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Impacts of criminalization and punitive regulation of online sex work and pornography: The need for sex workers' voices

A Submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics

RE: Protection of Privacy and Reputation on Platforms such as Pornhub

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Submitted by the AESHA (An Evaluation of Sex Workers' Health Access) Project on behalf of
the Centre for Gender and Sexual Health Equity

and West Coast LEAF Association

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Our Position:

We at the Centre for Gender and Sexual Health Equity (CGSHE) and West Coast LEAF, share the concern of the Standing Committee on Access to Information, Privacy and Ethics about the harms of non-consensual sexual content online. Sex workers are experts in the negotiation of consent and in safely navigating sexually explicit materials in the online sphere, therefore sex workers and considerations about their occupational health and safety must be included in deliberations about policy solutions to this important issue.

As outlined below, a significant body of peer-reviewed empirical evidence on sex work policy unequivocally demonstrates that punitive and restrictive regulations and policies undermine sex workers' occupational health and safety and push sex work underground. Indeed, regulatory models based on prohibition and criminalization have previously been shown as ineffective in curbing trafficking and sexual violence, and are instead shown to undermine sex workers' ability to access vital occupational health and safety protections (1-2). Digital environments have been identified as critical to sex workers' safety and autonomy (13-17). Deliberations about online pornography policy that fail to include or address sex workers' realities have the potential to create serious harms to sex workers' occupational health and safety and at the same time, are unlikely to reach the stated goals of protecting women and survivors of sexual violence (1-2). Through West Coast LEAF's ongoing monitoring of the gender-based impact of COVID-19, the importance of digital environments for sex workers has only increased as many sex workers have had to pivot to or continue working online to support their economic and health and safety needs in the face of financial devastation unrecognized by the financial supports rolled out by federal or provincial governments (3).

The Research:

Recent Science & Policy Developments:

Empirical evidence has consistently highlighted that criminalization, policing and punitive regulation are the key drivers that continue to undermine sex workers' human and labour rights, including occupational health and safety (4-6). In 2013, the Supreme Court of Canada (SCC) ruled unanimously in *Canada (Attorney General) v Bedford*, 2013 SCC 72 that the criminalization of sex work under previous legislation to be unconstitutional, however new aspects of sex work were criminalized under the new "end-demand" laws implemented in 2014. Qualitative and epidemiological research shows that current end-demand sex work laws reproduce harms to workers, including increased violence and barriers to accessing justice and health and labour protections (7-12).

Further punitive restrictions to online sex work have the potential to compromise digital work environments that have been shown to be safer for sex workers (13-17). Online sex work and solicitation is a safer environment for workers when compared to street-based sex work and serves as a critical livelihood for many workers in the sex industry. In a context where most aspects of sex work are already criminalized, but where selling sex itself is legal per new end-demand laws, it is imperative that sex workers' occupational health and safety is considered when deliberating about online sex workspaces, including but not limited to Pornhub. To avoid further jeopardy to the online workplaces of sex workers, sex workers themselves must be consulted on decisions about how to organize websites that host sexually explicit content. Indeed, sex

workers are experts and can provide important insights on protection of privacy and consent. Moreover, proactively hearing from and responding to the concerns of sex workers on the very issues that impact their lives and livelihoods is essential to promoting access to justice for this population, recognized as facing particular stigma and challenges in accessing legal remedies (18,19) (see also, *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 (20)).

The evidence on punitive approaches to sex work

AESHA is a 10-year longitudinal community-based research project housed at the University of British Columbia and Simon Fraser University-affiliated CGSHE, that includes over 900 sex workers across diverse work environments. AESHA research adds to the growing body of evidence globally that highlights how the current approaches criminalizing sex work and punitive regulation and censorship of sexually explicit material harm sex workers by increasing risk of violence, jeopardizing occupational health and safety, and reducing income security.

