



THE UNIVERSITY
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West Coast LEAF

Submission on *Bill S-224, An Act to amend the Criminal Code (trafficking in persons)*

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About the UBC AESHA Project & West Coast LEAF Association

The AESHA (*An Evaluation of Sex Workers' Health Access*) Project is a 10-year+ longitudinal community-based research project that includes a quantitative cohort and a qualitative and ethnographic arm. As part of the quantitative arm, AESHA operates a community-based prospective cohort of over 900 sex workers across diverse work environments. The qualitative arm is focused on documenting the lived experiences of sex workers of all genders, and third parties who provide services for sex workers (e.g., receptionists, venue managers, owners and security personnel). The AESHA project is housed at the Centre for Gender and Sexual Health Equity (CGSHE), a University of British Columbia Faculty of Medicine research centre.

Over the past decade, the AESHA Project has focused on evaluating the impact of evolving legislative approaches to the regulation of sex work including the Canadian 'end demand' laws (*The Protection of Exploited Persons and Communities Act*) on sex workers' health, safety, and human rights. This research has been shared in over 100 peer-reviewed articles in leading medical and social science journals (e.g., Lancet, JAMA, BMJ) and a recent report on the harms of end demand legislation, which was submitted to the federal Department of Justice and all MPs and Senators. AESHA findings have also been shared in a submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) of the United Nations Office of the High Commissioner on Human Rights calling for an end to the conflation between sex work and sex trafficking. AESHA is built on partnerships with numerous community and human rights organizations, including SWUAV, SWAN, PACE, WISH, HIM/HUSTLE, and Pivot Legal.

West Coast LEAF is a BC-based legal advocacy organization with a mandate to use legally rooted strategies such as litigation, law reform, research, and public legal education to achieve an inclusive and intersectional vision of gender equality. West Coast LEAF's work cuts across six interconnected areas of work: advancing access to justice, access to healthcare and economic security, promoting freedom from gender-based violence, supporting child and family well-being, and ensuring protection for the rights of those who are criminalized. West Coast LEAF has made numerous submissions to parliamentary and Senate committees where the rights and interests of gender-marginalized communities are at stake. West Coast LEAF's work is deeply collaborative and engaged with communities who have lived and living experience of gendered harms, including the impacts of law and policy on sex workers.

Overview

The political and ideological conflation of sex work (defined as the consensual exchange of sex services) and human trafficking have shaped repressive laws and policies that have consistently violated sex workers' human rights (1–3). Despite the harms of such laws and policies, most jurisdictions continue to uphold punitive measures targeting the sex industry, including criminalizing most aspects of sex work, and carrying out police raids and anti-trafficking "rescue" operations (4). Laws and policies that directly impact sex workers' rights, safety and autonomy are routinely developed without any or adequate consultation with sex workers themselves.

Bill S-224 is another in a long line of laws that adversely impact sex workers, particularly Indigenous, racialized, and migrant sex workers by adding to existing barriers to safe work and further isolating and disenfranchising sex workers from accessing health and legal supports. The Bill will add harm to sex worker communities without meaningfully addressing human trafficking. We urge the Committee to reject Bill S-224 and adopt a human rights-based approach to human trafficking that addresses the underlying structural social realities (such as poverty, precarity in immigration status, lack of access to affordable housing, health, and social services) that contribute to the risk of exploitation and abuse.

Context & Empirical Evidence of Harm of Punitive Regulations and Repressive Anti-trafficking Policies to Sex Workers

Sex workers face isolated and unsafe work environments, barriers to accessing healthcare, and increased vulnerability to surveillance and policing because of repressive anti-trafficking interventions and policies (5–7). As outlined below, a significant body of peer-reviewed empirical evidence unequivocally demonstrates that punitive and restrictive laws and policies undermine sex workers' occupational health and safety and push sex work underground. Indeed, regulatory models based on prohibition and criminalization, even when implemented under the guise of 'protection' or gender equality have been shown to be ineffective in curbing trafficking and sexual violence and have instead been demonstrated to undermine sex workers' ability to access vital occupational health and safety protections (1-2).

The empirical evidence that follows is crucial for the Committee to understand in its deliberations on Bill S-224. **The following false and disingenuous tropes or rationales for punitive regulation of sex work must specifically be resisted in the Committee's review of Bill S-224:**

1. Conflation of trafficking in persons with sex work.
2. Conflation of sex work third parties with perpetrators of trafficking.
3. Conflation of migrant sex work as human trafficking.

