

IMPACT OF THE PROTECTION OF COMMUNITIES & EXPLOITED PERSONS ACT (PCEPA) ON SEX WORKERS' SAFETY, HEALTH & HUMAN RIGHTS

A submission to the House of Commons
Standing Committee on Justice &
Human Rights

Re: Protection of Communities &
Exploited Persons Act

Submitted on behalf of The AESHA Project

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February 2022

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INTRODUCTION

The majority of the peer reviewed research included in this brief is drawn from a longstanding UBC research project based at the Centre for Gender & Sexual Health Equity, known as An Evaluation of Sex Worker Health Access (AESHA). AESHA is a longitudinal research project that began in 2010 and currently involves semi-annual questionnaires and sexual health nursing visits with over 900 cis and trans women sex workers, as well as qualitative interviews with >100 managers/third parties, cis and trans men, Two Spirit and gender diverse sex workers, and clients (sex buyers). The community of sex workers is diverse. Among the 907 cis and trans women sex workers interviewed bi-annually as part of AESHA, 61% worked in indoor venues (e.g., massage parlours, beauty establishments, micro-brothels, bars, hotels, out-call and in-call), and 39% worked primarily in public/street-based settings.

This brief draws from a 15-page report published by the AESHA Project in 2019. Click here to read the full report, "[Harms of End-demand Criminalization.](#)"

What are sex workers' experiences of safety, working conditions and human rights under PCEPA?

72%

of sex workers report no improvements in working conditions with PCEPA

26%

of sex workers reported negative changes in working conditions with PCEPA

- Reduced ability to screen prospective clients
- Reduced access to safe workspaces
- Reduced access to clients (which meant longer hours for less pay or having to take riskier clients)

Machat et al. 2019.

Did rates of reporting violence & access to justice change under PCEPA?

In analyses of access to justice over nine years, rates remained unchanged with no differences in rates of reporting violence to police in the pre-PCEPA vs post-PCEPA era. Only 26% of incidents of violence were reported to police. The majority of sex workers had not reported violence to police. A staggering 87% of racialized im/migrant sex workers and 58% of Canadian-born sex workers reported not reporting workplace violence to police. Similarly, patterns were identified in a study across five Canadian cities, including Ottawa, Toronto, Sudbury, Montréal and Surrey (Crago et al. 2021).

Access to Justice (2010-2018)

26%

of incidents of violence were reported to police

38%

of sex workers reported violence to police

87%

of im/migrant sex workers had unreported violence

58%

of Canadian-born sex workers had unreported violence

Reasons for unreported violence:

- Lack of trust with police & justice system
- Immigration concerns
- Concerns that sex workers do not have legal protection from violence under current laws



No difference in rates of reporting violence pre-PCEPA (2010-2013) vs PCEPA (2015-2018)

"I've needed the police's help with bad dates and they've done absolutely nothing. The fact that it's not legalized, you kinda can't do it, you know."

- Cisgender woman; sex worker

McBride et al., 2019a; 2020a.

Did PCEPA reduce stigma and barriers to housing, harm reduction, and social and health supports for sex workers?

Previous research by AESHA and many others (see also: *Bedford Case*) have shown that prohibitive sex work laws prevent access to health and social supports and safe, secure housing due to concerns of disclosing sex work status, sexual stigma and discrimination, and fear of arrest or loss of immigration status. In longitudinal analysis, sex work stigma (fear of disclosure of sex work status to family, friends, home community and health providers) was the strongest barrier to accessing health care for sex workers (Lazarus et al., 2011), and intersected with cultural and language barriers and fear of losing immigration status for racialized im/migrant sex workers (Goldenberg et al., 2017). Criminalization of sex work gives broad latitude for exploitation without recourse by housing managers and building staff. This can include evictions due to sex work, and affects some of the most marginalized and street involved sex workers by not allowing them to bring clients indoors to their own rooms in single room occupancy hotels and social housing (Lazarus et al., 2014). Queer women sex workers overwhelmingly describe intersecting sexual stigmas that prevent access to safe, secure housing (Lyons, 2019).

