

# **Bill C-36: Protection of Communities and Exploited Persons Act Human Rights Violations Against Sex Workers**

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The following is a policy brief constructed by student-volunteers with SafeSpace London from the Social Justice & Peace Studies program at King's University College.

## **Introduction**

Countless people across Canada are negatively affected by the current sex-work laws conducted by policy-makers. Enforced as of late 2014, Bill C-36/ Protection of Communities and Exploited Persons Act (PCEPA) continues to serve as the foundation on how Canada lawfully reacts to sex-work and treats sex-workers. This brief will address the following question: what are the negative consequences arising from Bill C-36 and what needs to change? In corresponding sections, we will discuss the issues surrounding Bill C-36, specifically the distinction between human trafficking and sex-work, its impact on marginalized groups in sex-work, sex workers' barriers to basic services, and the difference between legalization and the decriminalization of sex-work. This brief will also share the first-hand observations and personal concerns of the King's University College Social Justice and Peace program student-volunteers at SafeSpace, and will argue the case for decriminalizing sex-work in Canada.

## **Policy: Bill C-36**

Bill C-36/Protection of Communities and Exploited Persons Act (PCEPA) outlines the laws and penalties regarding sexual services in Canada, including the justifications of outlawing the purchase of sex. This brief will demonstrate why the legal justifications to criminalize sex work outlined in Bill C-36 is unjust. The following are the bill's justifications stated by the Government of Canada's Department of Justice:

*"Bill C-36 treats prostitution as a form of sexual exploitation that disproportionately impacts women and girls. Its overall objectives are to:*

- *Protect those who sell their own sexual services;*
- *Protect communities, and especially children, from the harms caused by prostitution;*
- *Reduce the demand for prostitution and its incidence"*

The law portrays sex-workers as victims who are exploited by men rather than autonomous individuals who utilize their freedom of choice. The law also willfully ignores the intersectional issues that drive many to enter the sex industry including poverty, misogyny, racism, lack of affordable housing, inaccessibility to drug abuse treatment, etc. Policy makers must recognize that sex-work can be an individual's choice, but it can also be a way individuals choose to navigate the larger systematic barriers placed against women, racialized individuals, LGBTQ2S+ individuals, and individuals from other marginalized groups. It is crucial to understand that sex-work will always exist and be in-demand despite any government efforts to prevent it. Therefore, people who

provide sexual services should not be legally shamed for their personal autonomy or for their economic circumstances.

There is also an inconsistent narrative the policy places on sex workers which is damaging. Particularly, the law insists to “protect” the community from sexual services. However, to protect, suggests that sex workers are a danger to society as well as being a victim of “[exploitation]”. This narrative is not only contradicting, but extremely harmful to sex workers who are legally villified for their occupation. Bill C-36 allows mistreatment of sex workers without any protection from the law.

Bill C-36 also does not specify the “harms” caused by sexual services. Instead, the bill emphasizes the wellbeing of children. To clarify, decriminalization of sex work does NOT imply romanticization of sexual services. Rather, decriminalization of sex work is to reduce harmful stigmatization, to combat normalized injustices towards sex workers, and to subsequently place full legal focus on legitimate, non-consensual crimes such as rape, pedophilia, and human trafficking.

### **Personal Experiences: Veronica Maldonado**

During one of my first shifts at SafeSpace, a woman asked for meals, gloves, and socks. It was a cold night so that was expected, but as I handed the requested items to her, I noticed that her fingers were almost purple from the freezing cold. I was later informed by my supervisors that many sex workers frequently experience discrimination, and are sometimes evicted from their homes due to their occupation. To my surprise, law enforcement often executes these sudden and forced evictions on sex workers. On different occasions, I heard from sex workers that they were in the position of having to stay with abusive partners to avoid homelessness, since they were unable to access independent housing or shelter due to their work being stigmatized. They were unable to report their abusers to police due to income dependency, personal safety, or fear of the police in turn harassing themselves due to their involvement in sex work or even finding ways to charge them under PCEPA. It can be argued that they can go to shelters and other social services, but these are temporary solutions, and they often face stigma there as well. It is beyond disturbing how the law is justifying the criminalization of sex work and how the police often abuse their power to harass those in difficult circumstances. Bill C-36 allows injustices towards sex workers to continue without punishment and it must stop. The law should protect sex workers via decriminalization and shift their focus to non-consensual crimes such as rape, pedophilia, and sex trafficking.

