

# Decriminalizing Sex Work:

## How The Protection of Communities and Exploited Persons Act Harms Consensual Sex Workers and Creates Further Stigmatization in Society

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**ABSTRACT:** This paper will explore the current legislation in place in Canada regarding sex work, the Protection of Communities and Exploited Persons Act (PCEPA), and how it harms and stigmatizes those engaging in consensual sex work. The PCEPA was established as a response to the decision made in *Bedford v. Canada* which determined that the previous provisions governing sex work were unconstitutional. The intention of this Act is to criminalize the payment of sexual services, the procurement of sexual services, and third-party advertising of sexual services. Its main goal was to reduce the human trafficking that often occurs within the sex work environment. While human trafficking is undeniably an issue in contemporary society, the PCEPA fails to acknowledge other perspectives of individuals that it impacts, including those choosing to engage in sex work. This paper will argue that the decriminalization of sex work will be beneficial for those engaging in sex work by reducing the harm and stigmatization that many sex workers face. Current sex work legislation must work to find a balance between combating human trafficking while also protecting consensual sex workers.

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**KEYWORDS:** *Bedford v. Canada*, human trafficking, sex work, PCEPA, policy studies

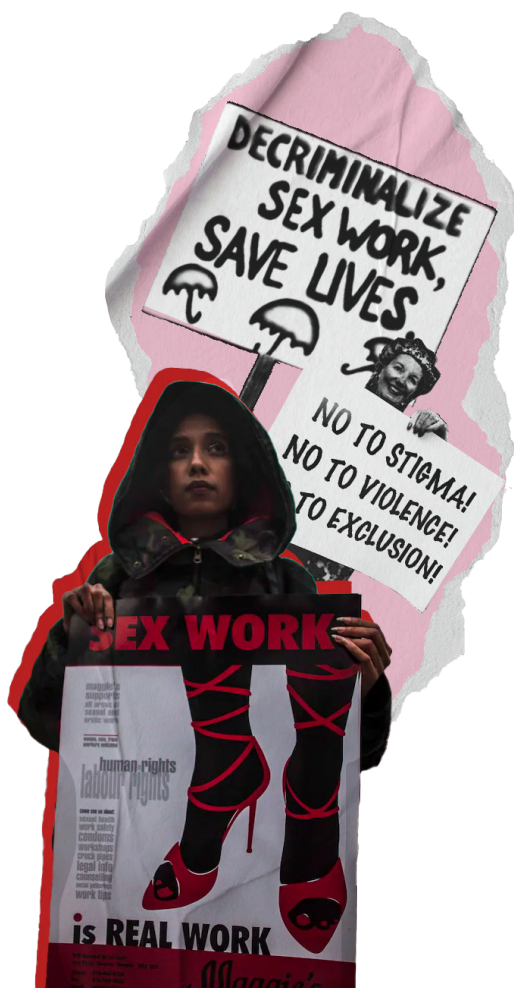
The legislation surrounding the sex industry has been a heavily debated topic among scholars and citizens in Canada. While the exchange of money for sexual services has never been made illegal, the laws pertaining to sex work have made it nearly impossible (Benoit et al. 2017a). Various decisions such as The Solicitation Subcommittee in 2003, the Bedford Charter Challenge in 2007 and 2013, and the deliberations surrounding Bill C-36 which enacted the Protection of Communities and Exploited Persons Act (PCEPA) in 2014 (Shaver 2019) have changed the provisions governing sex work within Canada. Each decision is believed to be more progressive than the last, with the final Act being thought to ultimately promote safety and protection for those in the sex industry. These three decisions, particularly the latter, fail to recognize the distinction that exists between those who chose to be in the sex industry and those who are coerced or forced into this line of work. In failing to do so, the implications of these legislative decisions promote dangerous and negative outcomes for those choosing to participate in sex work, ignoring their voices and perspectives throughout

the process. They fall short in protecting sex workers and add further stigma to this already highly stigmatized industry. Additionally, the way sex work is framed in policy as a result of the Conservative government's ideals directly reflects the way sex work is viewed by the general population. This paper will argue that decriminalizing sex work in Canada will bring about positive change in the lives of sex workers, as the current policy established by the Conservative government creates additional harm and stigma for those choosing to be in the sex industry. I would also like to briefly note that I will only be referring to sex work as sex work throughout this paper, as the term 'prostitution' is often linked to notions of criminality and immorality (Open Society Foundations 2019) which opposes the very ideas I am discussing.