Longitudinal analyses of pre/post end-demand law reform showed no improvements in health and social support access. In fact, there was a 41% reduction in access to health services and a 20% reduction in access to sex worker-led/community services (e.g., drop-in spaces, mobile outreach and peer support) after the implementation of PCEPA.

End-demand legislation and the ongoing impacts of policing among sex work communities since implementation of the laws have also been associated with restricted access to harm reduction supplies and overdose prevention among sex workers. In research with 884 sex workers interviewed between 2010-2018, we identified persistent barriers to condom access, which were not ameliorated post-implementation of PCEPA (Goldenberg et al., 2020a). In an analysis involving 624 sex workers who use drugs between 2010-2017, we found that experiencing police-related barriers to harm reduction was associated with over two-fold higher odds of nonfatal overdose (Goldenberg et al., 2020b).

Health & Social Support Access Post-PCEPA Implementation (2015-2018)

**after adjusting for type of work, age, race/ethnicity, career years in sex work & drug use*

- No improvements in access to health services for sex workers following PCEPA. In fact, there was a 41% reduction in access to health services under end-demand criminalization (2015-2018) compared to pre-PCEPA (2010-2013)
- No improvements in access to support services following PCEPA. In fact, there was a 21% reduction in access to community-led support services under end-demand criminalization (2015-2018) compared to PCEPA (2010-2013)

Argento et al. 2020.

Did PCEPA (and corresponding changes to immigration laws restricting involvement in the sex industry among foreign nationals) differentially impact safety, working conditions, labour rights and access to justice among racialized im/migrant sex workers?

Contrary to public perceptions, the majority of new im/migrant sex workers are in Canada legally and engaged in consensual exchange of sex for money (sex work) and are not victims of sex trafficking (forced sexual labour). Most im/migrant sex workers were working in Canada on short-term, open or temporary visas, while others were in the process of applying for full citizenship. As such, under the current legal landscape, the overwhelming majority of im/migrant sex workers fear reporting violence to authorities. Across the board, racialized im/migrant sex workers were the most likely to report harms post-PCEPA law reform (Machat et al., 2019; McBride et al., 2019; 2020).

Racialized im/migrant sex workers more criminalized under PCEPA

- Most likely to have reported negative changes post-law reform
- Higher rates of unreported violence (87%)
- More likely to report workplace inspections (by police or immigration)
- Fear of inspections directly linked to increased police harassment and reduced access to health services

Machat et al., 2019; McBride et al., 2019a.

CRIMINALIZING CLIENTS & COMMUNICATING

Did criminalizing clients and the new communicating provisions reproduce the same risks of violence and police intimidation for street-based sex workers?

In *Canada v Bedford*, the Supreme Court of Canada struck down the previous communicating law as unconstitutional. The new communicating law and targeting of clients under end-demand laws reproduces the same effects as the previous laws, including reduced ability to screen prospective clients and/or negotiate the terms of transactions.

AESHA research demonstrated that rates of physical and sexual violence against street-based sex workers were unchanged under end-demand enforcement efforts (24.6% vs 23.9%). Qualitative in-depth interviews and ethnographic work with

“Harassing the clients is exactly the same as harassing the women. You harass the clients and you are in exactly the same spot you were before. I’m staying on the streets. I’m in jeopardy of getting raped, hurt.”

- Cisgender woman; sex worker

street-involved sex workers showed that policing strategies targeting clients reproduced the same harms and risks of violence as previous criminal laws (Krüsi, 2014; My Work Should Not Cost Me My Life, SWUAV, CGSHE & Pivot, 2014).

End-demand enforcement approaches of street-based sex work reproduces the harms created by the previous criminalization of sex work, including:

- forcing rushed negotiations and foregoing critical safety strategies to screen prospective clients
- displacing sex workers to isolated and hidden spaces to avoid police persecution of clients, and reducing safety protections against violence from clients or violent predators posing as clients
- limiting access to police protections in cases of violence for fear of clients being targets of arrest

Below are the key ways that criminalization of clients and communicating laws negatively impact sex workers’ safety, health and human rights:

Enforced displacement increased risks of violence and reduced ability to screen clients.

