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Sex workers facing increased safety risks

Working alone, fear of police, inability to properly screen clients the norm since Bill C-36 passed 2 years ago

By Amanda Silliker

01/30/2017 | Canadian Occupational Safety



Jade is going into a client meeting alone. She does not have a lone worker monitoring device and knows very little about the client. These meetings often occur after hours and out of public view. Like many jobs, she is at risk for a variety of occupational health and safety issues, such as workplace violence, mental health problems and musculoskeletal disorders. But unlike other workers, Jade does not have

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health and safety legislation to protect her. In fact, there is currently legislation in place that is exposing her to even more safety risks.

“It infringes on my right to safety and security... And the possibility of working with a network of people for both safety and camaraderie is near to impossible without breaking the criminal law,” says Jade. “I am disconnected from all the supports I previously had and the layers of security are gone.”

Jade is a 50-year-old sex worker who has been operating as an escort north of Toronto for 16 years. In December 2014, the Conservative government put the Protection of Communities and Exploited Persons Act (PCEPA) in place, which made it an offense under the Criminal Code to purchase sexual services, communicate for that purpose and receive material benefit from sex work.

“Many people may believe that Canada’s new laws around sex work are having a big impact on buyers without bringing harm to the workers. But my experience has been the exact opposite since the laws were changed in 2014 and buying sex became a crime,” Jade says in a report by the Canadian Alliance for Sex Work Law Reform.

The act was the Conservative government’s response to the prostitution laws that were struck down by the Supreme Court of Canada in the *Canada (Attorney General) v. Bedford* decision in December 2013. In a unanimous 9-0 decision, the highest court said the laws prohibiting bawdy houses, living off the avails of prostitution and communicating in public with clients infringed the rights of prostitutes by depriving them of security of the person.

“The prohibitions all heighten the risk the applicants face in prostitution — itself a legal activity,” Chief Justice Beverley McLachlin wrote in the decision. “They do not merely impose conditions on how prostitutes operate. They go a 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 risks.”

The Supreme Court gave the government one year to come up with new laws, saying although the challenged provisions violate the Charter of Rights and Freedoms, it does not mean Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe on the constitutional rights of prostitutes. And PCEPA, formerly Bill C-36, was born, but it brought with it many of the same issues that were struck down in *Bedford*.



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“My overall reaction to Bill C-36 was one of concern... because it appears as though the bill risks exacerbating as opposed to ameliorating the conditions that were identified in *Bedford* as posing risks to sex trade workers,” says Stephany Mandin, partner at Goldman Hine in Toronto.

Two years later, many of the health and safety concerns that scholars, lawyers and industry experts had around the act have materialized. Arlene Pitts at York University in Toronto interviewed street-based sex workers who said the new law, at times, increases daily fears around safety, arrest, police harassment and discrimination.

“Criminalization continues to force them to work in unsafe environments,” says Pitts in her report, *Remembering Bedford*. “The current anti-sex work laws and regulations governing sex workers’ lives, labour and bodies continue to gravely impact sex workers.”

Amendments

Prostitution is legal in Canada but PCEPA criminalizes several activities around it. For starters, the act amends the Criminal Code to make it an offence to purchase sexual services. However, the act does not actually define “sexual services.” This could include everything from services performed by street-level prostitutes, massage parlours attendants and escorts, to work done over web cam or telephone.

The purchasing provision is driving sex work further underground due to fear of arrest, and sex workers and their clients are seeking out more isolated and dangerous locations to engage in this work, says Mandin. The penalties include jail time, up to five years in some cases (if the sex worker is over 18), and fines. The act outlines specific penalties for purchasing sexual services both from someone under the age of 18 and from an adult.

In addition, making the purchase of these services illegal means sex workers have decreased ability to screen clients, increasing their risk of violence.

“Now that purchasing sexual services is a crime in Canada, screening is more difficult than ever. I used to be able to get a new client’s name and references easily. The new laws have created a climate of fear and clients are afraid of providing personal information,” says Carmen, a sex worker in Vancouver who was interviewed as part of the Canadian Alliance for Sex Work Law Reform report.

PCEPA also amends the Criminal Code to create an offence that prohibits receiving a material benefit from sex work. This would result in up to 10 years in prison, if the benefit was from an adult providing the sexual services. This is essentially the same as the previous “living off the avails of prostitution” law that was struck down in *Bedford*. While the purpose of the law was to “target pimps and the parasitic, exploitative conduct in which they engage,” the law actually punished

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“everyone who lives off the avails of prostitution without distinguishing between those who exploit prostitutes and those who could increase the safety and security of prostitutes, for example, legitimate drivers, managers or bodyguards,” McLachlin wrote in her decision. This would hold true for the PCEPA provision as well. It also punishes anyone involved in business with a sex worker, such as accountants or receptionists.

