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Canada's Relationship with Women Migrant Sex Workers; Producing 'Vulnerable Migrant Workers' through "Protecting Workers from Abuse and Exploitation"

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Canada's Relationship with Women Migrant Sex Workers

Producing 'Vulnerable Migrant Workers' through "Protecting Workers from Abuse and Exploitation"

by

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Bachelor of Arts (Honours) International Studies, University of Saskatchewan, 2009

Thesis

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Abstract

Canada's immigration regulations and policy instructions, collectively known as 'Protecting Workers from Abuse and Exploitation' (PWAE), instruct visa officials not to process temporary work permits when there is suspicion that migrants may be at risk of sexual abuse or exploitation in industries related to sex work. The regulations are part of Canada's temporary foreign worker program, located within an anti-trafficking initiative.

Stretching across disciplines and focusing on critical migration scholarship, this research uses a communications studies lens to unpack the power of categorization, and the dividing practices that produce, maintain and normalize inclusion and exclusion, through the conceptualization of the nation. Anchored in the theories of Foucauldian governmentality and feminist intersectionality, this thesis employs a feminist critical discourse analysis to unpack the text of the regulations, informed by semi-structured interviews with immigration officials and a migrant sex work advocate. Additionally, administrative data obtained by special request are examined to analyze the criteria that inform migrant refusals and the trends over time. The analyses reveal how PWAE is interpreted and applied, and explores what the consequences are for the populations most effected –women migrant workers.

The results of the research demonstrate that PWAE advances a governing strategy that prioritises surveillance of the sex industries, increases migration controls and immigration enforcement. PWAE provides the Canadian state with the legal grounds to exclude undesirable women migrants from the Canadian community, discipline migrant actions and choices, police their presence in Canada and detain and deport them with ease. This securitization agenda exacerbates precarious working and living conditions for migrants in the Canadian sex industries and curtails mobility of women migrant workers, while allowing the Canadian state to maintain a benevolent and positive image as the protectors of Canadian population and of 'vulnerable foreign workers'.

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It has been said that cancer reveals two sides of a same coin; darkness and light. The darkness is the pain, fear and death. The light is the community of friends, healthcare teams, family and loved ones that emerge and gather to support cancer patients and their caregivers. In our journey we have certainly been blessed by a dimming darkness and an overwhelming abundance of light. Thank you to everyone who has made this journey possible. This thesis is dedicated to you.

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List of Abbreviations

CDA	Critical Discourse Analysis
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CIC	Citizenship and Immigration Canada
CoS	Copenhagen School
DERA	Dancer's Equal Rights Association
ESDC	Employment and Social Development Canada (formerly HRSDC)
GCMS	Global Case Management System
HRSDC	Human Resources and Skills Development Canada
HQ	Headquarters
HUMA Report	Temporary Foreign Worker Program Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
ILO	International Labour Organization
IN	International Network
IOM	International Migration Organization
IRCC	Immigration, Refugee and Citizenship Canada (legal name CIC)
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulation
LGC	Live-in Care Giver Program
LMIA	Labour Market Impact Assessment (formerly LMO)
LMO	Labour Market Opinion
MI	Ministerial Instructions
NIEAP	Non-Immigrant Employment Authorization Program
NOC	National Occupation Classification
PWAE	Protecting Workers From Abuse and Exploitation
PR	Permanent Residence
SAWP	Seasonal Agricultural Worker Program
TFWP	Temporary Foreign Worker Program

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Table 1

LMIA Required Work Permit and Work Permit Extension Applications, NOC Code 5134,
Refused under R200(3) between July 14, 2012 and November 30, 2016 (in persons)

p. 86

“By portraying migration as the cause of exploitation, the notion that women are always better off at ‘home’ is accepted without question”

(Sharma, 2005, p. 96)

“The existence of a legal prohibition creates around it a field of illegal practices”

(Foucault, 1977, p. 280)

A woman knocked at the door of a large gated wall. It is unknown whether the woman knew or understood what waited for her beyond the wall. But what was clear to the woman was that there were no viable options for her outside of these walls. An official slid open a slot on the large door and requested the woman’s documentation. The official received the documents and closed the slot leaving the woman standing in anticipation. After several moments the official again slid open the slot and handed the documents back to the woman.

You may not enter, the woman was told. You may not enter because we must protect you. We have determined that you may be vulnerable to sexual abuse or exploitation on this side of the wall, and we do not approve of the work that you will be doing. The official was not kind or unkind, they simply were. Without further explanation the official slid closed the slot on the door and shifted a lock into place.

The woman looked back towards the road she had travelled to arrive at this wall. Then, with a determined nod of her head, she slowly turned back to face the wall. Raising one hand, she placed it on the wall, and began to walk along its exterior. Always keeping one hand placed on the wall she searched for a weakness in its construction where she may hope to make her way inside. She had heard of individuals who helped persons like herself find their way past the wall, and she would consider using their services if she encountered them on this journey. She was determined to cross beyond this wall to find the opportunities that did not exist for her outside of it. Dangers mounted as she navigated this excluded channel.

“Thus, immigration laws serve as instruments to supply and refine the parameters of both discipline and coercion”

(De Genova, 2002, p. 425)

Chapter 1: Introduction

Migration is a contested field with a multitude of actors striving to address and govern the benefits and challenges that arise from flows and exchanges of people, cultures, goods, capital and ideas. And though “All the world seems to be on the move” (Sheller & Urry, 2006, p. 207), critical scholars have detailed a “global system of apartheid” (Sharma, 2005; Richmond, 1994), that “celebrates the mobility of capital and some bodies, while the bodies of others face ever-growing restrictions and criminalization”(Sharma, 2005, p. 88-89), with racialized bodies, predominantly those from the Global South, those most likely to be excluded (De Genova, 2013). Immigration governance is an important site in which states articulate and communicate which mobilities are desirable and which are undesirable. States enact migration legislation to sort migrant bodies into desirable or undesirable categories along state governing goals and strategies that rely on particular technologies, morals, values and knowledges. Factors such as gender, race, religion, geography, marital status, education and experience, intersect and mediate the decisions of bureaucrats who respond to state governing priorities. These intersecting factors mark bodies as safe and desirable, or risk-bearing and undesirable. This entire process is predicated on the acceptance of the state as the legitimate determinant of who has the right to belong, and who does not.

Immigration legislation signals to citizens and non-citizens alike which bodies have a right to belong to the state and national community, which movements are safe and welcomed, who is disposable and replaceable, and which bodies present risk, threat or problems. It is therefore important to decode immigration governance, and examine immigration legislation to uncover how national identities and priorities are imagined and articulated by the state. Determining which movements are policed and why, reveals a great deal about state governing priorities.

Canada provides an interesting context to examine immigration governance since the country's unique geographic location and history affords it the privilege of being particularly selective of the bodies that are permitted to enter and remain in its territory. Canada competes with other powerful western states to attract desirable migrants while simultaneously enacting externalization strategies to deter the arrival and criminalize the presence of undesirable migrants. This thesis examines a Canadian migration policy that classifies women migrant workers into a category of risk in order to govern their movement through restricting their mobility and criminalizing their presence in Canada. The Canadian immigration policy in question is "Protecting Workers from Abuse and Exploitation" (PWAE) which instructs immigration officers to refuse work permits to foreign nationals when there are "reasonable grounds to suspect a risk of sexual exploitation of some workers" (Government of Canada, 2012b). The policy also restricts all migrants in Canada from working in sectors related to the sex industries.

This thesis adopts a communication studies lens to examine the messages and governing priorities encoded in PWAE, how these messages are framed and communicated, how they are interpreted and applied, and what identities and activities are produced by PWAE. In order to uncover this information, I combine communication studies and cultural studies theories of governmentality and intersectionality to make three enquiries of PWAE; first, what strategies, values, goals and objectives inform PWAE? Second, what knowledges and practices are produced by the policy? And finally, how has the policy shaped the lives and decisions of those that it targets?

In order to properly respond to these questions, this thesis begins by tracing the history of the regulation and situating it in its international context. The history reveals past bias and assumptions that produce an emerging category of undesirable migrant; that of 'Vulnerable Foreign Workers'. The name of this category borrows directly from the label used to describe this migrant group in the Canadian Bill which originally introduced a version of PWAE, the 'Safe Streets and Communities Act' of

2012 (S.C. 2012, c.1). PWAE is then properly introduced and described prior to outlining the literature that engages with the power, strategies, knowledges and objectives (re)produced by migration governance in Canada and abroad.

Adopting a mutlitheoretical and mutlimethodological approach, I analyze the text and application of PWAE. Immigration legislation has long been analyzed in the social sciences and humanities since it is relevant to disciplines concerned with gender, equality, race, national identity and power (to name but a few). As described above, this thesis adopts a communication studies lens and draws on the communications studies method of feminist critical discourse analysis, supplemented by data analysis of Canadian immigration statistics, and semi-structured interviews with immigration officials and migrant sex worker advocates. My analysis reveals that PWAE frames its' claim to action as 'protecting' migrants, yet the regulations and policy advance an anti-immigration agenda more closely related to externalization and securitization. The language and application of PWAE locate responsibility for abuse and exploitation on the bodies of migrants, and produce a risk-bearing migrant subject who is discursively constructed as a risk to themselves and the Canadian community. PWAE is therefore a key site where women migrants are produced as 'vulnerable' in order to police their mobility.

Administrative data obtained from Immigration, Refugee and Citizenship Canada (IRCC), and semi-structured interviews complemented the conclusions drawn from the textual analysis. Interestingly, it is the gaps and silences of the administrative data that further confirm the power and flexibility of PWAE (and it's confidant, the category of 'Vulnerable Foreign Workers'). Through PWAE, the state is able to block the legal entrance of undesirable migrants, exclude them from the Canadian community, police their presence and facilitate their removal from the state. The regulations and policy thus allow the state to purge itself of 'undesirable' migrants. The successful framing of PWAE as

'protection' allows the Canadian state to advance this agenda while maintaining a positive and enlightened self-image.

