



ABORIGINAL LEGAL SERVICES

Gaa kina gwii waabamaa debwewin - All those who seek the truth

Legal Advocacy Director's Submissions and Speaking Notes for the Standing Committee on Justice and Human Rights

March 1, 2022, 4:30-5:30pm

A. Position Overview:

The *Protection of Communities and Exploited Persons Act* is end-demand legislation that is not effective; it is not creating positive change; and, it increases harm and opportunities of violence against sex workers.

We agree with and encourage this committee to read, review and seriously contemplate the research, recommendations and legal analysis provided in Pivot Legal Society's "EVALUATING CANADA'S SEX WORK LAWS: The Case For Repeal" We know that the Committee has had the opportunity to hear from Pivot on the last panel. Their previous submissions and work in this area aligns with ALS's advocacy and their work product and years of experience should be compelling to lawmakers. . I intend to focus on impacts *PCEPA* has on Indigenous communities.

Stigma perpetuates conditions that have allowed predators to murder, rape, and abuse sex workers with impunity. Police fail to investigate and prosecute these crimes when they involve Indigenous women, girls and 2SLGBQQIA+ assumed to be sexworkers. The National Inquiry into Missing and Murdered Women and Girls (NIMMIWG) heard this horrific narrative time and time again. Negative stereotypes about sex workers continues to have adverse impact on the way Indigenous women are portrayed, seen and treated. An example of this was apparent in the R.v. *Barton* case where Cindy Gladue was reduced to multiple references in Court as Native prostitute, Native girl and sex worker.

Disappeared and murdered Indigenous women are often assumed to be sex workers or reported in the media as being a sex worker. This belief, although erroneous on many occasions, results in less attention paid when Indigenous women go missing.

Laws prohibiting the exchange of sex for compensation between consenting adults is not the way to end violence against Indigenous women or to address inequality and systemic poverty. The pervasiveness of these stereotypes and

racism are so ingrained that the Supreme Court of Canada, in *Barton in 2019* had to instruct:

“Our criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on. Turning a blind eye to these biases, prejudices, and stereotypes is not an answer. Accordingly, as an additional safeguard going forward, in sexual assault cases where the complainant is an Indigenous woman or girl, trial judges would be well advised to provide an express instruction aimed at countering prejudice against Indigenous women and girls. This instruction would go beyond a more generic instruction to reason impartially and without sympathy or prejudice.” [para 200]

Sexual exploitation of Indigenous women, girls, two spirited community members occurs well before they decide to engage in sexwork. Indigenous children, who are apprehended into child protection services at alarming rates, often experience sexual exploitation. Addressing issues of poverty and inequity and decolonizing approaches to child welfare and institutions is the leading way to reduce sexual exploitation that Indigenous children experience.

The acute mass incarceration of Indigenous women in Canada’s Correctional institutes also demonstrates the high criminalization of Indigenous women. Indigenous women now account for 42% of the women inmate population in Canada. Laws that further perpetuate stereotypes and distinguish groups (such as sexworkers) are harmful and overcriminalized populations are the ones that face the most scrutiny of authorities, even when it is not warranted.

The ban on purchasing sex directly impacts sex workers’ safety—Indigenous sex workers safety, engaging the rights to liberty, life, and security of the person under Section 7 of the Charter, as well as Section 15, the guarantee of equality under the law.

The Court in *Barton* also had to remind us that

“Our criminal justice system holds out a promise to all Canadians: everyone is equally entitled to the law’s full protection and to be treated with dignity, humanity, and respect. Ms. Gladue was no exception. She was a mother, a daughter, a friend, and a member of her community. Her life mattered. She was valued. She was important. She was loved. Her status as an Indigenous woman who performed sex work did not change any of that in the slightest. But as these reasons show, the criminal justice system did not deliver on its promise to afford her the law’s full protection, and as a result, it let her down — indeed, it let us all down.”

We call for the repeal of *Protection of Communities and Exploited Persons Act (PCEPA)*. PCEPA is unconstitutional and actively prevents people who sell or trade sexual services from enjoying their fundamental Charter rights.

B. Background:

Like Pivot, ALS was an intervener in the *Bedford* case before the Supreme Court of Canada. We intervened mainly because of life and liberty risks that the criminal code provisions were creating for Indigenous sex workers.

On July 10, 2014, ALS made submission to this Committee, in the 41st Parliament, 2nd Session, on 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. At the time ALS objected to the passing of Bill C-36 because of the acute Indigenous overrepresentation in the criminal justice and penal systems, and the overall impact the bill would have on a number of Indigenous sex workers, their families, and communities. An important submission we made then and still make now is that the government can do everything to support individuals who do sex work or want to exit sex work, without criminalizing sex workers or putting them into harms way because the law fails to account for their lives, liberty and security of the person.

We knew well before *Bedford* that Indigenous people are disproportionately represented among those who do street-based sex work and engage in transactional sex. This is still true.

