



# THE PERILS OF “PROTECTION”

SEX WORKERS' EXPERIENCES OF LAW ENFORCEMENT IN ONTARIO



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## BACKGROUND

In 2014, the passage of the *Protection of Communities and Exploited Persons Act* (PCEPA) legally enshrined all sex workers as victims and widened the net of criminal prohibitions against sex work. Because the law frames sex workers as victims, the common misconception is that sex workers are no longer criminalized. However, the reality experienced by sex workers is much different. While the PCEPA immunizes some sex workers from criminal prosecution, sex workers continue to experience human rights abuses perpetuated by law enforcement in the course of their work. In particular, the conflation of sex work with human trafficking and sexual exploitation has been used to justify law enforcement intrusions in sex workers' lives and has empowered law enforcement to surveil, harass and abuse sex workers.

## PROJECT

In 2018, the Canadian HIV/AIDS Legal Network interviewed 22 sex workers in Toronto, London, Sault Ste. Marie and Ottawa about their experiences of law enforcement in the context of their sex work since December 6, 2014 (when the PCEPA became law). Sex workers we interviewed ranged in age from 19 to 60 and the majority identified as women, including one trans woman. Sex workers also identified as white, Indigenous, Asian, Black, Latina and Middle Eastern. Several disclosed having permanent resident status (versus Canadian citizenship). Workplaces included strip clubs, massage parlours, street, hotels/motels, spas/body rub parlours and personal residences, with roughly half working independently and the remainder with other sex workers and/or third parties. Six key informants from the same cities and Sudbury were also interviewed.



## KEY FINDINGS

### *Aggressive surveillance and law enforcement abuses*

Sex workers interviewed for this project described increasingly pervasive, unsought and disproportionate surveillance from law enforcement, who employ an array of laws (criminal, immigration, human trafficking, municipal and others) to monitor, interrogate, investigate, harass, detain, ticket, arrest, charge and deport sex workers. Sex workers reported that surveillance resulted in a range of abuses by law enforcement, including **assault, intimidation, threats, harassment, unwarranted searches of their workplaces and belongings, destruction or theft of property, arbitrary or disproportionate application of the law, retaliation and extortion.** Racialized, migrant and trans women bore the heaviest burden of this profiling, yet were routinely positioned outside the reach of assistance in times of actual need. Indigenous, Black and Asian sex workers described how they are singled out by police for scrutiny and abuse, and migrant sex workers also recounted their pervading fear of detention and deportation. One sweeping commonality was sex workers' experience of law enforcement as a source of repression rather than protection.

These abuses markedly occurred after the 2014 passage of the PCEPA, challenging the misconception that the law protects sex workers and indicating, rather, that it gives law enforcement greater license to accost them. As a result, sex workers perceive law enforcement as an ongoing threat and source of danger, and rarely as a source of protection. To evade and mitigate these harms, sex workers reported changing their ways of working, including by working in unfamiliar and secluded areas, working in social isolation, and working with unknown risks.

### *Impacts*

The negative impacts aggressive law enforcement surveillance and abuse have on sex workers are wide-ranging, resulting in:

- sex workers' diminished ability to earn income, and hence their ability to support themselves and their loved ones;
- harms to sex workers' physical safety, perpetuated by law enforcement or predators who exploit their isolation;
- effects on sex workers' mental health, including feelings of trauma, stress and fear of returning to work, anxiety and paranoia of being raided or surveilled;
- sex workers being "outed" and the stigma and discrimination that ensues;
- workplace eviction;
- harmful repercussions on sex workers' family life, including on child custody;
- limitations to sex workers' geographic mobility because of tickets or sentences restricting their ability to be or work in certain neighbourhoods or because their identity as sex workers is documented in databases accessible by border control agents;
- diminished opportunities for other or future employment, especially when sex workers have a criminal record;
- immigration detention and deportation for migrant workers found in contravention of immigration regulations prohibiting migrant sex work; and
- impediments to practicing safer sex.



