

Canadian Alliance for Sex Work Law Reform v. Attorney General

ANALYSIS

The continued violation of sex workers' rights—and the dismissal of their lived experiences and general humanity—is demonstrated in the September 2023 Ontario Superior Court's dismissal of a constitutional challenge against the Protection of Communities and Exploited Persons Act (PCEPA). This legislation will continue to put sex workers in danger.

See our [backgrounder](#) for an introductory overview of this case.

Applicants:

Canadian Alliance for Sex Work Law Reform (CASWLR), Monica Forrester, Valerie Scott, Lanna Moon Perrin, Jane X, Alessa Mason, Tiffany Anwar

Respondent:

Attorney General of Canada

[CASWLR v. Attorney General \(2023\)](#) addresses several criminal laws relating to sex work in Canada. Applicants argue that these laws **unjustly violate the rights and freedoms** of those engaged in sex work, **increasing their risk of harm** and negatively impacting their overall wellbeing. Opponents argue that the laws are necessary to prevent abuse and do not cause harm to sex workers.

The written decision for this case privileges the opinions of law enforcement, anti-trafficking groups, religious organizations and sex work abolitionists **at the expense of the lived experiences and insight** provided by sex workers, sex worker support organizations, allied organizations and **empirical researchers**. One opposing, abolitionist intervenor—bizarrely—asserts that the applicants in this case are seeking what amounts to a “constitutional right to buy sex” (para. 138). This couldn't be further from the truth. This constitutional challenge **aims to prevent unnecessary harms to sex workers and uphold their existing Charter rights**. It's clear there's an **urgent need to address the stigma and harms of sex work laws** when the judge in this case gave more weight to this bizarre argument over lived experience backed by academic research.

The following will explain how the Criminal Code sections challenged in this case put sex workers at risk of violence and exploitation, violating their rights to **free expression, peaceful assembly, equality, and life, liberty and security.**

S. 213(1). — STOPPING OR IMPEDING TRAFFIC

This provision is a holdover from previous legislation and was not modified by PCEPA. However, this legislation functions in tandem with the below Communicating Offence by criminalizing street-based sex workers. It is worth questioning why law enforcement needs a law that specifically targets disruption of traffic in the context of sex work, rather than relying on a more general law to regulate the functioning of roads.

S. 213(1.1). — COMMUNICATING TO PROVIDE SEXUAL SERVICES FOR CONSIDERATION (“THE COMMUNICATING OFFENCE”)

This provision violates the entire premise of decriminalizing the sale of sexual services as it unfairly targets and criminalizes street-based sex workers (as opposed to indoor sex workers—e.g., at massage parlours). [Partial decriminalization](#) is supposed to be for all sex workers. Further, prohibiting communication in public spaces forces sex workers to meet or rapidly move dates into private areas before they can adequately screen their clients for safety concerns; This increases numerous risks to sex workers’ safety and well-being.

S. 286.1(1). — OBTAINING SEXUAL SERVICES FOR CONSIDERATION

While Canada’s partial decriminalization model provides immunity to those selling sexual services, it still fully criminalizes purchasers. When one half of the transaction is still illegal it pushes the entire industry underground, increasing safety risks and decreasing the likelihood that sex workers will report problems or seek assistance.

S. 286.2(1). — RECEIVING A MATERIAL OR FINANCIAL BENEFIT KNOWING THAT IT IS OBTAINED FROM THE PURCHASE OF SEXUAL SERVICES (“THE MATERIAL BENEFIT OFFENCE”)

This provision intends to criminalize pimps and others who may exploit someone’s sexual labour. The law does not intend to capture roommates, partners, private bodyguards or drivers, bookkeepers, receptionists, translators, etc. However, third party criminalization continues to be a problem, particularly for racialized and/or migrant sex workers^{1,2}. This provision makes it very difficult for sex workers to work with other people, isolating them and increasing their risk of violence.

¹ [Sex-work advocates vow to wage more court battles after Toronto judge upholds controversial sex work laws](#)

² [Rights not rescue: Sex workers still contend with a fraught legal landscape](#)

[S. 286.3\(1\)](#). — PROCURING, RECRUITING, HOLDING, CONCEALING, OR HARBOURING A PERSON WHO PROVIDES SEXUAL SERVICES FOR CONSIDERATION

This provision is meant to address human trafficking but ends up criminalizing anyone who helps facilitate the purchase of someone else's sexual services—including anyone a sex worker may have hired to assist them with their business. This provision makes it very difficult for sex workers to work together or with support staff/managers, isolating them and increasing their risk of violence.

[S. 286.4](#) — ADVERTISING AN OFFER TO PROVIDE SEXUAL SERVICES

This provision criminalizes any advertisement of sexual services that does not come directly from the person whose services are being offered. This makes it impossible for a sex worker to legally hire an assistant or someone to help them promote their services.

Applicants in the case highlight that decriminalizing sex work is the best way to prevent harm. **The judge himself acknowledges decriminalization as a possible better option**, but states that Canada's parliament must initiate this change. **Decriminalization has worked in other countries**, such as New Zealand, where the sex industry is **regulated using labour and health policies** rather than criminal ones. However, unfortunately, such decriminalization **neglects migrant sex workers** who still face criminalization and the **risk of detention and deportation**. In Canada, in addition to PCEPA, migrant sex workers are also criminalized under the Immigration and Refugee Protection Regulations (IRPR).

Predators know that sex workers—particularly im/migrant sex workers—are **vulnerable because of our laws**. They take advantage of this and target people who are less likely to report, less likely to be taken seriously and less likely to receive justice. [The evidence is clear: PCEPA harms sex workers and should be repealed](#). Laws and policies should not be based on paternalistic views fuelled by [religious and conservative moralism about sex](#). We have numerous laws on the books that can be used to address gender-based violence, exploitation and trafficking; **We don't need to criminalize sex workers to protect them or anyone else**.

SWAN's Recommendations

- **Decriminalize sex work** in Canada to ensure sex workers have access to their basic human rights, including health and social services and access to legal and labour protections.
 - **Repeal PCEPA** to prevent the harms it causes to sex workers, putting them at risk of violence, exploitation and criminalization.
 - **Repeal the IRPR ban on sex work** to prevent the harms caused to im/migrant sex workers, such as detention and deportation.
- **Stop the conflation** of sex work and human trafficking and/or child sexual exploitation.

For a more in-depth look at PCEPA, see SWAN's [backgrounder](#) & [analysis](#) of its provisions, impacts, and SWAN's recommendations for improvement.

To better understand the specific risks to im/migrant sex workers, see SWAN's [backgrounder](#), [analysis](#), and [Charter violation](#) resources on the IRPR immigration ban on sex work.

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