

AN ABOLITIONIST APPROACH TO BE CONSOLIDATED

Brief on the Protection of Communities and Exploited Persons Act (PCEPA)

**Submitted to the Standing Committee on
Justice and Human Rights**



Pour les droits des femmes du Québec (PDF Québec)

March 2022

A feminist, mixed and non-partisan citizens' group created in 2013, composed of members from diverse backgrounds. PDF Québec believes that true democracy is only possible if de facto equality between women and men is achieved. PDF Québec supports a democratic and secular society.

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TABLE OF CONTENTS

SUMMARY OF BRIEF	4
LIST OF OUR RECOMMENDATIONS.....	5
INTRODUCTION	6
1 THE CURRENT LAW IS EFFECTIVE.....	6
1.1 Extent of the purchase of sexual services.....	6
1.2 Material advantages derived from the purchase of sexual services.....	7
1.3 Procuring.....	7
1.4 Communication for the purpose of providing sexual services.....	8
1.5 Obstructing traffic	8
1.6 Advertising sexual services for a fee	8
1.7 Human trafficking	9
1.8 All crimes related to prostitution	9
2 DECRIMINALISATION/LEGALIZATION OR ABOLITION	10
2.1 The Swedish model versus the German model	10
2.2 An abolitionist approach to be consolidated	11
CONCLUSION	11

SUMMARY OF BRIEF

Pour les droits des femmes du Québec (PDF Québec) continues to support the Protection of Communities and Exploited Persons Act (PCEPA), which received Royal Assent on November 6, 2014, and promotes a version of the nordic model to address sexual exploitation. We continue to support the objectives of this legislation, which makes the sex trade illegal in this country. The protection of human dignity and equality between men and women, as well as the abolition of sexual exploitation and violence, are goals that can only be achieved by criminalizing the demand of clients for sexual services, from which pimps also profit.

The PCEPA has proven to be effective, despite the fact that it is not widely known. Men who have purchased sex, obtained a material benefit from the purchase of sex, or prostituted people have been directly affected by this law. In addition, those who communicated with others for the purpose of rendering sexual services for a fee, interfered with traffic on public roads for the purpose of buying or selling sexual services, advertised sexual services, and engaged in human trafficking were also affected by this law, as there was an increase in reporting of all of these offences from 2014 to 2020.

After seven years of implementation of the PCEPA, it is surprising to see the low number of reports of offences related to the purchase of sexual services in the country, when "most women in prostitution report experiencing an average of five clients per day; some, more than twenty."¹ Furthermore, according to the Report of the Select Committee on the Sexual Exploitation of Minors, a proportion of the population is unaware that the purchase of sexual services is a criminal offence, hence the urgent need for public awareness campaigns on this issue. Finally, the trivialization of the sex industry in the media makes clients less responsible and facilitates the work of pimps.

It is wrong to claim that the PCEPA is a dangerous law that exposes prostitutes to violence, as since its implementation, the number of victims of injuries has decreased, as well as the severity of these injuries. Moreover, the number of homicides of prostitutes has also decreased since the enactment of the PCEPA. It is prostitution itself that is a dangerous practice, rather than a job like any other, as advocates of decriminalization/legalization claim.

PDF Québec is opposed to the repeal of the PCEPA. Decriminalizing prostitution would violate Canada's commitments to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), including Article 6, which states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women"².

¹ Malarek, Victor (2013). *The Johns : Sex for Sale and the Men Who Buy It*, Arcade Publishing, New York, p. 12.

² United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth | UN Women – Headquarters*

LIST OF RECOMMENDATIONS

As a result of the analysis conducted on the PCEPA, PDF Québec makes the following recommendations:

Recommendation 1

PDF Québec proposes that sections 286.1 and 286.1 (2) be maintained as they are. (Obtaining sexual services for consideration.)

Recommendation 2

PDF Québec proposes that section 286.2 be maintained as is. (Obtaining a material benefit from the purchase of sexual services)

Recommendation 3

PDF Québec proposes that section 286.3 be maintained as is. (Procuring.)

Recommendation 4

PDF Québec proposes that section 286.1(1)(i) be maintained as is. (Communication for the purpose of offering or providing sexual services for consideration).

