

**Universal Periodic Review of Canada
30th Session
April/May 2018
Joint Stakeholder Submission**



Canadian Alliance for Sex work Law Reform
<http://sexworklawreform.com>
contact@sexworklawreform.com

The Canadian Alliance for Sex Work Law Reform formed in 2012 and is composed of sex worker rights and allied groups and individuals in cities across Canada: Calgary, Edmonton, Hamilton, London, Longueuil, Montreal, Kingston, Québec, Sault Ste. Marie, St. John's, Toronto, Vancouver, Victoria, and Winnipeg. Members work together to fight for sex work law reform, sex workers' rights, and community well-being. Its member groups include: Angel's Angels (Hamilton); Action Santé Travesties et Transexuel(le)s du Québec (ASTTeQ) (Montréal); BC Coalition of Experiential Communities (Vancouver); Butterfly Asian and Migrant Sex Workers Network (Toronto); Canadian HIV/AIDS Legal Network (Toronto) Downtown Eastside Sex Workers United Against Violence (SWUAV) (Vancouver); Émissaire (Longueuil) FIRST (Vancouver); Maggie's Toronto Sex Workers Action Project (Toronto); Maggie's Indigenous Sex Workers Drum Group (Toronto); Migrant Sex Workers Project (Toronto); PEERS (Victoria); Projet Lune (Québec); Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton); Providing Alternatives, Counselling and Education (PACE) Society (Vancouver); Rézo, projet travailleurs du sexe (Montréal); Safe Harbour Outreach Project (S.H.O.P.) (St John's); Sex Professionals of Canada (SPOC) (Toronto); Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury); Stella, l'amie de Maimie (Montreal); Stop the Arrests! (Sault Ste. Marie) Strut! (Toronto); Supporting Women's Alternatives Network (SWAN)(Vancouver); Shift (Calgary); West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver); Sex Workers of Winnipeg Action Coalition (Winnipeg)



Sexual Rights Initiative
www.sexualrightsinitiative.com
info@sexualrightsinitiative.com

Formed in 2006, the Sexual Rights Initiative (SRI) is a coalition of organisations including Action Canada for Sexual Health and Rights (Canada), Akahata (Argentina), CREA (India), Coalition of African Lesbians (South Africa), Egyptian Initiative for Personal Rights (Egypt) and the Federation for Women and Family Planning (Poland). The SRI partners advocate together for the advancement of human rights related to sexuality, gender and reproduction at UN Human Rights Council.

Key Words: criminalization of sex work; human rights of Indigenous women, migrants, trans persons, persons who use drugs; discrimination; violence; trafficking.

Introduction

1. The manner in which sex work is criminalized, regulated and enforced in Canada is a profound violation of sex workers' human rights including the rights to life, health, non-discrimination, self-determination, privacy, freedom of association, to be free from violence, labour protections and access to justice. Indigenous women who sell or trade sex, racialized and migrant sex workers, trans sex workers and sex workers who use drugs are disproportionately deprived of these rights. Our recommendations promote a series of actions and policy reforms that need to be taken by the Canadian Government to respect and fulfill the human rights of sex workers, including but not limited to the removal of all criminal provisions that criminalize sex workers, clients and third parties. Decriminalization is part of a holistic response that must be accompanied by other measures that address economic, social, colonial, and historical oppression of women, trans persons and Indigenous, racialized and migrant communities.

Legal Context

2. Sex workers in Canada face significant risks to their safety, health, and human rights as a result of the criminalization of sex work. On December 6, 2014, the *Protection of Communities and Exploited Persons Act* (PCEPA) came into force. The PCEPA was the Government's response to a unanimous Supreme Court of Canada decision in *Canada (Attorney General) v Bedford, Lebovitch and Scott*.¹ Prior to *Bedford*, neither paying for nor selling sexual services was illegal, although many of the activities associated with sex work were. *Bedford* struck down three *Criminal Code*² provisions as unconstitutional: the prohibitions on publicly communicating to sell sexual services, keeping a "bawdy house" or brothel, and living on the avails of another's sex work. The Court found these provisions violated sex workers' rights to security under s. 7 of the *Charter of Rights and Freedoms* by preventing those engaged in a "risky -- but legal" business from legally employing safety-enhancing practices and could not be justified in the name of preventing nuisance. The Government was given one year to enact constitutionally compliant legislation. However, the changes introduced with the PCEPA not only reproduce the harms of the three *Criminal Code* provisions struck down, but also add new offences that magnify the difficulties of doing sex work safely.