Research has shown that enforcement of the prohibition on communicating in public spaces for the purposes of sex work pushes some of the most marginalized sex workers to dark alleys, industrial settings and more isolated and hidden indoor and off-street spaces, where they have little protection from violence or ability to screen prospective clients and safely negotiate terms of transactions, which are critical safety strategies (Shannon et al., 2008; Shannon & Csete, 2010; Krüsi et al., 2015; Lyons et al., 2017).

In longitudinal analysis, enforced displacement has been directly and independently linked to increased risk of both physical violence and rape (Shannon et al., 2009) and reduced ability to negotiate terms of transactions including safer sex practices with clients (Shannon et al., 2009; Deering, Rusch et al., 2014; Krüsi et al., 2015).

In qualitative research with trans women and Two Spirit sex workers, criminalization of sex work, negative interactions with police and enforced

“When [clients] are trying to avoid police like that - you just get into the vehicle, right.”

- Transgender woman; sex worker

displacement have been shown to push sex workers to isolated spaces, forcing them to rush negotiating terms of transactions including gender identity disclosure, which amplifies risks of violence (Lyons et al., 2017).

Policing and fear of arrest increase risks of violence to sex workers.

Under Canada’s previous criminal sex work laws, policing of sex work has been shown to directly and indirectly increase risks of physical violence and rape of sex workers. Policing shapes risks of violence directly through intimidation and abuse by authorities (e.g., forced confinement or detainment without arrest, confiscation of condoms or other property without arrest, verbal intimidation and police raids) and indirectly through surveillance and enforced displacement to isolated areas (e.g., being told to move on) (Shannon et al., 2008; Shannon et al., 2009; Shannon & Csete, 2010; Lyons et al., 2017).

Criminalization of communicating limits the ability of sex workers to safely negotiate condom use.

In work published in the *Lancet Sex Work and HIV Series* in 2015, criminalization was the primary structural driver of an increased HIV burden among sex workers (Shannon et al., 2015). When sex workers are pushed to work in isolated areas due to police and forced to rush negotiations of safer sex, they may be forced to forego client condom use to prioritize immediate safety over their sexual health (Shannon, Kerr et al., 2008; Shannon & Csete, 2010). In longitudinal analysis, court-ordered sanctions (e.g., red zone/no-go restrictions), enforced displacement, lack of access to safer indoor spaces and violence have all been directly linked to increased risk of client condom refusal and reduced ability of sex workers’ agency to negotiate safer sex work practices (Shannon, Strathdee et al., 2009; Krüsi et al., 2012; Deering et al., 2013).

Similarly, a systematic review and dynamic modelling paper in *The Lancet* demonstrated that the most effective intervention to prevent HIV infections is full decriminalization of sex work, which could reduce HIV infections by 33- 46% in sex workers across diverse settings in Canada, Kenya and India, through reducing violence and police harassment and increasing access to safer indoor workspaces (Shannon et al., 2015).

CRIMINALIZING MATERIALLY BENEFITING FROM SEXUAL SERVICES

How did continued criminalization of third parties under end-demand laws impact sex workers’ workplace safety and risk of violence?

Criminalization of third parties leads to criminalization of condoms as evidence.

Criminalization of managers and business owners leads to restrictions of sex workers’ onsite access to condoms, sexual health information and outreach services due to fear that condoms will be used as evidence of sex work and fear of criminal sanctions by managers and owners of sex work establishments. This undermines sex workers’ access to workplace health and safety protections (Anderson et al., 2016). Further, where venues or managers are criminalized, sex workers are left without access to labour rights, police and regulatory bodies if managers or owners breach labour standards or workplace health and safety standards (Anderson et al., 2015).

Criminalization of third party advertising limits sex workers’ access to critical safety protections from violence afforded by online sex work.

In qualitative research with cis and trans male sex workers as well as sex buyers, online sex work platforms afforded sex workers greater control over negotiations and screening of prospective clients, thereby reducing risks of violence. These results raise significant concerns about the criminalization of third party advertising of sexual services and points to the need to include the voices of sexual minority sex workers in policy discussions (Argento et al., 2016).