Recommendation 5

PDF Québec proposes that sections 213(1)(a) and 213(1)(b) be maintained as they are. (Stopping or impeding traffic for the purpose of offering, providing or obtaining sexual services).

Recommendation 6

PDF Québec proposes that section 286.4 be amended to update the definitions of "place", "public place" and "any place" to include private or public cyberspace. (Stopping or impeding traffic for the purpose of offering, providing or obtaining sexual services)

Recommendation 7

PDF Québec proposes that paragraphs 279.01(1)(a), 279.01(1)(b), 279.02(1), 279.02(2), 279.03(1) and 279.03(2) be retained as they are. (Trafficking of persons.)

Recommendation 8

PDF Québec recommends that the Quebec and federal governments hold targeted and recurring multi-platform awareness campaigns in the main metropolitan areas, at the entrance and exit gates of airports, ports and border crossings, to remind people of the criminal nature of the purchase of sexual services. (Purchase of sexual services.)

Recommendation 9

PDF Québec supports the guiding principles of the PCEPA, whose application has proven effective since 2015. However, its application must be strengthened in the future.

INTRODUCTION

Pour les droits des femmes du Québec (PDF Québec) continues to support the guiding principles of Bill C-36, given Royal Assent on November 6, 2014, the short title of which is the Protection of Communities and Exploited Persons Act³ (PCEPA). This legislation was passed by the Parliament of Canada out of deep concern about the exploitation inherent in prostitution and the risk of violence to which those engaged in the practice are exposed. In addition, the Parliament of Canada recognized the social harm caused by the commodification of the human body and the commodification of sexual activity. It was important to protect the human dignity and equality of all Canadians by discouraging this practice, which has negative consequences, particularly for women and children.

1 THE CURRENT LAW IS EFFECTIVE

Let us now look at how the PCEPA is achieving its objectives, by measuring its effectiveness using Statistics Canada data.

1.1 Extent of the purchase of sexual services

The PCEPA amended the Criminal Code to create an offence to prohibit the purchase of sexual services in any place (ss. 286.1(1) and 286.1(2)). The rationale for these offences is related to the importance of denouncing and prohibiting the purchase of sexual services in order to curb both the demand for and the commercial supply of prostitution.⁴ These new sections make prostitution a criminal offence. These new articles make prostitution between consenting adults illegal, while prostitution of minors remains criminal. From 2014 to 2020, the number of offences related to the purchase of sexual services from adults amounted to 2,970 cases, and the purchase of sexual services from minors to 330, totalling 3,300 cases reported to the various police forces in the country. These numbers increased by 98.6% for adults, from 4 to 285 cases, and by 100% for minors, from 0 to 50 cases, during this period.⁵ In these 3,300 cases, 2,413 adults and 21 juveniles were charged, representing 81.2% adults and 6.4% juveniles respectively, aged 12 to 17 years. The alleged perpetrators in these cases were predominantly male, while from 2015 to 2018, 23 alleged perpetrators in these cases were female.⁶

Recommendation 1

PDF Québec proposes that sections 286.1 and 286.1 (2) be maintained as they are.

³ House of Commons, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts (2014), Government Bill (House of Commons) C-36 (41-2) - Royal Assent - Protection of Communities and Exploited Persons Act - Parliament of Canada, <https://www.parl.ca/DocumentViewer/en/41-2/bill/C-36/royal-assent/page-66>.

⁴ Ibid, p. 8.

⁵ Statistics Canada (2022), Incident-based crime statistics by detailed violations, Canada, Provinces, Territories and Census Metropolitan Areas, UCR2 Survey, <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701>.

⁶ Statistics Canada (2021), Crimes related to the sex trade: Before and after legislative changes in Canada, Juristat, no. 85-002-X, p. 11, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010->.