¹ 2013 SCC 72 (*Bedford*). The *Bedford* decision considered 25,000 pages of Canadian and international evidence from sex workers and social science research.

² RSC 1985, c C-46.

The Harms of Criminalizing Sex Work: *The Protection of Communities and Exploited Persons Act (PCEPA)*

3. The PCEPA has been touted as one that will reduce sex workers' exposure to violence by treating them as "victims" while subjecting only clients and third parties benefiting from sex work to criminal sanctions. **In reality, sex workers across Canada continue to be arrested, denied their rights and experience heightened surveillance and harassment from police.** As is evident from the name of the law and the accompanying technical paper³, the PCEPA prioritizes the "protection" of communities from the perceived harm and nuisance of sex work over sex workers' rights.
4. Ignoring the diversity that exists within the sex industry in Canada, the PCEPA applies a one-size-fits-all approach to sex work based on the Nordic or "end demand" regime. It sets out five primary sex work-related offences,⁴:
 - Purchasing sexual services is illegal in all circumstances;
 - Communicating to exchange sexual services for money is illegal for clients everywhere and for sex workers in certain public places (at or in view of a school, playground or daycare);
 - Third parties are prohibited from benefiting from another's sex work, in the context of a commercial sexual service enterprise, effectively making all sex work businesses illegal (with a number of exemptions that are all nullified when benefits are received);
 - Procuring someone to provide sexual services is illegal;
 - Advertising anyone else's sexual services, whether by publishing an advertisement in print, broadcasting it, or hosting it online, is illegal.
5. Independently, each of these provisions engenders specific harms. Taken together, they make the legal practice of sex work, particularly in-call work, which the Supreme Court of Canada in *Bedford* found to be on the whole safer than other forms of sex work, nearly impossible.
6. The PCEPA is premised on the assumption that sex work is inherently harmful; however, this is not borne out by the evidence within the Canadian context. Moreover, international human rights experts have concluded that the criminalization of sex work creates vulnerability to human rights violations and not sex work itself⁵. Assumptions regarding sex work and attendant risks tend to

³see Technical Paper: Bill C-36, *Protection of Communities and Exploited Persons Act* available from <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>

⁴For the provisions criminalizing purchasing sexual services, communicating to purchase sexual services, and benefiting from another's sexual services, parallel provisions exist providing for more serious penalties when minors are involved.

⁵See for example: Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health A/HRC/14/20 available from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>; Amnesty

draw on more visible street sex work. Studies across Canada have found that, although street sex workers have experienced particularly dangerous work conditions as a result of criminal laws and their enforcement, violence against sex workers from clients has been empirically overestimated, and the majority of sexual transactions are not violent.⁶ When violence does occur it is more often targeted violence from predators and people posing as clients. The *Bedford* case reaffirmed these findings, finding that expert testimony about the intrinsic violence of sex work was ideologically motivated and lacked a firm evidentiary basis.⁷

7. PCEPA has also been accompanied with an aggressive response and connection made to human trafficking. Not only are distinctions between sex work and human trafficking not made in the language used by law enforcement, but it is evident in much of the police response to sex work that anti-trafficking initiatives are driving the repression of sex work

Purchase of Sexual Services

8. Criminalizing the purchase of sexual services magnifies the isolated nature of sex work and results in the same dangers and human rights abuses as direct criminalization of sex workers. Between 2012 and 2014, the Vancouver Police Department targeted clients for law enforcement rather than sex workers. Research with sex workers during this period confirmed that criminalization of clients recreated the impacts of the former unconstitutional laws for sex workers: “displacement to isolated spaces; inability to screen clients or safely negotiate terms of transactions; and inability to access police protection.”⁸
9. In July 2016, police in St. Catharine’s, Ontario, conducted a “sweep” to “sting” street sex workers by having undercover officers pose as potential clients – then arrested sex workers under s. 213(1)(a) of the *Criminal Code* for stopping traffic. Known as “Operation Red Light,” this sting was part of an intensified effort by the police to eliminate street-based sex work in the area. A Staff Sergeant with the Niagara Regional Police was quoted in the local paper stating, “They are victims, but the women — and the johns — are breaking the law, and we are the cops. This is what we do.”⁹ The sex workers were released on conditions that

