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# “Well, It Should Be Changed for One, Because It’s Our Bodies”: Sex Workers’ Views on Canada’s Punitive Approach towards Sex Work

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**Abstract:** Background: The regulation of sex work is contentious in all countries, including for governments, the public, and sex workers themselves. Research shows sex workers’ perspectives are ignored during policy formation in most cases. This is despite the fact they have unique insider knowledge and are directly affected by the policies that are enacted. Methods: We analyzed the accounts of a heterogeneous sample of adult sex workers (N = 218) residing in different urban cities in Canada to find out their views on current laws and their recommendations for reform. The interviews were conducted in 2012–2013 prior to the implementation of the 2014 *Protection of Communities and Exploited Persons Act*. The paper thus provides an opportunity to compare the changes desired by Canadian sex workers with changes put into law by the Act. Results: Although the interview questions did not directly ask about the current legal system, 121 expressed an opinion. Three main themes emerged from the qualitative analysis: (1) the challenges that criminalization posed to sex workers; (2) the workers’ suggestions for legal reform; and (3) potential issues with legal reform. Conclusions: We discuss the contributions our qualitative findings make to the scholarship on sex work regulation and call for further research that includes sex workers’ voices in decision-making regarding changes to policies affecting their lives.

**Keywords:** sex workers; criminalization; decriminalization; regulation; prostitution; Canada

## 1. Introduction

The history of prostitution policy is marked by deep tensions among religious leaders, politicians, health professionals, feminists, sex worker activists and their allies. An enduring position prevalent across many jurisdictions at present is that purchasing sexual services is a crime that disrupts the order of a community, exploits vulnerable women and girls, and thus requires criminal code sanctions to dissuade people from engaging in it (Hayes-Smith and Shekarkhar 2010; McCarthy et al. 2012; Weitzer 2010). From this lens, sex workers are viewed as a homogeneous group who are oppressed and enslaved by sex buyers and managers and in need of rescue (for a critical assessment see O’Connell Davidson 2015). Indeed, until the 1990s, the prevailing view of initial involvement in sex work was the ‘drift into prostitution’ passively undergone by neglected and abused children and teens (Farley 2004; Miller 2002; Pheterson 1993; Stoltz et al. 2007; Vaddiparti et al. 2006; Wilson and Widom 2010). A competing philosophical view that was prominent during the feminist ‘sex wars’ in the late 1970s and early 1980s and continues to influence debate amongst feminists to this day is that the selling and buying of sexual services among consenting adults is a form of service work and thus should be removed from criminal law and permitted to operate like any other free market activity (Duggan and Hunter 1995).

Yet, as Jeffery and Sullivan state, while the dispute between these “philosophic approaches to prostitution is certainly widespread in the literature [ . . . ] it is not at all clear that the debate can be so neatly divided into these two philosophic perspectives” (Jeffrey and Sullivan 2009, p. 61). Weitzer places these two accounts on a continuum, with the ‘oppression’ hypothesis at one end and the ‘empowerment’ hypothesis at the other and proposes a ‘polymorphous’ paradigm that recognizes the diversity of life histories and personal circumstances that lead people to the sex industry (Weitzer 2010). Researchers are increasingly calling for a more nuanced understanding that draws insights from both paradigms to understand the diverse situations and experiences of sex workers, respects their heterogeneity, and seeks to understand the socio-economic and legal factors, including punitive laws which limit their life chances (Vanwesenbeeck 2001; Shaver 2005). Global agencies, such as Amnesty International (Amnesty International 2016) have echoed this call, appealing for evidence-based research on the actual lived experiences of sex workers, and how various criminal law and regulatory approaches impact their human rights and dignity (Nussbaum 1999; Young 1992). As Young argues, “[m]ore inclusion of and influence for currently under-represented social groups can help a society confront and find some remedies for structural social inequality” (Young 2000, p. 141). This paper takes up this call by presenting the accounts of a relatively large heterogeneous sample of Canadian sex workers to examine their views on current laws and recommendations for law reform. Three main themes emerged in the participants’ accounts: (1) the challenges criminalization posed to sex workers; (2) suggestions for legal reform; and (3) potential issues with legal reform.

### *1.1. National Policy Approaches to Regulating Prostitution*

There are three main regulatory approaches to sex work: criminalization; legalization; and decriminalization. With criminalization, the sale and purchase of sexual services and any associated activities are criminalized. This form of regulating sex work is the most common around the world. Some scholars argue criminalization overlooks the economic and social heterogeneity of the sex industry and results in a range of negative outcomes (Weitzer 2010), including increased arrests of sex workers and increased rates of physical and sexual violence against them (Deering et al. 2014). One form of criminalization is abolitionism (also referred to as the ‘Swedish model’ or ‘Nordic model’), which criminalizes the purchase but not the selling of sexual services. In 1999, Sweden introduced fines and imprisonment for up to six months for buying or attempting to buy sexual services anywhere in the country. The law is also extra-territorial: Swedish persons who purchase or attempt to purchase sexual services in other countries that have similar laws can be charged when they re-enter Sweden (Bindel and Kelly 2003).

