



Submission to the House of Commons
Standing Committee on Justice and Human Rights:
Review of the *Protection of Communities and Exploited Persons Act*

February 22, 2022

I. Introduction

The [HIV Legal Network](#) promotes the human rights of people living with, at risk of, or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education, and community mobilization. Since our inception almost three decades ago, the HIV Legal Network has worked with sex workers to advocate for laws and policies that uphold their human rights and are a member group of the Canadian Alliance for Sex Work Law Reform, a coalition of 25 sex workers' rights groups across Canada. We make this submission to the Standing Committee on Justice and Human Rights in support of its review of the *Protection of Communities and Exploited Persons Act*.

II. The impacts of criminalization in Canada

Since 2014, human rights violations against sex workers in Canada have escalated with the passage of the *Protection of Communities and Exploited Persons Act* (PCEPA), which criminalizes sex workers (pursuant to the prohibition on public communication), those who purchase sexual services, third parties such as managers, security, receptionists, drivers, translators, peers, and partners involved in sex work, and those who advertise sexual services.ⁱ This approach, which seeks to 'end demand' for sex work by banning the purchase of sexual services, has been denounced by sex workers, human rights organizations, women's rights organizations, anti-trafficking organizations, and UN agencies who point to an extensive body of research which reveals that **criminalizing any aspect of sex work fuels stigma, discrimination and other abuse towards sex workers and facilitates exploitation in the sex industry.**ⁱⁱ As Human Rights Watch has concluded, the 'end demand' approach to sex work "has a devastating impact on people who sell sex to earn a living. Because its goal is to end sex work, it makes it harder for sex workers to find safe places to work, unionize, work together and support and protect one another, advocate for their rights, or even open a bank account for their business."ⁱⁱⁱ This research also describes how criminalization reduces sex workers' access to health, social, and legal services, undermines their autonomy, health, and safety, and violates sex workers' human rights.^{iv}

In 2019, the HIV Legal Network co-authored a report [The Perils of Protection: Sex Workers' Experiences of Law Enforcement in Ontario](#), featuring interviews with Indigenous, Asian, Black and other racialized sex workers, migrant sex workers, trans and 2-Spirit sex workers, and sex workers who work in conditions of extreme precarity.^v Some participants worked independently, and others worked with third parties such as managers, drivers, peers, translators, security, bookers, webmasters, and receptionists who provided them with support and infrastructure to work safely. Universally, the **study participants shared that the enforcement of the PCEPA has contributed to violence and exploitation against sex workers, challenging the fallacy that the law protects them.** In particular, sex workers

described the following:

- **Sex workers continue to work after the passage of the PCEPA.** Criminalizing sex work has not changed the reality that sex workers still need access to income to support themselves or their families. While they continue working, sex workers described the negative financial impacts of their encounters with police, who are empowered by the law to surveil sex workers. As one woman described: “[The police] want to put our clients in jail. So it affects us greatly. ... And then because it affects our financial, it affects all other aspects of our life ... our basic needs like shelter, food, clothing, love.” Additionally, some sex workers described how criminalization limited prospects of employment outside of the sex industry. One Two-Spirit sex worker who had previous sex work criminal charges described being unable to pursue a career in nursing because vulnerable sector screening revealed those convictions.
- Participants also shared how **criminalization forces sex workers to endure poor working conditions and incidents of violence.** Criminalization has forced third parties and workplaces to conceal sex work, so workers can neither access decent working conditions nor report harassment or violence because their employers and peers are consequently scrutinized as third parties or human traffickers. According to one participant: “A woman was blackmailed and robbed by many gangsters, so she tried to call the police to stop the violence ... the police came in and the officer did not investigate the blackmail...or the robbery, but ... gave them a warning that they needed to move out immediately ... the police did not ask, ‘What did the robber look like?’ but ... ‘Who rented the place to you? Who introduced you to work here? Who helped you do the advertisement?’” Another participant explained how constant police surveillance has led some women who can no longer work independently in public spaces to work for third parties that they do not know.
- **The PCEPA has discouraged reporting of violence by sex workers.** Most sex workers indicated that they would not go to police for help, especially if the abuse happened in the context of their work. Some sex workers — and particularly racialized sex workers— were criminally charged when they contacted law enforcement for assistance. Several participants described how reporting violence to the police resulted in their workplace being investigated or shut down, forcing them to move to remote areas without access to their safety networks, and putting them at greater risk of exploitation. Knowing that sex workers and their employers are unable to seek police assistance, one participant described how predators frequently target sex workers’ workplaces for robbery.
- **All sex workers shared how the PCEPA and law enforcement presence have led to their isolation, increasing their risk of targeted violence and other abuse.** Many described how the prohibition on purchasing sexual services has scared clients, who request meeting in more secluded locations, and has forced hurried encounters, hampering sex workers’ ability to take measures to promote safety such as screening, communicating about the terms of service, and negotiating conditions to sexual activity with a client. This undermines sex workers’ ability to establish consent to the sexual activities in which they engage. As one participant shared: “[Clients] don’t even want to have the initial conversation on the road, which is a lot more