International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers
<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

⁶ Cecilia Benoit and Leah Shumka, *Sex Work in Canada*, May 7, 2015, available at www.understandingsexwork.com; Chris Atchison, Dalia Vulmirovich and Patrick Burnett, Executive Summary of the Preliminary Findings for Team Grant Project 4 – Sex, Safety and Security: A Study of the Experiences of People who Pay for Sex in Canada, Canadian Institutes of Health Research, June 2015; Tamara O’Doherty,

⁷ Justice Himel’s evaluation of the testimony of Melissa Farley in *Bedford v. Canada (Attorney General)*, 2010 ONSC 4264.

⁸ A Krüsi, K Pacey K, L Bird, et al. “Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study.” *BMJ Open* 2014;4:e005191. doi:10.1136/bmjopen-2014-005191; Sex Workers United Against Violence, S. Allan, D. Bennett, J. Chettiar, G. Jackson, A. Krüsi, K. Pacey, K. Porth, M. Price, K. Shannon and C. Taylor, *My Work Should Not Cost Me My Life* (Vancouver: Pivot Legal Society, 2014), p. v.

⁹ <http://www.stcatharinesstandard.ca/2016/07/20/undercover-cops-take-aim-at-sex-trade>

included “no-go orders” prohibiting them from entering the area where the community and health services they access are located; reportedly some were offered diversion if they agreed to attend a study program about exiting sex work. A similar sting took place, also in St. Catharine’s, in October 2015.¹⁰

10. Criminalization reinforces existing stigma around sex work, often resulting in both over-policing of nuisance complaints and victim blaming if sex workers do experience violence.¹¹ The Missing Women Commission of Inquiry, established after the disappearance of 70 street-based sex workers in Vancouver, also found that adversarial relationships between street-based sex workers and police prevented sex workers from accessing police services when they had experienced physical and sexual violence, leading to a culture of impunity for predators.¹² The Vancouver Police Department has since engaged with sex worker and community groups to develop an official policy¹³ that prioritizes sex worker safety and dignity over enforcement, employing a liaison officer to specifically investigate complaints of violence and harassment by sex workers. This model represents a promising model of practice for police departments across the country pending law reform.

Communicating & Advertising

11. Laws that criminalize the ways that sex workers attract and negotiate with clients also impact directly on their safety. Restrictions on communicating in public for sexual services mimic the impacts of criminalizing the purchase of sexual services, severely limiting sex workers’ abilities to employ such safety measures as careful client screening and working in secure, familiar settings. Criminalizing communicating on the street and in public space disproportionately impacts sex workers who are Indigenous, living in poverty, and trans or two-spirit, who are both socially and racially profiled in public spaces. While police stings in Calgary, Ottawa, Hamilton, Cape Breton and other cities¹⁴ in Canada in 2015 and 2016 have primarily targeted clients of sex workers, sex workers themselves continue to be arrested with sections of the Criminal Code that still criminalize communication (s. 213), belying the assertion that the current laws see them as “victims.” Sex workers in major cities such as Ottawa and Calgary

¹⁰ <http://www.niagarabuzz.ca/2015/10/31/police-reports/prostitution-sweep-st-catharines/>

¹¹ A Krusi, T Kerr, C Taylor, T Rhodes, K Shannon, “They Won’t Change It Back In Their Heads That We’re Trash: The Intersection of Sex Work Related Stigma and Evolving Police Strategies,” *Sociology of Health and Illness*, 2015.

¹² *Forsaken*, *supra* at note 10.

¹³ Vancouver Police Department, *Sex Work Enforcement Guidelines* (2013),

¹⁴ Media articles on stings including the following: <http://www.900chml.com/2015/01/21/hamilton-police-lay-charges-under-new-prostitution-law/>; <http://www.cbc.ca/news/canada/manitoba/winnipeg-police-sex-trade-task-force-charges-26-men-age-18-77-1.3205790>; <http://www.lapresse.ca/le-droit/actualites/justice-et-faits-divers/201505/08/01-4868217-trente-clients-de-la-prostitution-arretes.php>; <http://www.cbc.ca/news/canada/calgary/prostitution-stings-lead-to-36-people-charged-in-calgary-1.3142408>; <http://calgaryherald.com/news/crime/police-charge-33-people-in-four-day-prostitution-operation>; <http://www.cbc.ca/news/canada/nova-scotia/sydney-prostitution-crackdown-will-continue-says-cape-breton-police-chief-1.3220927>.

also report ongoing over-policing and surveillance, including seizure of harm reduction materials including condoms, and drug paraphernalia.