Instead, we urge the Committee to meaningfully consult with diverse groups of sex workers on Bill S-224 and all future proposed legislation pertaining to trafficking in persons.

1. Harms of punitive laws that conflict trafficking with sex work

The harms of laws and policies that fail to distinguish between sex work and trafficking in persons (and thus violate sex workers' autonomy and human rights) have been well-documented by the long-standing research engaged in through the AESHA Project. In 2014, Canada enacted the *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25 (PCEPA), which enshrined "end-demand laws" that conflate sex work with trafficking. End-demand laws are based on assumptions that "exploitation is inherent in prostitution", depicting sex workers as passive victims of gendered violence (8). This lens informs the end-demand laws' focus on criminalization of clients and third parties (venue owners/ managers/security).

AESHA Project research involving 900+ sex workers interviewed between 2010-2019 shows that:

- Punitive models, even when implemented with the purported goal of "protecting" individuals, violate the safety and labour rights of sex workers, by limiting access to health services, safe workspaces, and access to justice. These harms disproportionately impact Indigenous and racialized sex workers and migrant sex workers (9–11), often identified as the very communities the laws are purporting to "help".
- Criminalizing any aspect of sex work under the guise of protecting sex workers results in punitive policing which displaces sex workers to isolated spaces where they have little ability to screen clients, negotiate transaction terms, or access protection (12–15),

effectively creating conditions of *diminished* safety and protection.

- Additional surveillance and punitive control of sex work hinders sex workers' health and physical safety by limiting their access to safety strategies and resources (16,17), again diminishing sex workers' ability to secure safety on their own terms.

2. Harms of conflating sex work third parties with perpetrators of trafficking

Most service industries rely on third party assistance systems. In sex work, third parties can be receptionists, managers/venue owners, advertisers, website providers, drivers, housekeepers, spotters, and security guards, etc. However, unlike in other industries, sex work third parties are criminalized and stigmatized. Trafficking laws make broad, unfounded assumptions about sex work third parties that rarely distinguish supportive third parties from abusive or coercive third parties.

Based on research with sex workers and third parties, evidence from the AESHA Project shows that:

- Third party roles are often occupied by current and former sex workers and a majority of third parties are women, contrary to the exploitative male "pimp" stereotype (18).
- Sex work third parties are diverse, as in other service industries. Third parties in sex work provide services for sex workers, such as client screening and security, as well as sexual health resources which promote sex workers' occupational health and safety (18).
- Criminalizing third parties under the semblance of protection constrains sex workers' access to assistance from supportive third party services (i.e., security protection, admin, drivers); undermines access to safer indoor venues; increases venues' vulnerability to violent robberies and assaults; restricts condom availability; and restricts sex workers' access to police protections (18–21).
- Workplace raids or surveillance disguised as "rescue operations" do not protect sex workers, but undermine occupational health and safety practices such as condom availability onsite (22,23). The fear of condoms being used as evidence of sex work by law enforcement forces sex workers and third parties to worry about being further criminalized for practicing safe sex.

3. Harms of conflating migrant sex work with trafficking

The conflation of migration for sex work and trafficking has informed punitive laws and policing which undermine migrant sex workers' safety and health. Due to assumptions about trafficking, Canadian immigration policy explicitly prohibits sex work among work permit holders and temporary residents (24). The criminalization of many migrant sex workers under the guise of preventing trafficking exacerbates barriers to reporting violence and accessing needed health and social supports among migrant sex workers, amplifying their vulnerability, and undermining their overall health and safety. Overly broad definitions of trafficking consequently increase workplace inspections, police surveillance, and border control raids against migrant sex workers and racialized migrant women. Peer-reviewed AESHA research demonstrates that:

- Fewer than 2% of migrant sex workers in Vancouver reported being coerced into sex work (25). Migrant women chose sex work for family and economic reasons, flexibility,

and relatively higher pay amid facing language barriers, barriers to formal employment, and discrimination (26).

