



ANALYSIS OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE
AND HUMAN RIGHTS TITLED *PREVENTING HARM IN THE CANADIAN SEX
INDUSTRY:*
*A REVIEW OF THE PROTECTION OF COMMUNITIES AND EXPLOITED PERSONS
ACT*

PRESENTED BY THE COMMITTEE ON PROSTITUTION, PORNOGRAPHY AND
SEXUAL VIOLENCE,
WITH THE COLLABORATION OF ROSE DUFOUR

SEPTEMBER 2022

PDF Québec is a feminist, citizen, mixed and non-partisan group, created in 2013 and composed of members from diverse backgrounds. PDF Québec believes that true democracy is only possible if it achieves de facto equality between women and men. PDF Québec supports a democratic and secular society.

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Context

On June 22, 2022, the Standing Committee on Justice and Human Rights (SCJHR) released the report titled *Preventing harm in the Canadian sex industry: A review of the Protection of communities and exploited persons Act*. A motion defined the work to be done:

“That the Committee undertake a comprehensive review of the provisions and operation of the Protection of Communities and Exploited Persons Act, which received Royal Assent on November 6, 2014, pursuant to section 45 of the Act; that, due to the sensitive nature of the study, the Committee provide adequate mental health support to the witnesses; that the Committee hold at least six meetings on the issue; that a report be tabled in the House of Commons; and that the Committee request that the government table a comprehensive response to the report”¹.

In fact, seven years after the adoption of the Protection of Communities and Exploited Persons Act (PCEPA), the Committee fulfilled its mandate to examine the Act and report its observations to the Speaker of the House of Commons, as specified in section 45 of the PCEPA. Committee members held eight meetings to hear testimonies and received 72 briefs, including one from PDF Québec, in March 2022². The Committee made 17 recommendations. However, the report includes a dissenting report from the Conservatives with eight recommendations, and a supplementary report from the New Democratic Party of Canada with three recommendations. These dissenting and supplementary recommendations to the report were submitted without the approval of the SCJHR, as provided for in Rule 108 (b) of Chapter XIII of the Standing Orders of the House of Commons³.

This document presents the analysis made by the Committee on Prostitution, Pornography and Sexual Violence, which was endorsed by PDF Québec’s Board of Directors. Both the form and content of *Preventing harm in the Canadian sex industry: A review of the Protection of communities and exploited persons Act* are examined.

1 Parliament of Canada, House of Commons, *Preventing harm in the Canadian sex industry: a review of the protection of communities and exploited persons Act*. Report of the Standing Committee on Justice and Human Rights, Randeep, Sarai, chair, June 2022, 44th parliament, 1st session, p. 5, <https://www.ourcommons.ca/DocumentViewer/en/44-1/JUST/report-4/page-24>.

2 Pour les droits des femmes du Québec, *Une approche abolitionniste à consolider*, Mémoire sur la Loi sur la protection des collectivités et des personnes victimes d’exploitation (LPCPVE) présenté au Comité permanent de la justice et des droits de la personne, Montréal, mars 2022, 11 pages, <https://site.pdfquebec.org/files/M%C3%A9moires/M%C3%A9moire%20sur%20la%20LPCPVE%20mars%202022%20VF.pdf>.

3 Parliament of Canada, House of Commons, *Chapter XIII, Striking of Committees, article 108 (b)*, <https://www.noscommunes.ca/reglements/Chap13-f.html>.

Our Analysis

For PDF Quebec, the Standing Committee on Justice and Human Rights (SCJHR) did not understand the purpose of its review mandate and erred in its interpretation of it. This undermines the credibility of the report tabled in the House of Commons. In addition, the SCJHR failed to understand the political, social and cultural issues related to the use of the terms "sex work" and "sex workers" in the drafting of its report. This undermines the veracity of its content in relation to reality.

Secondly, the SCJHR has made numerous omissions such as not hearing from clients who have been required to go to The Sex Buyer Program and the impact of the law on them. They are the primary actors in the sex trade - it is for them that the market exists. It also did not validate the accuracy of the data and information provided in the testimonies and briefs, did not take into consideration the international obligations on prostitution to which Canada is committed, only made cursory use of the evidence produced by Statistics Canada on sexual crimes committed before and after the enactment of the PCEPA, and did not use an unbiased methodology. Instead, the report privileges the testimony of individuals and organizations in the sex industry lobby, thereby discrediting the entire methodology used by the SCJHR and invalidating all its recommendations.

This report does not include any rigorous scientific analysis; it is limited to a truncated summary of data and opinions expressed by the parties during the parliamentary proceedings. After all these considerations, PDF Québec recommends that the Canadian government reject this report in its entirety and consolidate the approach aimed at the abolition of prostitution that already exists in the PCEPA.