Third parties: Debunking the ‘myth’ of exploitative pimps

30% of sex workers hired/engaged with third party supports for:

- Administrative support (e.g., booking clients, negotiating fees, services)
- Security protections (e.g., client screening, protection from violence)
- Of whom, 56% used third parties protections from potential aggressors

Third party security/admin support directly linked to:

84% increased access to occupational health and safety (condoms)

61% increased access to sex worker-led/ community supports

Yet PCEPA (2015-2018) was directly linked to 31% reduced odds of accessing third party supports.

Out of 25 third parties interviewed (owners, managers, drivers, bookkeepers, receptionists):

68% are current/former sex workers

88% identified as cisgender women

12% identified as cisgender men

McBride et al., 2019b; 2020b.

“At no time do you do anything you do not want to do. If a customer is rude, if he’s groping and you say no, and anything else that you do not want to do, you are to step out of the room, come and get me, and I’ll deal with it.”

- Cisgender man; owner, manager, security, former client

“I know I have a boss that will have my back no matter what.”

- Cisgender woman; worker, co-manager

“I feel that the law is not working. I think the government actually established the law to protect vulnerable groups. However, if the girls want to provide full services, as long as they are not underage, not pimped or forced or taken advantage of, as an owner, we provide a place for them. [In parlours] we are actually protecting the girls.”

- Cisgender woman; manager, owner, receptionist

RECOMMENDATIONS

Our empirical findings summarized herein from Metro Vancouver, Canada, highlight the continued harmful effects of PCEPA to sex workers' safety, health and human rights. Similar to recent evidence in France, these peer-reviewed empirical findings demonstrate that end-demand laws consistently place sex workers in harm's way.

A review of the global evidence (Shannon et al., 2018) and reports from New Zealand and parts of Australia have consistently demonstrated that the full decriminalization of sex work (removal of all laws targeting sex work) is necessary to ensure the safety, health and human rights of sex workers, including access to labour and other human rights protections afforded to all workers (Open Letter, CGSHE 2014).

This research demonstrates that end-demand legal approaches, such as PCEPA, focused on curtailing demand by criminalizing sex workers' clients and third parties who materially benefit, replicates the same harms of prior legislation. These harms include elevated risks of violence and abuse, barriers to accessing justice and continued stigma and fear that prevent access to safe, secure housing, health and social protections.

Based on close to a decade of community-based research pre- and post-PCEPA law enactment and subject to rigorous academic peer and community review, the key evidence-based policy recommendations are:

- 1. Full decriminalization of sex work** through the repeal of all criminal laws prohibiting sex work. Decriminalization is a critical and necessary first step to allowing sex workers access to existing labour and human rights protections afforded to all other workers in Canada, including protections from unsafe work conditions, violence, abuse or other rights violations. Full decriminalization aligns directly with global and Canadian government commitments to protecting the bodily autonomy of all individuals and advancing gender equity, and has been endorsed by international policy bodies including the World Health Organization/ UNFPA/UNAIDS/Global Network of Sex Work Projects (2012), Amnesty International (2014) and the Global Commission on HIV and the Law (2018).

- 2. Repeal of Immigration and Refugee Protection Regulations** that prohibit foreign nationals from working for employers offering sexual services to ensure the safety, health and human rights and access to justice of racialized im/migrant sex workers.
- 3. Extension of municipal "Access Without Fear" policies** (which provide sanctuary for non-status or undocumented im/migrants when accessing city services) to police agencies to increase access to justice among im/migrant sex workers.
- 4. Given the historical and ongoing experiences of racism and colonization in access to justice for Indigenous and other racialized sex workers, Indigenous and other racialized sex workers' voices must be centred** in the development of policy and law reform.
- 5. As Canada is a member state of the UN, the commitments to Leaving No One Behind** in historic calls for Universal Health Coverage and to the Sustainable Development Goals must be met by removal of prohibitive laws targeting any aspect of sex work (decriminalization) and adoption of rights-based policy approaches at federal, regional and municipal levels to ensure sex workers are not left behind and have access to housing, social support and health services free of stigma, discrimination and criminalization (UHC; NSWP, 2019).
- 6. Work directly with sex workers, sex work organizations and sex work policy experts** to ensure sex workers have the same access to provincial and municipal workplace protections and industry regulations, following key global examples in New Zealand and parts of Australia.