1.2 Material advantages derived from the purchase of sexual services

The PCEPA amended the Criminal Code to create an offence to prohibit obtaining a material benefit from the commission of the offence of purchasing sexual services (s. 286.2). This new offence modernizes the prohibition against living off the avails of prostitution, which had been declared unconstitutional by the Supreme Court of Canada in the Bedford decision, when prostitution was not illegal in Canada. From 2014 to 2020, the number of offences related to obtaining a material benefit from the purchase of sexual services from adults was 119 actual cases, and it was 70 from the purchase of sexual services from minors, for a total of 189 cases reported by the various police forces across the country. These numbers increased by 95% for adults, from 1 to 20 cases, and by 50% for minors, from 2 to 4 cases, over this period.⁷ Males were more likely than females to be convicted, from 2015 to 2019⁸. In these 189 cases, 84 adults and 15 young people were charged, representing 44.4% adults and 7.9% young people, aged 12-17, respectively.

Recommendation 2

PDF Québec proposes that section 286.2 be maintained as is.

1.3 Procuring

The PCEPA amended the Criminal Code to modernize the offences in s. 212(1), which were using outdated language and creating significant overlap between different offences designed to prohibit pimping. The rationale for the offence (s. 286.3) is that it is important to continue to denounce and prohibit pimping and the development of economic gain from the exploitation of others through prostitution, as well as the commercialization and institutionalization of prostitution.⁹ The number of offences under s. 212(1) is expected to increase in the coming years. From 2014 to 2020, the number of offences related to adult pimping was 1,219 cases, while it was 598 for the pimping of minors, totalling 1,810 cases reported by the various police forces in the country. These numbers increased by 98.2% for adults, from 5 to 271 cases, and by 100% for minors, from 0 to 88 cases during this period. In these 1,219 cases, 564 adults and 48 juveniles were charged, representing 46.3% adults and 3.9% juveniles, aged 12 to 17, respectively. Again, males are more likely than females to be the alleged perpetrators in pimping-related cases. Nevertheless, from 2015 to 2019, 62 alleged perpetrators were under the age of 18, more than doubling since the entry into force of the PCEPA.¹⁰ Young pimps are increasingly being arrested.

Recommendation 3

PDF Québec proposes that section 286.3 be maintained as is.

⁷ Statistics Canada (2022), *op. cit.*, note 5.

⁸ Statistics Canada (2021), *op. cit.*, note 6, p. 3.

⁹ Parliament of Canada, Statutes of Canada (2014), *op. cit.*, note 1.

¹⁰ Statistics Canada (2021), *op. cit.*, note 6, p. 12.

1.4 Communication for the purpose of providing sexual services

The PCEPA amended the Criminal Code to create an offence prohibiting communicating with another person for the purpose of selling sexual services in or near a public place or in public view, such as a day care centre, school grounds or playground (s. 286.1(1)(i)). The rationale for this section is to protect children from the harms of prostitution and to send a particularly clear message to purchasers about the harms their conduct causes to vulnerable communities. From 2014 to 2020, the number of offences related to communicating for the purpose of rendering sexual services for consideration totalled 323 cases reported by various police forces across the country. This number increased by 93.9% from 2 to 33 cases during this period. In these 323 cases, 129 adults (39.9%) and one youth were charged.

Recommandation 4

PDF Québec proposes that section 286.1 (1)(i) be maintained as is.

1.5 OBSTRUCTING TRAFFIC

The PCEPA amended the Criminal Code to modernize the offences of stopping or attempting to stop a motor vehicle, or obstructing pedestrian or vehicular traffic in a public place or in public view for the purpose of buying or selling sexual services (ss. 213(1)(a) and 213(1)(b)). The modernization of these offences was intended to prevent members of communities in which prostitution is practiced from being harassed by those who buy and sell sexual services.¹¹ From 2014 to 2020, the number of offences related to interfering with traffic for the purpose of buying or selling sexual services for a fee totalled 417 cases reported by various police forces across the country. This number increased by 89.3% from 3 to 28 cases during this period. Of these 417 cases, 40 adults (9.6%) and one youth were charged. The number of female alleged perpetrators of these offences is declining, as they accounted for 22% in 2014, and only 5% in 2019.¹² In addition, fewer of these offences occurred on the street or in an open space, while more were committed in a home or in a commercial accommodation unit, such as a hotel.

Recommendation 5

PDF Québec proposes that sections 213 (1)(a) and 213(1)(b) be maintained as they are.