12. Communicating clearly about services offered is fundamental to negotiating mutual consent to sexual activity. Increasingly, sex workers make use of electronic and online platforms to connect with clients, including through phone text messages, chat and social media applications, web cameras, and websites specifically devoted to advertising escort and independent in-call services. While these applications make it easier to screen clients, they are also easier for law enforcement to monitor. As a result, some clients are leery of engaging in boundary-setting communications or providing the kind of verifiable information sex workers have typically requested for pre-screening purposes.
13. Advertising is another method sex workers rely upon to set out the services they offer and those they are not willing to provide. In response to the ban on advertising, some websites have banned explicit references to particular acts. This prohibition encourages the use of coded and euphemistic language that may be misunderstood, confounding sex workers' efforts to screen out clients seeking services they do not offer and to agree to fundamental terms before meeting clients face-to-face, where negotiation may be more difficult.

Working Together with Others

14. The prohibitions on third party benefits and procuring prevent sex workers from legally enjoying the security of working with others -- including managers, call-takers and other administrative staff, bouncers, and drivers – and with each other, since sex workers often fulfill these roles. A key finding of *Bedford* was that working and living with others was often safety-enhancing. In a study of almost 600 sex workers, along with managerial practices such as venue safety policies and access to sexual and reproductive health supplies and services, social cohesion was found to significantly improve sex workers' health and safety and their abilities to negotiate condom use and other barrier contraceptives.¹⁵
15. Although third party and procuring provisions ostensibly target exploitation, research has found that stereotypical “pimps,” who manipulate or coerce sex workers through the use of threats and violence, are relatively rare in Canada, even accounting for the possible non-participation of those controlled by pimps in studies.¹⁶ Home-based in-call and street-based sex workers in Canada typically

¹⁵ P. Duff, J. Shoveller, G. Ogilvie, J. Montaner, J. Chettiar, S. Dobrer, K. Shannon, “The Impact of Social, Policy and Physical Venue Features and Social Cohesion on Negotiation of Barrier Contraceptives Among Sex Workers: A Safe Indoor Environment Scale,” *Journal of Epidemiology and Community Health*, 2014; E Argento, P. Duff, B. Bingham, J. Chapman, P. Nguyen. S.A. Strathdee, K. Shannon, “Social Cohesion among Sex Workers and Client Condom Refusal in a Canadian Setting: Implications for Structural and Community-Led Interventions,” *AIDS & Behaviour*, October 2015.

¹⁶ C. Benoit & A. Millar, *Dispelling Myths and Understanding Realities: Working Conditions, Health Status and Exiting experiences of Sex Workers*, 2001, accessed at:

work for themselves, employing people to help them with aspects of their work. Many managers are women and themselves former sex workers.¹⁷ In some commercial establishments, administrative or maintenance duties are shared between sex workers on rotation.

16. Being unable to legally work with, and for, others disadvantages those who wish to work indoors but lack the monetary resources, stable location, and/or management skills to undertake the booking, scheduling, and accounting, and other arrangements (for example, for phone and internet service) required to work independently. Their experiences as workers in a precarious, unregulated, illegal business are dependent on the dispositions and actions of individual managers and co-workers. Criminalization of third parties prevents sex workers from accessing occupational health and safety or employment standards regimes, leaving them without legal recourse or complaints mechanisms for situations involving sexual harassment, underpayment or non-payment of contracts or wages, unsafe or unhygienic facilities, or unfair hiring and dismissal practices.¹⁸
17. Many sex workers also engage family members and intimate partners as third parties. Laws that criminalize third parties and their application assume all relationships between sex workers and third parties are exploitative. Where violence does exist in these relationships, law enforcement focuses on sex work rather than addressing the violence itself. Sex workers who want to maintain their relationship with third parties are often victimized and not supported in addressing violence.
18. **The criminalization of sex work comes with a constant police presence, social and racial profiling, harassment, surveillance, arrest, detention and deportation — all of which contribute to sex workers’ isolation and vulnerability to violence.** Some members of our communities face police harassment regardless of their participation in sex work, particularly Indigenous women and youth, people who are im/migrants (particularly racialized women) and trans people (especially trans women). The criminalization of the sale or exchange of sexual services gravely exacerbates sex workers’ stigmatization and marginalization.