The reasons for this recommendation are as follows.

The title of the report is inappropriate

The first part of the report's title, *Preventing Harm in the Canadian Sex Industry*, is not relevant to the second part, *Review of the Protection of Communities and Exploited Persons Act* (PCEPA), as the Act was intended to create and modernize prostitution-related offences in the Criminal Code:

“This enactment amends the Criminal Code to,

- (a) create an offence to prohibit, in any place, the purchase of sexual services and communication for that purpose;
- (b) create an offence to prohibit the obtaining of a material benefit from the commission of an offence referred to in paragraph (a);
- (c) create an offence to prohibit the advertising of sexual services for compensation and to authorize the court to order the seizure of material containing such advertising and its removal from the Internet;
- (d) modernize the offence that prohibits the procuring of persons for prostitution purposes;

- (e) create an offence to prohibit communicating for the purpose of selling sexual services in a public place or in any place that is visible to the public and that is or is near a school ground, a playground, or a daycare Centre;
- (f) ensure consistency between prostitution offences and the existing human trafficking offences;
- (g) specify that, for the purposes of certain offences, a weapon includes anything designed, used, or intended to be used to restrain someone against their will. This enactment also amends other laws accordingly”⁴.

Indeed, the purpose of the PCEPA was never to prevent risks in the Canadian sex industry. There is no reference to these terms in the preamble and sections of the current PCEPA (Statutes of Canada [2014] Chapter 25). Furthermore, the motion adopted by the House of Commons was to be "a comprehensive study of the provisions and operation of the Protection of Communities and Exploited Persons Act, which received Royal Assent on November 6, 2014"⁵, not "to conduct a study on Canadian laws regarding the exchange of sexual services between adults" as announced on February 8, 2022. Nor should the motion call for a study on "voluntary sex work by adults"⁶. The PCEPA does not address the exchange of sexual services between adults⁷ but prohibits the purchase of sexual services and communication for this purpose for both adults and minors: "the offences set out in subsections 212(1) (procuring), 212(2) (living off the avails of prostitution of a person under the age of eighteen), 212(2. (1) (serious offence - living off the avails of prostitution of a person under the age of eighteen) or 212(4) (prostitution of a person under the age of eighteen)"⁸.

The SCJHR did not understand the purpose of its review mandate and erred in its interpretation of it. This has the effect of undermining the credibility of the report tabled in the House of Commons.

The content of the report is biased

The SCJHR report is a summary of the testimonies heard and the submissions made during the CPEPA review. It is interesting to read to understand the dynamics that exist between individuals and organizations regarding prostitution, the term which was not used by the SCJHR in writing its report. Indeed, the SCJHR decided to use the terms "sex work" and "sex worker" even though these terms never appear in the PCEPA. Nevertheless, it specified that it was "reserving terms such as 'prostitute' and 'prostitution' for direct quotations because these terms are increasingly seen as pejorative"⁹.

⁴ Government of Canada, Justice Laws Website, *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25, Summary), https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_25/page-1.html.

⁵ *Ibid.*, p. 6.

⁶ Parliament of Canada, House of Commons, Canada, *op. cit.*, note 1, p. 5.

⁷ Government of Canada, Justice Laws Website, *Protection of Communities and Exploitation Persons Act*, (L.C. 2014, ch. 25), article 5 (d), https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_25/page-1.html.

⁸ Government of Canada, Justice Laws Website, *Protection of Communities and Exploited Persons Act* (L.C. 2014, ch. 25), article 5 (d), https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_25/page-1.html.

⁹ Parliament of Canada, House of Commons, Canada, *op. cit.*, note 1, p. 11.

Worse still, by promoting the use of the term "sex work," the SCJHR legitimizes the sex industry discourse by disguising its prostitutional reality and promoting it as just another "profession". This report constitutes an implicit invitation to all women to its practice in the name of sexual liberation and agentivity, as if prostitution were a desirable career choice for girls and women who suffer severe physical and mental health consequences from it. Yet the preamble to the PCEPA never uses these terms retained by the SCJHR:

"Whereas the Parliament of Canada has serious concerns about the exploitation inherent in prostitution and the risk of violence to those engaged in this practice; Whereas the Parliament of Canada recognizes the social harm caused by the commodification of the human body and the commodification of sexual activity; Whereas it is important to protect the human dignity and equality of all Canadians by discouraging this practice which has negative consequences particularly for women and children; Whereas it is important to denounce and prohibit the purchase of sexual services because it contributes to the demand for prostitution; and Whereas it is important to continue to denounce and prohibit pimping and the development of economic interests from the exploitation of others through prostitution, as well as the commercialization and institutionalization of prostitution. That the Parliament of Canada wishes to encourage those engaged in prostitution to report abuse and to abandon the practice; and that the Parliament of Canada is fully committed to protecting communities from the harms associated with this practice"¹⁰.