dangerous for girls, because you want to have your agreement before you get in.” Another participant described how the advertising prohibition affected her safety: “if I can’t do the communicating that I’m used to doing online then it’s going to force me [to communicate] in that moment when I meet that client ... boundaries are important.... if you’re not able to communicate ahead of time ... it puts you in a rush to go through your boundaries, your prices, and everything.”

More broadly, criminalization has contributed to sex workers’ experience of numerous other harms, including:

- Negative effects on sex workers’ mental health, including feelings of trauma, stress and fear of returning to work, and anxiety and paranoia of being raided or surveilled;
- Sex workers being “outed” and the stigma and discrimination that ensues;
- Residential and workplace eviction;
- Harmful repercussions on sex workers’ family life, including on child custody;
- Limitations to sex workers’ geographic mobility because of tickets or sentences restricting their ability to be or work in certain neighbourhoods or because their identity as sex workers is documented in databases accessible by border control agents;
- Immigration detention and deportation for migrant workers found in contravention of immigration regulations prohibiting migrant sex work; and
- Impediments to practicing safer sex.

The most marginalized sex workers, who already face racial and social profiling, faced the most severe impacts of the PCEPA, yet were routinely positioned outside the reach of assistance in times of actual need. One sweeping commonality was sex workers’ experience of law enforcement as a source of repression rather than protection.

These findings reflect a growing body of research in Canada that has been conducted since the passage of the PCEPA, which demonstrates that the prohibitions on clients, third parties, and advertising have not increased sex workers’ health or safety. For example, research shows that the criminalization of clients and the prohibition on communicating has forced rushed negotiations and forgoing critical safety strategies to screen prospective clients; displaced sex workers to isolated and hidden spaces to avoid police persecution of clients; and limited access to police protections in cases of violence for fear of clients being targets of arrest.^{vi} By facilitating the removal of sex workers from public spaces, such tactics have merely perpetuated labour conditions that subject sex workers to greater risk of violence and poor health.^{vii}

In one study, **26% of sex workers reported negative changes in working conditions after the passage of the PCEPA**, including reduced ability to screen prospective clients, reduced access to safe workspaces, and reduced access to clients (which meant, among other things, longer hours for less

pay).^{viii} Notably, racialized and migrant sex workers were most likely to have reported negative changes post-law reform.^{ix}

The criminalization of third parties also forces sex workers to work away from support networks and without proven safety mechanisms, a finding confirmed by the Supreme Court of Canada in *Canada (Attorney General) v. Bedford*.^x Evidence has demonstrated the role of supportive managerial and venue-based practices, which allow sex workers to work together and promote access to health and support services, in reducing violence and health risks.^{xi} Yet, **PCEPA has limited sex workers' access to secure locations where they work in close proximity to colleagues**,^{xii} including indoor managed workplaces which enhance sex workers' safety by providing access to staff who carefully screen clients, record pertinent information, and secure the work environment.^{xiii} In British Columbia, researchers found significantly reduced odds of sex workers accessing health services when needed after the implementation of the new law.^{xiv}