About the Centre for Gender & Sexual Health Equity

The Centre for Gender & Sexual Health Equity (CGSHE, www.cgshe.ca) is a UBC- and SFU-affiliated academic research centre that aims to reduce gender and sexual health inequities through research, policy and practice.

In documenting gaps in equity together with community and drawing on an intersectional feminist lens, CGSHE's research aims to centre the voices and experiences of communities systematically marginalized due to social and/or economic disadvantages, including street-involved populations, mothers/parents in poverty, Indigenous women and Two Spirit people, racialized im/migrant and refugee communities, sex workers and gender and sexual minority populations (LGBTQ/2S).

About the Research (AESHA Project)

The AESHA Project (An Evaluation of Sex Workers' Health Access) is a longstanding, community-based research project of the Centre for Gender & Sexual Health Equity and the University of British Columbia. The AESHA Project was initiated in 2010 and includes over 900 street-based and indoor sex workers who complete semi-annual interviews on working conditions, access to legal, health and social supports and overall safety, health and human rights. Since its inception, the project team has included a diverse and multi-lingual staff (English, Mandarin, Cantonese and French) with current or former sex workers represented across the team, including coordinators, interviewers, sexual health nurses, students and co-authors. Given that AESHA had interviewed sex workers working prior to the implementation of the Protection of Communities and Exploited Persons Act (PCEPA) in December 2014, we were in a unique position to evaluate the impact of the new legislation on sex workers' safety, health and human rights before and after end-demand law reform. AESHA research is regularly published in high-impact peer review journals, including the *Lancet Sex Work Series*, calling for evidence-based decriminalization of sex work. AESHA findings were submitted as expert evidence and testimony in the BC Missing Women Commission of Inquiry, and

CGSHE legally co-intervened in *Canada v Bedford* at the Ontario Court of Appeal and the Supreme Court of Canada.

In 2014, in the lead-up to the passage of Bill C-36 into law, CGSHE drafted an [Academic Open Letter](#) submitted to the previous Conservative Federal Government and all MPs, signed by over 500 Canadian and international scientists, on the complete lack of evidence to support end-demand sex work laws. Despite community, legal and academic concerns raised about end-demand laws, the previous Conservative Federal Government passed PCEPA into law in December 2014.

The majority of our research evaluating PCEPA is drawn from longitudinal research with 900+ cis and trans women sex workers, as well as a smaller sample of 100 qualitative interviews with managers/third parties, cis and trans men, Two Spirit and gender diverse sex workers, and clients (sex buyers). Among the 907 cis and trans women sex workers interviewed: 31% identified as a gender and/or sexual minority with 6% trans women and Two Spirit sex workers and 93% cisgender women. Compared to general population estimates in BC and across Canada, there was significant overrepresentation of Indigenous (38%) and racialized im/migrant sex workers (24% Chinese, 3% Thai/Vietnamese/Korean/Japanese, 2% Black and 1% Latin/Central/South America).

We would like to acknowledge and thank all authors and contributors of the original 2019 report: Elena Argento, Brittany Bingham, Putu Duff, Bronwyn McBride, Minshu Mo, Sarah Moreheart, Alka Murphy, Jean Shoveller, Steffanie Strathdee, Sherry Wu
Community reviewers: Janice Abbott, Julie Chapman, Jenn Clamen, Alison Clancey, Alexis Flynn, Maura Gowans, DJ Joe, Shelda Kastor, Sherri Kiselbach, Dana Kremenz, Erin Pawliw, Kerry Porth.

AESHA team: Jennifer McDermid Jennifer Morris, Jennie Pearson, Emma Kuntz, Jue (Lois) Luo, Brittany Udall, Akanée Yamaki.

CGSHE administrative support: Megan Bobetsis, Melissa Braschel, Shannon Bundock, Jessica Maiorino, Peter Vann & AESHA's Community Advisory Board.

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