Legalization is defined by Weitzer as “legislation that provides mechanisms for government regulation of paid sex transactions after prostitution has been decriminalized” (Weitzer 2012, p. 76). Legalization assumes sex work is an ‘unfortunate’ part of society that cannot be eradicated through criminalization, and thus should be subjected to strict regulation by the state (Brents and Hausbeck 2005). For several regions currently utilizing the legalized method, this means implementing mandatory health testing for those wishing to enter and maintain work in the sex industry, control over the location of sex work businesses, and licensing (Bruckert and Hannem 2013). Those working in the sex industry are subjected to mandatory health testing on a frequent basis, and discourses of health and cleanliness are pervasive (Brents and Hausbeck 2005; Sullivan 2008). Analysis of legalized brothels in Nevada has shown some positive outcomes for sex workers; most notably, the ability to freely screen clients and negotiate payment, which ensures all parties agree to the terms of the transaction, and any deviations are generally not tolerated by management (Brents and Hausbeck 2005). However, legalization does not solve all problems. Exploitation of workers is still possible as brothel managers can categorize their workers as sub-contractors rather than employees in order to deny them full labor rights or benefits (Jeffrey and Sullivan 2009); further, aspects of manager control are not regulated under the legalized setting, such as limiting or restricting the movements of employees outside of the brothel (Brents and Hausbeck 2005). A further unintended consequence of legalized regimes has been

the creation of separate ‘classes’ of sex workers comprised of those who are licensed and thus subjected to the regulation and surveillance of the state, and those who do not possess a license and are thus ‘under the radar’; more vulnerable and marginalized workers often fall into the unlicensed category that renders them much less visible to the state and to services, including underage workers, ‘illegal’ migrants, and those being coerced or forced into the work (Katsulis et al. 2010; Outshoorn 2012).

Decriminalization involves the removal of selling and buying of sexual services and related activities from criminal codes. Under decriminalization, regulation of the sale of sexual services is present, but often moves to the local or municipal level, frequently through a nexus of non-sex-work-specific laws and codes. In 2003, New Zealand passed the Prostitution Reform Act (PRA), with the aim to improve the working conditions, health and safety of sex workers (Comte 2014). The revised law allows adults to sell from their own homes, in brothels, and from the street and other unregulated spaces; it also allows up to four workers to sell services from a shared space without requiring a brothel license. Nevertheless, in cities such as Auckland, bylaws have been passed prohibiting sex workers from advertising on the street and banning brothels from certain neighborhoods (McCarthy et al. 2012). Longitudinal evidence shows the PRA has been effective at increasing the health and safety of workers. At the same time, the number of workers has not increased (Abel 2011; 2014a; 2014b).

New Zealand is one of the few countries in recent times to use social science evidence to inform its 2003 policy decision, including feedback from diverse workers and genuine involvement of the national sex worker organization, the New Zealand Prostitutes’ Collective. In most other countries, prostitution policy is best understood as a legal fiction—driven by moral assumptions and not empirical evidence (Hayes-Smith and Shekarkhar 2010). Especially disturbing is the lack of consultations with active sex workers about whether a particular policy approach improves their health and safety and enhances their social inclusion in institutions and systems (Bruckert and Hannem 2013; Johnson 2015; Van Der Meulen 2010; Hudson and Meulen 2013; Pitcher and Wijers 2014).

Complicating matters further, policymakers in the last decade have increasingly conflated sex work with human trafficking (O’Connell Davidson 2015; McCarthy 2014). According to the Center for Health and Gender Equity (CHANGE), a non-profit USA-based agency dedicated to sexual and reproductive rights, “conflating human trafficking with prostitution results in ineffective anti-trafficking efforts and human rights violations because domestic policing efforts focus on shutting down brothels and arresting sex workers, rather than targeting the more elusive traffickers”. (Center for Health and Gender Equity CHANGE, p. 4). Likewise, Amnesty International argues that ‘sex work’ encompasses consensual activities between adults; whereas, ‘human trafficking’ involves exploitation via means such as threats, abuse of power or fraud (Amnesty International 2016). The reliance on what Bernstein (Bernstein 2010) refers to as evangelical feminist discourses that present sex workers as women and girls who are trafficked and thus in need of rescue with sex buyers punished, leads to a partial understanding of how risks are either minimized or exacerbated by policy (Bruckert and Hannem 2013; Johnson 2015). Canada’s recent policy turn is no exception in this regard.

### 1.2. Canada’s Recent Policy Approach to Regulating Prostitution

Canada’s laws related to prostitution have, as in most other countries, been driven more by ideology than empirical evidence, including the dominant ideology that conflates sex work with human trafficking (Jeffrey and Sullivan 2009; Shaver 2005; Bernstein 2010; Shaver 1994; Hallgrimsdottir et al. 2006; Baker 2015; Andrijasevic and Mai 2016). The exchange of money for sexual services has never been illegal in Canada, but the laws surrounding prostitution made it near impossible to conduct sex work without breaking a law. Prior to 2010, it was a criminal offense to keep or be found in a common bawdy house (Section 210(1)), live on the avails of prostitution—as in anyone who receives a monetary benefit via prostitution (Section 212(1)(j))—and communicate for the purposes of prostitution (Section 213(1)(c)). These laws were challenged in 2010 in the Ontario Supreme Court—three plaintiffs, Terri-Jean Bedford, Amy Lebovitch and Valerie Scott (all current or former sex workers), argued that certain sections of the Canadian *Criminal Code* for prostitution-related offences

violated their rights. Drawing upon a large body of social science and legal evidence (including by the authors), Ontario Supreme Court Justice Susan Himel struck down the three sections stating they deprived sellers of their ‘security of the person’ and ‘liberty interests,’ and increased their risk to be victimized. Moreover, Justice Himel ruled that the laws operate in a manner that is inconsistent with the principles of fundamental justice and individual rights laid out in Canada’s *Charter of Rights and Freedoms*.