Based on the above findings, this thesis argues that 'Protecting Workers from Abuse and Exploitation', advances a governing strategy that prioritises surveillance of the sex industries, and increased migration controls and immigration enforcement. Informed by prostitution abolitionism, and invoking the notion of vulnerability, PWAE provides the Canadian state and authorities with the legal grounds to exclude undesirable women migrants from the Canadian community, discipline migrant actions and choices, police their presence in Canada and detain and deport them with ease. This securitization agenda exacerbates precarious working and living conditions for migrants in the Canadian sex industries while allowing the Canadian state to maintain a benevolent and positive image as the protector of the Canadian population and 'Vulnerable Foreign Workers'.

Chapter 2: From ‘Prostitutes etc.’ to Stripper Visas and Back Again

PWAE applies to applicants in the Canadian Temporary Foreign Worker program (TFWP) which is governed by Canada’s Immigration and Refugee Protection Act (IRPA). PWAE was introduced as part of the Canadian Government’s initiative to address trafficking of persons. In order to unravel the logic and context informing this legislation, I begin this thesis with a historical overview of Canada’s immigration laws that led to the creation of the policy. The history reveals moral, gender and racial bias in Canadian immigration governance. Though Canadian immigration legislation has changed and evolved over the past century, this thesis demonstrates that bias remains encoded in the IRPA, as well as in PWAE. PWAE is outlined and described in this chapter in order to fully establish the policy, regulations and processing instructions that I analyze and discuss in the subsequent chapters of this thesis. Following a description of PWAE, I introduce the 2012 Canadian anti-trafficking strategy named the ‘National Action Plan to Combat Human Trafficking’, and outline the United Nations’ definitions of trafficking and smuggling. The United Nations definitions are important for comparing how PWAE aligns with international governance and norms.

Setting the Stage:

Canada’s IRPA (2002) is informed by a history of gendered, racial and moral discrimination against migrants. The laws that govern immigration to Canada have been amended and redrafted several times over the last century prior to establishing IRPA, however, current laws remain rooted in past assumptions and discriminatory practices. The 1967 Canadian Immigration Act is often viewed as the foundation for IRPA. The 1967 Immigration Act introduced a points system intended to decrease bureaucratic discretion in permanent immigrant selection in favour of evaluating migrants based on their ability to economically contribute to Canada (Van Dyk, 2016). Current immigration selection criteria continues to employ a points based immigration system, though the system has evolved and

shifted over time to its current design under IRPA. Under the new system, points are assigned to migrants based on such criteria as the ability to speak French or English, age, education, training, family members in Canada and arranged employment in Canada (Robert, 2005). Though the points system's explicit aim is to avoid discrimination, much of the selection criteria for points continue to discriminate against racialized and gendered migrants.

Since the 1960s, women across the globe have represented a smaller (yet growing) presence in formal labour markets. In general, women continue to face discrimination in accessing labour markets, and they are often primarily employed in heavily feminised sectors such as care work, domestic services and entertainment. Employment in these sectors is often devalued and informal, lacking social protections, collective bargaining rights and a host of other human rights protections (Hennebry et al., 2016a). Further, women worldwide continue to have less access to formal education and training than do men (Hennebry et al., 2016a). Women therefore often lack the necessary education and employment histories to meet selection criteria for Canada's permanent immigration point requirements. Many of the same barriers exist for racialized persons of the global south, including devalued labour, less formal education and lack of work experience. Gender and racial discrimination therefore remain embedded in the Canadian permanent immigration points based selection system. And gendered and racialized bodies tend to enter Canada through temporary employment channels (Hennebry, 2006; Sharma, 1999).

Perhaps unsurprisingly, shortly after the introduction of the points system, a new Canadian migration program was established in 1973 named the Non-Immigrant Employment Authorization Program (NIEAP). The NIEAP created a new class of temporary workers which was the foundation for Canada's current Temporary Foreign Worker Program (TFWP) (Foster, 2012). The NIEAP legislated temporary work permits that were employer specific, required government permission to change

employers or working conditions, and prohibited migrants from changing immigration conditions from within the country (Van Dyk, 2016). All of these regulations served to prevent temporary migrants from applying for permanent economic immigration status (Foster, 2012). Sharma (2007) argues that the NIEAP legislated the subordination of migrants, particularly the subordination of non-white and women migrants, as temporary and disposable labour, and ensured this class of foreign racialized labour remained unentitled to the same rights as Canadian residents or citizens. Under the NIEAP and the current TFWP, a significant portion of labour remains concentrated in lower skilled jobs that are often defined by the three “Ds: Dirty, Dangerous, Difficult work” (Sharma, 2007). The temporary and permanent migration programmes, which operate in parallel, allow the Canadian state to divide foreign born persons into desirable migrant classes which are welcome to permanently settle in Canada, and undesirable yet necessary classes of precarious temporary labour which is populated by women and racialized persons.

In addition to race, class and gender, moral concerns have historically informed the creation and application of Canada’s immigration laws. Conceptions of women’s sexual morality in particular have been significant in producing migrant categories. The Canadian Immigration Act of 1910 introduced several classes of prohibited persons including prostitutes, which the Act defined as “women and girls coming to Canada for any immoral purpose” (Government of Canada, 1910, R3(g), p. 5). This category of prohibited persons was maintained and expanded upon in the subsequent Immigration Act of 1952, where section 5(e), described “Prostitutes etc.” as “prostitutes, homosexuals or persons living on the avails of prostitution or homosexuality, pimps or persons coming to Canada for these or any other immoral purposes” (Canadian Immigration Act, 1952, p. 42). This expanded category of ‘immoral persons’ prohibited individuals suspected of engaging in what may be considered non-normative sexual activities and desires. And under the 1952 Act, visa officers were provided with full discretionary power to determine if a person fit into one of these prohibited categories (Van Dyk,

2016). Though there exists no concrete data pertaining to migrant rejections under this category, the category of “Prostitutes etc.” encodes moral imperatives that target women and sexual minorities and provides the state with the flexibility to deny any migrant who did not meet certain standards and criteria of moral desirability.

The 1976 Immigration Act, which is closest in design and regulations to Canada’s current Immigration and Refugee Protection Act (IRPA), replaced explicit categories of prohibited persons with broader categories of persons excluded for reasons related to health, public safety, criminal activity and fraudulent immigration claims (Van Dyk, 2016). Explicit mentions of morality were replaced by the language of national/public security. Yet the notion of immoral persons remains implicit in many of the migrant categories and knowledges that inform visa officers’ eligibility determinations. IRPA also shifted considerably towards an economic logic, further institutionalizing the state’s desire to attract educated and higher class immigrants for permanent immigration and relegate less desirable migrants to temporarily fill unwanted and unattractive, yet economically essential employment positions (Foster, 2012; Lenard & Straehle, 2012).

Interestingly, during the time that the Canadian Immigration Act was rewritten to exclude overt mentions of morality, Macklin (2003) notes that an informal cross-border exchange program of exotic dancers, known as the ‘Exotic Dancer Visa Program’, existed through the 1970s and 1980s between the United States and Canada. McDonald et al. (2000) indicate that applicants who entered through the ‘Exotic Dancer Visa Program’ often ended up working in other positions in the sex industries including massage studios and the sex trade. Under the ‘Exotic Dancer Visa Program’, foreign-born exotic dancers could apply for work permits directly at a point of entry (Canadian border) with identification documents and a Canadian offer of employment (Macklin, 2003). This represented an expedited temporary foreign work permit process which otherwise required employers to submit a

Labour Market Opinion (LMO, renamed Labour Market Impact Assessment LMIA, in 2014) to Human Resources and Skills Development Canada (HRSDC, renamed Employment and Social Development Canada ESDC, in 2014). The LMIA process is intended to ensure that temporary job offers to foreign nationals do not harm or disrupt the Canadian economy (Smith, 2017). As part of the LMIA process, employers are expected to provide 'proof' of an employment demand that cannot be filled by Canadian employees. ESDC validates employment contracts to ensure that the terms and conditions are in line with Canadian industry standards.

Macklin (2003) indicates that the 'Exotic Dancer Visa Program' received expedited processing considerations because industry representatives had lobbied the Government of Canada to allow swift entry of foreign born exotic dancers in the face of an abrupt and continuous shortage of Canadian born dancers. A former visa official confirmed in our interview that industry representatives often influenced the Canadian Government to respond to their labour needs by facilitating the entrance of migrant workers, when said representatives could prove that there was a persistent shortage of Canadian born employees willing to work in their sector (i.e. agricultural and automotive industries) (Jones, personal communication, May 2017). Macklin (2003) attributes the shortage of Canadian born exotic dancers to an economic boom in the 1990s which expanded domestic labour markets creating more job opportunities for Canadian women in other sectors. Additionally, working conditions in exotic dancing deteriorated in the 1990s with the advent of the lap dance which increased client/dancer contact. According to Macklin (2003) the lap dance introduced new expectations from male customers and increased power inequalities between bar owners, customers and women exotic dancers, making the sector less desirable for Canadian women. The Ottawa-based Dancer's Equal Rights Association (DERA), which is populated by ex- and current exotic dancers, agrees with this description of lap-dancing which has since become a defining feature of the erotic dance industry. According to Bouclin's (2014) research, DERA argues that lap-dancing results in the increase in abuse

and exploitation of women working in an under-regulated industry (p. 132). The 'Exotic Dancer Visa Program' is therefore yet another manifestation of the TFWP contributing to the creation of an exploitable and immobile foreign labour pool.

During the same period of the 1990s, international preoccupation with human trafficking increased, culminating in the United Nations creating and adopting a protocol specifically aimed at preventing trafficking in November 2000; 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children' (Palermo Protocol) (OHCHR, 1996). Anti-trafficking groups in partnership with the United States, drew international attention to the Canadian 'stripper visa' and pressured the Canadian state to eliminate the 'Exotic Dancer Visa Program' (Macklin, 2003; McDonald et al., 2000). Groups accused the Canadian Government of contributing to human trafficking through the 'Exotic Dancer Visa Program' and ambiguous record keeping by CIC meant that the Government lacked evidence to counter such claims. CIC authorized foreign born exotic dancers work permits under the Canadian National Occupation Classification (NOC)¹ category of "buskers" and later "performing artists" which was a broad category, and made it statistically impossible to estimate or account for the number women who entered into Canada as exotic dancers. Anti-trafficking groups accused the Canadian Government of being complicit in the trafficking of women and the American Government criticised Canada's cavalier stance on human trafficking (Macklin, 2003; McDonald et al., 2000).