<http://www.hawaii.edu/hivandaids/Working%20Conditions,%20Health%20Status%20and%20Exiting%20Experience%20of%20Sex%20Workers.pdf>; C. Bruckert & T. Law, Beyond Pimps, Procurers and Parasites: Mapping third parties in the in-call/outcall sex industry. Rethinking Management in the Adult and Sex Industry Project (Ottawa: Social Sciences and Research Council of Canada, March, 2013, accessed at: <http://www.powerottawa.ca/ManagementResearch.pdf>; L. Casey & R. Phillips, Behind Closed Doors: Summary of Research Findings, 2008, accessed at <http://www.safersexwork.ca/wpcontent/uploads/2014/06/BehindClosedDoors.pdf>; K. Gillies, “A Wolf in Sheep’s Clothing: Canadian Anti-Pimping Law and How It Harms Sex Workers,” in E. van der Meulen, E. Durisin, & V. Love (Eds.) *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, (Vancouver: UBC Press, 2013) p. 269-278; O’Doherty, 2015, p. 47.

¹⁷ Bruckert & Law, 2013.

¹⁸ Bruckert & Law, 2013.

Indigenous Women Who Do Sex Work

19. While it is difficult to generalize about how sex work laws impact Indigenous people selling or trading sex because of their diverse experiences, on the whole Indigenous people in Canada experience discrimination, over-surveillance and profiling by police, and involvement with the criminal justice system and incarceration at much higher rates than most of the population.¹⁹
20. Alliance member organizations from across Canada have reported the following experiences of Indigenous women who do sex work, since the introduction of PCEPA:
 - a) **Laws that criminalize the purchase of sexual services and ban public communicating about sexual services push Indigenous sex workers into isolated and dark areas where they are more vulnerable to predators** who rely on sex workers' distrust of police and the justice system's dismal response to sexual assault and violence against Indigenous women generally, for immunity. **This vulnerability is intensified for two-spirit and transgender sex workers.**
 - b) "Stings" targeting clients do not make sex workers safer; instead, they drive away "good" clients, leaving sex workers out on the street for longer and encouraging them to take riskier dates.
 - c) **Police surveillance on strolls can also work to break down the sense of community and camaraderie between sex workers**, which has been shown to significantly enhance sex workers' health and ability to resist exploitation.
 - d) Indigenous sex workers may rely more heavily on family members to perform safety-enhancing roles, like providing transportation to and from other regions or jurisdictions. **The material benefit provisions of the *Criminal Code* have the potential to criminalize these personal relationships, even when they are not exploitative**, for example, if the parties share drugs or alcohol.
 - e) When sex workers work for escort agencies or for nightclubs that employ security protocols, their co-workers are automatically criminalized.
 - f) Much of the violence against Indigenous women who sell or trade sex is mis-categorized and conflated with "trafficking" — which has grossly inflated estimates of the number of "trafficked" Indigenous women and girls in Canada,

¹⁹ Government statistics indicate that Indigenous adults accounted for one-quarter of admissions to provincial/territorial correctional services and 22% of admissions to federal correctional services in 2014/2015, while representing about 3% of the Canadian adult population. Statistics Canada. Adult correctional statistics in Canada, 2014/2015. <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14318-eng.htm>; Annual Report of the Correctional Investigator 2014-2015. <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx>

and led to prioritizing of funding for law enforcement strategies that increase over-policing in Indigenous communities, instead of investing in peer-led programs that allow Indigenous people selling or trading sex to exchange knowledge and support each other. Some programs offered by non-profit organizations require that those accessing supports identify as “victims” or pressure participants not to engage in sex work in order to access services. These strategies are not supportive of Indigenous women and do not respect that they are best placed to determine their own life choices.