After a series of appeals, the case was finally heard by the Supreme Court of Canada (SCC) in 2013 (indexed as *Canada v. Bedford*). The SCC unanimously ruled in favor of the plaintiffs, stating the three challenged sections violated Section 7 of the *Charter*. The SCC ruled:

The three impugned provisions, primarily concerned with preventing public nuisance as well as the exploitation of prostitutes, do not pass *Charter* muster, they infringe the s. 7 rights of prostitutes by depriving them of security of the person in a manner that is not in accordance with the principles of fundamental justice.

([*Bedford v. Canada* 2013,] p. 1104)<sup>1</sup>

The SCC decision in *Bedford* was a rare occasion in the history of Canadian prostitution policy development that was informed by research from a ‘realist’ perspective (Dunn et al. 2013) that carefully weighed all of the available evidence—ranging from advocates for the status quo to those for removing prostitution completely from Canada’s *Criminal Code* to others arguing something in-between. Crucially, *Bedford* and the SCC decision paid serious attention to evidence provided by active and experiential sex workers, sex worker organizations and allied agencies serving sex workers in their communities, legal scholars, and social science researchers whose empirical findings showed that sex work, much like other forms of marginalized work, involves the interplay between structure and agency in workers’ lives (Bungay et al. 2011; Benoit et al. forthcoming). The SCC decision in *Bedford* created a policy window for new regulation that would normalize sex work and improve sex workers’ ability to protect their health and safety on the job and reduce prostitution stigma, both in health and protective services and society at large (Abel 2011; Benoit et al. 2015a; Benoit et al. 2015b). Such regulation would also address the specific concerns of sex workers who wish to leave this work (Abel et al. 2009).

The SCC ruled the prostitution laws stay in effect for one year; afterwards, the sections would be removed from the *Criminal Code*. Thus, if it chose, the Government of Canada had one year to amend new laws and/or develop regulations that would comply with the *Charter*. In response to *Bedford*, the government under the Conservative Party enacted Bill C-36, which legislated the *Protection of Communities and Exploited Persons Act* (PCEPA).

In the developmental phase of Bill C-36, the government solicited public input into the new laws, collecting over 30,000 responses to a set of questions posed via a dedicated website (Department of Justice Canada 2014a). The government claimed the public input was used as support in the Bill’s development. As noted in its technical paper, Bill C-36 made a ‘transformational shift’ from the position taken by SCC decision in *Bedford*:

Bill C-36 reflects a significant paradigm shift away from the treatment of prostitution as “nuisance”, as found by the Supreme Court of Canada in *Bedford*, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls.

(Department of Justice Canada 2014b, p. 3)

A range of evidence, including evidence-based briefing notes and open letters, was submitted to Department of Justice Canada from active sex workers, sex worker organizations, and legal scholars and social scientists (including the authors), and some appeared as witnesses before the

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<sup>1</sup> *Bedford v. Canada* [2013], R.S. C. 2013, SCC 72.

federal committee concerning Bill C-36 (i.e., Standing Committee on Justice and Human Rights). These submissions were based on robust research by experts, as well as direct anecdotal evidence from sex workers themselves and should have been forefront in the development of Bill C-36. But, unlike the SCC decision in *Bedford*, policymakers among the majority Conservative government appeared primarily concerned with pleasing their constituents and hearing evidence from advocates of the 'Swedish model' banning the purchase of sex (Dodillet and Östergren 2011). Our experience outlined below is a case in point.

In September 2014, the lead author and her research team convened a two-day international symposium and policy workshop meeting in Ottawa, timed to coincide with Parliamentary debate of Bill C-36. Government representatives from all political parties as well as relevant government ministries (health, justice, etc.) were formally invited in writing by the first author to this symposium. Many said they were busy or did not respond. In the end, three Members of Parliament, (MP), Randall Garrison (opposition critic for public safety, New Democratic Party of Canada), Elizabeth May, (Leader, Green Party of Canada), and Carolyn Bennett (Liberal Party of Canada) attended in person, as well as senior researchers from Public Safety Canada and Health Canada. No MP was present from the Conservative Party, the majority government at the time. Prior to the Ottawa event, the team widely circulated a working paper (Benoit et al. 2014) around parliament and to all invited guests based on analysis of data from their first multi-city study (Canadian Institutes of Health Research, Team Grant 2011-16) of Canadian sex workers (N = 218) that directly challenged the premise of Bill C-36; the findings presented showed sex workers are a heterogeneous population with diverse backgrounds and experiences. These results implied a criminalization approach to policing sex work was not justified and unlikely to be uniformly effective. The findings were showcased at the Ottawa event, which included representatives of sex worker organizations and academics from Canada and abroad, government officials, policy makers, police chiefs, healthcare providers, members of faith communities and journalists. The event received widespread coverage in daily and weekly newspapers, magazines, radio and electronic media but did not convince enough members of Parliament and Senate to oppose Bill C-36, which made the PCEPA law in December 2014.

According to this new legal framework, sex workers may: provide sexual services at fixed indoor locations; communicate with others for the purpose of offering or providing sexual services for consideration so long as this communication does not occur in a public place that is next to a school ground, playground, or daycare center; advertise their own sexual services; and pay for services with profits from the sale of their own sexual services (e.g., accounting, security) when that compensation is proportionate to the service offered. While the *Criminal Code* amendments enacted in PCEPA effectively permit many sex work-related activities, they make it illegal for clients to obtain sexual services in any venue or to communicate in any place—public or private—for the purpose of obtaining sexual services for consideration. Moreover, it is now illegal for newspaper/magazine publishers, website administrators and web-hosting services to publish advertisements for any sexual services.