By the early 2000s, the media intensified its coverage of the exotic dancer visa. The Globe and Mail was among other news outlets covering the Canadian 'stripper visa' (Heinzl, 1999; Oziewicz, 2000). The Canadian Government began to move towards reducing the amount of temporary work

¹ National Occupation Classification Code provides information on, and classifies all occupations in Canada into categories and subcategories of similar employment. As of the 2006 NOC, exotic dancers were registered under NOC code 5232 (Government of Canada, 2013a).

permits issued to dancers from roughly 1000 visas issued annually in the mid-1990s (McDonald et al., 2000 p. 2), to between 500-600 visas issued annually in the early 2000s (Audet, 2004).

Yet in 2002 when IRPA was introduced, the 'Exotic Dancer Visa' remained intact despite the fact it was increasingly difficult for Canada to justify its existence. The continued use of the visa also contrasted with Canada's international commitment to the Palermo Protocol which Canada ratified in 2002 (Oxman-Martinez et al., 2005). However, that same year, Canada amended the IRPA to include s.118 which deals explicitly with human trafficking offences (de Shalit & Meulen, 2016). There is thus a significant disconnect, or misrepresentation emerging around Canada's handling of migrants in the sex industries. It was not until 2004, that a scandal would lead the state to eliminate the 'Exotic Dancer Visa Program' LMIA exemptions. The scandal involved Minister Judy Sgro, then Canadian Minister of Immigration, who provided a special residency permit to a foreign born exotic dancer who had assisted in the Minister's campaign (Hines, 2004). The scandal eventually led to the Minister's resignation, and the number of new visas issued to exotic dancers were reduced significantly from several hundred annually to approximately 17 by 2006 (Barnett, 2007).

In 2007, the newly elected Conservative Party introduced Bill C-57 'An Act to Amend the Immigration and Refugee Protection Act' to the House of Commons. The 2007 Minister of Citizenship and Immigration, the Hon. Diane Finley, stated that the legislation would target foreign born exotic dancers (Barnett, 2007). Clauses 2 and 3 of Bill C-57 proposed amending the IRPA to "allow immigration officers to refuse to authorize foreign nationals to work in Canada if they are deemed to be at risk of exploitation" (Barnett, 2007, p. 6). Bill C-57 was met with opposition and ultimately tabled over an administrative pause in the Canadian Government. But the Bill successfully introduced the migrant category of "Vulnerable Foreign Workers". This category became formally established into Canadian law in 2012 with Bill C-10 'Safe Streets and Community Act' (formerly Bill C-56), which officially provided immigration officers the "discretion to refuse to authorize foreign nationals to work

in Canada if, in the opinion of the officers, the foreign nationals are at risk of being victims of exploitation or abuse” (Government of Canada, 2012a).

Ministerial Instruction and Regulation Change ‘Protecting Workers from Abuse and Exploitation’

As previously described, the IRPA became the legislative authority governing Canada’s immigration program in 2002. The Immigration and Refugee Protection Regulations (IRPR) provide details about the implementation of the IRPA. PWAE consists of two regulations under IRPR. IRPR is legally binding and details how immigration officials are to apply the Act under different circumstances. In 2008, the Harper government introduced amendments to the IRPA through Bill C-50 which authorized the Minister in charge of Citizenship and Immigration Canada to issue special instructions directly to immigration officers (CIC, 2016). Ministerial Instructions (MIs) provide the state with unprecedented flexibility and discretion to rapidly adjust immigration program delivery thus foregoing the lengthy requirements of creating regulations. According to the Government of Canada MIs must be in line with Canadian immigration goals, are intended to be temporary, and are often used to immediately impact immigration changes while a new or adjusted regulation undergoes the regulatory process (Government of Canada, 2003).

PWAE emerged as a MI in 2012. The MI states that visa officers should not process work permit applications of foreign nationals, applying from within or outside of Canada, who will be employed in a “sector where there are reasonable grounds to suspect a risk of sexual exploitation of some workers” (CIC, 2012). The sectors included in these instructions are strip clubs, escort services and massage parlours, as well as any bar or hotel that hosts occasional exotic dance performances and has extended employment to a foreign national who has indicated that their occupation is exotic dancer. Foreign nationals may not work directly in these sectors nor perform contract work for the business “irrespective of the specific occupation that the applicant is intended to fill at that business”

(CIC, 2012). In addition, all open works permits, issued to foreign nationals would include the visible remarks “Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services”(CIC, 2014).

A full regulatory change to the IRPR came into effect December 31st, 2013. The new regulations prohibit all foreign nationals from working in the above sectors and businesses regardless of their immigration status and the visible remarks, which prohibit employment in sex work, were printed on visitor, student, and temporary work permits. The new regulations also extended and clarified that foreign nationals are prohibited from working in any and all capacity, including chef, bouncer, janitor etc., for “any business in Canada that offers striptease, erotic dance, escort services or erotic massages on a regular basis” (CIC, 2014). Processing instructions in PWAE indicate that immigration officials should examine the offers of employment extended to migrants to determine if the business in Canada offers the services outlined above.

According to policy guidelines, immigration officials who determine that a foreign national meets the criteria of the regulation, input a designated refusal code under the applicant’s name in Canada’s international tracking system: Global Case Management System (GCMS). The information in GCMS is permanent and accessible to all officers in the Canadian immigration sector including the Minister and border service officers. A letter is provided to the applicant that simply states that their application is not eligible for processing. No further details for the refusal are provided (CIC, 2014).

PWAE re-introduces explicit morality and discretion into the IRPA. It marks the return of the logic of the previously prohibited category of ‘Prostitutes etc.’. Similar to the previous immigration law, gender is encoded into PWAE though the text remains carefully gender neutral. The areas excluded from legal work permits (striptease, erotic dance, escort services or erotic massages) are gendered sectors where women are predominantly employed, and the notion of ‘sexual abuse and

exploitation' often has a gender-based understanding of male perpetrator and female victim. PWAE is thus a state policy restricting women's mobility that also communicates the state's view of the sex industries as an immoral and exploitative economy. PWAE produces the category of 'Vulnerable Foreign Workers', and frames the policy in the language of protection. The implications of both the category and the framing of PWAE are addressed in subsequent chapters.

Canada's National Action Plan to Combat Human Trafficking

As outlined above, PWAE emerged partly in response to international anti-trafficking pressures, including the American Government's vocal disapproval of Canada's perceived laissez-faire attitude towards human trafficking (de Shalit & Meulen, 2016). For this reason, it is unsurprising that the MI that would eventually become PWAE, was introduced as part Canada's larger anti-trafficking initiative, the 'National Action Plan to Combat Human Trafficking', launched June 6, 2012 (Public Safety Canada, 2016). According to the Canadian Government, the National Action Plan was informed by four pillars, or the '4-Ps' approach; prevention of human trafficking, protection of victims, prosecution of offenders, and partnerships with agencies working domestically and internationally (Public Safety Canada, 2016).

The National Action Plan introduced comprehensive and "aggressive new initiatives to prevent human trafficking, identify victims, protect the most vulnerable, and prosecute perpetrators", and received a large sum of federal funding (Public Safety Canada, 2016, p.9). The roll out of the National Action Plan was designed to be implemented over the course of four years, and involved the Canadian Federal Government partnering with foreign governments, the International Organization for Migration (IOM), Canadian Provincial Governments, Canadian law enforcement agencies and civil society organizations. According to the government, the National Action Plan intended to honour the

Canadian Government's "longstanding commitment to protect the vulnerable, tackle crime and safeguard Canadians and their families in their homes and communities"(Public Safety Canada, 2016, p. 1).

PWAE forms part of the pillar of protection and assistance to victims. The protection pillar includes training and additional funding for front-line service providers and organizations that respond to the needs of victims of trafficking. PWAE is nestled under point 2.13 of the National Action Plan, which is named "Protect foreign nationals vulnerable to human trafficking, including female immigrants aged 15-21 years" (Public Safety Canada, 2016, p. 32). The title of this section eliminates any doubt that PWAE targets women migrants' mobility.

The National Action Plan indicates that HRSDC (now ESDC) would work with Citizenship and Immigration Canada "to prevent the sex trade from accessing the Temporary Foreign Worker Program" (Public Safety Canada, 2016, p. 15). And the 2012-2013 report of the Plan indicates that Citizenship and Immigration Canada were provided Ministerial direction and instructions "that aim to protect foreign national who are at risk of being subjected to humiliation or degrading treatment, including sexual exploitation" (Public Safety Canada, 2016, p. 22). One can conclude that the mention of a Ministerial direction refers to the MI that was delivered by the Minister of Immigration in 2012. The National Action Plan therefore seeks to protect foreign nationals by preventing their access to the sex industries, which, according to the Government of Canada, will also assist in safeguarding Canadian citizens and their families. The implications of these associations are explored in the analysis section of this thesis.

Generally, anti-trafficking initiatives from across the globe, including Canada's National Action Plan and PWAE, are informed by the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children. In 2000, the protocol was developed in tandem

with two additional protocols; the 'Protocol Against Smuggling of Migrants by Land, Sea, and Air (Smuggling Protocol)' and the 'Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition', which supplement the 'Convention Against Transnational Organized Crime' (CATOC). Together, the three were collectively referred to as the Palermo Protocols (Brusca, 2011). However, the widespread ratification and approval of the anti-trafficking protocol has led to the name Palermo Protocol being popularized to refer to the UN's anti human trafficking efforts, and is used as such in this thesis.

The Palermo Protocol was the first international instrument to attempt to address all aspects of human trafficking (Brusca, 2011). The protocol outlines measures to prevent trafficking, to protect victims and to promote cooperation among states. It has provisions for the safe return and reintegration of trafficking victims, prohibits the trafficking of children, and also specifies that victims of trafficking should not be criminally prosecuted for prostitution or immigration violations that they committed as part of their trafficking. The Protocol indicates that victims should be protected from deportation or forced return when there are grounds to suspect that their return to country of origin poses a risk to the victim or their family (OHCHR, 1996). These last two points are important since they attempt to create a framework that considers the rights of victims of trafficking in addition to providing states with instructions towards securitizing against human trafficking. Perhaps the most important intent of the Protocol was to establish a common definition of human trafficking. The definition provided by the Protocol is as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour

or services, slavery or practices similar to slavery, servitude or the removal of organs (OHCHR, 1996).

