

I am representing Sex Professionals of Canada to ask for the expungement of historical criminal records of those convicted of the old and now defunct bawdy-house provision as it pertains to sex work.

In *Canada v Bedford, (Lebovitch and Scott)*, we challenged the bawdy-house law on the basis that the law infringed on our right to life, liberty and security of person, under section 7 of the Canadian Charter of Rights and Freedoms. We argued that the law caused significant harm to sex workers. On December 20, 2013 the Supreme Court of Canada agreed.

The bawdy-house legislation prevented even one woman or man from working out of their own home. That is the way many sex workers operated. We always feared being outed by neighbours, a disgruntled client or anyone else. Some of us had to put up with neighbours who, if they found out we were working, would try and use that information to blackmail us. We all did our best to stay under the radar, and in the closet so to speak. If we had a predator pretending to be a client, unless we thought our life was in danger we would not call the police. Reason being that often the sex worker would be investigated because according to police she or he was a criminal. Usually, sex workers were also charged with being an inmate as well as a keeper of a bawdy-house, even though she or he was the only person working there.

Keeping a Common Bawdy-house carried a two year sentence. The law also fell under the organized crime provision. If three or more sex workers worked at a location, the police could and did show up with moving vans. Sex worker's bank accounts were frozen along with any financial assets like RRSP's. They were left with the clothes on their backs. If convicted, everything they owned was forfeited to the Crown. Working together is better for safety, sharing of expenses, and for each other's company but the law prohibited us from working that way.

Another kind of situation where the bawdy-house law caused harm to our street based colleagues was identified in *Canada v Bedford*. As the Supreme Court of Canada stated in their ruling on our case: *"the bawdy-house prohibition prevents resort to safe houses, to which prostitutes working on the street can take clients. In Vancouver, for example, "Grandma's House" was established to support street workers in the Downtown Eastside, at about the same time as fears were growing that a serial killer was prowling the streets — fears which materialized in the notorious Robert Pickton. Street prostitutes — who the application judge found are largely the most vulnerable class of prostitutes, and who face an alarming amount of violence (para. 361) — were able to bring clients to Grandma's House. However, charges were laid under s. 210, and although the charges were eventually stayed — four years after they were laid — Grandma's House was shut down (supplementary affidavit of Dr. John Lowman, May 6, 2009, J.A.R., vol. 20, at p. 5744). For some prostitutes, particularly those who are destitute, safe houses such as Grandma's House may be critical. For these people, the ability to work in brothels or hire security, even if those activities were lawful, may be illusory". [para 64]*

In *Canada v Bedford*, the bawdy-house law was found to be "grossly disproportionate", and was invalidated. The Supreme Court of Canada when referring to Section 210 in our case stated: *"The harms identified by the courts below are grossly disproportionate to the deterrence of community disruption that is the object of the law. Parliament has the power to regulate against*

nuisances, but not at the cost of the health, safety and lives of prostitutes. A law that prevents street prostitutes from resorting to a safe haven such as Grandma's House while a suspected serial killer prowls the streets, is a law that has lost sight of its purpose". [para 136.]

The Conservative government of former Prime Minister Stephen Harper did not reintroduce the bawdy-house law, nor has the Liberal government of Prime Minister Justin Trudeau.

Therefore we respectfully request the following: That the criminal records for those convicted with Keeping a Common Bawdy-house be expunged. The criminal records for those convicted of being an Inmate of a Common Bawdy-house be expunged.

The definition for what is a Historically Unjust Conviction in Bill C-66 seems to be twofold:

A. The offence has been deemed unconstitutional contrary to the Charter

-The preamble of Bill C-66 states that if charges for the offence were laid today, "it would be inconsistent with the Canadian Charter of Rights and Freedoms."

Does Keeping and / or being an Inmate of a Common Bawdy-house pertaining to sex work, or prostitution meet the first test? On December 20, 2013, Keeping a Common Bawdy-house and being an Inmate as it pertains to sex work or prostitution was invalidated by Supreme Court of Canada. Therefore, if charges for the offence were laid today, the charges would be inconsistent with the Canadian Charter of Rights and Freedoms.

B. The offence no longer exists

-Section 23(2) of Bill C-66 states that the Governor in Council may only add another offence covered by the bill "if the activity no longer constitutes an offence under an act of Parliament..."

Does the offence of Keeping and / or being an Inmate of a Common Bawdy-house as it pertains to sex work exist today?

No, it does not. Does the activity of Keeping and / or being an Inmate of a Common Bawdy-house as it pertains to sex work constitute an offence under an act of Parliament?

