



SWAN Vancouver

**Brief to the Justice and Human Rights Committee on Bill C-36:
Protection of Communities and Exploited Persons Act**

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by SWAN Vancouver

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SWAN Vancouver (SWAN) promotes the rights, health & safety of newcomer, migrant and immigrant¹ women engaged in indoor sex work through front-line service & systemic advocacy. SWAN's multi-lingual staff, comprised of sex workers and others, works with im/migrant sex workers who experience multi-layered criminalization via the Protection of Exploited Persons and Communities Act (PCEPA), Immigration and Refugee Protection Regulations (IRPR), anti-trafficking legislation, and municipal bylaws.

SWAN is a member of the Global Alliance Against Traffic in Women (GAATW), an alliance of more than 80 non-governmental organizations from Africa, Asia, Europe, Latin America and the Caribbean, and North America. As such, we support an evidence-based, human rights approach to anti-trafficking.

In this brief, we have two objectives:

- 1) address the harms of centering human trafficking rhetoric in the PCEPA hearings

in order to make space to

- 2) outline the impacts of PCEPA criminalization on im/migrant sex workers.

Addressing the Harms of Centering Anti-Trafficking Rhetoric

In an unfortunate repeat of the 2014 Bill C-36 hearings, trafficking rhetoric has once again been allowed to take center stage in this review of PCEPA. It is important to address this disheartening development in order to make space for the experiences of im/migrant sex workers, who are living and working within the criminalized environment created by PCEPA, to be heard.

While the vast majority of women SWAN has interacted with over the years have not been trafficked, we work with the stereotypical archetype of the trafficked woman in Greater Vancouver (i.e. Asian women who speak English with non-Western accents), and it is precisely our work with these women that places us within the anti-trafficking landscape. SWAN has

¹ hereinafter im/migrant

engaged deeply with human trafficking-related issues dating back to 2006, when law enforcement across the Lower Mainland carried out punitive anti-trafficking raids on 18 Asian massage businesses, with the aim to identify victims of trafficking. None of the 78 women arrested were found to be trafficked.² Sadly, 16 years later, these ill-informed, misguided, anti-trafficking ‘raids and rescues’ continue to be a reality for im/migrant sex workers, and the discourse that fuels them is on full display in these hearings.

We are disheartened to hear (repeatedly) debunked statements, which uphold the trafficking rhetoric, being consumed without critical investigation once again. An example of this is the following:

“The average age of entry into the sex trade is 12-14 years old.”^{3 4}

Human trafficking exists but the discourse surrounding it is muddled with much disinformation.⁵ It is unfathomable that sensational trafficking statistics and information found on Google would be given the same weight as sex workers’ lived experiences, not to mention the wealth of empirical evidence which unequivocally demonstrates the harms of criminalization through PCEPA. This highly problematic moral crusade against sex workers, under the guise of anti-trafficking, is much more than a mere ‘ideological divide’ as it has been characterized in these hearings. The rhetoric put forth by these anti-sex work witnesses dehumanizes and erases the very existence of those who will be directly affected by this Committee’s decision. In 2022, it is unconscionable that the individuals most impacted by PCEPA have to fight so hard to have their voices heard amid trafficking disinformation that is, at best, viral scarelore.

Upholding sex workers’ rights and addressing human trafficking are not mutually exclusive. In fact, we do it at SWAN every day. Unfortunately, anti-trafficking rhetoric and the assertion that sex work is inherently exploitative leaves no room for the former. Sadly, we feel it is imperative to address this before we can discuss the very issue at hand, i.e. the legal framework governing sex work in Canada.

Dangers PCEPA poses for im/migrant sex workers

SWAN’s brief is informed by 20 years of front-line experience working directly with im/migrant sex workers, as well as years of research, advocacy and policy work on both sex work and anti-trafficking.

PCEPA entrenches law enforcement surveillance and targeting of im/migrant sex workers

Due to race, ethnicity, class and gender, Asian women working in massage businesses experience the heightened risk of being suspected of criminal activity and linked to

² Bolan, K. (2006, December 9). 18 massage parlours raided, 100 arrested, *Press Reader*. Retrieved from www.pressreader.com/canada/vancouver-sun/20061209/281500746761851

³ Hall, C. (2014, September 5). Is One of the Most-Cited Statistics About Sex Work Wrong? *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2014/09/is-one-of-the-most-cited-statistics-about-sex-work-wrong/379662/>

⁴ Kessler, G. (2015, June 11). The Four-Pinocchio Claim that ‘on average, girls first become victims of sex trafficking at age 13 years old’. *Washington Post*. Retrieved from <https://www.washingtonpost.com/news/fact-checker/wp/2015/06/11/the-dubious-claim-that-on-average-girls-first-become-victims-of-sex-trafficking-at-13-years-old/>

⁵ Clancey, A. & Wiseman, A. (2020). *Transforming Anti-Trafficking Sentiment into Effective Action*. Retrieved from <https://tinyurl.com/4pmw52v3>

organized crime. In SWAN's experience, law enforcement is much more likely to racially profile Asian massage businesses through the use of PCEPA, in combination with bylaw enforcement and/or coordinated efforts with the Canada Border Services Agency (CBSA).