### History of Sex Work Legislation

The Subcommittee on Solicitation Laws (Subcommittee, hereafter) was created by the federal government in February of 2003 (Shaver 2019). The Subcommittee's mandate was to review the solicitation laws that were in place at the time in hopes of improving the safety of sex workers and the general population. In addition, it provided recommendations that could reduce the violence and exploitation sex workers face within broader society (Shaver 2019). While this review was initially promising, the execution was disappointing and ineffective; when the final report was released, it did not contain a single suggestion for substantial reform despite this being one of the main reasons the Subcommittee was formed (Shaver 2019). These decisions set the stage for further legislation regarding sex work.

The Bedford v. Canada case was the next influential decision in regard to sex work legislation. The case began in 2007 when Teri Bedford, Amy Lebovitch, and Valerie Scott (two former sex workers and one current sex worker) challenged the three sections of the Criminal Code that regulated sex work to the Ontario Superior Court (Shaver 2019). Research has shown that many sex workers have advocated for the removal of these provisions in the Criminal Code and to focus instead on protecting sex workers from further exploitation and harm (van der Meulen 2010). Snow and colleagues (2020) outline how the unsafe working conditions and prevalent victimization of sex workers were the primary motives behind the challenge made in the Bedford case. This challenge by Bedford and colleagues was based on four claims: (1) the laws violated Section 7 of the Charter of Rights and Freedoms which outlines the rights to liberty and security of the persons, (2) these violations did not align themselves with principles of fundamental justice, (3) the prohibition of commu-



nication regarding sexual services violated the workers' rights to freedom of expression, and (4) these violations could not be justified in a "free and democratic society" (Bedford v. Canada 2010). The focus of their argument was that the laws in place within the Criminal Code prevented sex workers from creating and enforcing safety plans through the prohibition of communication between workers and their clients (Snow et al. 2020). In 2010, the Ontario Superior Court found the Criminal Code to be unconstitutional in its provisions regulating sex work at the time (Bedford v. Canada 2010). The decision was then appealed in 2011 when a split decision occurred within the court (Shaver 2019). This resulted in an appeal to the Supreme Court of Canada which, through a unanimous vote, struck down all three provisions regulating sex work in the Criminal Code and gave the federal government one year to enact new legislation that would address this decision (Shaver 2019; Snow et al. 2020).

Finally, we can look at the proposition of Bill C-36 that was brought forward by the Conservative government in 2014 in response to the Supreme Court's decision on the Bedford case (Benoit et al., 2017a; Government of Canada, Department of Justice 2014; Shaver 2019). The intention of this bill was to criminalize the payment of sexual services, the procurement of sexual services, and third-party advertising of sexual services (Protection of Communities and Exploited Persons Act [PCEPA] 2014). Shaver (2019) outlines how the bill essentially reintroduced the old laws while altering them to prohibit the purchasing and advertising of sexual services. It officially became implemented as the Protection of Communities and Exploited Persons Act (PCEPA) in November 2014 (Government of Canada, Department of Justice 2014). Various issues and concerns have been raised in regard to the implementation of this Act which will be discussed further in this paper.

### **Harms of the Protection of Communities and Exploited Persons Act (PCEPA)**

Various issues have emerged as a result of the implementation of the PCEPA, specifically, the additional danger it has imposed on sex workers despite its intention to provide safety and protection. A multitude of research has been conducted on the various ways sex workers feel they are negatively impacted by this Act, and I will be focusing on four specific elements in this next section: issues with specific sections of the Act, the blurring of consensual sex work with coerced sex work, the discourses and narratives surrounding this piece of legislation, and the lack of evidence and input from sex workers. Each will be further explored and dissected to

gain a better understanding of how this Act specifically undermines sex workers who choose to be in the industry.