- ***Harms of sex work criminalization.*** AESHA's research has highlighted the pivotal role of criminalization, policing and surveillance in shaping the health, safety and human rights of sex workers (7-10-9). Criminalization and policing disproportionately impact marginalized populations of sex workers, including racialized and Indigenous, im/migrant workers, trans sex workers and sex workers who use drugs (9-12), and are often determined by the socio-spatial features of sex work venues and locations (21-23). Canada's end demand laws perpetuate existing harms for sex workers, including elevated risk of violence, barriers to accessing justice and continued stigma and fear that prevent access to safe, secure housing, healthcare, and social protections (24-28). These harms disproportionately impact racialized, im/migrant sex workers, who are viewed categorically as victims of exploitation, but at the same time deemed unworthy of occupational protections (24-30).
- ***Online access is necessary for sex workers' safety, agency, and security.*** Digital tools used for solicitation, content distribution, client communication and violence reporting support sex workers' safety, by allowing for improved client screening, increased control and worker autonomy (13-15). Online censorship policies, punitive laws and increased surveillance jeopardize sex workers' access to these occupational health and safety strategies. Rather than increased punitive regulation AESHA's research demonstrates the need to remove barriers to access online spaces for sex work and access to digital technologies.
- ***Decriminalization, not heightened punitive regulation, is necessary to root out exploitation.*** As outlined by Canada's Justice Minister in a recent statement, the *Criminal Code* already includes sections specifically prohibiting the publishing and/or selling of sexually explicit material relating to children in a comprehensive way (section 163.1 child pornography), as well as voyeurism and the non-consensual distribution of intimate images, (sections 162, 162.1, 163) (29). Recommendations for more broad, punitive regulation which may conflate child pornography and non-consensual materials with sex work, in turn, work to undermine online sex workspaces. Additional regulation and censorship of online spaces where sex workers operate will further hinder sex workers' ability to work in safe conditions and is more likely to foster exploitation by pushing sex work further 'underground'. The evidence shows that decriminalization, and sex worker-led harm reduction strategies, rather than regulation or punitive approaches, are most effective in addressing trafficking, exploitation and violence in the context of sex work (30-32).

Policy Implications:

Despite being frequently positioned as serving to protect women, AESHA's findings indicate that the current broad discussion to further regulate online pornography fuels stigma against sex workers and violates sex workers' human rights by exacerbating risk for sex workers and communities already vulnerable to violence and exploitation. In other jurisdictions, such as the United States, further criminalization and regulation of online sex work has been found to be ineffective in discouraging trafficking or sexual violence but has proved to harm sex workers and pushed the industry further underground and outside the parameters of safe(r) online spaces (16, 17, 33). In line with the recommendations made by international policy bodies such as the World Health Organization, UNAIDS and Amnesty International (34-36), the above outlined peer-reviewed empirical evidence demonstrate the negative impacts of criminalization and punitive regulation on sex workers' occupational health and safety.

We urge the Standing Committee on Access to Information, Privacy and Ethics to consider the above outlined empirical evidence in their deliberations and make an evidence-based call to:

- **meaningfully consult with sex workers in any deliberations about online sexually explicit content**
- **refrain from implementing further punitive restrictions to regulate online sex work environments.**

About the AESHA Project at the CGSHE:

The Centre for Gender and Sexual Health Equity's Assessment of Sex Workers' Health Access (AESHA) Project is a 10-year longitudinal community-based research project that includes a quantitative cohort and qualitative/ethnographic arm. The CGSHE is a University of British Columbia and Simon Fraser University-affiliated research centre at Providence Health Care. 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). Over the past 5 years, the AESHA project 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 38 peer-reviewed articles and a recent report on the harms of end-demand legislation, which our team submitted to the federal Department of Justice and all MPs and Senators. Our team also leveraged AESHA findings 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 of the conflation between sex work and sex trafficking. AESHA is built on partnerships with SWUAV, SWAN, PACE, WISH, HIM/HUSTLE, Pivot, Canadian HIV/AIDS Legal Network, and the BCCDC. The Centre for Gender and Sexual Health Equity (CGSHE) has a strategic mandate to advance gender & sexual health equity among marginalized populations in BC, Canada, and globally through three pillars: research, policy, and practice. These pillars incorporate community-based, clinical and population health research, policy evaluation, implementation science and education.

About West Coast LEAF:

West Coast LEAF is dedicated to using the law as a strategy to work towards an equal and just society for all women and people who experience gender-based discrimination. Since our founding in 1985, we have helped bring about some of Canada's most important feminist victories for reproductive rights, workplace standards, fairness in family law, legal protections from sexual harassment, and more. In collaboration with community, West Coast LEAF uses litigation, law reform, and public legal education strategies to create social change. While we are focused on issues in British Columbia, we also take action in matters of national significance that are important to the equality and human rights of people in British Columbia. We aim to transform society by achieving access to healthcare; access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and the right to parent.

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