Moreover, the prohibition on advertising, which necessitates the engagement of third parties (e.g. website providers to run sex workers' advertisements) has forced sex workers to engage in coded communication in their advertisements to ensure they are not removed — contributing to uncertain terms between sex workers and clients. For some sex workers, the inability to advertise has displaced their work from indoor settings to public spaces, a sector with which they may be unfamiliar. **A legal framework that subjects all third parties to criminal sanction without evidence of abuse drives the sex industry underground where labour exploitation can flourish** and deters sex workers from reporting when they experience violence, for fear that they or their employer may be charged with sex work offences.^{xv} In particular, Indigenous, racialized, and migrant sex workers are least likely to access police protection and report violence.^{xvi}

Additionally, **migrant sex workers, who are legally prohibited from working in the sex industry, are under constant threat of detention and deportation, thus hindering their access to health and support services and the police for fear of being labeled victims of trafficking**.^{xvii} In Canada, anti-trafficking enforcement efforts such as raids by law enforcement agencies including the RCMP, Canada Border Services Agency (CBSA) and municipal police put women from the most marginalized groups, including Indigenous and migrant women, in danger. Law enforcement agencies across Canada have regularly participated in mass, indiscriminate efforts to identify trafficking victims in the sex industry such as Operation Northern Spotlight, during which police have detained and harassed numerous sex workers where there has been no evidence of coercion, exploitation, or human trafficking.^{xviii} The routine conflation of sex work and trafficking results in the over-policing of sex workers, especially those who are Indigenous or migrant. When police have raided sex work establishments or posed as clients in their efforts to “rescue” human trafficking victims, sex workers have repeatedly experienced this as a form of intimidation, harassment, surveillance, and a gross violation of privacy that has further entrenched fear and distrust of police services.^{xix}

Anti-human trafficking organizations such as the Global Alliance Against Traffic in Women (GAATW) have documented the harmful effects of anti-trafficking measures on sex workers who are affected by raids on their workplaces, carried out ostensibly to find people who have been trafficked.^{xx} GAATW and

Freedom United have subsequently underscored that **decriminalizing sex work is a necessary response to address human trafficking** by increasing the negotiating power of sex workers over working conditions and facilitating reporting of concerns without fear of criminal repercussions.^{xxi} The UN Special Rapporteur on violence against women has also noted the need to ensure that “measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers”^{xxii} while UN Women has expressed its support for decriminalizing sex work, acknowledging that sex work, sex trafficking and sexual exploitation are distinct, and that their conflation leads to “inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights.”^{xxiii}

iii. The promise of decriminalization

In New Zealand, where sex work was decriminalized via the *Prostitution Reform Act* in 2003,^{xxiv} research indicates that sex workers experienced improved working conditions and are better protected from exploitation and violence after the passage of the law.^{xxv} Following decriminalization, sex workers in New Zealand had the same employment rights as other workers and the sex industry could operate under the same health and safety rules as any other New Zealand industry. Consequently, decriminalization changed the balance of power between brothel operators and sex workers.^{xxvi} In surveys conducted of sex workers’ experiences of robbery, physical assault, and sexual assault prior to and following decriminalization, sex workers across sectors reported dramatic declines in such adverse experiences after decriminalization.^{xxvii} Moreover, research done within five years of decriminalization showed a growing confidence among sex workers in police, with many sex workers reporting that they could trust the process of reporting incidents to the police and following through on court proceedings.^{xxviii}

Decriminalizing sex work is in line with recommendations made by UN Special Procedures and other UN agencies. Mr. Anand Grover, the previous UN Special Rapporteur on the right to health, has concluded that criminalizing sex work diminishes sex workers’ bargaining power in choosing clients and negotiating condom use, impedes sex workers’ access to health services, and denies them protections that legal work requires, such as occupational health and safety standards.^{xxix} As he notes, decriminalizing sex work “forms a necessary part of a right-to-health approach to sex work, and can lead to improved health outcomes for sex workers.”^{xxx} Similarly, the Global Commission on HIV and the Law has recommended that States “repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex” and refrain from using trafficking laws “against adults involved in consensual sex work” in order to ensure an “effective, sustainable response to HIV that is consistent with human rights obligations”.^{xxxi} Additionally, **UNAIDS recommends “ending the criminalization of all aspects of sex work, including the purchase, sale and management of sex work; extending labour protections; protecting sex workers against state and private actor violence; and ending stigma and discrimination.”**^{xxxii}