As was the recent case for Canada and despite the availability of reliable evidence from active sex workers, sex worker organizations and social scientists researching the lived experiences of sex workers, over time and place, policymakers largely fail to take into account the *diverse* circumstances and perspectives of sex workers in forming policy, the population directly affected by such policies and who have important insider knowledge into the intended and unintended ways in which the laws affect them (Bruckert and Hannem 2013; Johnson 2015; Hudson and Meulen 2013; Pitcher and Wijers 2014; Ngugi et al. 2011). This is no easy task due to the challenges of research and collecting evidence on sex workers operating in criminalized and highly stigmatized environments (Weitzer 2010).

Below we present what a relatively large diverse sample of Canadian sex workers—who vary along many dimensions, including by age, gender, race, and work location—told us about their views on current laws and recommendations for policy change, albeit in more detail than at the Ottawa event. They tell us that they recognize and want to ameliorate the ways in which criminalization compromises their occupational health and safety. Most participants recommend



decriminalization with occupational health and safety regulation in place, much like other occupations in Canadian society.

## 2. Material and Methods

### 2.1. The Study

This study is part of a larger community-engaged project examining the perspectives and experiences of five groups in the sex industry: sex workers; sex workers' intimate partners; sex purchasers; managers of sex workers; and police and other service providers. The analysis for this paper represents the sex worker portion of the project, which comprises questionnaire and interview data collected from 218 adult sex workers in Canada. Ethics approval was obtained at the University of Victoria, Canada.

Collaborators included sex worker-led organizations, outreach agencies and public health or human rights groups. Collaborators assisted in designing the multi-project study, helped with recruitment of participants and supported interpretation of the findings. Sex workers, the focus of the present article, were age of majority (at least 19 years old), legally able to work in Canada and received money in exchange for in-person sexual services on at least 15 different occasions in the previous 12 months. The age threshold was chosen out of interest in recruiting participants who would be subject to potential conviction as adults under the *Criminal Code*. The work frequency threshold was determined to only include those who engaged in sex work on at least a part-time regular basis.

Our objective was to obtain as broad a cross-section of sex workers as possible (given time and budget constraints), representing the diversity of social, political, and cultural contexts that are likely to condition the organization and practices relating to the industry in Canada. In order to achieve this objective, we chose six Census Metropolitan Areas (CMAs) out of a sample of 93 CMAs that provided a fair representation of Canada's overall census measures, such as population size or education levels. The six research sites were: St. John's, Newfoundland; Montréal, Québec; Kitchener-Waterloo-Cambridge, Ontario; Wood Buffalo (Fort McMurray), Alberta; Calgary, Alberta; and Victoria, British Columbia.

As with other hidden populations, it is not possible to collect a statistically representative sample of the population of sex workers. As noted by [Weitzer \(2010\)](#), there are no listings of entire populations of sex workers and the best approach is purposive sampling in many geographical regions, and from different types of sex work, which our study employed. For this study, various purposive sampling techniques were utilized, including: phone calls and emails directly to escorts via their advertisements online or in directories; recruitment through advertisements in newspapers, on relevant websites, in social support offices and health clinics; hiring sex workers as experiential research assistants; and respondent-driven sampling. Our sampling strategies were continuously adjusted in order to balance the number of participants through each sampling strategy. The final sample consisted of 218 participants. Recruitment was challenging in the Wood Buffalo (Fort McMurray) CMA because sex workers tend to travel to, rather than reside in, the area for work—this restricted the time for both recruitment and conducting interviews. In the end, we feel that our sample of sex workers is one of the most comprehensive to be found in the Canadian research literature. Regardless of a limited sample in Wood Buffalo, we are reasonably confident that we have good representation based on various social and economic characteristics.

Development of the research instrument included active involvement with community partners. The majority of the interviews were conducted by the first and second authors, with the remainder conducted by trained research assistants. All interviewers underwent training to help maintain data quality and to mitigate reporting bias. Interviews took an average of 90 min to administer, including the close-ended and open-ended questions. All participants received an honorarium of \$60 CAD. Interviews conducted in French were translated into English prior to analysis. The present analysis

focuses on sex workers' accounts from an open-ended question pertaining to perceived impact(s) of the law on their working lives, in addition to any recommendations for legal reform.

## 2.2. Data Analysis

The interviews were conducted between November 2012 and December 2013, which was before the PCEPA became law.

We examined responses to the following question, which preceded open-ended probes: *What do you know about the laws surrounding sex work?* Interviewers' probes included whether participants thought their work was illegal or not, whether the law had any impact on their work, and whether the law impacted their personal relationships. Although the interview question did not directly ask about participants' desire for legal reform, the timing of the interviews meant many participants were aware of the *Bedford* case and this sparked discussions of their opinions on legal reform during the interviews.

There were 20 participants missing answers to this qualitative question because they did not wish to be recorded, completed only a portion of the interview, due to poor audio quality or the interviewer mistakenly skipping the question. The coding process followed Braun and Clarke's steps of thematic analysis (Braun and Clarke 2006). The third and fourth authors separately conducted initial coding and the first two authors independently developed preliminary coding schemes based on analysis of a random subsample of the transcripts. Coding among the four authors was then compared and consensus on a coding framework was achieved. The fourth author applied this coding structure to the entire set of transcripts and the third author checked the final coding. Based on responses from reviewers, the third author nuanced the coding to better present the scope and quality of the data. All authors contributed to the data analysis, drafting of the initial manuscript, and read and approved the final version, ensuring reliability and consensus. Pseudonyms were assigned to participants when using their quotes below to ensure confidentiality.