PCEPA is used as a tool to target im/migrant sex workers. SWAN has witnessed time and time again how a PCEPA investigation into an im/migrant sex worker's activity can quickly turn on its head and end up incriminating the im/migrant sex worker herself; she either becomes the target of an anti-trafficking investigation or is deported. In fact, **we have never had a case turn out otherwise**. When deportation occurs, including to women who have been trafficked, it is a clear instance of crimmigration, i.e. the convergence of criminal law and procedure with immigration law and procedure. The way in which PCEPA is used as a tool to further criminalize im/migrant sex workers is not widely known or discussed, and this contributes to law enforcement using this mechanism without accountability or oversight.

Criminalization not only creates fear of and adversarial relationships with law enforcement agencies, it also creates stigma. SWAN obtained CBSA training materials and the following is what their staff are taught about sex workers:

“Statement b (correct answer): A woman’s time in prostitution is spent in debt bondage. A chain of traffickers (recruiters, transporters, pimps and brothel managers) ensure that the woman gets a very small cut of her earnings. Women are left with disease-ridden bodies, children and no savings.”⁶

Several times throughout the hearings, Committee Members have raised the question of better law enforcement training. Over the past decade, SWAN's Executive Director has spent extensive time and effort attempting to educate law enforcement in regards to sex work and trafficking in several provinces across Canada. It is work that SWAN no longer does, as in our experience, police are unwilling to engage when the educational materials do not confirm their existing bias, i.e. that one must be 'forced' if they are working in the sex industry. Further, it seems futile to spend time educating police when their mandate to enforce PCEPA is fundamentally at odds with increasing sex workers' safety, which is what SWAN works to do every day.

PCEPA endangers im/migrant sex workers' safety

In 2017, SWAN interviewed 22 im/migrant sex workers and published, '[Barriers to Justice for Migrant & Immigrant Sex Workers: A Community-Led Research Project](#)'. Several of the respondents stated that the decriminalization of sex work would be the only change that would encourage them to report violence to the police.

“Police won't help us because we are not in a proper or legal trade. We have to hide.”

In research on the impacts of PCEPA on sex workers' health, safety and human rights conducted by the Centre for Gender and Sexual Health Equity (2019), a staggering 87% of

⁶ CBSA. (2016). People at Risk: Officer Induction Training Program.

im/migrant sex worker respondents had experienced violence which they did not report.⁷

It cannot be clearer that PCEPA has been a gift to predators who capitalize on the impediment to reporting violence that results from criminalization. Consequently, PCEPA has been counter-productive to the intention stated in its title, as it has in fact driven sex workers underground and created environments in which violence, exploitation and trafficking can thrive.

Im/migrant Sex Workers Do Not Want Their Clients Criminalized

Since the implementation of PCEPA in 2014, SWAN has heard im/migrant sex workers adamantly oppose the criminalization of their clients.

The assertion that im/migrant sex workers are not criminalized under Canada's asymmetrical 'end demand' legal framework is inherently flawed. One cannot criminalize one half of an interaction without it having negative consequences and outcomes for the other half. Criminalization of the purchase of sex necessitates increased measures to avoid detection by law enforcement. Valuable time that could be spent keeping oneself safe is instead spent on evading police.

“I would never want to engage with the police due to fear. Women working never feel protected by police because our work is criminalized, so we have to take care of things ourselves.”

The reality that sex workers must take care of things themselves in the absence of legal and labour protections has resulted in British Columbian sex workers pursuing alternative means of protection outside of the criminal justice system. In 2021, five British Columbian sex work and allied organizations secured \$1 000 000 in funding to create a provincially integrated bad date reporting system across British Columbia.⁸ The bad date reporting system is a sex worker-led response to report violent incidents or safety concerns to peers and/or outreach workers. The need to create a provincial safety mechanism in response to the lack of criminal justice protections demonstrates PCEPA's failure to protect sex workers. It is incomprehensible that any other group of individuals in Canadian society would have to resort to these measures to keep themselves alive and safe.