Furthermore, the SCJHR erred in claiming that "trafficking in persons and exploitation of children are not part of the Criminal Code (the Code) provisions dealing with voluntary sex work by adults"¹¹. This is incorrect, as the Criminal Code does not contain the term "sex work" and indeed, the PCEPA includes provisions related to trafficking in persons and child exploitation in sections 19, 23, 24, 25, 29, 30, 35, 41, 42 and 43.

While "the terminology regarding the sale of sexual services and the persons engaged in this activity remains highly contested"¹², as the SCJHR itself reports, it has nevertheless chosen to use the terms "sex work" and "sex worker" in this report to refer to adults who sell their own sexual services, the terminology used by the sex industry. Let us be clear that prostitution, no matter how you call it, is never sexuality, prostitution is a commodity system, it is the purchase of sex for a fee. The SCJHR has become mired in a mishmash of definitions promoted by the sex industry. This demonstrates either ignorance or willful omission of the premises upon which the PCEPA was built.

The SCJHR did not understand the political, social, and cultural issues associated with the use of the term "sex work" when drafting its report. This undermines the veracity of the content of the report tabled in the House of Commons in relation to reality.

¹⁰ Government of Canada, *op. cit.*, note 8.

¹¹ Parliament of Canada, House of Commons, *op. cit.*, note 1, p. 6.

¹² *Ibid*, p. 10.

The methodology used is flawed

While they are the primary producers of prostitution and the primary target of the PCEPA, which prohibits the purchase of sexual services, the Committee did not hear from clients¹³, including those who were required to attend a program for offenders, or audit the impact of the legislation on them. This is an important gap for the Committee's review as one of the PCEPA's objectives is "to denounce and prohibit the purchase of sexual services because it contributes to the demand for prostitution"¹⁴. Once again, clients have escaped the scrutiny of the public and legislators. This seems to be a lack of knowledge and even ignorance of the reality and consequences of prostitution, this patriarchal merchant system that sells access to people's body and sex, mostly of women, and accepts it as a fatality that cannot be changed because it has existed since antiquity.

Instead, the SCJHR chose to limit itself to hearing about the range of experiences that individuals have had in the sex industry "... with particular attention to the testimony of people with lived experience in the industry and to peer-reviewed research"¹⁵. In our view, this created a methodological bias in favor of the views of individuals and organizations advocating for the repeal of the PCEPA. No literature was cited in the report that addressed the consequences of prostitution, such as distancing, disengagement, dissociation, and decorporalization among women in prostitution,^{16, 17} as well as the consequences of Germany's liberal prostitution laws, which have contributed to an explosion in demand and increased violence against women in prostitution¹⁸.

Furthermore, the data presented in the testimonies and briefs were not verified, as stated in the following note:

"Some testimonies and briefs contain statistics that are mentioned in this report. Some of these statistics come from peer-reviewed studies and official sources; in other cases, the source is less clear. The Committee has attributed all claims to the individuals and organizations that provided the information but has not verified their accuracy"¹⁹.

13 *Ibid*, p. 5.

14 Government of Canada, *op. cit.*, note 8.

15 Parliament of Canada, House of Commons, *op. cit.*, note 1, p. 13.

16 Trinquart, Judith, *La décorporalisation dans la pratique prostitutionnelle, un obstacle majeur à l'accès aux soins*, thèse de doctorat d'État de médecine générale, Université Paris-Nord, Faculté de Médecine de Bobigny-Paris XIII Léonard de Vinci, février 2002.

17 Trinquart, Judith, *Corps disloqués, âmes brisées, les conséquences physiques et psychiques de la prostitution*, conférence présentée au colloque *Enjeux et défis de la sortie de la prostitution*, 3 octobre 2014. Conférence disponible en trois parties aux adresses suivantes :

<https://www.youtube.com/watch?v=ghd207DnETA>, https://www.youtube.com/watch?v=-BY_4bkfqY, <https://www.youtube.com/watch?v=eJLFBauLodA>.

18 Kraus, Ingeborg, *La décriminalisation de l'achat de services sexuels : leçons tirées de l'expérience allemande*, p. 10, <https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11570562/br-external/KrausIngeborg-10569341-f.pdf>.