### **Personal Experiences: Gretta Freeland**

As a student volunteering with SafeSpace London, the negative effects of Bill C-36 are constant and apparent. From over policing, to violent victimization, and negative interactions with authoritative figures including police and landlords, the women I have met have experienced it all. Due to the increased isolation and unsafe working conditions caused by the current legislation, sex workers are being victimized at an alarming rate. Despite this increased violent victimization, I have talked with multiple sex workers who have been victims of sexual and physical violence who have either been afraid to report their victimization to police or have attempted to give a statement and has been disregarded. Through my experience, I have personally noticed that police are more likely to believe the statement of the violent perpetrator rather than the statement of the victim if she is a known sex worker by police. The mistrust between police and sex workers is an alarming issue perpetuated by the misuse of anti-human trafficking legislation and PCEPA which continually negatively impact sex workers, causing constant trauma. The overpolicing of sex

workers goes as far as ‘observing’ SafeSpace and those who access our resources in squad cars across the street, making many people uncomfortable. Despite abiding by current legislation and working within the stated ‘legal’ parameters, many sex workers in our community have become victims of violence, kidnapping, and trafficking in some instances due to the systemic ramifications of PCEPA. With all of these experiences in mind, decriminalizing sex work has been a topic sex workers in our community believe would create a safer environment and reduce many of the risks associated with sex work. Although I cannot speak for sex workers as a whole, my personal experiences volunteering within the community have shown me that Bill C-36 perpetuates violence against sex workers, promotes over policing, and in turn violates the human rights of sex workers across Canada.

### **The Harms Caused by Associating Sex Work with Human Trafficking**

As noted above, Bill C-36 Protection of Communities and Exploited Persons Act (PCEPA) treats sex work as a form of sexual exploitation and focuses on eradicating sex work from Canada through the Nordic model. This model fails to understand the autonomy associated with sex work, and instead associates sex work and trafficking together. If Canada were to decriminalize sex work, not only would it allow sex work to thrive as a safe occupation, promote safe sex and safely accommodate the prevalent market for sexual services, but it would also provide an environment for human trafficking to be more easily and affectively prevented, spotted, and addressed without negatively impacting sex workers and their human rights.

It is important to understand the differences between sex work and human trafficking, while identifying the harms caused by associating one with the other. Human trafficking occurs when a person is unwillingly forced or coerced into a form of service or labour, including sexual services, while sex work is a job which an individual willingly and consensually participates in the exchange of sexual services for money (Decriminalize Sex Work, 2021). The difference is one of consent and autonomy.

The lack of legitimate differentiation between sex work and trafficking in legislation leads to associating sex work with human trafficking and can harm the rights of sex workers. For example, Bill 251, Combating Human Trafficking Act, is currently being debated as a legislation which would allow police to have more authority in Ontario while investigating issues of human trafficking. Specifically, Section 1 of Bill 251 states that officers can view hotel registry information without a court order if they have reason to believe “the victim of human trafficking will suffer bodily harm or that the information recorded in the register will be destroyed within the time it would take to obtain an order.” (Jones, 2021, p. i). However, this Bill does not distinguish the differences between trafficking and sex work, which ultimately allows room for police to investigate sex workers under the jurisdiction of ‘suspicion’.

While the current *Criminal Code* laws regarding trafficking, Section 279, does provide a non sex work focussed set of provisions to address exploitation, the overbroad usage of anti-human trafficking legislation has resulted in the over policing of sex workers. This over policing not only puts sex workers themselves on police raider, but it also results in third party’s (e.g., co-workers) being mistaken for traffickers (Canadian Alliance for Sex Work Law Reform). This results in sex workers being increasingly isolated and marginalized due to fear of legal repercussions. This isolation puts sex workers at an increased risk of being victimized themselves. The anti-human trafficking legislation paired with Bill C-36 results in an increased risk of sex workers becoming victims of trafficking themselves due to isolation and a dangerous work environment. Additionally, the systemic bias created by PCEPA within law enforcement, paired with the over

policing and misuse of anti-human trafficking legislation, has resulted in violence against sex workers being disregarded.