## 3. Results

### 3.1. Demographic Profile

The mean age of participants in this study was 34, ranging from 19 to 61 years. Seventy-six per cent of the sample were women, 17 percent were men and 7 percent were either transgender or indicated a different sex-assigned-at-birth. Nineteen percent of participants identified as Aboriginal, 12 percent of a visible minority, and 12 percent indicated they were born outside of Canada.

Median personal income among participants was \$39,500 CAD, which is higher than the Canadian general population in the year the data was collected (2013) at \$32,020 CAD (Statistics Canada 2016). The proportion of participants who had completed high school or equivalent was 70 percent. Twenty-eight percent indicated they were either married or common law. Additionally, 39 percent reported they had financial dependents (either child or adult dependents).

We categorized participants' work type based on questions regarding work location, advertising location and supervision. Sixty percent of the participants engaged primarily in independent indoor work, 19 percent in managed indoor work, and the remaining engaged in independent street-based work. The number of years in the sex industry ranged from less than one year to 34 years, with a median of 6.8 and mean of 9.7 years.

As reported in our previous analyses (Benoit et al. 2016a; Benoit et al. 2016b), sex workers in this sample reported higher unmet health care needs (40.4% vs. 14.9% with unmet needs) and have significantly lower levels of confidence in the police (63% vs. 15% report 'not very much' or 'no confidence at all' in the police) compared to other Canadians. This prior research noted that stigma, discrimination and criminalization all likely factored in to these poor outcomes for sex workers.

### 3.2. Thematic Analysis

Although the interview question did not directly ask about opinions or recommendations to the current legal system, 121 participants out of the available 198 transcripts discussed the impact that criminalization had on their work and/or expressed an opinion on law reform. It is not surprising that a limited number of participants expressed an opinion because many had inaccurate understandings of the laws (both municipal and federal) and, additionally, awareness of the recent *Bedford* decision may have caused confusion of what was currently illegal about their work.

Three main themes emerged from the qualitative analysis: (1) the challenges that criminalization posed to sex workers prior to the *Bedford* decision; (2) the workers' suggestions for legal reform; and (3) potential issues with legal reform.

#### 3.2.1. Theme One: Challenges of Criminalization: "They Make It Very Hard for People to be Safe"

Participants in this study provided valuable insight into the challenges they faced under a criminalized legal framework. This included uncertainty over what behaviors and groups the laws and law enforcement were targeting, antagonistic relationships to protective services that compromised workers' health and safety, and difficulties around accessing municipal licensing and having a criminal record.

One of the main challenges that many workers had with the existing punitive laws in 2012–2013 was that they were unclear, difficult to comprehend and contained numerous 'grey areas' which left considerable discretion in the hands of law enforcement regarding interpretations of who could be charged and under what circumstances. Brianna described this lack of clarity in relation to the 'communication in public' and 'living on the avails' sections:

That's kind of where the grey area is, what's public and what's not. Like is the internet a public place? So there's a lot of grey area that's really hard to understand [ . . . ] like if you live with a partner, are they guilty of that [living on the avails]? That's kind of grey area too I think. So, it's all very convoluted.

Jaqueline questioned the rationale behind the *Criminal Code* laws as they seemed to contradict themselves at times, and did little to support consenting adults who wish to make a living in the industry:

I don't know much because it's very confusing. They tell you that you can do this, but, on the other side, you can't. Like okay. You can do escort service, but you can't advertise. So how you going to work if you can't advertise? For any type of job or business, you have to advertise to make money. [ . . . ] So how am I supposed? You don't want me soliciting on the street.

Participants also spoke about how the laws were differentially applied by law enforcement, resulting in a lack of action to protect people in the industry who are being genuinely harmed. Some participants perceived that the 'living on the avails' law was unnecessarily strict towards workers and their appropriate supervisors or support people (e.g., security personnel), but perceived as loosely applied, if at all, towards oppressive parties, referred to as "pimps" in some participant accounts, who were forcing workers to sell sexual services against their will. Jasmine described:

Criminal laws I think, the real laws, they are not applying them and they should, you know. That is what sickens me. They will use small insignificant laws when people work professionally and adult work [ . . . ] but you know sexual slavery is going on and they don't do anything about it because they waste their time going after small agencies that run well.

One of the more troubling consequences that criminalization of elements of sex work had on workers was the frequently antagonistic and alienated relationship with police services. Police officers



were seen as threats by a number of participants due to their role in implementing *Criminal Code* sanctions against them and co-workers. Gayle noted: “I don’t think we should have to, or I should have to, worry or look over my shoulders for cops, or worry if it’s a cop on the other line talking to me”. The antagonism between sex workers and police services due to criminalization resulted in some workers feeling alienated from accessing police services and feeling particularly vulnerable to victimization, as Hilda described:

As far as it’s not legal, we always try to hide. We don’t have the confidence to, to think that we can get help from the people around us [ . . . ] people take advantage of the fact that you do something hidden, illegal.

This antagonist relationship with police services was often directly linked to the diminishment of occupational health and safety. Mandy described how working in a safer environment—her home—opened her up to potential criminal charges: “I feel really safe in my house, and yet that’s the most illegal kind of work that I do, so that’s hard”. This was echoed by Margaret who observed that the ‘bawdy house’ provision left workers choosing between more dangerous working conditions or being criminalized if they were caught:

They make it very hard for people to be safe. What I know is that you’re not supposed to work out of the same place, which I do, so I am breaking the law on that. I realize that. But, to work out of a hotel or anything is unfamiliar surroundings, and it’s just not safe.