Both of these provisions — purchasing sexual services and receiving a material benefit from sex work — essentially make it illegal to run a bawdy house, despite the fact that this is widely accepted as one of the safest ways to conduct sex work. The *Bedford* decision noted that bawdy houses improve prostitutes’ safety by providing “proximity to others, familiarity with surroundings, security staff, closed-circuit television and other such monitoring that a permanent indoor location can facilitate.”

The court noted that preventing sex workers from working in a safe indoor location is “grossly disproportionate to the deterrence of community disruption,” also noting that “Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes.”

Since the escort agency Jade was working for closed after PCEPA came into force in 2014, she operates alone and says she is more at risk than ever before.

“I worked with agencies because it afforded me greater safety. Callers are aware that there is a driver with you and that you are part of a network of people who know exactly where you are. That’s why being able to work in groups is so important, but it’s illegal under current laws,” she says.

According to Amnesty International, “working in isolation places sex workers in a vulnerable situation at risk of robbery, physical assault and rape.”

The purchasing of sex and material benefit provisions also eliminate the ability to have “safe houses” where street-level sex workers — the most vulnerable — can take their clients. The *Bedford* decision noted that safe houses for some prostitutes may be critical. For example, around the same time as convicted serial killer Robert Pickton was preying on prostitutes in Vancouver’s Downtown Eastside, a safe house called Grandma’s House was established, only to be shut down.

“A law that prevents street prostitutes from resorting to a safe haven such as Grandma’s House while a suspected serial killer prowls the streets is a law that has lost sight of its purpose,” McLachlin wrote in the Supreme Court decision.

Maud, a street-based sex worker who participated in research by POWER (Prostitutes of Ottawa-Gatineau Work Educate & Resist), says a safe place to take clients would increase safety.

“Then they could also monitor a little. Girls are missing and get beat up and we still haven’t found them years later. Nobody has a clue where they are,” she says. “We need a place where we can go.”

Another amendment in PCEPA is around communication. The act not only says it is an offence to communicate in any place for the purpose of purchasing sexual services, it also expressly prohibits such communication in a public place (or place that is open to public view) that is next to a school ground, playground or daycare centre.

The issue of communication in a public place was already struck down in the *Bedford* decision and McLachlin said it prevented prostitutes from screening potential clients for intoxication and propensity to violence. She said this was a “grossly disproportionate response to the possibility of nuisance caused by street prostitution.” The decision noted face-to-face communication for screening is “an essential tool” for enhancing the safety of street prostitutes.

“(It’s about) allowing the sex trade worker himself or herself to have control. To be able to say yae or nay, to have an open public space where they can call for help, where they can accept or reject a client,” says Mandin.

It also allows the sex worker to negotiate services, set boundaries and establish fees.

But the new communication laws in PCEPA have the continued effect of displacing sex workers to more secluded, less secure locations, says Mandin.

“Find me a place in downtown Toronto that doesn’t have a school, park or child. What they are doing is forcing this work... into the dark spaces, alleyways, literally the underground.”

Another amendment from the exploited persons act is creating an offence that prohibits the advertisement of sexual services. This means sex workers are using a lot of euphemisms and not really explaining what services they offer, which ultimately creates a health and safety issue, says Jenn Clamen, co-ordinator of the Canadian Alliance for Sex Work Law Reform, a group of 28 sex worker rights and allied groups based in 17 cities across Canada.

“When you are not able to openly and adequately advertise and speak to what it is that’s happening in a session, there is a lot of miscommunication and misunderstanding and that’s not fun for anyone in any kind of service,” she says. “That creates a climate of tension and stress and discomfort.”

Overall, the amendments in PCEPA have created an increased fear of police, which only further harms their health and safety.

“The problem with criminalizing any aspect of sex work is it creates and maintains and promotes an antagonism with police,” says Cla-

men. “And so sex workers are at every moment avoiding police and that means in conditions where there is exploitation or where violence is being experienced, they are still avoiding police.”

Violence can include everything from physical violence to verbal abuse and sexual assault. Street-level sex workers are the most vulnerable, with 78 per cent of these workers being victims of physical assault during their sex work careers, according to POWER. Comparatively, 25 per cent of indoor workers have been physically assaulted.

Beth, a street-based sex worker who participated in POWER’s research, was a victim of violence, but was not able to get help from police.