IV. Recommended actions

We urge this Committee to center the experiences of sex workers, who are most directly affected and profoundly harmed by the PCEPA, review the extensive peer-reviewed, empirical research that confirms such harms in Canada and beyond, and recommend the:

- Immediate repeal of all sex work–specific criminal laws, including the offences in the *Protection of Communities and Exploited Persons Act*, which endanger sex workers’ lives, health, and safety;
- Immediate repeal of all immigration laws and regulations that prohibit migrant people from working in the sex industry, and have led to the detention and deportation of migrant sex workers;
- Application of laws of general application to address instances of violence and exploitation against sex workers, such as laws against kidnapping, theft, robbery, extortion, intimidation, criminal harassment, and assault;
- Cessation of raids, detention, and deportation of sex workers through anti-trafficking, anti-sex work and immigration laws and ensure Canada Border Services Agency is never involved in anti-trafficking investigations, because their involvement exacerbates migrant workers’ fears of detention and deportation and inhibits reporting of violence if it occurs; and
- Application of a labour and human rights framework that engages provincial/territorial legislation including employment standards and occupational health and safety legislation, to ensure that sex workers’ rights, safety, and dignity are respected, guaranteeing that sex workers and their allies are consulted in doing so.

ⁱ *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25).

ⁱⁱ See, for example, Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, March 2017; UNDP, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, 2012; UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012; WHO, UNFPA, UNAIDS, Global Network of Sex Work Projects, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for sex Workers in Low and Middle Income Countries: Recommendations for a Public Health Approach*, December 2012; CHANGE, “Women’s Rights Organization Applauds Amnesty International Recommendation to Decriminalize Sex Work,” August 11, 2015; Amnesty International, *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*, May 26, 2016; Amnesty International, *We live within a violent system”: Structural violence against sex workers in Ireland*, 2022; C. Benoit et al., “The relative quality of sex work,” *Work, Employment & Society* 35(2)(2020): pp. 239–255; C. Benoit et al., *Working paper for Building on the Evidence: An International Symposium on the Sex Industry in Canada*, 2014; L. Jeffrey & G. MacDonald. “It’s the Money, Honey: The Economy of Sex Work in the Maritimes,” *Canadian Review of Sociology and Anthropology* 43:3 (2006): pp. 313–328; J. Lewis & F. Shaver, *Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House of Commons Subcommittee on Solicitation Laws*, 2006; Pivot Legal Society, *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform*, 2006; J. Levy and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers,” *Criminology & Criminal Justice* 1–15 (March 31, 2014); P. Östergren and S. Dodillet, “The Swedish Sex Purchase Act: Claimed success and documented effects,” paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges, The Hague, Netherlands, March 3–4, 2011; and U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012.

ⁱⁱⁱ Human Rights Watch, “Why Sex Work Should Be Decriminalized,” August 7, 2019: <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>.

^{iv} See, for example, M. Decker et al., “Human rights violations against sex workers: burden and effect on HIV,” *Lancet* (2015) 385:9963: pp. 186–199; Canadian HIV/AIDS Legal Network, *Sex, Work, Rights: Reforming Canadian Criminal Laws on*

Prostitution, 2005; and K. Shannon et al., "Global epidemiology of HIV among female sex workers: Influence of structural determinants," *Lancet* (2015) 385:9962: pp. 55–71.

^v HIV Legal Network, *The Perils of Protection: Sex Workers' Experiences of Law Enforcement in Ontario*, 2019.

^{vi} 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*, December 2019.

^{vii} A. Krüsi et al., "'They Won't Change It Back In Their Heads That We're Trash': The Intersection of Sex Work-Related Stigma and Evolving Policing Strategies," *Sociology of Health & Illness* (April 26, 2016).

^{viii} S. Machat et al., "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada," *Canadian Journal of Public Health* (2019) 110(5): pp. 575-583.

^{ix} *Ibid.*

^x *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

^{xi} A. Krüsi et al., "Negotiating Safety and Sexual Risk Reduction with Clients in Unsanctioned Safer Indoor Sex Work Environments: A Qualitative Study," *American Journal of Public Health* (2019) 102(6): pp. 1154–1159.