A few participants spoke of how the criminalization of the sex industry inhibits sexual health due to the wish to avoid appearing as a ‘sex-related’ business. Safe sex supplies such as condoms may be limited or hidden out of fear of police raids and using such supplies as evidence of illicit activity: “[Management says] ‘Don’t leave condoms in the bedroom’ in case the police did come in and say worse came to worse, they raid the rooms. You can have a lot of trouble for just having condoms in the bedroom” (Melissa).

Less frequently noted challenges associated with criminalization included difficulties in accessing municipal licenses and having opportunities outside of the industry become limited by criminal records. Some participants wondered why municipalities across Canada even offered licensing options for escorts and sex work businesses. Their reasoning was that the *Criminal Code* sections still applied and could technically be used against those with municipal licenses. Lena related: “If you’re working at a massage parlor, which is technically illegal, which they raid sometimes and you’re like ‘come on I have to pay a license for illegal activity,’ it’s weird”. This inherent conflict between handing out licenses while retaining existing *Criminal Code* laws and the benefit to licensed individuals was questioned by participants such as Layla:

Why am I giving you my personal information when you can still arrest me, and secondly, if I have your license and I get pulled over and it’s some dodgy dink who pulls me over on the highway, he can see I have an adult license. If he chooses to be an asshole, you think he’s going to be any nicer to me on the side of the highway? No.

Beyond this perceived lack of benefit to the worker, municipal licenses under criminalization were also difficult to access for many workers due to the high costs charged by municipalities, and the requirement that the worker have no criminal record. As Elsie put it: “You could probably get it all started up and going for maybe two grand. But you do have to have the background check and criminal and all of that, right, so. Not an option for me”. Summer faced similar difficulties: “Once I got a prostitution charge I couldn’t get a license again”. Having a criminal record was also a challenge for workers who had been charged with prostitution-related offences and wished to leave the sex industry; in these situations, criminal records became linked to keeping workers in the industry due to a lack of opportunities for those convicted of crimes in other jobs. This was the case for Maia:

Well, more in the sense of having a criminal record because of it. It causes a lot of problems. With job offers, at one point, I didn't know what to do...to put or not that I have a record, they will...It's either I'm lying or if I don't say anything maybe they won't know. This is stigmatization, you know, it remains. If you get stopped for a ticket they have it in their file. You are always afraid that it will come out. You can say that it follows you all the time.

The challenges with criminalization identified by our participants highlighted the link between punitive legal frameworks and compromises in worker safety, legitimacy and access to protective services. Many participants had insights into how these issues associated with criminalization could be remedied through legal reform.

### 3.2.2. Theme Two: Suggestions for Legal Reform; "It's Not Like Being a Doctor or Lawyer, but at Least It Would Be Recognized as a Job"

Suggestions for an alternative legal framework were offered by a number of participants who said they were unsatisfied with the criminalized model of regulation, and recommended steps to remedy the issues faced by sex workers in relation to criminalization.

Almost all of the participants who offered up opinions on the sex work-related laws made the case for removing laws that rendered their consensual work, *de facto*, illegal. Among these opinions, there was a mix of views touching on elements of their health and safety, legitimacy as citizens, access to protective services and their individual agency. The accounts of Violet, Kate and Cathy demonstrated how sex workers should be allowed to exercise their agency and be in full control of their bodies:

Well it should be changed for one, because it's our bodies. Who are they to say if we can or can't sell our bodies.

(Violet)

It's my prerogative if I want to sell my body for sex. How is that against the law? I don't understand that. It's my choice to sell my body to whoever, right?

(Kate)

Everybody eats, so we can buy food. Everybody sleeps, we can buy beds and hotels. Everybody has sex, so why can't we say that we're paying for sex? [ . . . ] There are risks if you're going to work at Wendy's, you could get burned with the oil, right. Everybody takes risks, everybody takes precautions for those risks.

(Cathy)

Cathy draws an important connection that was echoed by a number of other participants in comparing sex work to other types of work that may or may not pose potential risks for the workers. Justine noted that:

If I could actually run it like a real business and it was legal, you know, then I could, you know, run it like a real business. Like advertising, I wouldn't have to hide out in my, in this building. I could have a place, like an actual business place. [ . . . ] if I run it like a real business I could have somebody answer phones for me, I could do screening. I could do all that because it would be the norm.

It was suggested by some participants that the type of regulation that would be appropriate in the case of sex work is found within the decriminalized framework, where sex work would be regulated like other low-prestige service jobs and held to the same minimum labor standards. As Sandra states, sex work "would be looked as, you know . . . it's not like being a doctor or lawyer, but at least it would be recognized as a job". Participants noted that under a decriminalized framework, sex work could be regulated using existing occupational health and safety guidelines that govern other types of personal service work, as Whitney put it:

I have to be checked for disease, to be in the cook industry. And they very—if you going be in the—with childcare, or school. You have to be checked. And you have a special book, and they will not even let you work if you don't have that stuff from your—the doctor. It should be same thing.

[for sex work]

This type of legal reform was perceived by participants as being accompanied by a host of benefits, many of which directly addressed the challenges presented by the criminalization model adopted in Canada before the enactment of the PCEPA. The most important of these was related to health and safety of the workers which was believed to greatly improve under a decriminalized framework. Participants felt that eliminating prohibitions against consensual adult sex work would mean that “it would change the way I work and how scared I feel. Like, I don't want to feel scared when I'm potentially seeing a client, that it's the police” (Mandy). Tyler contended that removal of the fear of arrest posed by criminalization could result in workers reaching out to police services more frequently: “I think she would call the police more often. Because she would feel that police can offer her protection”. Other participants, such as Cora, felt that “decriminalization is huge, in terms of like reducing stigma towards workers and enabling us to seek services without fear of being penalized”.

