

FOR IMMEDIATE RELEASE  
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## **In Canada the Government Does Have Business in the Bedrooms of the Nation**

### **Ontario ruling in constitutional challenge of Canada's sex work laws disappoints but offers clarity on the sale of sex and freedom of association**

According to an Ontario Superior Court of Justice ruling released September 18, it appears that the government does have business in the bedrooms of the nation.

Justice Robert Goldstein found that "there is no constitutional right" to charge money for sexual services. Doing so is against the law, however people who sell sexual services are immune from prosecution under Canada's Protection of Communities and Exploited Persons Act (PCEPA).

In the decision, Goldstein wrote, "The legal status of sex work is no longer ambiguous. The purchase of sex is prohibited. Sex work is no longer legal, but sellers of their own sexual services are immune from prosecution."

Justice Goldstein's decision also provided clear guidance regarding the prosecution of Canada's laws that prohibit receiving material benefits from the sale of sexual services:

"Sex workers should understand that PCEPA, when properly interpreted, does not prohibit them from accessing safety measures, working in association with each other, and accessing the services of non-exploitative third parties. Sex workers can engage the services of third parties that do not exploit them, including security guards, drivers, and receptionists." (*Canadian Alliance for Sex Work Law Reform et al v. Canada 2023*, p. 4)

In response to the decision, Andrew Sorfleet, president of the Triple-X Workers' Solidarity Association of British Columbia said:

"We strongly condemn this Ontario ruling which serves to reinforce the Canadian government's efforts to limit sexual activity between consenting adults in private. However, we acknowledge the Ontario court's guidance on the question of the legal status of professional associations of sex workers. People who sell sex have the freedom to form associations under this law."

In Justice Goldstein's finding on section 2(d) of Canada's Charter of Rights and Freedoms – the freedom to associate – he states:

“As I have already emphasized, properly interpreted, PCEPA does not prevent sex workers from forming an association or a collective where it is not a commercial enterprise.”

However, Judge Goldstein goes on to demonstrate the legal contortions under PCEPA that effectively allow people who sell sex to communicate with clients, but do not allow clients to respond:

“Finally, I turn to the association between sex workers and customers. For similar reasons, I find that s. 2(d) of the Charter does not protect that association. Customers do not have the right to communicate or associate with sex workers, whether virtually, by phone, or in person. The immunity provisions do not make it legal for sex workers to have these communications, but they immunize sex workers from prosecution for doing so. In other words, it is not associational rights of sex workers at issue — it is the associational rights of customers.”

## Seeking clarity regarding professional associations

Triple-X first raised the issue of the impact PCEPA has on the freedom to associate in July 2019. In an interview with *The Georgia Straight*, Andrew Sorfleet stated that the law “stands right in the way of sex workers being able to form their own association.”

In February 2022, Triple-X raised the issue again in its brief submitted to Canada's Parliamentary Standing Committee on Justice and Human Rights review of PCEPA: Stronger Together: Solidarity Organizing and Exploitation Prevention.

<https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11602469/br-external/TripleXWorkersSolidarityAssociationOfBritishColumbia-e.pdf>

The submission emphasized the Charter right to freedom of association with regard to the collective pursuit of common goals and workers' right to unionize. The Triple-X submission was highlighted in the Justice Committee's report:

“Triple-X Workers' Solidarity Association of B.C.'s brief states that the law does not contemplate sex workers organizing unions or professional associations or the possibility of such organizations collecting membership dues, and providing services such as advertising and promotion of the industry. They call for amendments to clearly permit such organizing by sex workers.”

In October 2022, the government dismissed the Committee's recommendations. This lack of response prompted Triple-X to write to former Attorney General of Canada, David Lametti, on November 25, 2022 asking the Department of Justice for clarification on the material benefit from selling sexual services law (Criminal Code s. 286.2) with regard to collection of association membership fees and the promotion of the Triple-X industry generally.

<https://triple-x.org/about/pr/LamettiLetter-20221125.pdf>

The Honourable David Lametti replied in his letter dated May 2, 2023, that he was unable to provide legal advice.

“Our government is very concerned about the safety of all persons engaged in the sex trade, and we are committed to taking into account the interests of all impacted groups. For this reason, we will continue to monitor the impact of the Act’s reforms including relevant Canadian case law...”

<https://triple-x.org/about/pr/LamettiReply-230502.pdf>

While the Ontario decision may still be appealed, in the meantime people who sell sex in Canada can look to this ruling for some clarity on the legal interpretation of PCEPA and its impact on their profession.

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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 bylaws webpage: <https://triple-x.org/about/bylaws.html>.

As of June 2018, the Triple-X certification mark was registered with Innovation, Science and Economic Development Canada (Certification Mark No. 1,774,304). Section 2 of the Defined Standard ensures that members have provided Triple-X with proof of age (18 years of age or older) in the form of government-issued identification or affidavit by a guarantor. Section 3 stipulates that members have signed the Triple-X form agreeing that they consider themselves a Triple-X worker and agreeing to provide Triple-X services for financial compensation. Triple-X services involve sexual stimulation that may or may not involve physical contact.

Section 4 of the Defined Standard for certified workers ensures:  
“... that they are qualified to: a) assess risks for sexually transmitted infections (STIs); and b) ensure best practices in STI prevention are followed appropriate for the service provided according to BC Centre for Disease Control guidelines.”

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