1.6 Advertizing sexual services for a fee

The PCEPA amended the Criminal Code to create an offence to prohibit the advertising of sexual services for profit and to authorize the court to order the seizure of materials containing such advertising, as well as its removal from the Internet (s. 286.4). The basis of this offence relates to the commercialization and institutionalization of prostitution, which exacerbates the negative consequences of this activity and the exploitation inherent in it.¹³

¹⁰ Department of Justice of Canada (2014), Technical Paper (justice.gc.ca) : <https://www.justice.gc.ca/eng/pr-rp/autre-other/protect/index.html>.

¹¹ Statistics Canada (2021), *op. cit.*, note 6, p. 10.

¹² Statistics Canada (2021), *op. cit.*, note 6, p. 10.

From 2014 to 2020, the number of offences related to the advertising of sexual services for remuneration totalled 179 cases reported by the various police forces in the country. This number increased by 97.5% from 1 to 40 cases during this period. In these 179 cases, 10 adults (5.6%) and only one youth were charged.

According to the Report of the Select Committee on the Sexual Exploitation of Minors, the Criminal Code has not kept pace with the rapid development of information technology. Police forces do not have the tools to intervene easily and quickly in cyberspace, either to hold accountable the owners of pages such as MindGeek and OnlyFans, which share videos of underage girls of a sexual nature, or to shut down sites advertising sexual services.¹⁴

Recommendation 6

PDF Québec proposes that section 286.4 be amended to update the definitions of "place", "public place" and "any place" to include private or public cyberspace.

1.7 Human trafficking

The PCEPA amended the Criminal Code to harmonize prostitution offences with trafficking offences (ss. 279.01(1)(a), 279.01(1)(b), 279.02(1), 279.02(2), 279.03(1) and 279.03(2)). The Parliament of Canada based this harmonization on the desire to encourage people involved in prostitution to report abuse and to abandon the practice. From 2014 to 2020, the number of human trafficking offences totalled 1,866 cases reported by police forces across the country. This number increased by 58.2% from 143 to 342 cases during this period. Since the enactment of the PCEPA, there has been an increase in human trafficking cases in which both a pimping offence and the obtaining of a material benefit have been reported.¹⁵

Recommendation 7

PDF Québec proposes that paragraphs 279.01(1)(a), 279,01(1)(b), 279,02 (1), 279,02(2), 279,03(1) et 279,03(2) be maintained as they are.

1.8 All crimes related to prostitution

Crimes reported to police forces across the country vary by province and census metropolitan area. This variation can be explained by different law enforcement practices and reporting methods in the various jurisdictions.¹⁶ Since the coming into force of the PCEPA, the highest number of reports of prostitution-related offences have been made in the following provinces: Alberta (1,198), Ontario (958), Quebec (957) and British Columbia (630). In terms of census metropolitan areas, the order of reporting of prostitution-related offences was as follows: Edmonton (782),

¹³ Library of Parliament (2014), *op. cit.*, note 3, p. 8.

¹⁴ Quebec National Assembly (2020), *Report of the Select Committee on the Sexual Exploitation of Minors*, December 2020, p. 70, <http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/csesm-42-1/index.html>.

¹⁵ Statistics Canada (2021), *op. cit.*, note 6, p. 9.

¹⁶ Statistics Canada (2021), *op. cit.*, note 6, p. 8.

Montreal (656), Winnipeg (537), Saskatoon (348), Vancouver (321), Toronto (234) and Calgary (193).

Recommendation 8

PDF Québec recommends the holding of multi-platform awareness campaigns carried out in synergy by the Quebec and federal governments, targeted and recurring, in the main metropolitan census regions, at the entry and exit gates of airports, ports and border crossings and addressed to all persons travelling in these areas, to remind them of the criminal nature of the purchase of sexual services.