Beyond the ability to access protective services, removing consensual adult sex work from the *Criminal Code* and regulating it like other forms of labor in Canadian society would allow for more stringent safety measures to be put in place for the well-being of the workers. As Alice recounted, allowing for indoor sex work venues (previously characterized as ‘bawdy-houses’) could increase safety because security could be present:

Like if you're going to do it, do it here. Like they'll set up places for you or, you know, make it . . . so that people can have access to security whether it's police or like just a security that they feel safe in doing it; safe for the client, safe for the customer—you know, everybody.

Participants spoke of how the ‘bawdy house’ law restricted their ability to deliver services indoors. If ‘bawdy houses’ were allowed, sex work could be legally conducted indoors, which was important for creating enough time for them to properly screen clients, record pertinent information, and secure their work environment. Kellie related how indoor work can facilitate client screening:

Everything we need to actually have in place, like, if you want, like I said, good clientele, you got to be able to check them. Just as much as they check us; we got to be able to make sure we're safe, they got to be able to make sure they're safe, it's a mutual understanding and then you meet in the middle.

Similarly, Delia stated: “They need to make it so that you can legally do it indoors, anywhere. Because if you can do it in your own home [ . . . ] you're able to take your preventative measures”.

Participants were also aware of the requirement of having to pay into beneficial government programs (such as Employment Insurance and Canada Pension Plan) under a decriminalized or legalized legal system. They observed that the government could benefit through increased tax revenues on sex work activities. Pearl noted: “I would love to pay taxes. Because with taxes there's an awful lot of good things, too”. Other potential benefits of this policy direction noted by participants was increased social inclusion, which involved having to pay taxes but also availing of the benefits of citizenship enjoyed by other Canadians. As Jackie put it: “If I could claim my income I could own a house now, because I definitely have the income and means to support a household. But I can't”.

An important caveat that many participants noted in their discussions of legal reform was the need to carefully delineate between consensual sex work occurring between adults compared to workers who are being forced, coerced or trafficked (including those who are underage) (O'Connell Davidson 2015; Amnesty International 2016; Brents and Hausbeck 2005; Bruckert and Hannem 2013). As was noted above in the challenges of criminalization theme, there was a perception

among some participants that law enforcement spent a disproportionate amount of time applying *Criminal Code* laws to the former group, when their attention should be directed towards the latter. This type of enforcement under a criminalized framework led some participants, such as Elena and Rochelle quoted below, to speak of the need for legal reform to differentiate between workers who want to be in the industry versus workers who do not, challenging the recent conflation of sex work and human trafficking:

But then you have to . . . you have to look at it from the people that want to work and the people that are being forced to. Or, it's a different story. So, I can understand why those laws are there, for the girls that are being trafficked and not wanting to be there, but there's also the girls that are choosing to do that.

(Elena)

I think the people that don't want to be in this industry, really, like just the trade, should be helped. Like the people that are forced, there are people who are human trafficked that come here, or even like the women that are like, said "Oh you're going to have a good job" and then they're working in the massage parlor. Like those women, they should be helped. But the women that want to be doing it—let them do it.

(Rochelle)

What much of the discussion among participants was centered around, if not explicitly stated, was that the role of the law should be to identify those who are in the industry without consent (i.e., through being forced, coerced or trafficked) and target their oppressors through sanctions that are already in place in the *Criminal Code*, while supporting the agency of those who are in the industry consensually.

### 3.2.3. Theme 3: Potential Issues with Legal Reform: "By Making Things Legal, You also Devalue Them"

It is important to note that not all participants were strong advocates for regulatory change that would be entirely tolerant of sex work. A small number of participants identified new challenges for workers that could be posed by bringing in a decriminalized framework to regulate the sex industry. These challenges were almost exclusively centered on financial concerns. There was apprehension that legal reform would lower the going market price for sexual services because more workers would enter the industry and current workers would have to lower their prices because the services offered would no longer carry a legal risk. Lena expressed her worry this way: "I have my doubts about it, because by making things legal you also devalue them".

Other concerns focused on the possibility that business licenses would be too expensive, raising overhead costs. Participants also recognized that legal reform could result in an increase in their tax burden, as noted by Marilyn: "I quite like it the way it is, because when I try to figure out my income [laughs] sorry, but . . . I don't want to pay taxes with my money, thank you". Clara and Marsha were both ambivalent regarding the potential tradeoff between decreased profits and increased safety:

A part of me is reluctant to see the laws change just because it will change the face of our rates structure, but the other part of me is pushing for it because it's so hard for a lot of us to feel safe in anything.

(Clara)

If they legalized it they could actually ask for taxes on it [ . . . ] that might be a downside because then you're losing money, but at the same time, you're safer if they know exactly what you're doing. So I don't know.

(Marsha)

The accounts among this sample show the conflict between desiring more occupational health and safety assurances and having concerns regarding the devaluation of services and decreased profits. This indicates that decriminalization is a complex matter, in that opinions regarding its application were not wholly positive among our participants.

#### 4. Discussion and Conclusions

Prostitution policies across the political spectrum continue to be largely driven by ideology, and serve as a prime example of 'morality politics' (Wagenaar 2017). This absence of empirical evidence by which to judge the effectiveness of regulatory frameworks—criminalization, legalization or decriminalization—renders their impact on the lives of sex workers immune to critique. As a vulnerable occupational group, sex workers have very limited opportunity to challenge these politicized approaches, in part because the clandestine and sometimes criminalized nature of their work activities leaves them unlikely to engage with mediums of public communication nor join sex worker organizations. Social science research that manages to capture the voices of sex workers on what they want in regard to regulation of their work is both germane and timely, something Young (1992) has called for regarding other marginalized populations who continue to be underrepresented even in democratic countries.