19 Parliament of Canada, House of Commons, *op. cit.*, note 1, p. 67.

This invalidates the recommendations proposed by the SCJHR since they are based on information that may be erroneous. For example, the average age of entry into prostitution, established at 12 to 14 by the PCEPA proponents, is discredited by three studies conducted between 2007 and 2018 which state that young people enter prostitution between the ages of 20 and 24. Yet, the Council on the Status of Women's 2012 Opinion on Prostitution that is used to describe the situation concluded that "over 80% of adult prostitutes in Canada entered prostitution as minors".

The average age of entry into prostitution is between 14 and 15²⁰, as the Select Committee on the Sexual Exploitation of Minors pointed out in its report tabled in December 2020 at the Quebec National Assembly. Furthermore, in her book *Je vous salue... Le point zéro de la prostitution*, Rose Dufour found that 40% of the prostituted women she interviewed were minors when they entered prostitution²¹. The inaccuracy of the report's data calls into question the validity of its recommendations.

It is also surprising to note the lack of interest shown by SCJHR members in the Statistics Canada's study entitled *Sex Trade Crimes: Before and After Legislative Changes in Canada*, as it devoted only one paragraph to it in its report. Yet, this study demonstrates the positive effects of the PCEPA's new provisions related to the goals pursued by the legislator in 2014. The nine key facts outlined by the Statistics Canada study demonstrates the effectiveness of the PCEPA, as we highlighted in our March 2022 brief. This non-appropriation of evidence provided by a world-renowned Crown corporation contributes to the weakness of the content presented in the SCJHR report.

Finally, while eight briefs referred to Canada's international obligations with respect to prostitution, "the Committee did not analyze them in depth, and its report focuses on Canadian law"²². This means that the recommendations are based on a partial analysis that does not consider the conventions and protocols that Canada has ratified and signed, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), especially Article 6 which states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and the exploitation of women's prostitution"²³. As a result, we do not have a global and worldwide vision of the prostitution phenomenon, whose market has become international for a long time.

The SCJHR's failure to hear from clients, the primary actors in the sex trade, and the impact of the law on them, to validate the accuracy of the data and information provided

20 Assemblée nationale du Québec, *Rapport de la Commission spéciale sur l'exploitation sexuelle des mineurs*, décembre 2020, p. 15, <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/csesm-42-1/index.html#documentsReflexion>.

21 Dufour, Rose, *Je vous salue... Le point zéro de la prostitution*, Éditions MultiMondes, Sainte-Foy, 2005, p. 390.

22 Parliament of Canada, House of Commons, *op. cit.*, note 1, p. 18.

23 Nations Unies, *Convention pour l'élimination de toutes les discriminations à l'égard des femmes*, <https://www.ohchr.org/fr/instruments-mechanismes/instruments/convention-elimination-all-forms-discrimination-against-women>.

in the testimonies and briefs, to take into consideration the international obligations on prostitution to which Canada is committed, to use the evidence produced by Statistics Canada on sex crimes committed before and after the enactment of the PCEPA, and to use an unbiased methodology by privileging the testimony of individuals and organizations from the sex industry lobby, discredits the entire methodology used by the SCJHR and thus invalidates all the recommendations in its report.

Data and discourse analysis is lacking

While the SCJHR was expected to provide a comprehensive study, it did not provide any critical analysis of the relationship between the PCEPA's objectives, and the outcomes achieved and reported in the hearings and submissions. It did not consider the relationship between established Canadian jurisprudence and the legal claims made by the various parties. It failed to consider the links between the implementation of the PCEPA and the development of programs to support victims of prostitution, to educate and train those who work with clients and prostituted women, those who work with individuals, organizations, the justice system, health and social services, education and higher education, and the general public. And finally, it did not address the links between the gaps in the application of the PCEPA and the good practices highlighted by various parties involved.

This report does not include any rigorous scientific analysis. It is limited to a truncated summary of the data and opinions expressed by the parties during the parliamentary proceedings.

Recommendations are partial and biased

Without relevant scientific analysis, it is understandable that "the Committee found it difficult to develop specific recommendations regarding the maintenance, repeal or amendment of the provisions or to come to a decision to repeal all of the sex work provisions of the PCEPA" ²⁴. In these circumstances, the SCJHR should have simply adopted the first recommendation that "the Government of Canada undertake extensive consultations prior to amending or developing programs or policies related to the Protection of Communities and Exploited Persons Act"²⁵.

Unfortunately, it has proposed improvements to protect those in the sex industry that run counter to the objectives of the PCEPA passed in 2014.

For PDF Quebec, after all these considerations, the Canadian government must reject this report in its entirety and consolidate the approach aimed at the abolition of prostitution that exists in the PCEPA.

²⁴ Parliament of Canada, House of Commons, *op. cit.*, note 1, p. 42.

²⁵ *Ibid.*, p. 1.

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