Though the definition refers to several forms of exploitation, therefore recognizing that the problem of 'trafficking' is complex, sexual exploitation is explicitly stated and many popular anti-trafficking campaigns have focused on preventing sexual abuse and exploitation. The careful inclusion of coercion and force in the UN trafficking definition also contrasts with definitions of human smuggling which are often characterized by consent between the migrant and the smuggler, generally through some form of contractual agreement. According to this distinction human smuggling is a crime against a state and its borders, while human trafficking is a crime against the migrant's body (United Nations, 2000; OHCHR, 1996). Yet increasingly, academics have questioned the value of distinguishing between trafficking and smuggling (Mountz, 2010; Sharma, 2005; Yea, 2015). This thesis also troubles the distinction between trafficking and smuggling since many migrants shift between statuses and channels in their migratory projects. This point is expanded upon the subsequent section, where additional literature is provided that questions the distinction between human smuggling and trafficking.

The UN Smuggling Protocol recognizes the vulnerability of migrants who are smuggled and the protocol's statement of purpose is "to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants" (United Nations, 2000, p. 2). Here, the risks to the rights, lives and security of migrants who are smuggled are specifically emphasized. The Protocol also provides a framework for the prosecution of criminal groups involved in dangerous forms of human smuggling, and includes socio-economic measures to address the root causes of the smuggling of migrants (United Nations, 2000).

Distinctions between trafficking and smuggling produce specific migrant subjects, and states draw on these definitions and narratives to classify migrants into those worthy and unworthy of

protection. However, as detailed in the analysis of PWAE, the notion of ‘protection’ itself becomes a tool to exclude migrants. The narratives and discourses of both trafficking and smuggling de-politicize increased state securitization of migration, and allow states to escape scrutiny of geopolitical actions that cause or exacerbate conditions that may push a person to access precarious migration channels (O’Connell Davidson, 2010; Sharma, 2005). Having outlined the history and context of the regulation, the subsequent chapter reviews the major bodies of literature that contribute to understandings of the role of the state and its borders in contributing to migrant vulnerability and precarity.

Chapter 3: Categorizing Vulnerability, Classifying Desirability

A growing body of literature has detailed the relationship between restrictive migration policies, increased clandestine migration, and migrant vulnerability to exploitation (Agustín, 2007; Crowhurst, 2012; Fassin, 2011; De Genova, 2002, 2013; Hennebry et al., 2016a; Menjívar, 2014; Mountz 2003; O'Connell Davidson, 2006; Sharma 2005). As detailed above, PWAE securitizes against migrant women's mobility in order to 'protect' them from sexual abuse and exploitation. This chapter therefore brings together several bodies of literature including migration and border studies, securitization studies, and Foucault's notions of categorization, to discuss how dividing practices are foundational to classifying migrants into categories of desirability or risk, which justifies securitization in the name of protection. Each field of research addressed in this literature review identifies unique strategies and problematizes the links between popular government justifications to direct securitization efforts onto women migrants. This literature review therefore provides an overview of the assemblages that limit migrant women's mobility.

I begin the review by introducing Foucault's concept of categorization, before addressing the violent effect of this process in bordering practices in general, and more specifically in Canadian immigration practices. Following this reasoning, I discuss how the classification of migrants into categories justifies state securitization against risky bodies that are represented as threats and risk. I then outline how the categorization of risk in PWAE is informed by dominant trafficking narratives and discourses which frame restricting women migrant mobility as 'protection'. The result of this framing is the production of the undesirable migrant category 'Vulnerable Foreign Workers'. This chapter situates this thesis within conversations about the construction and (re)production of migrant 'vulnerability' that justifies restrictive or repressive state actions.

The Power of Categorization

Contemporary society is organized around classifications and categorization, and these categories have the power to produce one's lived realities. Migration governance is an important site of categorization, and citizenship is one of the most visible and accepted sites of the construction of 'us' and 'other' (Sharma, 2007). French philosopher Michel Foucault's foundational theories surrounding the notions of classification and dividing practices offer valuable insight for understanding the power of migration governance to (re)produce state practices and migrant options, choices and lived realities.

Throughout his various works, Foucault argues that classification and categorization structure discourse and order institutions. In the *"Archaeology of knowledge"* (1989), Foucault compares classification systems throughout time to demonstrate that categories shift and change as new knowledge or ambitions emerge. Changes in classification imply changes in the way subjects are conceived of based on the category into which they are imagined. Foucault argues that this is possible since classifications and categories create and limit discourse, or the way that we may think of, imagine or understand something. Additionally Foucault traces how institutional practices and social interactions are determined by classification which functions to divide, exclude and even confine undesirable categories of subjects (Foucault, 1989). Haggerty (2001) explains that "the production and reproduction of official classifications establishes the contours of the objects to be governed: it renders them knowable and potentially subject to political intervention" (p. 46). In his work 'Madness and Civilization', Foucault outlines how the poor, mentally ill and unemployed were all classified under a single category of 'idle'. The production of the 'idle' subject then provided justification for detaining subjects in the asylum which had the effect of removing undesired categories of persons from society. The separation of undesirable subjects from society also allowed for new objects of knowledge and control to develop (Foucault, 1988). Categories, and classification of categories, therefore have the

power to shape and control social realities, and lived experiences. In 'Discipline and Punish', Foucault indicates that categories allow society to be organized to facilitate discipline and create an analytical space where subjects may be observed, calculated and controlled (Foucault & Rabinow, 1984).

Subjectivity to a particular category is determined by the presence or absence of specific criteria, the importance of which are determined by political judgements, rationales, choices and theoretical or ideological positions. For this reason, Haggerty (2001), indicates that "Classifications often reveal as much, or more, about the assumptions, prejudices, dreams, and aspirations of the classifiers as they do about the objects of which they speak" (p. 46). According to this logic, an analysis of PWAE reveals as much or more about the Canadian state and Canada's understanding of its national identity, as it does about women migrant workers. PWAE is a site of friction which communicates how the state views women migrants, understands women's sexuality and reveals Canada's moral aversion to the sex industries. I will expand on these assertions in the analysis and discussion chapters of this thesis.

Foucault's contribution to understanding how dividing practices (re)produce subjects reveals the power of categorization, however, his work is commonly criticised for its failure to consider the impacts and importance of gender in the powerful process of classification. Gender is particularly important to this thesis since, as described above, gender is encoded into PWAE. Judith Butler extended Foucauldian theories to include gender as an important dividing practice. Butler theorized gender as a social identity which is performed by individuals, and hegemonic gender representations classify individuals into gendered categories (Butler, 2006). Categories, and specifically gender categories, can therefore be understood as produced and performed.

This has important implications for migration governance where "sovereignty and jurisdiction (re)produce each other in the domains of immigration law" to "divide the world into

compartments”(Kendra Strauss, 2015, p. 147). Cresswell (2006) indicates that “forms of ‘correct’ and ‘appropriate’ movement are produced in relation to ‘inappropriate’ forms of movement through complicated representational processes” (p. 142). In terms of immigration governance, I demonstrate that these representational processes produce always already fallible categories, which themselves contain a myriad of other categories that splinter into more precise classifications. My analysis of PWAE reveals that it is an important site where these categories are divided along gender and racial lines, and imbued with particular moralities.

Categorization as a Weapon

Pickering & Ham (2014) indicate that, “The power relations that produce and act through categories of social difference shape institutions, social interactions, individual and collective experiences, subjectivities and identities” (p. 4). Migration governance is an important and visible site to examine and unpack these power relations since, as Satzewich (2015a) indicates, immigration policies and controls “at their most basic level, are simultaneously about inclusion and exclusion (Sharma, 2006; Schrover & Shrinkel, 2013)... to facilitate the entry of desirable individuals and bar the entry to undesirables” (p. 21). Macklin (2001) outlines the way that categorization of migrants functions as a defence weapon to prevent the entry of undesired migrants and keep them apart from the state. De Genova (2013) and Sharma (2007) argue that managed migration programs have emerged to include undesirable migrants through subverting their rights and subjugating them to the needs of capital. Mountz (2003) documents the way that categorization is employed in the Canadian context to tame undocumented migrants and smugglers. I draw on all of these conceptualizations of the role of migration governance to argue that PWAE performs each of these functions; PWAE prevents access to the state, subjugates women migrant’s labour in the sex industries through producing illegality, and produces a disciplined women migrant subject.

The power of migration policies to perform and (re)produce subjectivities stems from the understanding of migration governance as a normalized and accepted part of State sovereignty. Indeed, a major factor contributing to the power of migration governance is the normalized understanding of the category of 'migrant'.

Our current understandings of migration, and the normalization of the categories of '(im)migrant', are relatively new if considered in a historical context. Current discourses informing these categories and their subcategories, are closely linked to the emergence of globalization. Giddens (1990), conceptualized globalization as a product of late modernity, which universalized capitalism as the global means of commodity production and generated international acceptance of the nation-state as the universal form of political organization. State sovereignty became a primary concern of the nation-state with globalization hardening and softening borders; facilitating the flow and mobility of goods and capital across international borders while simultaneously restricting the mobility of persons (Andrijasevic, 2010; Fassin, 2011; Turner, 2007). Defining characteristics of Giddens' modern nation-state include an increase in Foucauldian type surveillance and industrialized military (Giddens, 1990). Tied to the concept of the nation-state is a general consent, if sometimes tacit, to allow the state the use of legitimate force to offer protection (Hicks Stiehm, 1982). Additionally, the modern state monopolizes the authority to provide legal identities to people and determine their legitimate movements (Torpey, 1998). These legal identities function as categories that determine a subject's access to rights and their relationship to the state (both political apparatus and population). The normalized distinction between citizen and migrant is therefore relatively contemporary, and Walters (2015), indicates that in the UK, concerns about contemporary understandings of 'immigration' emerged in political and public life in the 1970s.