Moreover, associating trafficking and sex work within legislation is harmful to immigrant/migrant sex workers. New and pending legislations like Bill 251 result in an increase of profiling, specifically towards immigrant/migrant sex workers. This is caused by the bias belief that migrant women have been unwillingly brought to Canada and sexually exploited (Canadian Alliance for Sex Work Law Reform, 2015). Through these bias beliefs and the misuse of legislation, migrant sex workers are at an increased risk of being investigated for “assumed” sexual exploitation, and in turn are deported (Canadian Alliance for Sex Work Law Reform, 2015). Additionally, this is an issue that has been seen amongst Indigenous women in Canada as well. The misuse of anti-trafficking legislation contributes to the over policing of Indigenous women with the assumption that most Indigenous women are being trafficked rather than working on their own free will. This not only attributes to the already high rates of unnecessary policing of Indigenous people, but it also prioritizes larger police budgets for unnecessary investigations on Indigenous sex workers (Canadian Alliance for Sex Work Law Reform, 2017).

Overall, associating sex work and trafficking together through legislation can be very harmful to sex workers across Canada. Associating trafficking with sex work also contributes to the assumption that all people working in the business of sexual services need saving and eliminates the autonomy many people feel and strive for when working as a sex worker. Although laws regarding human trafficking are important, it is crucial that sex work and trafficking are clearly separated throughout legislation to ensure the rights of sex workers are not infringed upon by legislation that does not accurately relate to them. In order to achieve this, the first step needs to be the full decriminalization of sex work in Canada and the repeal of PCEPA.

### **Personal Experiences: Morgan Donaldson**

Throughout my time at Safe Space London, I have seen Bill C-36 and the criminalization of sex work have a negative impact on sex workers in our community. Firstly, the criminalization of sex work makes it difficult for workers to find suitable clients due to lack of screening. I have personally heard stories of concern throughout the community and within the bad-date-reporting channel. Sex workers that access the space have confided in me experiences of theirs that could have been avoided if screening had been available and they were not forced to work in areas where proper safety cannot be upheld due to their work being criminalized. Secondly, many of the women who access the space are not housed. This can be due to various reasons, but the issue of employment is a big contributing factor. When filling out applications for housing, when asked for employment, sex workers cannot be truthful, and when landlords discover their work, they can often face discrimination and end up homeless. Many of these sex workers feel fear in accessing shelters due to stigma and a lack of safety and therefore sleep on the streets. Every time someone asks for a blanket, an emergency tent, or warm clothes it further instills anger in me towards this unjust system and society. Every time someone asks for a wound care kit or medical aid it reminds me of the stigma towards sex workers entrenched in medical institutions and the healthcare workers that are supposed to remain impartial. Every time I listen to a story about lack of safety and protection, I further resent the police and local government for violating the sex workers’s right to protection. Decriminalization is essential and my time at Safe Space London has revealed to me the severity of the situation and the injustices the criminalization of sex work and PCEPA supports.

### **Diversity of Sexwork within Marginalized Groups**

There is further policing of “dangerous classes” from participating in sex work (McClintock, 1992, p. 71). The criminalization of sex work further marginalizes “dangerous classes,” “2SLGBTQI, Indigenous, Black, Asian, racialized, and migrant sex workers,” in which the police further target (Egale, 2021, p. 3). “Sex workers from these communities are unable to benefit from health and safety regulations, labour laws, and human rights protections” and are harshly affected by legislation criminalizing sex work (Egale, 2021, p. 15). “Findings concerning racialized action and gendered relations of power have important implications for prevention and interventions to support” sex workers (Bungay et al., 2012, p. 263).