- g) **While Indigenous women will continue to face police harassment and over-policing regardless of the laws regulating sex work, the criminalization of the sale or exchange of sexual services gravely exacerbates their stigmatization and marginalization.** The ongoing criminalization of sex work has resulted in a constant police presence, social and racial profiling, harassment, surveillance, arrest and detention of Indigenous women who sell or trade sex — all of which contribute to isolation and vulnerability to violence. Criminalization also exacerbates already significant barriers, and makes access to the protection of the justice system even more difficult for Indigenous people who sell or trade sex.
- h) For Indigenous women working in constrained circumstances, removing their source of income by criminalizing their clients does not make them safer, help meet their immediate needs, or increase their future options. At present, Indigenous sex workers are also often silenced by stigma within their own communities, and are assumed to be exploited in sex work.

Racialized and Migrant Sex Workers

21. Despite the harms imposed by criminal law, sex work provides economic opportunities for people who work within informal labour markets and street economies, particularly communities of racialized and im/migrant sex workers who experience less employment opportunity because of continued racism in Canada. Similar to Indigenous people who sell or trade sex, im/migrant communities are made particularly vulnerable by the criminalization of sex work. The threat of police involvement, surveillance, and deportation increases their vulnerability to violence and limits their ability to come forward as victims of violence.
22. In Canada, as elsewhere, “anti-trafficking” campaigns have been pitched as a means of “protecting vulnerable women” but have worked primarily to put women doing sex work in danger. Anti-trafficking rhetoric and programming by the government has focused on sex work to the detriment of other forms of labour exploitation, equating all sex in exchange for money or goods with sexual exploitation and violence against women, even in the absence of coercion. This

understanding is not in keeping with the definition of human trafficking in international law and fails to account for what sex workers themselves say about their experiences. The PCEPA contained minor amendments to the *Criminal Code* trafficking provisions indicative of the linkage between the two from the Government's perspective. As under the PCEPA, sex workers who are targeted in anti-trafficking investigations are labeled as victims but treated as criminals subject to a range of punitive responses. Consequently, anti-trafficking campaigns work together with historical discrimination and immigration policies to make certain groups of women more susceptible to human rights violations.

23. Migrant sex workers have been targeted by law enforcement who often work hand in hand with Canada Border Services Agency (CBSA). For example, in 2015, the Ottawa Police Service released information about a raid on massage parlours that led to the deportation of 11 women.²⁰ Trying to avoid detection increases im/migrant sex workers' isolation and dramatically reduces their access to health and safety resources. Im/migrant workers who are victims of violence do not report it for fear of being arrested and deported. Butterfly, an organization that provides support to migrant sex workers throughout Ontario, has documented cases in which one sex worker reported being robbed four times in a week, and another sexually assaulted three times in one week.²¹ In a survey conducted by Butterfly in 2015, more than 60% of respondent migrant sex workers said they had experienced different forms of violence, but felt that they were unable to call police for fear that they or their co-workers would be arrested or subjected to increased police surveillance, loss of income, and possible deportation.²²
24. In addition, sex work-related criminal offences capture a range of people and behaviours that are not exploitative. As a result, migrant sex workers may continue to face economic and situational risks if the people they work with are criminalized.
25. Alliance member organizations from across Canada have reported the following experiences of migrant sex workers, since the introduction of PCEPA:
 - a) Criminalization of sex work increases sex workers' susceptibility to violence. **The conflation of sex work and trafficking has led to law enforcement targeting of women working in situations that are not exploitative and made it more difficult for courts to recognize actual trafficking.** This is reflected in the relatively low number of trafficking convictions, including in exploitative labour.

²⁰ <http://news.nationalpost.com/news/canada/migrant-sex-workers-caught-up-in-ottawa-sting-facing-deportation-further-exploitation-activists>

²¹ "Migrant Sex Workers Live Under Constant Police Threat," (Part 5 of Series) Ricochet , accessed at: https://ricochet.media/en/1421/migrant-sex-workers-live-under-constant-policethreat?post_id=1485165438479137_1677972789198400#_=_

²² Butterfly Asian and Migrant Sex Workers Support Network, *The Journey of Butterflies*, 2016, accessed at: http://media.wix.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf, p. 4.

