

Bill C-75: Joint Statement on the repeal of Criminal Code laws used against LGBTQ2S+ people and sex workers.

This month the House of Commons Standing Committee on Justice and Human is examining Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. While this is a very broad piece of legislation addressing unused and unconstitutional laws, it also forms part of the federal government's apology to LGBTQ2S+ communities, delivered by Prime Minister Justin Trudeau in the House of Commons on November 28, 2017. Bill C-75 falls very short of the apology. Likewise, the government committed itself in 2015 to review laws that criminalize sex work, which also remains unaddressed in Bill C-75.

This bill presents an opportunity to finally repeal archaic criminal offences historically used to criminalize the consensual activities of LGBTQ2S+ people, all of which stem from the late 19th and early 20th centuries. These include provisions against bawdy houses, indecent acts, obscenity, and vagrancy. In our view the criminal law should not be used to enforce notions of sexual morality but should instead be used in cases of actual violence, harassment and abuse, which are covered under other more appropriate sections of the Criminal Code.

Bill C-75 has numerous limitations that must be addressed. The bill finally repeals the prohibition against anal intercourse, but does not address the many other historic uses of the Code to criminalize consensual LGBTQ2S+ sexual activities. This fact was acknowledged by the Prime Minister in his apology, he explicitly mentioned the use of the bawdy house law in the mass police raids on gay bathhouses. From 1968-2004, more than 1,300 men were charged with this and related offenses in raids on bathhouses and bars across Canada. If C-75 does not address the bawdy house laws it fails to address the large mass arrests of men for having consensual sex with other men.

The provision against indecent act remains, which has long been used to criminalize consensual sex between men, involving thousands of charges. Charges of vagrancy have been used against trans and gender non-conforming people as well as sex workers. C-75 specifically reforms these laws, but it does not repeal them. We call for the repeal of the bawdy house law, indecent acts, and vagrancy from the Code. Other offences used to criminalize consensual LGBTQ2S+ activities, including obscenity, immoral theatrical performance, indecent exhibition, and nudity are not addressed, nor is the criminalization of cases involving HIV nondisclosure.

The recently adopted criminal record expungement bill (C-66), which was also part of the apology process, only covers a small fraction of the offences used to criminalize LGBTQ2S+ people. Only charges for gross indecency and buggery/anal intercourse qualify for an expungement, meaning those convicted under the bawdy house laws in various bathhouse raids are still unable to clear their records. Nor will the many people charged for consensual activity through the indecent act or other sections of the Code. If the bawdy house laws and indecent act were repealed in C-75 it would allow people convicted of these offences to apply for expungement of their convictions for consensual sexual activity. As it stands Bill C-75 maintains most of the offenses used to criminalize consensual LGTBTQ2S+ activity, this must be changed.

There is much in common between the policing of sex work and policing LGBTQ2S+ people, including historically through the bawdy house law and other sections of the Criminal Code. We fully support the repeal of all laws criminalizing sex work and the recommendations of the Canadian Alliance for Sex Work Law Reform.

Since Bill C-75 only mentions the material benefits and advertising offences, both of which create harmful working and living conditions for sex workers, we call for these sections to be repealed at this time. By criminalizing the act of materially benefiting from another party's sex work, section 286.2 of the Criminal Code restricts sex workers' capacity to engage in supportive work relationships that enhance their safety and improve work conditions. This provision reproduces the harms of the prior *living on the avails* offense that was struck down in the 2013 *Bedford* decision for violating sex workers' section 7 Charter rights.

Criminal Code section 286.4 prohibits advertising paid sexual services. As with the prohibitions on communicating and purchasing, this provision undermines the safety benefits that sex workers derive from openly communicating the terms and conditions of their services and establishing boundaries with their clients in advance of in-person contact. Prohibiting advertising creates significant barriers to working indoors, which the evidentiary record in *Bedford* demonstrates is safer than working on the street. Since the enactment of the advertising provision, many websites and newspapers no longer publicize sex workers' services. Those that do have often discontinued their virtual lounges that allowed workers to share safety and other valuable information. Despite an immunity clause that prevents arrest and prosecution of most sex workers in both the advertising and material benefit laws, these activities remain a crime for all people involved. It is working in this context of criminality that creates harmful conditions for sex workers.

Repealing the material benefits and advertising offences are only the very first steps to a more holistic reform of sex work laws.

The apology process to the LGBTQ2S+ communities also demands that the bawdy house, indecent act and vagrancy provisions are entirely repealed in C-75. Otherwise, the apology remains flawed and unfulfilled. Justice for sex workers demands that at the very least the material benefits and advertising provisions that continue to make the lives of sex workers and those supporting them unsafe also be repealed. We need to stop legislating a morality that disadvantages and discriminates against LGBTQ2S+ people and that creates unsafe working conditions in the lives of sex workers.

Supported by

Organizations

Canadian Alliance for Sex Work Law Reform: Angel's Angels (Hamilton); Action Santé Travesties et Transsexuel(le)s du Québec (ASTTeQ) (Montréal); BC Coalition of Experiential Communities (Vancouver); Butterfly Asian and Migrant Sex Workers Network (Toronto); Canadian HIV/AIDS Legal Network (Toronto); Downtown Eastside Sex Workers United Against Violence (SWUAV) (Vancouver); Émissaire (Longueuil); FIRST (Vancouver); HIV Community Link, Shift Program (Calgary); Maggie's Toronto Sex Workers Action Project (Toronto); Maggie's Indigenous Sex Workers Drum Group (Toronto); Migrant Sex Workers Project (Toronto); PEERS (Victoria); Projet Lune (Québec); Prostitutes Involved Empowered

Cogent Edmonton (PIECE) (Edmonton); Providing Alternatives, Counselling and Education (PACE) Society (Vancouver); Rézo, projet travailleurs du sexe (Montréal); Safe Harbour Outreach Project (S.H.O.P.) (St John's); Safe Space (London); Sault Ste. Marie Sex Workers' Rights (Sault Ste. Marie); Sex Professionals of Canada (SPOC) (Toronto); Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury); Stella, l'amie de Maimie (Montreal); Stop the Arrests! (Sault Ste. Marie) Strut! (Toronto); Supporting Women's Alternatives Network (SWAN)(Vancouver); Shift (Calgary); West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver); Sex Workers of Winnipeg Action Coalition (Winnipeg)

The Canadian AIDS Society

The Canadian Centre for Gender and Sexual Diversity

The Canadian HIV/AIDS Legal Network

HIV & AIDS Legal Clinic Ontario

Triple-X Workers' Solidarity Association of British Columbia

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