Our qualitative findings contribute to the small body of literature that sets out to capture sex workers' diverse personal views on legal reform relating to the sex industry (Lutnick and Cohan 2009; Begum et al. 2013). Similar to what has been reported in a few other Canadian studies (Lutnick and Cohan 2009; Jeffrey and Macdonald 2006; O'Doherty 2011), most of our participants who expressed an opinion on Canada's prostitution laws supported removing adult consensual sex work from the *Criminal Code*. Even though the exchange of sex for money was not technically illegal at the time of our study, criminal provisions surrounding the activity, from their view, created dangerous conditions for sex workers, and hindered access to police protection for the majority of workers. Further, uncertainty over the significant grey areas in the law and the discretion utilized in the enforcement of these laws meant that many participants felt uneasy about their legal status and what they could do to safeguard themselves against criminalization. As Amnesty International observes often happens under criminalization (Amnesty International 2016), sex workers in our sample noted that law enforcement directed attention towards brothels and independent workers as opposed to human traffickers and those exploiting others within the industry. Our participants, echoing the call of international agencies and researchers (O'Connell Davidson 2015; Amnesty International 2016; Bruckert and Hannem 2013; Johnson 2015; Center for Health and Gender Equity CHANGE), argued Canada's trafficking laws should be better enforced, but that commercial sex between consenting adults should not be criminalized.

In response to these significant challenges, our participants contributed realistic suggestions for reforming the legal system that do not neatly fall under an ideology-driven, adversarial policy approach (Wagenaar 2017). Nearly half of our participants had a well-thought-out view on prostitution legal reform and the vast majority favored change in the direction of decriminalization *and* regulation by utilizing Canada's existing occupational health and safety laws that regulate other service jobs. As hinted at above and discussed in detail elsewhere (Benoit et al. 2016b), sex workers in our multi-city study had significantly lower confidence in police than other Canadians, and said that the police especially do a poor job treating sex workers fairly and being approachable and easy to for them to talk to. Decriminalization and regulation may not completely eliminate such prejudicial attitudes and unjust treatment of sex workers by police, but at least some of our participants suggested legal reform may reduce hesitancy by sex workers to involve the police if they witness or experience a crime (Abel et al. 2009; Stoltz et al. 2007; O'Doherty 2011; Abel et al. 2010). The same is likely to be the case regarding sex workers' comparatively high unmet healthcare needs. Compared to other Canadians, sex workers in our study were nearly four times more likely to say they had an unmet health need and a quarter recounted judgmental treatment when seeking health care (Benoit et al. 2016a).



According to our participants, decriminalization and regulation of sex work might also have a positive health system effect at the workplace and individual levels resulting from formal licensing system for sex work businesses and options for sexual health screening, health prevention and safer sex supplies. Formal acceptance of sex work as a legitimate business activity might make it easier for sex workers to disclose their work to healthcare providers, and receive non-judgmental health services (Abel et al. 2010; Nguyen et al. 2008).

As noted above, our study preceded the PCEPA when it was not a crime in Canada to sell or buy sex but most of the activities surrounding the transaction were criminalized. Therefore, for a very long time Canada has addressed sex work through a criminalization lens, and unfortunately, that lens did not change when the Government of Canada enacted a new law in 2014 criminalizing the purchase of sexual services anywhere and at any time. Our participants said they wanted complex and nuanced legal reform that addressed their occupational health and safety concerns; however, their requests were not taken into account in the formation of the PCEPA. Thus, even if marginalized groups participate, the prospects for legal reform depend on the current political–legal climate, which largely favors criminalization. This has been the experience in Canada even when sex worker advocacy organizations mobilized and called on the government to develop a collaborative rather than control-driven approach to prostitution policy (Wagenaar 2017). This tells us that in most cases (New Zealand is an exception (Radačić 2017)), they have had little success in challenging morality politics by resorting to discourses around human and civil rights.

Instead, based on research from Sweden, the source of the abolitionist ‘Nordic model’, it is likely that we can expect to find continued issues related to criminalization of elements of the sex industry in Canada, including a lack of harm reduction services, increased stigmatization, and increased danger associated with some types of sex work (Levy and Jakobsson 2014). We speculate this legal framework will continue to push the sex industry underground as sex workers will have a vested business interest in staying under the radar in order to encourage client confidence in their ability to continue patronage without being exposed to criminalization. This applies to both indoor and street-based work venues and may further compromise sex workers’ abilities to enforce health and safety practices. Further, the new provisions in the law prohibiting third parties from advertising any sexual services has the potential to close off popular advertising avenues, which may necessitate workers having to adapt and find new (and possibly more dangerous) modes of conducting their work.

There is urgent need for empirical investigation to verify or refute our speculations about the PCEPA. In 2016, the authors received funding for a second wave of the study discussed here, and are currently carrying out interviews with sex workers in five of the six cities initially visited using the same sampling strategies. In mid-2020, the Canadian government is mandated to review its recent prostitution law, opportune timing for them to share results on whether the law has had a positive, negative or mixed effect on health equity for sex workers with the Minister of Justice and Attorney General of Canada and other members of Parliament. The question remains as to whether policymakers will be more receptive to listening to what sex workers in Canada have to say this time around.

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