

Monday, March 13, 2023

The Honourable Marco Mendicino  
Minister for Public Safety  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Minister Mendicino,

**Re: Order Amending the Schedule to the Expungement of Historically Unjust Convictions Act**

On behalf of Triple-X Workers' Solidarity Association of B.C., I commend Public Safety Canada for passing the Order Amending the Schedule to the Expungement of Historically Unjust Convictions Act on February 17, 2023, which addresses historical discrimination by making convictions under Criminal Code bawdy-house laws eligible for expungement.<sup>1</sup>

I understand that this step towards correcting the unjust application of the bawdy-house laws relates directly to the passing of Bill C-75 in December 2018 that repealed the Criminal Code section "Bawdy House for Purposes of Indecent Acts" completely. (In 2014, the "Bawdy House for the Purposes of Prostitution" section was repealed with the passing of Bill C-36, the Protection of Communities and Exploited Persons Act, after the section had been ruled to be in violation of the Charter of Rights and Freedoms by the Supreme Court of Canada in *Bedford v. Canada* in 2013.)

I also understand from "What Are the Eligibility Criteria for Expungement?" on the Parole Board of Canada website, that prostitution-related convictions under Canada's Criminal Code bawdy-house sections before 2014, such as s.210 (2)(a) "Inmate of a Common Bawdy-House," are still not eligible to be expunged: "The person who was convicted did not exchange money for providing or receiving sexual services."<sup>2</sup>

In 2022, the Parliamentary Committee on Justice and Human Rights report: *Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act* (p.33) calls attention to the issue of expungement of criminal records for prostitution-related convictions: "Some witnesses also recommended expunging criminal records of sex workers."<sup>3</sup>

Briefs and testimonies from several organizations put forth recommendations for expungement of prostitution-related convictions. Asian Women Coalition Ending Prostitution, Asian Women for Equality, Centre to End All Sexual Exploitation, Defend Dignity, Resisting Exploitation, and Embrace Dignity, argued that a criminal record is "a serious barrier to moving forward;"<sup>4</sup> "a burden and a barrier to education, housing and employment;"<sup>5</sup> and also that "there are many

pieces of legislation across Canada that prevent those with criminal records from working, particularly in the volunteer sector. That is a barrier to exiting, which tends to punish the more vulnerable.”<sup>6</sup>

Employers and institutions such as schools and nonprofits are required by law to conduct criminal record background checks for many kinds of employment or volunteer positions, for example parents and guardians who wish to assist with curricular or extracurricular activities involving their children.

Perhaps the most personal argument put forward for the expungement of all criminal records related to prostitution convictions was made in a class-action civil lawsuit filed in B.C. Supreme Court, on February 16, 2022.<sup>7,8</sup>

Susan Davis, of the B.C. Coalition of Experiential Communities, describes how she applied to volunteer at her neighbourhood Community Policing Office only to be rejected for a criminal record for soliciting that had been pardoned long before. Davis is well known in her community as an advocate, but as she puts it: “I didn't have any control over [the record's] release in that way.”

According to Davis' lawyer, Jason Gratl, “It is no doubt easier to accumulate data than it is to curate data, but where dissemination of data may leave a false, misleading, unfair or harmful impression, there is a duty to curate.”<sup>9</sup> I couldn't agree more.

Minister Mendicino, in a March 7 CTV News interview, you are quoted as saying:

“The idea of transactions based on money have, for far too long, stigmatized sex workers ... And so, as we navigate that, I think it is important to put that lens on the work of getting access to expungements as well.”

Is Public Safety Canada also concerned with addressing this unjust barrier confronting sex workers when they seek to change their employment?

I look forward to more news from Public Safety Canada about access to expungement for prostitution-related bawdy-house convictions, and hope for further reforms that improve access to criminal conviction pardons for all past prostitution-related offences borne by sex workers.

Triple-X Workers' Solidarity Association of B.C. is a registered non-profit association in British Columbia since February 2012 (Society Incorporation Number: S-0059449; Federal Business Number: 830870309BC0001).

Persons can become members of the Triple-X Workers' Solidarity Association of B.C. if they have agreed to the direct exchange of sexual stimulation for financial compensation within the last six months and they intend to continue to work in the Triple-X industry. The full list of Triple-X membership criteria as defined in our Constitution, Bylaws & Policies are available on our website: <https://triple-x.org>.

Triple-X examines and analyzes federal and provincial laws and policies for potential implications on the sex industry. Triple-X also organizes and co-sponsors Vancouver's Red Umbrella March for Sex Work Solidarity, held annually since 2013.