The evidentiary record for the *Bedford* case alone amounted to more than 25,000 pages, demonstrating how Canada's prostitution laws impacted sex worker safety. We know what harms occur when sex work is criminalized. New caselaw has also explored evidence that the *PCEPA* is recreating the harmful conditions that led the SCC to strike down the prostitution laws in *Bedford*. The Nordic model of asymmetrical criminalization and end-demand legislation is not effectively improving lives of sex workers. The eradication of sex work has yet to be achieved in any of the countries using asymmetrical criminalization

The *PCEPA* has been mischaracterized as targeting clients and exploitive third parties without criminalizing sex workers and others who may enhance their safety. In fact, the new law has resulted in sweeping criminalization of the sex industry, putting sex workers under increased scrutiny and increasing their physical and economic insecurity. Under the new law, working outside is just as dangerous as it was in the past, and working inside is not viable for anyone wanting to do sex work who is not already well-resourced and established. [Pivot, page. 64]

C. Recommendations:

Aboriginal Legal Services supports the following recommendations from PIVOT Legal Society, "EVALUATING CANADA'S SEX WORK LAWS: The Case For Repeal", and their past submission, "Brief to the Standing Committee on Justice and Human Rights, Study of Human Trafficking in Canada" on May 28, 2018. Specifically we support the following:

Repeal the Laws that Criminalize Sex Work Ensuring that sex workers' rights are protected requires the repeal of the PCEPA and all criminal laws that prohibit the purchase of sexual services and prevent adults selling sex from working with others in non-coercive situations. Changing the law would not just make sex work safer; it would be a first step towards undoing the stigma experienced by people who do sex work.

Use Existing Laws to Prosecute Perpetrators of Violence Instead of a being governed by a separate legal regime that sets them apart, sex workers need to be able to access the police and to enjoy the full benefit of legal protections theoretically available to everyone in Canada, including Criminal Code provisions to punish perpetrators of violence

*We would add, that law reform should consider using appropriate language and not characterizing acts of sexual violence of minors as "interfering".

Don't Conflate Trafficking and Sex Work

The human trafficking provisions in the *Criminal Code* and the *Immigration and Refugee Protection Act* can and should be applied in bona fide situations of coercive labour. At the same time, law enforcement and government must recognize that sex work is not trafficking. Sex work (the consensual exchange of sexual services for money) is not trafficking, and trafficking laws should not be used as a reason to investigate sex workers and sex work businesses unless there is compelling evidence of debt bondage, violence, deprivation of liberty, or similar exploitation.

Recognize the Complex Realities of Indigenous People Who Sell and Trade Sex

Specifically, The federal government should increase broad-based support, including through funding to Indigenous communities for self-administered education, vocational training, housing programs, income assistance, employment programs, and health and addictions services, based in Indigenous traditions. This would position Indigenous people to decide whether they want to participate in the sex industry, and if so, under what conditions.

Invest in Supports for Low Income Sex Workers – Whether They Want to Do Sex Work or Not

Poverty, discrimination, and stigma are constants in the lives of many sex workers. Using criminal laws to deny people their income sources is not the way to ensure genuine autonomy. Instead, like all people experiencing poverty or discrimination, low-income sex workers – whether they wish to seek other work or not – need access to more substantial income assistance benefits, safe and affordable housing, and culturally appropriate educational opportunities and health services, which in some cases may include mental health supports, drug treatment, and harm reduction services.

The National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG)

ALS supports the implementation of the following Calls to Justice from the NIMMIWG. The following recommendations must be read in the context of the above recommendations and implemented with the National Inquiries principles for change as guiding direction, including and not limited to focus on substantive equality and human and Indigenous rights:

- 4.3 We call upon all governments to support programs and services for Indigenous women, girls, and 2SLGBTQQIA people in the sex industry to promote their safety and security. These programs must be designed and delivered in partnership with people who have lived experience in the sex industry. We call for stable and long-term funding for these programs and services.
- 5.3 We call upon the federal government to review and reform the law about sexualized violence and intimate partner violence, utilizing the perspectives of feminist and Indigenous women, girls, and 2SLGBTQQIA people.
- 12.14 We call upon all child welfare agencies to establish more rigorous requirements for safety, harm-prevention, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. We also insist that governments provide appropriate care and services, over the long term, for children who have been exploited or trafficked while in care.

D. Resources relied upon in preparation of submissions:

Canada (Attorney General) v. Bedford, 2013 SCC 72
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

R. v. Barton, 2019 SCC 33, [2019] 2 S.C.R. 579

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17800/index.do>

PIVOT Legal Society, “EVALUATING CANADA’S SEX WORK LAWS: The Case For Repeal” (2015) available at:

https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/1960/attachments/original/1480910826/PIVOT_Sex_workers_Report_FINAL_hires_ONLINE.pdf?1480910826

Pivot Legal Society Brief to the Standing Committee on Justice and Human Rights, Study of Human Trafficking in Canada” May 28, 2018

https://www.pivotlegal.org/submission_on_human_trafficking_to_standing_committee_on_justice_and_human_rights

Universtiy of British Columbia, Centre for Gender and Sexual Health Equity, “Harms of end-demand criminalization: impact of canada's pcepa laws on sex workers’ safety, health & human rights” (2019) available at

http://www.cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf

Yadgar Karim, “Ottawa Street-based Sex Workers and the Criminal Justice System: Interactions Under the New Legal Regime” (Master’s Thesis, University of Ottawa, 2016), 84-85.

Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge (January 21, 2020)

<https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>

ALS Submissions to The Standing Committee on Justice and Human Rights, 41st Parliament, 2nd Session, on 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.

<https://openparliament.ca/committees/justice/41-2/41/christa-big-canoe-1/only/>

Miigwech, Respectfully,

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March 1, 2022