2SLGBTQI “sex work is rarely treated as an object of substantive concern” and remains largely unexplored (Laing et al., 2016, p. 1). “The reproduction of heteronormative understandings of gender relations and identities” serves to obscure the diversity of sex workers (Laing et al., 2016, p. 2). “Legislation must consider sex workers who are members of the 2SLGBTQI community and consider their experiences of homophobia and transphobia” (Egale, 2021, p. 16). Discrimination against sexual orientation and/or gender identity intersects with discrimination experienced as a sex worker (Egale, 2021, p. 16). “The decriminalization of sex work should be integral to the fight for equality and 2SLGBTQI rights” (Egale, 2021, p. 3). “In the Canadian context, it is crucial to note the ongoing violence that colonization continues to have on Indigenous communities, especially Indigenous women who sell” sexual services (Egale, 2021, p. 18). “Despite the documented over-representation of Aboriginal women in visible, street-based sex work in Canada’s urban centres and the devastating number of lives lost through violence and murder over the last decade, there’s a surprising silence in public policy and research on the voices and struggles of Aboriginal women” in sex work (Bingham et al., 2014, p. 441). “Aboriginal women in Canada experience rates of violence 3.5 times higher than non-Aboriginal women, in particular, women involved in sex work or at heightened risk of violence” (Bingham et al., 2014, p. 441). Also, Indigenous sex workers “experiences differ from their non-Aboriginal counterparts and that they live with historical trauma resulting from the turbulent history of racial policies in Canada, which is further compounded by contemporary racialized policies that create the context within which they work and live” (Bingham et al., 2014, p. 441).

“Citizenship and immigration also are important contextual factors” in sex work (Bungay et al., 2012, p. 264). Although all women are at risk for violence, immigrant women, particularly those not proficient in English, experience unique challenges and are much more likely to experience interpersonal violence” (Bungay et al., 2012, p. 279). “Considerably more work is needed to articulate the complexities for non-Canadian born women with regards to violence” and much more research needs to be employed for understanding, prevention, and intervention (Bungay et al., 2012, p. 280). “*The Immigration and Refugee Protection Act* and its Regulations (IRPR) prohibit the involvement of migrant sex workers’ in the sex industry,” therefore those who decide to engage in sex work are in breach of immigration regulations (Egale, 2021, p. 13-14). “This place is migrant sex workers in a particularly precarious position as they are constrained and punished by the legal frameworks and regulations surrounding both immigration and the criminalization of sex work” (Egale, 2021, p. 14). “Migrant sex workers face further barriers, profiling and policing as the laws that oppressed sex workers within Canada intersect with the laws that oppress and endanger migrants” (Egale, 2021, p. 18).

Decriminalization contests “the paradoxes in Canadian law that render women’s negotiations with clients an illegal act and the resultant violation of women’s rights to protection” (Bungay et al., 2012, p. 277). Current “policies are discriminatory, target the most marginalized

sex workers, and increase the vulnerability of all sex workers by preventing them from being able to create safer and more equitable work environments” (Egale, 2021, p. 3). There is a significant stagnation at local and national policy levels to address these issues while the day-to-day effects of criminalization of sex workers continue to contribute to structural and interpersonal violence committed against them” (Bungay et al., 2012, p. 278). “Intersections must be considered when creating policies regarding sex work. These experiences display how intersecting forms of oppression result in very real experiences violence for marginalized communities not only within Canada but globally as well” (Egale, 2021, p. 19). “It is crucial that policies contribute to positive change and safer working conditions for all sex workers, many of whom experience intersectional marginalization associated with racism, sexism, transphobia, and homophobia within and beyond sex work” (Egale, 2021, p. 14).

### **Student Volunteer Experience: Toni Zapata**

During my time at SafeSpace London, I have personally witnessed the issues bill C-36 imposes on the sex working community, and the direct trauma it causes to the individuals who are engaged in sex work. The lack of safe supported access to regular basic needs and human services is very frightening. Services I take advantage of all the time are inaccessible to these participants because of their occupations. I would not think twice to tell a doctor, nurse, or social worker the dangers of my occupation. These workers do not have that luxury. The participants who access SafeSpace lack agency and safety over themselves as they are forced to hide their work in fear of legal repercussion while being in direct danger. By having no legal safety nets in place to assist them if something were to go wrong with a client, they must make a choice every time they are approached because their lives depend on it. This bill actively forces these workers into isolation and hiding while trying to make a living. These workers are often forced into abusive situations to stay housed or have somewhere warm to sleep for the evening, as the sex work that is legal is stigmatized and deemed unstable, and the sex work that isn't is demonized. Our time and resources could be better allocated to set up a harm reduction frame work to assist those working in the sex industry become as safe as possible rather than actively shaming workers into the dark.