Current distinctions between citizen and migrant, though relatively recent, produce very real consequences for each of the categories. Sharma (2012) argues that the category of citizen relies on

the discourse of nationalism which is intersected by racism and sexism. Nationalism, Sharma demonstrates, is a widely accepted process which legitimizes social stratification and discrimination between deserving citizen and undeserving 'other'. Lenard & Straehle (2012) indicate that the categories of 'us' and 'other' form the foundation on which modern states are organized (Lenard & Straehle, 2012). This is not to say that citizenship is a homogenous category, and Sharma (2012) readily admits that there is social stratification within the category of 'citizen' based on geography, class, racism, sexism, and other intersecting social identities. But Sharma (2012) argues that nationalism is particularly pernicious since it openly and institutionally (re)produces, encourages and performs acts of racism and sexism that are often practiced more subtly and covertly on citizens. Jiwany indicates that the racialization and gendering of the category of migrant 'other' is normalized through focusing on difference as a form of inferiority (Jiwany, cited in Walia, 2013, p.62). This normalization is widespread as Satzewich (1991) and Hennebry et al. (2016a) indicate that racialization and gendering is implicit in the international governance of migrant labour market flows. This 'othering' of migrants shapes "imaginings of who is entitled protection *from* the nation-state ... and who faces violence *by* the nation state because their bodies are deemed not to belong" (Walia, 2013, p. 63). The migrant 'other' is therefore produced as naturally subject to precarious and exploitative labour practices among other forms of social discrimination (Sharma, 2012; Galabuzi, 2006).

This is an important consideration for the analysis of PWAE. It contributes to an understanding of the TFWP, and the history of PWAE, which relegate migrants to an exploitable category which is easily discriminated against. This thesis adopts an understanding that migrants are (re)produced through migration governance and state communication tactics as naturally less deserving of the same rights as Canadian citizens. A starting point in the analysis in thesis is that the normalization of the 'otherness' of migrants is an arbitrary division that must be questioned and undone. Migrants deserve

the same universal human rights and considerations, including labour rights and considerations, as do citizens of Canada.

The importance of race and gender in influencing categorization cannot be understated since even within the category of migrant 'other', there are hierarchies of categories which are informed by, and (re)produce different discourses determined by intersecting social factors that influence the channels of migration available to an individual. The category of 'illegal' migrant is among the bottom tier of the hierarchy of migrant categories since 'illegal' migrants have administratively violated the state and are thus subject to its violence. De Genova (2002) provides a history of immigration law to demonstrate how migrant 'illegality' is a political identity which is produced through deliberate and calculated, yet incoherent, political interventions (2002). He is joined by additional scholars who argue that migrants should *not* be understood as 'illegal', but rather as '*illegalized*' through restrictive migration regulations that shift and change throughout time (Anderson et al., 2005; Bauder, 2013; De Genova, 2002). This represents a radical, yet increasingly accepted departure from traditional studies of migration which unquestioningly accept the state's monopoly as the legitimate determinant of human mobility and naturalize labels including 'illegal immigration' and 'illegal aliens' which dehumanize and negatively portray migrants (Carens, 1987).

Migration scholars have outlined how restrictive migration policy does not diminish the flow of migrants across borders, but rather transforms flows, and disciplines migrants choices and behaviours (Bauder, 2005; De Genova, 2002, 2013; Schweppe & Sharma, 2015). This observation parallels Foucault's discussion of the penitentiary system in which he argues that the prisons' failure to reduce crime rates should not be viewed as a failure of the system, since this was never the true intent of the prison. Rather, the primary goal of the prison system is to identify and normalize, or build consensus around, what is and what is not considered acceptable and legal behaviour in society (Foucault, 1977). Strauss (2017) describes a similar process of norm creation where migration

governance and policy (re)produces acceptable migratory behaviour and acceptable migrant categories (p. 147). This argument is taken up and developed in relation to PWAE in subsequent chapters.

There are additional parallels between Foucault's analysis of the prison system and migration governance. Foucault argues that in addition to defining delinquent behaviour, the prison creates a space to know the prisoner as a "pathologized subject" (Foucault & Rabinow, 1984, p.231), intimately known and categorized by the state, with the goal of producing "bodies that are both docile and capable" (Foucault & Rabinow, 1984, p.235). Similarly, migration governance increasingly relies on technologies to intimately know migrant bodies in order to control their mobility (such as biometrics), and restrictive migration policies employ these technologies. Migration scholars have described migration policies that restrict people's legal mobility as disciplining, subordinating and controlling unruly or undesirable populations (Bridget et al., 2005; De Genova, 2002; O'Connell Davidson, 2010). De Genova contends that restrictive policies are not always intended to physically exclude migrants, but also to "socially include them under imposed conditions of enforced and protracted vulnerability.... [and] the subordination of their labour" (De Genova, 2002, p. 429). This argument has been echoed by Preibisch (2010) in respect to the inclusion through submission of migrant workers in Canada's agricultural migration stream. As mentioned above, this argument is also pertinent to understanding the history of PWAE.

Illegalized migrants are the category most vulnerable to all forms of abuse and exploitation since they lack the protection of the law (Bauder, 2013). De Genova (2002) explains that the constant threat of removal or denial is a powerful leverage against all migrants no matter their status, ensuring compliance even under exploitative conditions. But this is especially true of migrants whose entrance is blocked by restrictive policies and who turn to clandestine routes which increases their invisibility, subjugation and exclusion from laws, social protections and support (Coutin, 2003; De Genova, 2002;

Heyman, 1998). It is widely acknowledged and documented that precarious or irregular migration status (re)produce vulnerability to abuse and exploitation (Hennebry et al. 2016a; Lenard & Straehle, 2012; Strauss, 2017).

The figure of the illegalized migrant, and the concept of 'legislated illegality' are important to this thesis, since as demonstrated in the previous section, PWAE criminalizes a category of migrant that was previously legal, and whose work permit applications were expediently processed until the early 2000s. The political identity of illegalized migrant sex worker in Canada is thus a recent category of migrant that was produced as part of a political intervention which is consistent with De Genova's conceptualization (De Genova, 2002). This shift in political category now ensures the unacceptability of the presence of migrant's employed in the forbidden sectors in Canada and ensures that their labour is subordinated. Migrants who are classified into this category by the state become dangerously disciplined and vulnerable to control and exploitation. Additionally, this new categorization does not stem the flow of migration into the sex industries in Canada, but rather, creates a new channel of illegalized migration and a new population of illegalized, and thus vulnerable, individuals.

Classifying Migrants into Exploitable Labour Pools: Canadian Immigration Categories

As noted, PWAE is a policy within Canada's TFWP, and this program itself therefore deserves attention. Examining the micro-politics of Canadian immigration regulations creates the possibility of joining macro debates around international migration governance. Immigration laws and policy determine migrant categories regardless of whether individuals enter the country through official or unofficial channels. And though some migrants may evade contact with immigration and border officials, most journeys include interaction with immigration officials and it is then that technologies of

migration governance systemically sort subjects who “become known to authorities” (Pickering & Ham, 2014, p. 6).

In Canada, this ‘knowing’ influences every part of the migrant experience including the length of time individuals are permitted to remain in the country, the type of activities they may engage in, (work, travel, etc.) and the rights that individuals may claim. The Canadian immigration system is hierarchically organized around categories much like the hierarchies described in the previous section. Canadian Permanent resident status (PR) is at the top of this hierarchy since it accords most citizenship rights to individuals, excluding political participation. But it is worthy to note that even the category of PR maintains migrants as ‘other’ since PR status is revocable under Canadian immigration law (CIC, 2015).

Arat-Koc (1999) has indicated that the Canadian Government began a shift away from permanent immigration to Canada in the 1990s in favour of temporary economic migrants, and this shift was outlined in the previous chapter. Hennebry (2011) indicates that since the early 2000s, the number of temporary migrant workers entering Canada per year has surpassed the number of permanent immigrants. Berman (2010) argues that the international popularity of temporary economic migration, or guest worker policy can be attributed to the global spread of neoliberal capitalism which has further entrenched deep systems of inequality within and between countries and created a demand for cheap and exploitable labour. Robinson (cited in Walia, 2013) agrees and indicates that “the transnational circulation of capital and the disruption and deprivation it causes, in turn, generates transnational circulations of labour. In other words, global capitalism creates migrant workers” (p. 43). Restrictive migration policies, and managed migration schemes are important elements of governmentality that produce exploitable labourers. Several scholars have documented how restrictive labour migration programs produce pools of exploitable temporary labour migrants wherein state policy can be leveraged against migrants to discipline their behaviour inside, and

outside of the workplace (Bauder, 2005; Ferguson & McNally, 2014; Hennebry, 2012; Heyman, 1998; Preibisch, 2010).

Categories in the Canadian temporary foreign worker stream are both gendered and racialized which as previously mentioned, reflects the organization of international migration flows (Satzewich, 1991; Hennebry et al., 2016a). Satzewich contends that racialization is a mechanism used by the Canadian state to situate migrants in terms of their productive value (Satzewich, 1991). Hennebry et al. (2016a) extends this argument to include gender as a social factor that states and private actors consider in categorizing and marginalizing the productive value of women migrants into stereotypical and devalued women's labour including care work, service industries and entertainment (sex) industries. PWAE is located within this process of racialization and gendering of migrant categories and restricts women migrant workers' access to an industry into which migration governance has marginalized their productive value; the sex industries.

The question of whether sex work is a legitimate form of labour or inherently exploitative by nature, continues to be debated among scholars and activists, and these debates remain unresolved (Agustín, 2007, 2008; Sharma, 2005). However, in terms of cross border sex work, Agustín (2007) argues that when considered in the context of women facing oppressive or undesired realities in countries of origin, migration for sex work does not seem wholly unimaginable. Hennebry et al. (2016a) indicate that women may choose to migrate for work based on a lack of access to domestic labour markets, pressures to economically provide for family members, or as an escape from gendered forms of violence, among additional social and economic factors. According to Agustín (2007), when the only economic migration options available to women migrants are low skilled, or degrading and low paying jobs, women migrants may prefer to undertake high-risk, high stakes jobs in sex industries rather than the alternative of lower paying temporary forms of devalued labour. Considered within this argument, PWAE limits women's legal economic migration options to

Canada and include assumptions about women's agency in working in the restricted sectors. The regulations can thus be understood as a form of state securitization against migrant employment in a morally unpopular form of employment in a high risk Canadian industry.