In addition, the number of victims in cases involving at least one prostitution-related offence increased from 2015 to 2019 to a total of 2,170, of which 47.0% were related to the purchase of sexual services, 34% to pimping, 9% to obtaining sexual services for profit, 24% to human trafficking, and 18% to a sexual offence. The vast majority of victims were female (94%), and young people aged 12-17 years accounted for 44% of victims.¹⁷

Since the introduction of the PCEPA, victims reported minor injuries in 17% of reports, compared to 19% prior to the legislation. This decrease was reported for both adult and minor victims. Injuries were more severe in cases of human trafficking. Only one in 10 victims suffered injuries in the purchase of sexual services, while the rate was 20% for adult victims of pimping.¹⁸ In light of these data, it seems that pimps are more violent than clients. According to data from the Canadian Homicide Survey, since the coming into force of the PCEPA, 33 out of 35 homicide victims were female prostitutes, 20% of whom were indigenous, compared to 53 out of 54 from 2010 to 2014. Prior to the PCEPA, 43% of homicide victims had a murderer in a criminal relationship with them, either clients, drug dealers or gang members. After the PCEPA, 38% of prostitutes were killed by a casual acquaintance or stranger instead.¹⁹

2 DECRIMINALIZATION/LEGALIZATION OR ABOLITION

2.1 The Swedish model versus the German model

The Swedish model borrowed by Canada with the adoption of Bill C-36, now the Protection of Communities and Exploited Persons Act, in 2014, shifted prostitution from the realm of indecency to that of violence against prostitutes. This is a paradigm shift with major implications for the criminalization of those who profit from sexual exploitation, namely clients and pimps. The same applies to the measures to be put in place to help the victims of prostitution to escape. Not to mention the fact that pornography creates the need for the client to resort to prostitution, while also serving as a reference for imposing degrading and dehumanizing sexual acts on prostitutes. Germany's path to decriminalization/legalization is quite different.

¹⁷ Statistics Canada (2021), *op. cit.*, note 6, p. 14.

¹⁸ Statistics Canada (2021), *op. cit.*, note 6, p. 15.

¹⁹ Statistics Canada (2021), *op. cit.*, note 6, p. 15.

Since 2002, the number of prostitutes has exploded to 400,000, most of whom are migrants. There are one million clients and 3,500 brothels, 500 of which are located in Berlin.

"Brothels have flourished in Germany since prostitution was legalized.²⁰ Seventeen years later, in 2019, international organized crime groups have multiplied, and the number of 20,000 prostitutes who are victims of human trafficking, sexually exploited, is three or four times higher than before the law decriminalizing prostitution was passed in 2002.

2.2 An abolitionist approach to be consolidated

Men who bought sex and trafficked people were directly affected by the PCEPA, as there was an increase in offences from 2014 to 2020. More than half of adult clients and pimps were convicted, while few youth were convicted. Men who obtained a material benefit from the purchase of sexual services and who prostituted people were also affected by the PCEPA, with an increase in offences from 2014 to 2020. However, less than half of the adults were convicted of these two offences. Individuals who communicated with others for the purpose of providing sexual services for a fee, interfered with traffic for the purpose of buying or selling sexual services, and advertised sexual services were also affected, with an increase in offences related to these communications from 2014 to 2020. However, few adults have been convicted. Despite its timid application, PDF Québec supports this law, which has made adult-on-adult prostitution illegal for the first time in Canadian history.²¹ Without this law, there is no way to prevent prostitution in Canada. Without this law, there is a strong lobby in Canada that could lead us to the situation in Germany, where prostitution is legalized and has many victims, mostly girls and women.

Recommendation 9

PDF Québec supports the guiding principles of the PCEPA, which has proven its effectiveness since 2015. However, its implementation needs to be strengthened in the future.

CONCLUSION

PDF Québec therefore calls for the law to be maintained, and even strengthened. Moreover, to take the path of decriminalizing prostitution, as the pro-sex lobby is calling for, would contravene Canada's commitments to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in particular Article 6, which states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".²²

²⁰ Ducouso, Pauline, « L'Allemagne, plus grand bordel d'Europe », *Le Point*, 2 avril 2019, https://www.lepoint.fr/societe/l-allemande-plus-grand-bordel-d-europe-02-04-2019-2305174_23.php.

²¹ Library of Parliament (2014). *Legislative Summary of Bill C-36: An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts*, publication no 41-2-C36-E, 18 juillet 2014, https://lop.parl.ca/sites/PublicWebsite/default/fr_CA/ResearchPublications/LegislativeSummaries/412C36E.

²² United Nations, *op. cit.*, note 2.