### *The Broad Categories of the PCEPA*

The PCEPA, while claiming to have progressed in the right direction from preceding pieces of legislation on sex work, has created further difficulties and dangers for sex workers through its various provisions. Many of the challenges to this Act highlight the link between punitive legal frameworks and compromising the safety, legitimacy, and protection of sex workers (Benoit et al. 2017a). For example, the prohibition on communication regarding sexual services that the PCEPA enforces restricts sex workers from having the ability to negotiate with clients beforehand and reduces their ability to screen clients to ensure that they are entering into a safe exchange (Snow et al. 2020). This has resulted in sex workers resorting to areas like alleys, side streets, and isolated areas to conduct their services, increasing the risk of victimization (Snow et al. 2020). Similarly, the PCEPA criminalized profiting from the sale of sexual services in hopes of reducing the violence and coercion that individuals such as pimps will often use to benefit from the exploitation of the workers (Snow et al., 2020). However, this forces sex workers to work alone, as those who provide security or protection face criminalization if caught (Snow et al. 2020). This further exacerbates the dangerous conditions of sex work and displays a clear example of how this legislation focuses solely on those being coerced into sex work while ignoring the safety of other sex workers.

### *Consensual Versus Coerced Sex Work*

As Benoit and colleagues (2017a) outline, sex workers discussing the PCEPA emphasized the need to carefully distinguish between consensual sex work and sex work in which the people involved are being coerced or trafficked. The dominant narrative that surrounds sex work is that of human trafficking, subsequently creating the connection between sex work and victimization (Rose 2016). Rose (2016) describes how anti-human trafficking narratives hold powerful influence over policies created for the sex industry, which in turn have negative effects on those who voluntarily choose to partake in sex work. The creation and employment of the PCEPA reflect these anti-human trafficking narratives, shifting the ways sex workers are treated as it depicts all sex workers as victims (Snow et al. 2020). The legislation itself creates conditions that produce additional dangers for all sex workers, overpowering the voices and perspectives of those who voluntarily engage in sex work. While discussing consensual versus coerced

sex work, it is important to note that there is a grey area surrounding these distinctions. There are various factors that may influence an individual's decision to be in the sex industry. Some may be coerced, others forced by factors such as racism, poverty, or domestic violence, and some may simply choose to engage with this work (Abrol 2014). However, acknowledging that there are individuals who are not merely “trafficked” into the industry is crucial to consider while developing and implementing sex work legislation.

#### *Discourses Created by the PCEPA on Sex Work*

Along with the physical danger that the PCEPA imposes on sex workers, the various discourses that have emerged contribute to the negative effects this Act has had on those choosing to be in the sex industry. The dominant discourse that has appeared throughout discussions surrounding sex work and the PCEPA is the dichotomy of how sex workers are viewed. This dichotomy often portrays sex workers as either victims of exploitation or as empowered individuals taking control over their bodies and their decisions (McLean 2017). However, the former is often favoured in discussions on sex work as seen through the PCEPA. As Shier (2021) suggests, improving the working conditions of those in the sex industry was not a priority for policymakers as they often presume that individuals should not be engaging in sex work at all. Focusing on the victimized sex worker overpowers the knowledge and contributions of consenting sex workers and their insights on these matters (Rose 2016). As a result, these discourses and the legislation promoting them can increase the stigmatization that many sex workers face daily.

#### *Lack of Evidence & Input From Sex Workers*

The PCEPA overlooks and ignores the perspectives of sex workers while focusing largely on the issue of human trafficking. While human trafficking is important to address and should be at the forefront of policy discussions, it is equally important to bring the voices of sex workers who choose to be in the industry into the focus of legislation decisions. In their work, Benoit and colleagues (2017a) describe the availability of reliable evidence and input from various sex workers that exists. However, policymakers fail to take into account the diverse perspectives of those within the sex industry when implementing legislation despite the sex workers being the population directly affected by it. Similarly, the experiences of sex workers tend to be framed in ways that fail to account for their wide range of experiences and life circumstances (Rose 2016). An exception to this was the Bedford challenge that allowed three sex workers to bring their voices into the focus of

legislation discussions (Benoit, Unsworth, et al. 2021). However, as we can see from the legislative outcome, their voices did not make the lasting impact they had hoped for and thus demonstrates how the legal system has failed to make significant changes in this area. The lack of representation of actual sex workers in these discussions has resulted in their needs and safety being overlooked in the implementation of the legislation, furthering the dangers that sex workers may face within their work environment.