### **Barriers to Service Under Bill C-36/Protection of Communities and Exploited Persons Act**

Bill C-36/Protection of Communities and Exploited Persons Act (PCEPA) introduced on November 6<sup>th</sup>, 2014, outlines the laws and penalties regarding sexual services in Canada, including outlawing the purchase of sex. The bill emphasizes treating sex work as a form of sexual exploitation. The bill states it would protect those who sell their own sexual services, protect communities, and reduce the demand for sex in exchange for money. Despite these sentiments the bill introduces harmful side effects of stigma to the community and those who are sex workers. These side effects include housing instability, health care discrimination, and inadequate social services. Bill C-36 states that it “seeks to protect the dignity and equality of all Canadians”, however not giving Canadians the dignity of choice to safe sex work is a direct hypocrisy of that statement.

### ***Housing***

Homelessness is a term used to define those who are not housed or houseless. However, whether a sex worker considers themselves houseless or not depends on the individual. During a case study in 2005 they found that 42% of their participants confirmed they were homeless. 131 women reported living on the streets, 69 in someone else's home, 32 in a shelter, 14 in a variety of other places. (Kurtz, S. P., 2005). These participants discussed what it means to be homeless to

them and why it varies. Although it is a fluid term to these individuals at the end of the day one thing is certain. None of them had secure stable housing. Housing becomes a barrier to sex workers as there are three major issues. One being that sex work is not considered stable lawful employment acceptable to a landlord, two sex workers are more likely to be exploited due to the nature of their work because of occupational stigmas, and three not having an address means nowhere to send important mail or proof of residency, supporting the lack in health/social services. Many service providers, especially those in health care, require proof of legal identity. When disclosing the nature of their work, they are more than likely to be turned away or told they need to give sexual favours or lose their housing because it is unsafe for them to report these behaviours. Sex workers often face backlash due to the falsehood that sex workers are not credible individuals. The decriminalization of sex work would help sex workers secure stable housing through non-discrimination laws and providing safe refuge to report harassment and coercion that may happen by individuals in power such as landlords. The stability of housing is the first step in an important factor to mental and physical health care.

### *Health*

### *Care*

‘International research shows that there is a strong correlation between fear of the stigma of prostitution, fear of being reported to authorities, employers, and colleagues, and potentially for some such as migrants, deportation, and sex workers non-disclosure of their status. Such fears create isolation and marginalisation, which are often the root cause of sex workers remaining excluded from health services and the consequent mental health challenges they face (Sanders, 2007)’. (Sweeney, L.-A., 2020). Health care becomes inaccessible to sex workers as there is a fear of judgement, discrimination, and legal action. The isolation that happens to sex workers within health care becomes prominent when health care providers lack the knowledge on how to assist these individuals and their needs. “Service providers stated that ‘isolation is a barrier to both accessing health services and attaining support. To overcome such isolation sex workers’ participation in the development of services they need and will use could reduce the experience of isolation for sex workers and remove the sense of stigma, I would like to learn from the women themselves, what do they need and who are they?’ (Sexual Health Service). PCEPA actively promotes the occupational stigma and non-disclosure of their work, actively working against obtaining non-stigmatized health care to utilize a harm reduction model prevents sex workers from the mental and physical health care needed. The barriers to sex workers accessing health care are large, unless they are deemed ‘vulnerable, or at risk’, trafficked or exiting sex work. (Sweeney, L.-A., 2020). Decriminalization of sex work would bring the opportunity to health care professionals to work with sex workers on developing a program or framework to best support their care, without the fear of repercussions. “Existing evidence from decriminalised and managed sex work environments suggest that the removal of criminal sanctions on the collectivisation of sex work, safer indoor workspaces and reduced policing targeting the sex industry can support health access and reduce societal stigma” (Lazarus, L.,2012).