To learn more about us, please find enclosed, two of our 2022 publications: *Stronger Together: Solidarity Organizing and Exploitation Prevention*; and *Sex, Scandal and Scapegoats: Canada's Blood Donation Ban for Selling Sexual Services*.

Sincerely,

Andrew Sorfleet, President  
Triple-X Workers' Solidarity Association of B.C.

Encl.

CC:

- Shawn Tupper, Deputy Minister of Public Safety Canada, 269 Laurier Avenue West, Ottawa, Ontario K1A 0P8
- Tricia Geddes, Associate Deputy Minister of Public Safety Canada, 269 Laurier Avenue West, Ottawa, Ontario K1A 0P8

#### Notes

1. "Government of Canada takes another step towards righting historically unjust convictions," Government of Canada News Release, March 7, 2023

<https://www.canada.ca/en/public-safety-canada/news/2023/03/government-of-canada-takes-another-step-towards-righting-historically-unjust-convictions0.html>

2. "What Are the Eligibility Criteria for Expungement?" Parole Board of Canada (March 1, 2023)

<https://www.canada.ca/en/parole-board/services/expungements/eligibility-criteria.html>

3. *Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act*, Parliamentary Committee on Justice and Human Rights, June 22, 2022 (p.33)

<https://www.ourcommons.ca/Content/Committee/441/JUST/Reports/RP11891316/justrp04/justrp04-e.pdf>

4. Submission to the Standing Committee on Justice and Human Rights Review of the Protection of Communities and Exploited Persons Act, Defend Dignity, February 25, 2022, (p. 8)

*"It follows that expungement should be granted to individuals who have been charged with offences related to selling their own sexual services, including under s. 213. We've seen that a criminal record is a serious barrier to moving forward for some of the survivors we support. The process to receive a pardon is onerous and expensive — on top of the federal fee, there are*

*additional fees to obtain the required documents. If expungement doesn't happen, at the very least they should be offered access to supports and waived fees to obtain a pardon."*

<https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11604373/br-external/DefendDignity-e.pdf>

5. Brief: Review of the Protection of Communities and Exploited Persons Act, Centre to End All Sexual Exploitation (CEASE), February 2022 (p. 2)

*"Recommendation: Expunge or deem "spent" the criminal records of those women, males, transgender and non-binary persons providing, or being trafficked/pimped to provide sex services who were charged with the old S.213 CC from 1986 - 2013. These summary convictions are now 9 years past the time they were declared non-constitutional by the Supreme Court of Canada, yet for many they are still a burden and a barrier to education, housing and employment."*

<https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11604368/br-external/CentreToEndAllSexualExploitation-e.pdf>

6. Ms. Gwendoline Allison (Barton Thaney Law, As an Individual), Evidence Testimony, March 1, 2022

*"There's also expunging the records of those who have been convicted of selling sexual services in order to permit them to gain employment. There are many pieces of legislation across Canada that prevent those with criminal records from working, particularly in the volunteer sector. That is a barrier to exiting, which tends to punish the more vulnerable."*

<https://www.ourcommons.ca/Content/Committee/441/JUST/Evidence/EV11616848/JUSTEV05-E.PDF>

7. "Proposed class-action lawsuit in B.C. seeks permanent deletion of sex-work records: B.C. lawsuit asks for removal of sex-work records," *Penticton Herald*, February 16, 2022

[https://www.pentictonherald.ca/news/national\\_news/article\\_7ae81428-cabd-5505-a806-4f9dc580612f.html](https://www.pentictonherald.ca/news/national_news/article_7ae81428-cabd-5505-a806-4f9dc580612f.html)

8. "Outdated convictions must be deleted from sex workers' records, lawsuit argues: Proposed class action says outdated criminal records hold people back from job and volunteer opportunities," Bethany Lindsay, CBC News, February 16, 2022

<https://www.cbc.ca/amp/1.6354442>

9. "Sex work records should be erased," Ian Mulgrew, Vancouver Sun, February 16, 2022

*Opinion: 'If you had moved on with your life, and your husband and children didn't know you used to be a sex worker and you went casually to volunteer somewhere thinking there was nothing to fear ... it could destroy someone's life.'*

<https://vancouversun.com/opinion/columnists/ian-mulgrew-sex-records-should-be-erased/wcm/61ff2b1b-8da9-4cc5-acd5-83f9a33b45c9/amp/>