“I was just coming out of an alley; I had just been raped. I had been hit over my head with a brick. My head was gushing blood. I flagged a cop and he told me to call my own fucking ambulance... and he told me he had no time for me. Then he left,” says Beth. “I couldn’t even walk.”

Beth says she is so used to violence that she considers it “part of the job.”

Other OHS issues

Aside from the health and safety issues identified in *Bedford* and that PCEPA brings to light, sex workers face a variety of occupational health and safety concerns. While sexual health may be the first issue to come to mind, it is often not always the primary health concern.

“Sex workers, for the most part, are quite skilled at sexual health because their body is their working tool and they know how to protect it,” says Clamen.

Like others working in personal service and manual jobs, musculoskeletal problems can be a “real concern” for sex workers, according to the May 2015 report *Sex Work in Canada* by Cecilia Benoit and Leah Shumka. For example, they often experience muscle and joint pain as well as chronic pain in their upper backs, shoulders, feet and ankles.

Other health problems, such as arthritis, fibromyalgia and gastrointestinal illnesses appear to be common among women working in the sex industry, found the report.

Many sex workers consider their mental and emotional health to be the most important and the hardest to maintain, found the report. Sex workers have reported post-traumatic stress disorder, depression, anxiety, psychosis and eating disorders.

A lot of the health issues sex workers face stem from the stigma and the stress of being marginalized, the report says.

Next steps

Since the Liberal government came into power, the new Minister of Justice and Attorney General of Canada Jody Wilson-Raybould has met with a number of groups about PCEPA, including sex-worker advocacy groups, anti-human trafficking groups, law enforcement and the legal community, according to her press secretary Valérie Gervais.

“The minister has specifically committed to reviewing whether or not former Bill C-36 addresses all of the issues identified in the Supreme Court of Canada’s 2013 *Bedford* decision,” she says. “Engagement with groups representing those most affected by C-36 has begun and will continue throughout the review process.”

Gervais was not able to confirm a timeline or specific outcomes at

this point.

Clamen is “slightly optimistic” that the current government will give sex workers more room to engage with lawmakers and that they will consult with them in a meaningful way.

“This is quite urgent. This isn’t a joke; it’s not an opinion, not an ideology lobby. These are really important pieces of legislation that are having very real impacts on people every day,” she says.

As a starting point, the Liberal government should go back to *Bedford* and see what the Supreme Court said about protecting the human dignity and security of sex workers, says Mandin.

Then it should look at “revising the bill with the view of creating laws that instead of having the effect of a back-door criminalization, actually address the issues and improve on those risks to sex trade workers,” she says.

Some provisions need defined exceptions, such as the material benefit law, so sex workers can hire drivers but are protected from exploitation by pimps, for example, says Mandin.

Most importantly, the purchasing of sexual services needs to be decriminalized, she says.

“By prohibiting the purchase of sexual services you’re recreating the situation that the court in *Bedford* was trying to prevent,” says Mandin, who suspects the act will come up against a charter challenge. “I understand limits but I think that a blanket criminalization is problematic.”

Clamen and the Canadian Alliance for Sex Work Law Reform do not believe there needs to be any specific criminal laws to regulate prostitution. Clamen points to a “whole slew” of other laws against sexual

assault, kidnapping and confinement, abuse, underage issues and trafficking that would protect sex workers and address some of the broader concerns without specific legislation.

“Other industries don’t have police engaged with their work at all times. If there is a noise complaint, there’s a noise complaint — in a bakery, a brothel or a nightclub. But the police are not engaged in the regulation of your industry. It’s that element we are really looking to remove,” says Clamen.

Prostitution is legal in many countries around the world and there are myriad examples, each with pros and cons, that Canada could follow. The most expansive is New Zealand where sex work is recognized as legitimate work and treated the same as other workplaces. For example, licensed brothels operate under public health, occupational health and safety and employment laws. This model is most similar to what Clamen and the alliance are looking for.

At the end of May, Amnesty International published a policy and research on the protection of sex workers’ rights. It makes several calls on governments, including the participation of sex workers in the development of laws that affect their safety. It recommends the decriminalization of consensual sex work, including those laws that prohibit associated activities, such as bans on “buying, solicitation and general organization of sex work.” It says this is based on evidence that these laws make sex workers less safe.

For Jade, she hopes one day things will go back to the way they used to be, and she will be making a good living while working in a safe, supportive environment.

“I want to keep doing sex work,” she says. “Prohibition never works. We need decriminalization. Just ask sex workers and Canada’s Supreme Court.”

This article was originally published in the [December/January 2017 issue of COS](#).

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