Securitizing the State Against Undesirable Categories

Canada has been able to maintain discriminatory migration regulations and programs because of the discourses surrounding migrants which increasingly (re)produce and represent migrant subjects as threats and risk. Dauvergne (2008) suggests that states, particularly economically prosperous Western states, position migrants as scapegoats for anxieties related to globalization, economic uncertainty, increased mobilities and perceived loss of sovereignty (Dauvergne, 2008). Recent political campaigns in both the USA and Britain, provide evidence of political parties positioning migrants as dangers to state interests; risky 'others' who threaten cultural norms and values, increase crime rates and unfairly benefit from the economic system and social protections. States draw on ideology and fear within complex interactions and logics that are political, social, cultural and economic, in order to justify increased surveillance and securitization of migration (Fassin, 2011). And though certain historical periods of social, economic, cultural and political tensions are more or less favourable for the development of barriers between states and people (Rudolph & Jacobsen, 2006), the current trend has been towards states increasing securitization measures to restrict legal migration flows in an attempt to enforce greater control of human movement. Indeed, in their discussion of transforming borders in Europe and North America, Andreas and Snyder (2000) conceptualized the increased tendency of border securitization as a 'Wall around the West'.

The Copenhagen School (CoS) which developed the theory of securitization, claims that securitization is mainly illustrated in liberal-democratic society (Buzan et al. 1998, p. 24). CoS theory of securitization views security as a 'speech-act' informed by political argument which discursively

constructs a threat (Williams, 2003). Positioning an issue as an 'existential threat' (a threat to survival), enables the suspension of 'normal politics' in order to address the threat (M. McDonald, 2008). Buzan et al. (1998) describe the discursive construction of security in the following terms: "Security is a quality actors inject into issues by securitizing them, which means to stage them on the political arena... and then to have them accepted by a sufficient audience to sanction extraordinary defensive moves" (Buzan et al., 1998, p. 204). As will be demonstrated in the analysis chapter of this thesis, PWAE communicates to the Canadian population the threat and risk associated with 'Vulnerable Foreign Workers', which then allows the Canadian Government to sanction defensive moves including refusing entrance to migrants based on suspicion, increasing surveillance and profiling of women migrants and removing them from the state territory.

According to Aradau, the concept of securitization, coined in 1995 by Ole Wæver, is "regarded as a path-breaking alternative to realist and neo-realist understandings of security" (p. 388). Realist understandings of security view threats as "objectively given and military in nature" (p. 48). The social constructivist roots of securitization theory is ideal for conceptualizing how states react to threats that are "beyond and beneath the state" (Aradau, 2004, p. 388), or non-military in nature, with the same measures as more tangible and 'real' threats (Buzan et al., 1998). According Aradau, this makes securitization ideal for understanding the state's reaction to "migration, refugees, organized crime, terrorism, human trafficking, or AIDS" (Aradau, 2004, p. 388). As mentioned above, this thesis invokes this understanding of securitization to explain the primary impetus and outcome of PWAE. And this is only possible based on the previously discussed normalization of the 'otherness' of migrants.

McDonald (2008) argues that migrants have been represented by politicians as threatening to both modern state sovereignty and identity. He indicates that political leaders make clear choices to communicate the threatening nature of immigration to constituents which serves to justify increasingly restrictive practices (McDonald, 2008). Bigo (2002) agrees and argues that political speech

and policy are laden with signs that associate migration with threat based on social images. Bigo (2002) indicates that in state migration governance communications “The wording is never innocent. Both migration and security are contested concepts, and they are used to mobilize political responses, not to explain anything” (p.71). Sharma (2005) continues this argument by indicating that contemporary state discourses are driven by the “eradication of dangerous foreigners” to protect the “homeland” (p.89). This thesis adopts Bigo (2002) and Sharma’s (2005) description of charged state communication surrounding migration, migrants and governance. The analysis and discussion expose how the Canadian state discursively constructs the migrant category of ‘Vulnerable Foreign Workers’ as a threat to Canada and its community. Through encoded language and tactics, PWAE mobilizes support for defensive tactics in order to protect Canadian communities from this undesirable category of migrant.

By positioning migrants as dangerous threats, states generate acceptance of securitized responses to migrants, imposing traditional realist security practices and technologies to address migration including using security forces to tighten borders and immigration controls and increasing the policing of migrants (Adelman, 2001). Bigo (2002) is critical of this approach and claims that “The securitization of migration is [a] transversal political technology, used as a mode of governmentality by diverse institutions to play with the unease [associated with migration], or to encourage it if it does not yet exist, so as to affirm” the role of security and protectionism in which state and non-governmental actors participate, and “to mask some of their failures”(p. 65).

Considered within this understanding of securitization, PWAE is a securitization tactic which produces and illegalizes a category of migrant and provides the government and actors in the security field with additional power to block, monitor, and facilitate the removal of undesirable migrants. The analysis in this thesis demonstrates how positioning the state itself as vulnerable to this undesirable migrant is one of the logics that allows the state to advance a securitization agenda which masks state

failures to protect migrant worker rights. As Walia (2013) explains, “By invoking the state *itself* as the victim, migrants *themselves* are cast as illegals and criminals who are committing an act of assault on the state” (p. 54). Undesirable migration can therefore be construed as trespassing, and migrants constructed as problems, risks and threats that must be prevented, managed and contained. And this is precisely the function that PWAE (re)produces.

Producing and Managing Risky Migrants

Risk is an important determinant of migrant categorization. Pickering & Ham (2014) detail how people are “sorted into categories at the border to determine whether their mobility does or does not constitute a risk” (p. 12). PWAE is an example of this process, though the sorting takes place in visa offices around the world rather than at Canada’s physical border sites. Bigo (2002) refers to society’s current preoccupation with risk as a “Shift from panoptical to the banoptical, where specific groups are rendered suspect; simply by categorising them, anticipating profiles of risk from previous trends, and projecting them by generalization upon the potential behaviour of each individual pertaining to the risk category” (p. 81). Aradau (2008) agrees that profiling is a key dividing practice that allows states to categorize between desirable and undesirable individuals. Profiling relies on statistical factors and intersecting social identities. Salter (2006) describes this process as the site where the “the document is compared to the body which is compared to the story” (p. 281). Scholars have argued that the ambiguity of risk indicators for border control have meant that risk profiling is often linked to discrimination rather than actual illegal activity (Agustín, 2007; Pickering & Ham, 2014). According to Satzewich (2015a), differences in Canadian visa officials’ decision making on immigration cases is attributed to differences in “understanding and assessments of credibility and risk” (p. 16). Aradau (2008) explains that understandings of risk and credibility are cyclically (re)produced; previous acts of risk profiling inform the existence of present threat characteristics, which then justifies the use of

securitization tactics and technologies to predict and prevent risks, and prominent among these technologies is profiling. For PWAE, immigration officers would profile migrants based on the presence of certain 'risk' factors into the category of 'Vulnerable Foreign Workers'. This then justifies securitizing against the migrant. Once these risk factors are established (gender, race, age etc.), they justify future profiling of migrants into the category which generates more securitization, including continued profiling. The analysis of PWAE demonstrates that officers profile migrants based on intersecting social factors that are carefully coded in both Canadian migration governance and PWAE itself. But profiling is only one of the many tactics that are employed by states to securitize against migrants.

States have employed an arsenal of strategies and instruments of control to securitize their borders and territory in order to control movement and limit risks. Similar to Aradau (2008), Bigo (2002) asserts that "Securitization of immigration is the result and not the cause of the development of technologies of control and surveillance" (p. 73). These technologies include building and employing actual barriers, such as border gates and walls to reinforce and define physical borders. But increasingly, and ascribing to Giddens description of late modernity (1990), states monitor, police, quantify and map their borders far from the actual physical site of the political border in what has become known as remote-control border practices (Casas-Cortes et al., 2015). Walters (2015) suggests that borders should be understood as events that are produced by certain technologies, rather than as static locations. Border studies provides rich insight into how data monitoring and document procurement, immigration raids and offshore detention facilities, are increasingly used in coordination with exclusionary narratives and categorization to create supranational borders which become embedded and performed in the everyday lives of migrants and citizens alike (Amoore, 2007; Coleman, 2009; De Genova, 2013; Gill, 2011; Johnson et al., 2011). Borders in migration governance should therefore not be understood as static lines that define state territory, but rather as sites where

states communicate notions of identity and belonging to migrants and citizens alike. Supranational borders (re)produce individual's identities in relation to particular governments, territories and national communities and signal to individuals their worth, value and access to rights. PWAE is situated at this nexus and is a technology of supranational borders; preventing the entrance of undesirable migrants at a point of contact prior to entering the Canadian state, producing the migrant identity of 'Vulnerable Foreign Workers' and influencing migrant access to rights in Canada. These concerns will be developed in subsequent chapters.

The strategy of pushing borders into remote control locations is referred to in immigration studies as the externalization of migration controls. Frelick et al. (2016) define externalization as "extraterritorial state actions to prevent migrants, including asylum-seekers, from entering the legal jurisdictions or territories of destination countries or regions", which prevent migrants' abilities to claim rights and avoid the state's obligation to provide and protect those rights (p. 193). Menjivar (2014) indicates that externalization also includes outsourcing migration controls and activities in third countries through multi or bilateral agreements (i.e. EU/Turkey 'Dirty Deal', USA/Mexico Southern Border Plan), and insourcing activities that police migrants more closely within the state borders. According to Haddad (2008), states employ externalization to both prevent migrants and asylum-seekers from legally entering their territories, and/or facilitate the state's ability to apprehend and return unwanted migrants (Haddad, 2008). Hathaway and Gammeltoft-Hansen (2014) note that the politics of externalization have allowed western states to continue to support refugee and immigration laws while avoiding and insulating themselves from the impacts and responsibilities related to protecting the rights of vulnerable migrants (p. 9). Plaut (2016) explains that externalization is often associated with tough on crime rhetoric, justified through embedding migration controls in state crime-control efforts to address human trafficking and people smuggling, and prevent terrorists from sneaking in as refugees. Plaut's (2016) argument relates well to PWAE which is an externalization

tactic introduced as part of Canada's anti-trafficking initiative which adopts a tough on crime stance. And this has implications for the lived experiences of women migrant workers, influencing their options and choices.

According to Fassin (2011), as governments increase their securitization efforts towards policing migrants, the border becomes embedded in the migrant bodies and experiences, imposing external and internal frontiers. These bordering practices influence and dictate migrant options and choices, and promote self-policing of migrant decisions and behaviour (Mountz, 2010). The disciplinary function of the border increases when migrants pursue clandestine or illegal routes in their migration project (Coutin, 2003). And several studies, including reports by the UN and ILO, document how intensified border restrictions and immigration controls lead to migrants using increasingly risky and dangerous routes that sacrifice their security, dignity and even lives when crossing borders (UN General Assembly, 2015; Satzewich, 2015a).

