerous commitments to remove legal barriers hindering access to HIV prevention services have been made, the DRSP de Montréal makes the **following recommendations:**

- **Ensure full participation of local networks of self-identified sex workers in the current review of the PCEPA and in all subsequent processes.** From a public health perspective, the experience of sex workers is key to maximizing the effectiveness of the current process in order to improve the current legal environment to benefit the health of sex workers.
- **Account for the significant collateral impact on sex worker health and stigmatization caused by all forms of sex work criminalization during the current review of the PCEPA.** Given the proven impacts the legal environment is having on the health of key populations and social inequalities in health, every legislative option explored by the Committee should be reviewed with the Minister of Health. Any decisions made from these reviews should serve to avoid doing harm to sex workers' health and protect, promote and improve it. The health of these populations should continue to be monitored after any option is implemented.
- **Use evidence to develop laws and measures that support population health and that are consistent with a public health approach.** The public health science is clear: the criminalization of any aspect of sex work negatively affects the health of sex workers, including by elevating the risk of HIV.
- **Maintain Canada's commitment to eliminate HIV transmission as a public health threat by implementing concrete measures to meet the international targets by 2025.** In addition to the criminalization of sex work, other structural barriers at the federal level prevent public health objectives from being realized. These other barriers include the criminalization of drug use and possession for personal use and of non-disclosure of HIV status.

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