#### **Stigmatization & Public Perceptions Around Sex Work**

Continuing the discussion of the narratives surrounding sex work, stigmatization undeniably exists within the sex industry and perpetuates extensive harms experienced daily by sex workers. The way in which sex work legislation frames sex workers can directly influence public perceptions of sex work and exacerbate the stigmatization sex workers may encounter in their lives. Exploring the views that the Conservative government holds towards sex work is essential to understanding how sex workers are framed in sex work legislation as they have had considerable influence over the laws that are standing today. Additionally, analyzing the stigma that occurs illustrates another harmful result of the PCEPA and supports the demand for the decriminalization of sex work.

#### *Conservative Government and Neoliberalism*

Exploring the ideals that the Conservative government holds towards sex work is critical to the discussion of sex work legislation as they have been the main influence on the current regulations placed on the sex industry. In response to the Bedford challenge, the Conservative-led government at the time opposed the decisions of the court stating that “the prostitution trade is bad for society” (Shaver 2019, 1958), which clearly outlines this government's view of sex work. Additionally, the Conservative government argued that prostitution should be prohibited entirely as any effort to decriminalize it would negatively impact Canadians and suggest that the exploitation of an individual's body is acceptable within society (Sampson, 2014). They have also proposed ideas on how to regulate sex work which include giving assistance to first-time offenders or those being coerced into sex work in order to get them out of the industry without criminal records while arguing for the punishment of those who “freely [seek] to benefit from prostitution” (Sampson 2014, 151). The Conservative government's stance on sex work reflects neoliberal methods of governance that emphasize individual freedom, traditional values, and

personal self-restraint (Sampson 2014). These views are reflected in the legislation around sex work and the way it depicts sex workers. Not only has this resulted in poor outcomes for those choosing to be in the sex industry, but it has led to an increase in the stigmatization surrounding sex work.

### *Stigmatization of Sex Work*

An analysis of the PCEPA suggests that while matters of exploitation and protection are embedded immensely throughout, there is a lack of discussion of aspects such as discrimination and stigmatization within the Act (Shier 2021). Stigmatization surrounding sex work is deeply entrenched within our society and has only been worsened by the implementation of the PCEPA. The way in which the PCEPA frames sex workers has been reproduced in various ways in larger society; for example, radical feminists view sex work as a practice of sexual exploitation and argue that it should be completely abolished (Sampson 2014; Shaver 2014). Sex workers are also constructed as deviant “others” and are given derogatory labels such as prostitute, whore, and hooker (Benoit et al. 2017b). The label of “prostitution” itself holds a vast amount of stigmatization and despite this, is still used in most government policy documents including the PCEPA (Benoit et al. 2017b). As Benoit et al. (2017b) outline, macro-level influences such as policies and laws directly contribute to the stigmatization of sex work, and the PCEPA is no exception. The PCEPA emphasizes that sex workers are often “victims” of the industry, creating stigma towards those who choose to be in that position and causing unnecessary discrimination. As the PCEPA continues to criminalize aspects of sex work, it continues to exacerbate the stigma around it, despite the Act not directly prosecuting sex workers (Desmore 2021). This, along with the various other factors discussed, outlines why the legislation in place needs to be reformed in order to avoid increasing the danger that sex workers face.