The UN General Assembly has emphasized how in the face of externalized migration controls, migrants increasingly contract the services of private actors to facilitate border crossings (UN General Assembly, 2015). Migrants travelling with the assistance of a private actor are vulnerable to the whims of the individual arranging their journey. If the private actor proves to be unscrupulous, migrants risk facing grave consequences, including forced labour, exploitation, and even death, (UN General Assembly, 2015). This is an example of how lines blur between trafficking and smuggling. Externalization of border controls therefore perpetuates the trafficking and smuggling behaviours that the rhetoric claims to prevent. And this has important implications for PWAE which is a restrictive policy that shrinks legal migration channels to Canada. The discussion chapter of this thesis clearly outlines how PWAE has contributed to migrant vulnerabilities to unscrupulous third parties.

Additionally, when migrants embark on migration projects through irregular channels, their 'illegal status' in countries of destination associates migrants with risk and categorizes them as deportable 'illegal aliens', which transforms their mundane everyday actions into illicit acts which are punishable by the law (Coutin, 2003; De Genova, 2002; Heyman, 1998). Chavez (1998) outlines how state's repression is most strongly exerted on undocumented migrants who face detention and deportation for committing the crime of living without appropriate documentation.

Canadian immigration programs, including PWAE, that externalize migration controls and limit and restrict the entrance of migrants into Canada must be understood in relation to international evidence gathered on the consequences of externalization of migration policies. Additionally, as outlined in the previous chapter, PWAE narrowly focuses on a very specific category of risky migrant which I argue is gendered, racialized and marginalized migrant category. This is unsurprising since migration controls are not evenly applied to everyone. Among migration scholars it is widely recognized that restrictive migration policies are levied against persons who lack political and social power resulting from intersecting factors including race, religion, nationality, social class, ethnicity, gender and sexuality (Anh Duong, 2012; Carens, 1987; O'Connell Davidson, 2010; Scheppe & Sharma, 2015; Wonders, 2006). Additionally, scholars argue that state practices of restrictive migration control are often de-politicized and hidden behind discourses of smuggling and trafficking (O'Connell Davidson, 2010; Sharma, 2011, 2015). De Genova and Sharma are among a growing group of academics who contend that the narratives and discourses of trafficking and smuggling allow the state to portray itself as benevolent and paternalistic while carrying out migration reforms that restrict legal migration channels and promote migrant vulnerability and exploitation (Anderson, 2012; De Genova, 2013; Sharma, 2005).

Border studies contribute to understandings of risk analysis, categorization and decision making that occurs at the border, but only a small selection of research examines how sex and

women's sexuality in particular, interacts with additional social identities or markers, to categories migrants at remote control borders. This type of categorization, which profiles migrants based on risk logic, is precisely what this thesis examines. Much of the risk profiling employed by regulations PWAE is informed by trafficking discourse, which as the next section describes, conflates migrant employment in the sex industries with trafficking and relies on essentialized understandings of vulnerability. By employing this logic, PWAE creates a new political category of undesirable migrants, that of 'Vulnerable Foreign Workers', which is populated by persons in need of state protection.

Anti-Trafficking Undercurrents of PWAE: Operationalized Narrative and Discourse

Pickering & Ham (2014) indicate that migration governance dealing with sex work should be understood "against the ideologically charged international backdrop of anti-trafficking initiatives" (p. 3). Since PWAE forms part of Canada's anti-trafficking plan, it should therefore be analysed within this context. Pickering and Ham (2014) argue in their discussion of migrant sorting at the Australian border, that "highly gendered and racialized discourses that circulate around anti-trafficking initiatives" often result in "law enforcement and intelligence efforts to identify and repatriate suspected victims of trafficking" (p. 3). I argue that the same logic of stop, block and return of undesirable migrants is operating in PWAE, maintained by the powerful discourses and narratives of human trafficking.

As detailed in chapter two of this thesis, the United Nations has provided a baseline definition of trafficking which distinguishes between trafficking and sex work and "acknowledges trafficking as a form of exploitation that occurs in various work sectors" (Pickering and Ham, 2015, p. 5). However, reviews of anti-trafficking campaigns, policies and literature from across the globe reveal that national and supranational policy struggle to apply a clear and consistent definition of trafficking and rely on affective narratives and discourses of trafficking to inform policy directions (Anderson & Andrijasevic,

2008; Andrijasevic, 2010; Anh Duong, 2012; Berman, 2010; Crowhurst, 2012; De Shalit, Heynen, Robert, & van Der Meulen, Emily, 2014; Doezema, 1999, 2010; Gozdziaak & Collett, 2005).

The most commonly operationalized trafficking narrative imagines victims who are innocent white women, or minors, who are forced, deceived or coerced away from the safety of their homelands and into grave sexual exploitation (Andrijasevic, 2010; Berman, 2010; Crowhurst, 2012; De Shalit et al., 2014). These essentialized victims are thought to be physically confined or under constant surveillance by their captors, who are part of an international criminal organization. The narrative invokes discourses of racialization, stereotypes of vulnerable females and prostitution-abolitionism (Chapkis, 2003; Doezema, 2010; O'Connell Davidson, 2006; Yea, 2015). The narrative also engages with the traditional narrative strategy of separating subjects into the tidy categories of antagonists, victims and protagonist. Antagonists are imagined as criminal men who may also be understood as economic migrants committing crimes against innocent women and against the state. The category of victim is occupied by two subjects, first the violated defenceless women and children, and second the violated international borders (Chapkis, 2003). Finally, the narrative positions states and non-state actors as protagonist saviours who must rescue and protect victims, and also prevent future victimization (De Shalit et al., 2014).

Several studies have begun to untangle the oversimplified trafficking narrative and unpack international anti-trafficking policies and campaigns to map the complicated relationships between migration policies, sex work, vulnerability and exploitative labour conditions (Agustín, 2007; Anderson, 2012; Aradau, 2008; Berman, 2010; Crowhurst, 2012; Doezema, 1999, 2010; O'Connell Davidson, 2010; Sharma, 2005, 2011). Prominent criticisms of the trafficking narrative include that it conflates sex work and prostitution with human trafficking, invokes gendered moral panics about inappropriate female behaviour, racializes and genders victims and criminals, ascribes to prostitution abolitionism, denies women's agency and relies on definitive binaries that allow states to apply categories which

shrink legal access to human rights and labour migration channels (Anderson, 2012; Anderson & Andrijasevic, 2008; Brock et al., 2000; Doezema, 1999; O'Connell Davidson, 2010; Sharma, 2005).

Andrijasevic (2010) dismisses the smuggling and trafficking binaries of illegal/legal and victim/criminal by detailing the fluidity of migrants shifting between statuses. This includes travelling through legal channels (obtaining legal immigration documents) and later slipping into illegal situations, or contracting the services of smugglers who later subject them to abuse and exploitation. Sharma (2005) provides an example of the blending of smuggling and trafficking in her interactions with migrants from the Fijian province of China to British Columbia. The migrants had hired the services of smugglers who transported them to Canada via boat. Sharma (2005) outlines how lines blur between smuggling and trafficking with different parties mobilising the label of 'victim of trafficking' to rationalize security measures against the women migrants (state), advocate for the women to stay (feminist advocates and NGOs), or attempt to claim rights and access to the Canadian labour market (women themselves).

It is precisely these binaries, panics, discourses and narratives that inform PWAE. Sharma's (2005) work questioning the utility of the categories of victim, or 'potential victim' is therefore important for unpacking governing motives and objectives embedded in PWAE. The category produced by PWAE, that of 'Vulnerable Foreign Workers', conflates exploitation and abuse with sex work. The focus on sexual abuse and exploitation in PWAE, a characteristic of popular anti-trafficking campaigns, has the effect of rendering other forms of exploitation or abuse present in the Canadian TFWP unremarkable (Agustín, 2007; Anderson & Andrijasevic, 2008; Sharma, 2005).

Walia (2010) outlines how the rhetoric of anti-trafficking ignores and erases the labour exploitation produced by state regulated Canadian migration programs including the Seasonal Agricultural Worker Program (SAWP) and Live-in Caregiver program (LCP). Anti-trafficking framing

permits the state to displace responsibility for exploitation onto foreign 'others' and position itself as the saviour of victims, or 'Vulnerable Foreign Workers' (Walia, 2010). Pickering & Ham (2014) indicate that the state's position of 'saviour' justifies the state's heightened monitoring of women's sexuality in migration governance, linking migrant women to risk. This process is reflected in PWAE.

Aradau (2008) argues that policy responses based on trafficking narratives tend to view women as both victims and naturally risk-bearing subjects who pose threats to themselves and to society. Gilbert (2007) explains that trafficked migrants embody risk since they are visible evidence of leaky borders, which supports state rhetoric of a need for stronger migration enforcement, and justifies the states handling of women as threats (p. 77). Lee (2011) claims that the popular trafficking narrative also links trafficking to organized crime networks which normalises "enforcement-led interventions" that strengthen state power with little tangible results for stopping trafficking or punishing suspected traffickers (p. 84). The often referred to 'war on trafficking' has resulted in heightened suspicion, limited mobility and increased vulnerability to exploitation of persons categorized as 'illegal aliens', 'bogus asylum seekers' and 'undeserving trafficking victims' (Lee, 2011, pp. 123-126). PWAE legislates the Canadian state's ability to intervene with enforcement, and is squarely situated within Canada's 'war on trafficking' generating precisely the type of suspicion that Lee (2011) refers to.

Yea (2015) examines the politics of victimhood and the ways that states classify, demarcate and construct migrant identities to create and differentiate between deserving and illegitimate victims of trafficking. Kelly (2005) refers to this classification and differentiation as 'a hierarchy of worth' (p. 236). Mountz (2004) describes a similar hierarchy of legitimacy in her discussion of the classification of asylum seekers in Canada, where categorization determines access to human rights protection. Hierarchical category structures are therefore especially important to determining the rights that a migrant may access, especially within anti-trafficking initiatives.