Third-Party Advertising Can Be a Safety Mechanism⁹

Shortly after PCEPA came into force, many websites imposed stricter posting criteria for adult-oriented ads, banning the use of sexual terminology. This prevents im/migrant sex workers from clearly communicating in their ads what services they provide, increasing the risk for

⁷ Centre for Gender and Sexual Health Equity. (2019). *Harms of End-Demand Criminalization: Impact of Canada's PCEPA Laws on Sex Workers' Safety, Health and Human Rights*. Retrieved from https://www.cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf

⁸ See BC Bad Date & Aggressor Reporting Project at <https://bcbdar.org>

⁹ Belak, B. & Mackenzie, K. (2017, June 1). Backpage: Sex Workers Can Find Safety in Online Marketplace. *Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/opinion/backpage-sex-workers-can-find-safety-in-online-marketplace/article35181699/>

misunderstanding and potential violence. It also prevents im/migrant sex workers from supporting each other when language barriers exist.

SWAN has had an online outreach program since 2014 in which we have connected with hundreds of im/migrant sex workers who use internet and communication technologies for their work. In 2017, SWAN and PIVOT Legal Society's sex work lawyer published an op-ed in the *Globe and Mail* outlining how im/migrant sex workers exercise agency by using the internet to work safely. Sex workers are tech savvy and use online classifieds to screen their clients. It allows them to work for themselves, define the parameters of their own business, and work indoors, which *Bedford v. Canada* showed to be safer than working on the street. Such safety measures counter the anti-trafficking assertion that sex work is inherently violent; if it were, there would be no way to make it safer. The unanimous Supreme Court decision outlined that indeed there are various ways to make sex work safer, and the use of technology for advertising is one of them.

Online classified sites have also enabled SWAN to connect with women who tend to be isolated due to sex work stigma, systemic racism, and newness to the community or country. Our online outreach program has allowed SWAN to become known in the im/migrant sex work community as a trusted support organization, effectively giving women a means to address violence or exploitation if it occurs. PCEPA has impacted our ability to do our work in online spaces, thereby reducing sex workers' access to critical community supports.

Material benefit and procuring: Not all Third Parties are Exploitative

Third parties are necessary for many im/migrant sex workers because they play a significant role in maintaining workplace safety. 75% of the women we interviewed in '[Barriers to Justice for Migrant & Immigrant Sex Workers: A Community-Led Research Project](#)' only reported violence to these third parties (e.g., managers, co-workers) because of the systemic barriers created by multi-layered criminalization, including PCEPA.

Having met many third parties in two decades of doing this work, we can confidently assert that the majority of third parties are not traffickers or exploiters. The premise implicit in these provisions – that all third parties are controlling or exploitative – is infantilizing and paternalistic as it assumes that sex workers cannot decide with whom it is or isn't safe to work with and that the state must decide for them.

However, this is not meant to say that unfair or exploitative labour practices do not occur. An im/migrant sex worker may be engaging in consensual sex work, but still receive an unfair cut of money, be asked to work long hours, or be required to pay fines for workplace rule infractions. These issues are best dealt with through employment standards, not criminal law or the police. But with PCEPA, there is little to no recourse for unfair employment practices. The material benefit and third-party provisions recreate the same harms as the previous living on the avails provision, by penalizing third parties without distinguishing between those who exploit sex workers and those who increase the safety and security of sex workers. There are already existing criminal laws to deal with exploitation, but sex workers still need access to labour

protections and employment standards which can only be attained under a decriminalized legal framework.

Decriminalize sex work

SWAN joins sex workers and other sex worker rights organizations, researchers, and international organizations including UN bodies, Amnesty International, the World Health Organization, and Human Rights Watch in supporting decriminalization or the removal of criminal penalties around consensual, adult sex work.

This is the only legal framework that would support the unanimous *Bedford v. Canada* decision by the Supreme Court of Canada, which found that three provisions pertaining to sex work in the Criminal Code were unconstitutional and endangered sex workers' health and safety. Further, *Bedford v. Canada* also found:

“The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk.”

from Attorney General of *Canada v. Bedford* et al Para 60

Since 2014, SWAN has witnessed how PCEPA replicates these same harms, and has created even more barriers that prevent people from taking steps to protect themselves from said risk.

In Conclusion

Committee Members, SWAN would like to conclude with the following:

We urge you to center your deliberations on sex work, not human trafficking, to ensure that sex workers' perspectives are truly heard and their human rights upheld.

We implore you to have the courage to do what sex workers are asking of you. Listen to sex workers and repeal PCEPA in its entirety.