- Third-party criminalization disproportionately impacts migrant sex workers, as they were significantly more likely to rely on third parties for safety and occupational health than their Canadian-born counterparts (12).
- Sex workers with precarious immigration status faced 2.5-fold increased odds of client condom refusal, enabling violent perpetrators to target racialized migrant women (27) knowing that workers and workplaces are unlikely to call police due to fear of criminal charges and deportation (23,26).
- Migrant sex workers faced 58% decreased odds of reporting violence relative to Canadian-born workers, with no migrants reporting experiences of workplace violence to police post-implementation of end-demand sex work laws (20). Migrant sex workers faced violent robberies and assaults with weapons in their workplaces, yet avoided contacting authorities due to fear of arrest, charges and police harassment, leading to impunity for violent perpetrators (20,21).
- Over half of indoor sex workers feared workplace inspections that could result in arrest and immigration status revocation and deportation (28). Fear of workplace inspections by authorities (i.e., law enforcement or immigration) was directly linked to reduced access to needed healthcare services among migrant sex workers (28).

Bill S-224 is overbroad, criminalizing those who provide supportive services to sex workers

Section 279.04(1) of the *Criminal Code* provides as follows:

For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- a) used or threatened to use force or another form of coercion;
- b) used deception; or
- c) abused a position of trust, power or authority.

Bill S-224 proposes to amend section 279.04(1) to read:

For the purposes of sections 279.01 to 279.03, a person exploits another person if they engage in conduct that

- d) causes the other person to provide or offer to provide labour or a service; and
- e) involves, in relation to any person, the use or threatened use of force or another form of coercion, the use of deception or fraud, the abuse of a position of trust, power or authority, or any other similar act.

Subsection 279.04(2) would be repealed.

Bill S-224 removes from s. 279.04(1) the requirement that the conduct in question “*could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened.*” It thus captures a broad range of conduct under the criminal prohibition on trafficking in persons, effectively criminalizing anyone who engages in “coercion” or “any other similar act” to abuse of a position of trust, power or authority. Coercion is not defined in the *Criminal Code* and the addition of “any other similar act” to this offence is overly broad.

In light of the empirical evidence identified above concerning the conflation of sex work and trafficking in law enforcement, a practice which disproportionately impacts Indigenous, racialized and migrant sex workers, the amendments to s. 279.04(1) risk capturing *all* sex work third parties, including those who are providing supportive services to sex workers. This would have the absurd effect of criminalizing those who provide services that enhance sex workers’ safety and wellbeing and offer protection from the kinds of exploitation and abuse Bill S-224 purports to address.

These concerns are not overblown or exaggerated. Law enforcement and prosecutorial practices, and prevailing attitudes and policy directives treat trafficking in persons as interchangeable with sex trafficking, and regard sex work as trafficking in and of itself. Statistics Canada research bears this out. Most police-reported cases of human trafficking have focused on sex trafficking, with the vast majority of those reported after the passage of *PCEPA* in 2014 (29). Between 2006 and 2018, 1,096 individuals were charged in relation to 1,416 trafficking offences, with 82% of those charges being issued after *PCEPA* came into force (30).

Trafficking in persons is defined in s. 279.01 of the *Criminal Code* as follows:

- (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence ...

Subsection (2) provides that there can be no consent to the activities identified in subsection (1) of the offence, and subsection (3) creates a presumption that “evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is ... proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.”

Taken together, the current prohibition on trafficking in persons already provides law enforcement and Crown counsel a very broad latitude to investigate and pursue trafficking charges. Under s. 279.04(1), Crown counsel will need to prove an intent to exploit whereby the impugned conduct “in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.”

Courts have interpreted the current version of s. 279.04(1) very expansively. Decisions from the Ontario Court of Appeal in *R v. AA*, 2015 ONCA 558 and in *R v Gallone*, 2019 ONCA 663 have significantly shaped the legal framework for assessing trafficking and exploitation, and it is within this framework that proposed amendments to s. 279.04 will be addressed by the courts. The trafficking offence has been interpreted in a disjunctive manner, meaning that the *actus reus* or conduct requirement of the offence is made out if the accused person engaged in any one of the specific types of conduct set out in the first part of s. 279.01(1), (i.e., recruits, transports, transfers, receives, holds, conceals or harbours a person), or if the accused person’s

conduct satisfies the second part of the provision (i.e., exercises control, direction or influence over the movements of a person). Thus, as the Court of Appeal stated at paras. 33-34 of *Gallone*, the *actus reus* of the trafficking offence “would be made out if the accused recruited the complainant. It would also be made out if the accused exercised influence over the movements of the complainant.” For the mens rea or criminal intent element of the trafficking offence, courts have gravitated to interpreting exploitation through a purportedly objective standard. In *R v AA*, the court held that exploitation should not be viewed solely from the perspective of the complainant, but must be adjudicated on “objective factors” (para. 76). If a “reasonable person” in the complainant’s position could have feared for their safety (broadly defined as including psychological harm, such as deception or pressure, along with physical harm), that will satisfy the exploitation requirement of the trafficking offence.