### **Decriminalization of Sex Work**

Throughout this paper, we have looked at the ways sex work has historically been regulated and have discussed the harms of various legislative decisions. In order to move forward and create legislation that reduces the violence that sex workers experience, decriminalization measures must be incorporated into our society (Benoit et al. 2017a). Various case studies have found that sex workers continuously advocate for the decriminalization of sex work in order to bring about positive changes within the sex industry (Abrol 2014; Benoit et al. 2017a; Benoit, Unsworth, et al. 2021; van der Meulen 2010). Additionally, global social rights agencies have

advocated for decriminalization as a harm reduction approach, stating that it is a human right for individuals who voluntarily choose to do sex work to have access to employment and civil rights similar to that of other service workers while being free from stigma and discrimination (Benoit, Unsworth, et al. 2021). Many individuals have voiced their opinion about the PCEPA and how it makes those choosing to work within the sex industry feel unsafe and unprotected (Benoit, Unsworth, et al. 2021). Change is needed to reduce the harm sex workers experience and to increase their overall well-being (Benoit, Unsworth, et al. 2021). Various sex workers have also argued that they should be allowed to dictate what they can and cannot do in their profession and with their bodies without being punished for it (Benoit et al. 2017a). Abrol (2014) outlines that while decriminalization may have its drawbacks, such as further stigma and extensive labour regulations, the potential positive outcomes outweigh the risk.

So, what exactly would the decriminalization of sex work look like? Decriminalization involves the removal of selling or buying sexual services from the Criminal Code (Benoit et al. 2017a). It would reduce the amount of interference from the government or third parties in the lives of sex workers (Abrol 2014), allowing them to have more control of their work as well as the clients and situations they choose to engage with. Decriminalization also creates the potential to lessen the victimization sex workers experience from clients and police officers who target them, as well as allowing sex workers to hire protection without having to resort to individuals, such as pimps, that exploit them while doing so (Abrol 2014). Many sex workers suggest that if sex work were decriminalized, they could engage in their work as a real business and look into benefitting measures such as advertising, minimum labour standards, and occupational health and safety guidelines (Benoit et al. 2017a); put simply, sex work would be seen as legitimized work. Additionally, sex workers could have a place to sell their sexual services to ensure their safety and protection without fear of being shut down by the laws in place (Benoit et al. 2017a). Sex workers would also be able to seek justice against a would-be kidnapper or assailant without the fear of being criminally prosecuted themselves (van der Meulen 2010). They could also access health services, mental health aids, and housing resources (Benoit, Unsworth, et al. 2021) while improving their overall well-being without the threat of criminal prosecution. They could be free to engage in the lifestyle they want without fear of shame and stigma, allowing them to become empowered and restore their dignity that is too often silenced by shame. Additionally, the decriminalization of sex work would

allow sex workers and the organizations supporting them to make important decisions regarding their work, without having their lives and bodies dictated for them (Benoit, Unsworth, et al. 2021).

The list of positive impacts that the decriminalization of sex work could have on sex workers seems to be endless. However, it is important to discuss the tragic reality that exists for many in the sex industry: human trafficking is still prevalent in society today. While it is uncertain whether the PCEPA has effectively combated human trafficking, we do know that the Act has had harmful impacts on those choosing to be in that line of work. Therefore, in an effort to decriminalize sex work, it is essential to find a balance between combating the issue of human trafficking and ensuring the protection and safety of those choosing to engage in sexual services. While it is not addressed in this paper, establishing how a balance may be struck between the two is essential to ensuring efforts to decriminalize are effective in both areas.

### **Conclusion**

The legislation surrounding sex work in Canada has developed immensely over the years and continues to be researched and discussed by various scholars today. The PCEPA, while attempting to promote safety and protection, has resulted in further harm and stigmatization for sex workers choosing to be in the industry. The PCEPA fails to recognize the difference between those who are victims of the sex industry and those who choose to be in this line of work, thus creating dangerous conditions for all sex workers. This discussion that has been developed on the PCEPA throughout this paper builds a foundation for why decriminalization is the best option for sex work in Canada. Additionally, analyzing the framework the Conservative government has created around sex work is crucial to understanding the stigmatization that has resulted from the PCEPA. This paper considers these topics and outlines how decriminalization can bring about positive changes in the lives of sex workers while acknowledging that human trafficking is a tragic issue that needs to continue to be addressed.

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