No, it does not. The Protection of Communities and Exploited Persons Act did not reintroduce any part of the bawdy-house law pertaining to sex work or prostitution. Nor has the bawdy-house law been reconstituted or reintroduced for sex work or prostitution under any other act of Parliament.

It is next to impossible to obtain employment outside of sex work, if a person is tethered to a criminal record for sex work. In fact, it is even difficult to obtain a volunteer position with a criminal record.

The process for expungement and the destruction of documents raises serious concerns. First, Bill C-66 only mentions convictions for the specified acts. It is unclear if this also includes those who were found guilty, but were given a conditional or absolute discharge. These individuals may no longer have a criminal record, but documents relating to their charges may still be retained by various state agencies. We are aware that the federal government does not have

the jurisdiction to force local agencies to comply with an expungement, but section 18 of Bill C-66 establishes a process where such agencies are at least notified that the records should be removed.

Please ensure the expungement process includes those who received a discharge so that local police agencies and courthouses can be informed.

The Charter Statement on Bill C-66 indicates that the Parole Board “must expunge if there is no evidence that the applicable criteria are not satisfied and the activity in question is not otherwise prohibited under the Criminal Code.” While this may alleviate the requirement to provide documentary proof for an expungement, the bill provides no process to assist individuals in locating what documents state agencies may still have on file from a historically unjust charge. Such record searches are laborious and time-consuming, dependent on the applicant being familiar with record-keeping institutions and practices, and will require the applicant to make numerous FOI requests.

Please establish a process for the access and retrieval of all documents related to an applicant’s expungement.

Sections 17 and 19 of Bill C-66 instruct the RCMP and other relevant federal agencies to destroy historical documents related to an expungement. While we strongly agree with the need to ensure that these state-produced records can never be used against those who were charged, at the same time, their destruction goes against government policies related to record retention. Indeed, the bill explicitly overrides the *Library and Archives of Canada Act* and the *Privacy Act*. The retention of government records is integral to the democratic process as a way to check on the policies and practices of the state, and the means by which the histories of the sex worker and the LGBTQ2S+ communities, including the forms of state persecution directed at our communities, are preserved. There must be a clear process built into Bill C-66 to preserve documents, rather than simply having them destroyed. This recommendation has recently been endorsed by the Canadian Historical Association, the professional organization of historians in Canada, which also has serious concerns about Bill C-66 and the destruction of archival documents. (see references below)

Please amend sections 17 and 19 of Bill C-66 to prevent the destruction of expunged documents, and establish a process that strikes a balance between the protection of confidentiality and historic preservation.

We also request that the Senate urge the government to repeal the the Protection of Communities and Exploited Persons Act. PCEPA is a set of inconsistent laws, and it reproduces the harms of the old laws which were deemed to be contrary to the Charter.

Finally we urge this committee to expunge the historical records of our allies and friends, the LGBT2QS+ community who were convicted with sections of the bawdy-house law in raids on bars and bathhouses, including the notorious raids in Montreal and Toronto.

Thank you for your consideration.

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References:

Canada v Bedford. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

Keeping a Common Bawdy-house included in Organized Crime legislation:
<http://www.cbc.ca/news/politics/organized-crime-law-changes-unveiled-1.910802>

RCMP definition of Organized Crime: <http://www.rcmp-grc.gc.ca/soc-cgco/what-quoi-eng.htm>

Canadian Historical Association, “Open Letter re: Bill C-66” <http://www.cha-shc.ca/english/advocacy/the-cha-writes-to-the-honourable-scott-brison-to-express-its-concerns-regarding-bill-c-66.html#sthash.K8OrPzvv.x5R1hA6Q.dpbs>

Ryan Maloney, “Bill C-66: House Of Commons Passes Legislation To Expunge Gay-Sex Criminal Records – But some advocates and MPs say it doesn't go far enough,” Huffington Post http://www.huffingtonpost.ca/2017/12/14/bill-c-66-house-of-commons-passes-legislation-to-expunge-gay-sex-criminal-records_a_23307752/

Jim Bronskill, “Academics urge federal government to preserve same-sex criminal records as part of ‘historical record’,” National Post <http://nationalpost.com/news/politics/dont-destroy-gay-sex-records-historians-urge-as-feds-move-bill-through-commons>

197. (1) In this Part,

“common bawdy-house” means a place that is

(a) kept or occupied, or

(b) resorted to by one or more persons

for the purpose of prostitution or the practice of acts of indecency;

210. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) Every one who

(a) is an inmate of a common bawdy-house,

(b) is found, without lawful excuse, in a common bawdy-house, or

(c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house,

is guilty of an offence punishable on summary conviction.

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

(4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

Supreme Court of Canada ruling in *Canada v Bedford*. [para 16]

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>