Under the current legal regime, trafficking offences can be made out where there is no actual threat to a person’s safety and despite a person’s subjective belief that their safety was not threatened. Safety is defined to include psychological harm, such as deception or pressure, along with physical harm. And, importantly, a finding of actual exploitation is not a necessary element of the offence, Crown counsel need only prove an “intent” to exploit on an objective standard.

Bill S-224’s amendments to the trafficking offence opens the door to an even broader application of the offence, whereby exploitation could be construed on the basis of “another form of coercion” or “the abuse of a position of ... power or authority or any other similar act”. Bill S-224 risks capturing even more third parties, including many of those that are providing supportive services to sex workers. Including a catch-all of “any other similar act” in defining exploitation allows law enforcement and Crown counsel unlimited discretion to pursue human trafficking charges without regard to context and without the need for any actual evidence of exploitation.

Conclusion & Recommendations

Bill S-224 drastically expands the definition of exploitation and captures even more sex work third parties. It does so by further entrenching prevailing attitudes that all sex work is inherently exploitative, while increasing the disproportionate surveillance and policing of Indigenous, racialized, and migrant sex workers. Far from “protecting”, Bill S-224 only adds to the structural barriers experienced by sex workers in securing occupational health and safety, and access to healthcare and justice. Moreover, the amendments will do nothing to meaningfully address human trafficking or the exploitation of vulnerable people.

We urge the Committee to:

- Reject Bill S-224 in its entirety.
- Support non-carceral and non-discriminatory approaches to safety, including community-based anti-violence programs developed by and for sex workers and affordable and adequate housing.
- Invest in community initiatives run by and for people working in the sex industry that are non-directive, non-stigmatizing, rooted in human rights, and not focused on “exiting” sex work.
- Invest in population specific community initiatives by and for Indigenous, Black, racialized, and migrant worker communities that enrich networks of community support.
- Ensure full and permanent immigration status for all in Canada, without exception.
- Engage in meaningful consultation with diverse communities of sex workers on all future proposed legislation or policy that impacts sex work.

As an alternative to rejecting the Bill, amend Bill S-224 with the following:

1. Add a preamble that acknowledges the problematic conflation of sex work with trafficking:

Preamble

Whereas the Parliament of Canada recognizes the harms the conflation of sex work with sexual exploitation causes sex workers;

Whereas the Parliament of Canada recognizes the harms of human trafficking initiatives that equate sex work with human trafficking;

Whereas the Parliament of Canada is committed to upholding the human rights of sex workers, and particularly the most marginalized sex workers, who have borne a disproportionate impact of the harms of human trafficking investigations;

Whereas it is important to ensure that human trafficking investigations are based on evidence and center the subjective experiences of victims; and

Whereas the Parliament of Canada wishes to encourage those who experience abuse and exploitation to report those incidents;

2. Amend s. 279.04(1) of the *Criminal Code* so that prosecutors must prove a complainant's subjective concern for their safety, as follows:

... if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, ~~could reasonably be expected to~~ **causes the other person to believe that their safety or the safety of a person known to them would be threatened** if they failed to provide, or offer to provide, the labour or service.

Exploitation and abuse in the sex industry cannot be addressed without also addressing the criminal laws that mandate police and other law enforcement to monitor sex workers and their workspaces and criminalize their labour. This requires:

- Decriminalizing sex work by removing all sex work-specific criminal provisions, including residual s. 213 prohibitions and provisions introduced through *PCEPA*.
- Repealing specific immigration regulations and work permit conditions that prohibit migrant women from working in the sex industry (including repealing the IRPR ss. 183(1)(b.1), 196.1(a), 200(3) (g.1) and 203(2)(a)).
- Stopping raids, detentions, and deportations of sex workers.
- Ensuring the Canada Border Services Agency is never involved in anti-trafficking investigations.

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