Going to the authorities is thus not a viable option for many sex workers and the majority of sex workers we interviewed stressed that they would not report abuse from law enforcement to police, especially if this abuse occurred in the context of their sex work. The majority of sex workers interviewed also indicated that they would not go to police for help in the case of non-state actor abuse, again stressing that they would be even less likely to do so if this abuse happened in the context of their sex work. As May, an Asian sex worker, shared:

“If anything happens in a massage parlour, I would not complain or seek help, because I don’t want them to know that I do massage. I feel this discrimination so strongly.”

This heightens sex workers’ vulnerability to targeted violence, exploitation and abuse.

## CONCLUSIONS

While some members of the public, policy-makers and law enforcement assert that the continuing criminalization and additional surveillance of sex work is protective, sex workers and key informants we spoke to shared their experiences of law enforcement as not only being a barrier to sex workers’ safety, but in many scenarios posing both an immediate and systemic danger. Interviewees described the harms of living and working in a context of criminality and the powers that criminal, immigration, human trafficking, municipal, child protection and drug-related laws and policies conferred on law enforcement to monitor, antagonize, detain, charge and deport sex workers. Such law enforcement interventions were unwanted, threatened many facets of sex workers’ lives and violated their rights to work; privacy; equality and non-discrimination; life, liberty and security of the person; health; working conditions that are just, favourable, safe and healthy; freedom of expression; freedom of peaceful assembly; freedom of association; freedom from unreasonable search and seizure; freedom from arbitrary detention and imprisonment; and freedom from torture and cruel, inhumane and degrading treatment. Moreover, these law enforcement interventions did not merely represent a case of a few “bad apples” but reflect a system that provides law enforcement with extraordinary control over sex workers’ lives — control that did not recede upon the passage of the PCEPA.

In order for police to provide meaningful assistance, sex workers and key informants stressed that they must treat sex workers as deserving of respect and police assistance *if requested*. The fact that the majority of project participants described this seemingly obvious fact as the exception rather than the rule is a reminder of how sex workers continue to be stigmatized, dismissed, discriminated against, and treated with contempt by actors in the legal system. When in need of assistance, almost all of the sex workers interviewed for this project turned to their own social networks as well as sex worker-led organizations, underscoring the role of sex worker-led organizations as a critical source of support. Despite the vital support that these organizations provide, many sex workers do not have the resources to formally organize and foster this community, suggesting that policy-makers and funders need to invest in and sustain such organizations.

Significantly, despite recent rhetorical shifts characterizing and codifying sex workers as victims, sex workers do not perceive themselves or their work in this way. Even so, some now feel pressure to conform to this stereotype in order to minimize the potential harms perpetuated by law enforcement and to be deemed worthy of assistance. Sex workers and key informants underscored that if law enforcement is to have a constructive relationship with them, law enforcement must centre their perspectives as people who are directly affected by law enforcement actions. And as sex workers and key informants interviewed for this project made abundantly clear, law enforcement need to be removed as the primary regulators of sex workers’ lives. The experiences they shared highlighted the harmful impact of laws and policies that empower law enforcement to surveil, detain, criminalize and deport sex workers, implicating sex work-specific criminal laws (i.e. those laws that criminalize sex workers, their clients, third parties and the places they work), immigration laws that prohibit migrant sex work, aggressive initiatives that claim to target human trafficking, municipal bylaws regulating sex work-related businesses and public space, and laws criminalizing drug possession.

As Kelly, a sex worker from London, Ontario, concluded:

“They just need to make it legal, legal. Not have grey areas, and just make it legal. ... Why do you have to come and destroy lives, and make people lose their houses and lose their kids? Why do you have to break families up? It’s ridiculous ... Why would I want to talk about that stuff behind closed doors, where I could get hurt? I’d rather talk about that before I get to my hotel room, than afterwards ... They need to put laws in place that allow us to have a little bit more freedom of how we choose to do it.”



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1240 Bay Street, Suite 600, Toronto, Ontario, Canada M5R 2A7  
Telephone: +1 416-595-1666 / Fax: +1 416-595-0094 / Email: [info@aidslaw.ca](mailto:info@aidslaw.ca) / [www.aidslaw.ca](http://www.aidslaw.ca)

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Foundation  
of Ontario**  
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