^{xii} C. Benoit et al., "'Well, it should be changed for one, because it's our bodies': Workers' views on Canada's punitive approach towards sex work," *Social Sciences Special Issue Sex Workers' Rights: Looking toward the Future* (2017) 6(2): 52.

^{xiii} G. Abel & M. Ludeke, "Brothels as sites of third-party exploitation? Decriminalisation and sex workers' employment rights," *Social Sciences* (2021) 10(3): <https://doi.org/10.3390/socsci10010003>; C. Benoit et al., "Centering sex workers' voices in law and social policy," *Sexuality Research and Social Policy* (2021).

^{xiv} E. Argento et al., "The impact of end-demand legislation on sex workers' utilization of HIV care, health and community-led support services in a Canadian setting," abstract presented at AIDS 2018 and J. McDermid et al., "The impact of end-demand criminalization on occupational health and experiences of violence among sex workers in Vancouver, Canada," presented at American Public Health Association AGM, October 2020.

^{xv} See, for example, CASWLR, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014; C. Benoit et al., "Centering sex workers' voices in law and social policy," *Sexuality Research and Social Policy* (2020); A. Crago et al., "Sex workers' access to police assistance in safety emergencies and means of escape from situations of violence and confinement under an "end demand" criminalization model: A five city study in Canada," *Social Sciences* (2021) 10(1): pp. 1–13; S. Machat et al., "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada," *Canadian Journal of Public Health* (2019) 110: pp. 575–583.

^{xvi} B. McBride et al., "Underreporting of violence to police among marginalized and im/migrant sex workers pre and post-end demand laws: Findings of a community-based cohort in Metro Vancouver," *Law and Society Association Annual Meeting*, 2020.

^{xvii} See J. Fudge et al., *Caught in the Carceral Web: Anti-trafficking Laws and Policies and their Impact on Migrant Sex Workers*, 2021; Butterfly (Asian and Migrant Sex Workers Support Network), *Behind the rescue: How anti-trafficking investigations and polices harm migrant sex workers*, 2018; and Butterfly (Asian and Migrant Sex Workers Support Network), *Survey on Toronto Holistic Practitioners' Experiences with Bylaw Enforcement and Police*, May 2018.

^{xviii} CASWLR, "Sex Worker Human Rights Groups Oppose Police Operation Northern Spotlight Press Release," October 8, 2018.

^{xix} Centre for Feminist Research York University, *Challenging Trafficking in Canada: Policy Brief*, 2017.

^{xx} Global Alliance Against Traffic in Women, "GAATW-IS Statement on attack on UN research calling for the decriminalisation of sex work," October 2013: <https://www.gaatw.org/component/content/article?id=754:gaatw-is-statement-on-attack-on-un-research-calling-for-the-decriminalisation-of-sex-work>

^{xxi} *Ibid* and J. Ewart-James, "Why Freedom United supports the decriminalisation of sex work," August 23, 2021: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/why-freedom-united-supports-decriminalisation-sex-work/>.

^{xxii} Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc. A/HRC/26/38/Add.1, 2014.

^{xxiii} UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.

^{xxiv} *Prostitution Reform Act 2003*.

^{xxv} G. Abel, L. Fitzgerald and C. Brunton, *The impact of the Prostitution Reform Act on the health and safety practices of sex workers: Report to the Prostitution Law Review Committee*, 2007; G. Abel and M. Ludeke, "Brothels as Sites of Third-Party Exploitation? Decriminalisation and Sex Workers' Employment Rights," *Social Sciences* (2021): 10(3): pp. 1-15.

^{xxvi} *Ibid.*

^{xxvii} L. Plumridge and G. Abel, "A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers." *Australian and New Zealand Journal of Public Health* (2001) 25(1): pp. 78-83.

^{xxviii} *Report to the Prostitution Law Review Committee* and L. Armstrong, "From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry," *British Journal of Criminology* (2017) 57(3): pp. 570-588. doi: 10.1093/bjc/azw019.

^{xxix} Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/14/20, 2010.

^{xxx} *ibid* at para. 46.

^{xxxi} Global Commission on HIV and the Law, *Risks, Rights, and Health*, July 2012 at p. 43.

^{xxxii} UNAIDS, *HIV and Sex Work: Human Rights Fact Sheet Series*, 2021.