- b) **Sex workers' physical and economic security is threatened when sex work establishments are raided by law enforcement in order to arrest third parties,** all of whom are assumed to be exploitative under PCEPA. Racialized people are often assumed to be traffickers or trafficked victims. Black men are often targeted by law enforcement as assumed traffickers.
- c) Although the federal government has claimed that the new laws would not be used against sex workers, **racialized and migrant sex workers have been disproportionately arrested and detained under the sex work offences.**
- d) **Sex workers, including migrant sex workers, may be prosecuted under the offences related to third party benefits and trafficking when they work with, gain material benefits from, and assist other sex workers to enter or work in Canada.**
- e) The Canadian government claims that the purpose of *Immigration Act* restrictions that prohibit people with temporary work permits and people who have open work permits from working in strip clubs and massage parlours is to prevent trafficking. However, it unnecessarily **limits employment options for migrant, and particularly racialized migrant communities.**
- f) **CBSA may arrest and deport migrant sex workers who do not have legal permission to work in Canada.** Sex workers who receive "Departure Orders" must leave voluntarily within 30 days. Failure to do so may result in forcible removal from the country, even if sex workers are simultaneously identified as victims in an investigation.
- g) Partnership investigations between Canada's federal police agency, the Royal Canadian Mounted Police (RCMP), municipal bylaw enforcement and CBSA can often result in **racial profiling or the targeting of racialized sex workers or any sex worker who is not perceived to be a 'local'.**
- h) The harmful impacts of criminalizing sex work go beyond the violence of arrest and incarceration. Police repression is a significant factor in creating vulnerability to violence and poor working conditions. A context of repression makes it difficult for sex workers to report human rights violations and other crimes and for police to investigate acts of targeted violence against sex workers by predators, who commit such violence in a context of impunity. Legal and social constructions of sex work as exploitation contribute to a climate of stigma and disdain for sex workers and sex work, which also promotes violence and discrimination. Like with other vulnerable communities, **the decriminalization of sex work is a crucial first step to reduce instances of violence and provide meaningful assistance to sex workers. By decriminalizing sex work, sex workers**

would be able to benefit from labour protections, including employment standards and occupational health and safety laws, that are afforded to all other workers. These are far more effective measures to promote sex workers' human rights, including labour rights, than criminal and anti-trafficking laws.

Specific Recommendations for Legislation:

26. Repeal the *Protection of Communities and Exploited Persons Act* and other *Criminal Code* provisions criminalizing sex workers, clients and third parties. As a federal state, Canada needs the Government to lead the reform process with decriminalization before other laws and regulations for sex worker health and safety can be enacted.
27. Ensure that any other legislation proposed to address sex work is developed in coordination with sex workers, recognizes the diversity of sex workers' opinions and experiences, and puts sex workers' human rights at the forefront.
28. Address violence against sex workers by guaranteeing that they enjoy the full benefit of existing laws criminalizing physical and sexual assault, robbery, forcible confinement, kidnapping, stalking, and other forms of abuse, instead of segregating them through use of a separate set of stigmatizing laws.
29. Recognizing that policing is a provincial matter, encourage federal Justice, Public Safety and Health authorities to provide guidelines for criminal law enforcement that prioritize the health, safety and human rights of sex workers in all situations, and that prohibit, for example, seizing harm reduction supplies such as condoms as evidence. The Vancouver Police Department's Sex Work Enforcement Guidelines are a best practices example and could be used as a model for other municipalities.
30. Similarly, draft guidelines for provinces to make occupational health and safety regulations and employment standards legislation available to sex workers, recognizing that differently situated sex workers may have vastly different experiences and needs.
31. Stop using anti-trafficking programs to justify the intrusion of law enforcement in places where sex work is taking place, including indoor sex work establishments.
32. Discourage the partnership between law enforcement and Canada Border Service Agency that enables them to enter indoor sex work establishments under the guise of anti-trafficking measures.

33. Review existing anti-trafficking policies and programs that equate sex work with human trafficking, and revise policies to remove assumptions that sex work, absent coercion, is a form of trafficking, sexual exploitation, or violence.
34. Ground policy development in data and the voiced concerns of people working in the sex industry. Evidenced-based research is necessary to inform “anti-trafficking” mandates and to address the use of biased and unsubstantiated information about human trafficking as a basis for government programs.
35. Provide federal support for municipal Access Without Fear/Sanctuary City policies that allow migrants to report violence against them and receive essential services such as health care without fear of deportation.
36. Increase funding to Indigenous communities for self-administered education and vocational training, housing, income assistance, employment programs, and health and drug use programs, based in Indigenous traditions.