### *General*

### *Social*

### *Services*

Besides housing and health care there are a great deal of services that sex workers still need access too. Accessing all these services have two types of barriers. There are structural barriers which are the way agencies have set up their programs making them unavailable or inaccessible due to the way the service is offered. Then there are Individual barriers which are based on individual circumstances. These individual barriers often include intersectional issues of social and political identity. The way services for sex workers are set up, specifically in London Ontario is

not a sustainable method to support the population. Providing legalized non-stigmatized legislation and policy will provide sex workers with basic needs, services, and safety. Basic needs such as water, showers, hygiene products, and laundry facilities, along with supported temporary shelter, food, public transport, and drugs. Services such as health care, mental and physical, education, tax clinics, identification clinics, harm reduction-based drug clinics. This service should be available in an inclusive non-indoctrinated setting. Finally the safety to be able to have agency of their own bodies and rules; the safety to report assaults without fear of backlash, and the safety to choose if this is the life path they want to be on.

### **Personal Experiences: Elizabeth Van Ee**

During my time at Safe Space I have met many individuals who do not feel safe using the same resources that I have always deemed a natural benefit of being a Canadian. I have met sex workers who are so unwilling to return to hospitals because of the abuse and hardships they have faced at the hands of healthcare providers. Individuals who do not see the police as a force of justice but instead a danger to their safety and wellbeing. These resources are doing the opposite of what they are supposed to be doing. They are meant to represent safety and help in a time of need and instead they hurt and demonize some of the most marginalized groups that they are meant to protect. Decriminalization is the only way to remove the stigma sex workers face and create a change to better serve sex workers and care for them as is their human right. The fact that many of the people who access our space feel as if we are the only place that truly cares for them should be a disappointment. Our resources need to support everyone, especially those who are marginalized, and if they are not meeting those standards they should be reassessed and improved. We have a major hole in our resources and sex workers are the ones slipping through the cracks. The decriminalization of sex work is only the first step in making Canada a better place for sex workers.

### **Recommendation**

Based on the evidence given on the inadequacies of Bill C-36, the best course of action is for Canada to move to the full decriminalization of sex work. Decriminalizing sex work will meet the goals of Bill C-36 better than the bill itself has. Bill C-36 seeks to “Reduce the demand for prostitution and its incidence”. It has been proven in New Zealand that decriminalizing sex work did not increase the demand for the sex industry and that sex work does not occur due to demand but instead because of the workers’ socioeconomic needs (Cahill, 2019). This would suggest that the legal status of sex work is not the determining factor for demand. Additionally, the very reference to reducing demand for sexual services in the legal code of Canada is in itself stigmatizing, and results in the marginalization and villainization of sex work, resulting in a violation of sex worker’s human rights.

Decriminalization would also better meet the desire to “protect those who sell their own sexual services” as Bill C-36 claims but does not fulfill. Decriminalization gives sex workers the same employment and legal rights as other working citizens (Abel, 2014). These rights protect sex workers by allowing them to fight for safer working conditions. Decriminalization also leads to safer sex practices such as condom use leading to lower rates of HIV and other sexually transmitted infections (Cahill, 2019). Sex workers are also able to organize community-based health support (Cahill 2019). Sex workers’ human rights are restored when sex work is decriminalized and therefore, they are better protected and equipped to protect themselves.

The legalization of sex work would not be an adequate substitute for decriminalization because of the regulations that would be involved. It would create a “correct” way of doing sex work and would marginalize individuals that do not fall into those regulations. It once again creates



scenarios where sex workers can easily be criminalized. It leaves marginalized groups such as drug users even further marginalized as they will still be considered as participating in illegal sex work. For these reasons the legalization of sex work would not meet the goals that Bill C-36 was hoping for and does not benefit sex workers, making decriminalization the predominant choice.

The full decriminalization of sex work would be the best approach for the Canadian Government because it would protect sex workers from the exploitation caused by the current laws. In order to sustain the benefits of the decriminalization of sex work, the Canadian Government should also analyze what government resources are inaccessible to sex workers and make changes to these resources to meet the needs of this marginalized group of individuals.

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