Understood in this context, it is important to examine not only the discourses of migration governance and policies, but also the practices produced by acts of governance. Questions about the personal bias of bureaucrats, and systemic biases of government institutions, laws and policy therefore become important for understanding the process of determination of migrant categorization, especially since immigration officials work as gatekeepers utilizing the law to determine which migrants are worthy of inclusion, versus exclusion, and under which circumstances (Satzewich, 2015). It is therefore timely to analyze PWAE, which produces women as both potential victims and risky subjects, and instructs immigration officials to ‘protect’ ‘Vulnerable Foreign Workers’ by refusing their entrance into the state.

The Weapon of Protection and Convenient Category of ‘Vulnerable Foreign Workers’

As described above, externalization has become a popular strategy to prevent undesirable migrants from legally accessing states and excluding migrants from the national community. François Crépeau, the *United Nations* Special Rapporteur on Human Rights of Migrants, argues that externalization strategies are framed both as security efforts and as humanitarian endeavors that are protecting migrants from the dangers associated with migration (Frelick et al., 2016). This observation is certainly true of externalization tactics that deal with migrants in the sex industries. Indeed, the Global Alliance Against Trafficking in Women (GAATW) has observed that anti-trafficking laws and campaigns, mobilized in the language of ‘protection’, often violate migrant rights through externalization tactics including confinement, denial of mobility rights, incarceration and deportation (Pickering & Ham, 2014).

The GAATW’s observations ascribe to the Anderson’s (2012) description of the contemporary governance dilemmas faced by liberal states who govern through a political culture of individual rights. According to Anderson (2012) migration governance creates a “liberal dilemma of promotion of

basic [universal] human rights on one hand, and the rights of citizens on the other” (p. 1242). Liberal states attempt to harmonize the conflict of maintaining a rights based political framework while denying the rights of non-citizens by framing migration externalization and enforcement in the discourse of ‘protection from harm’ (Anderson, 2012).

I have previously discussed the negative discursive framing of migration, which at times is also portrayed “as the *cause* of exploitation” (Sharma, 2005, p. 96). But the framing of migrants as ‘vulnerable’ must also be considered in the context of externalization since PWAE invokes the notion of vulnerability to justify securitization. According to Miller (2004) representations of migrants as ‘vulnerable’ reduces many non-Western women to “suffering bodies in need of protection by the law and the state” (p. 27). This representation obfuscates a rights based approach that advocates for the protection of the individuals’ rights, including the right to participation, mobility and equality (Fitzgerald, 2010, p. 278). McNay (2003) indicates that as with sexuality, power shapes the recognition or denial of agency, and representing migrants as ‘vulnerable’ denies and erases perceptions of agency. The category of ‘Vulnerable Foreign Workers’, produced by PWAE, imposes what De Genova describes as an essentialist politics of difference (De Genova, 2013). The discursive representation of migrants as ‘victims’ or ‘vulnerable’ strips them of a form of agency that may be understood as self-determination, which implies that they are unable to self-govern, and incapable of democratic citizenship. The exploitation or abuse of a ‘vulnerable migrant’ can therefore be explained by their natural exploitability since their ‘foreignness’ is associated with their subjugation (De Genova, 2013). This discourse of vulnerability allows states to view a homogenous, essentialized population of vulnerable migrants, which simplifies management and control under a concise governing strategy (Berman, 2010). And increasingly, management of ‘vulnerable migrant’ populations has translated into externalization tactics couched in the language of ‘protection’.

PWAE specifically targets women migrants with this logic by framing women migrants as 'Vulnerable Foreign Workers' in need of 'protection' through externalization. This framing is simplified by an international compulsion to 'protect' women from harm and victimization, that is deeply rooted in patriarchy (Hicks Stiehm, 1982). According to Hicks Stiehm (1982), women are rarely permitted to "act either as defenders or as protectors" and are relegated to the subject position of "the protected" (p. 367). Pickering & Ham (2014) argue that this is reflected in migration governance where enforcement and rescue is viewed as feminine. In other words, when supranational borders, securitization and externalization tactics operate to intercept, apprehend, detain and deport men migrants, it is often framed as masculine enforcement of strong state borders, but when states enact these same processes with women migrants, it is framed as in feminine conceptions of protection. Since PWAE targets women migrants specifically, it is unsurprising that the state frames it within the feminized paradigm of 'protection'.

Butler (2004) indicates that some people, and women in particular, are normalized as naturally vulnerable and exploitable since they are understood as being damaged, poor, powerless or tragic. These patriarchal notions construct women migrants, especially those in the sex industries as "risky beings, always in danger" (Aradau, 2008, p. 103). This discourse then justifies and generates widespread acceptance for humanitarian 'protection' using aggressive tactics including detainment and deportation of migrants, and quieter exclusions such as discrimination. All of these tactics and techniques are employed by PWAE through the discursively produced category of 'Vulnerable Foreign Workers'.

According to Anderson (2012) externalization and securitization based on the 'protection from harm' is often unquestioned and widely accepted by citizens since the discourse of 'protection from harm' is strongly linked to conceptions of 'good' (p. 1248). Walter (2015) agrees with Anderson's

argument in his discussion of antipolicies (anticorruption, antiterrorism, anti-trafficking) which he indicates is a governance strategy that positions these sorts of interventions as 'good', and polarizes public debates, positioning them around the binary question of "are you with or against the good?" (p. 3).

To summarize the literature presented above, the category of 'Vulnerable Migrant Workers' erases, or at the very least diminishes, the state's view of women migrants' agency, and justifies patriarchal state tactics to manage this population. The language of 'protection' then functions as a weapon which is widely accepted by citizens, to externalize 'risky' and undesirable migrants through denying them entry, profiling and policing them once they have entered the state, and removing them from the state body.

Situating the Research

Several bodies of knowledge, including border studies, securitization, migration, mobilities, trafficking, vulnerability and externalization converge in a complicated web to form assumptions about migrant women's mobility and agency. My research into PWAE which claims to protect migrants from abuse and exploitation is situated at this nexus. The next chapter introduces the theoretical grounding of Foucauldian governmentality and intersectional theory that informs and guides the analysis of PWAE. In this thesis, I examine how the Canadian state operationalizes the narrative and discourses of trafficking into racialized and gendered policies that shrink the definition of abuse and exploitation and direct the states' securitization efforts onto women migrants. My research extends arguments and contributes to the larger conversations in the preceding review of the literature in three primary ways: first, by critically analysing the only Canadian immigration policy that explicitly mentions abuse and exploitation, second by interrogating how Canadian immigration officials'

determine 'vulnerability' in the Canadian Temporary Foreign Worker Program (TFWP), and finally by examining the impact of PWAE on migrants.

Nandita Sharma sets the standard for challenging the Canadian state for institutionally producing exploitative labour conditions across the TFWP that create the migrant 'vulnerability' that the state claims to be preventing (Schweppe & Sharma, 2015; Sharma, 2005, 2007, 2011). Sharma has focused some of these analyses on migrant sex workers and trafficking narratives in Canada (Sharma, 2005, 2011). De Shalit et al. (2014) examine Canadian media and NGO communication strategies for trafficking and find that the conflation of exploitation and sexual exploitation maintain a representation of women migrant 'victimization' and 'vulnerability' which strips them of their agency in such a way that citizens are encouraged to "actively disbelieve anything that [migrant sex workers] may say about their own life circumstances or relationships" (De Shalit et al., 2014, p. 407). This, argue De Shalit et al. (2014) positions the state as the absolute saviour of 'vulnerable' migrant women.

My research begins from this starting point and examines how the externalization tactics of PWAE adopt and operationalize these knowledges and discourses. My research specifically addresses how immigration officials interpret and apply PWAE, which reveals the social locations, or characteristics that influence the production of the category of 'Vulnerable Migrant Workers' in Canadian immigration governance. There is very little research examining Canadian immigration officials' interpretation of discretionary regulations and policies (See: Satzewich, 2015a,b). And even less research evaluating the interpretation of sexuality and vulnerability in the process of vetting work permits for migrants under the Canadian TFWP. Previous studies have examined the decision making process of Canadian immigration officials in Canada. Allison Mountz (2003) and Jennifer Hyndman (2010) who both examined how the Canadian government, immigration officials and law enforcement respond to asylum claimants in Canada. Mountz (2003) documented the way the state sorted into categories asylum seekers from the Fujian province of China who were smuggled into Canada on

boats. She argues that immigration officers and police draw on and perpetuate understandings of the legitimacies of asylum claims (2004). Hyndman, (2010) examined how immigration officials classified refugee child soldiers and concluded that “geographical location and imagination strongly shape access to provisions of international law and the victimized status of ‘child soldier’ in particular” (p. 248). Finally, Vic Satzewich (2015a,b) undertook a comprehensive examination of the decision-making process and discretionary practices of Canadian visa officers in embassies abroad, with an emphasis on permanent entries, predominantly spousal and federal skilled worker applications. My research is informed by the findings of these previous studies, and particularly relies on Satzewich’s conclusion that it is the “social constitution of discretion”, or structural and organization factors, that influence the visa officers’ discretion (Satzewich, 2015a, p. 16). In addition, the research expands on each of the previous works and interrogates the gendered ways that visa officers apply policy related to sexuality, which is (arguably) not explicitly gendered.

Finally, my research aims to understand the impact of PWAE on the lived experiences of migrants. In doing so, this project complicates the reading of PWAE, questioning the goals and objectives of PWAE, the strategies employed to reach the goals the experiences produced by the policy. It is my hope that this study draws attention to politically palatable immigration governance that targets particular migrants in the language of protection, by framing and representing the migrant as ‘Vulnerable Foreign Workers’.

Chapter 4: Theoretical Framing and Methodological Approach

Migration practices and governance are social spaces and practices in which “bodies, institutions, and ideologies meet, interact and shape each other” (McCann & Kim, 2003, p. 161). The interdisciplinarity of the field of migration means that this thesis draws from several theories, concepts and notions to guide the analysis, and adopts a multimethodological approach to interrogating PWAE. However, two theoretical frameworks inform this thesis’ analysis; governmentality and intersectionality. Together these theoretical groundings provide a rich framework that traces the lines of power which rely on intersectional social differences to produce and differentiate migrants into desirable subjects, and determine who has the ‘right to belong’ in the contemporary nation-state. This chapter begins by outlining my use and understanding of governmentality, and intersectionality, prior to discussing the relevance of this combined theoretical framing for understanding PWAE. Following this discussion, I introduce my primary method of feminist critical discourse analysis and supplementary methods of semi-structured interviews and administrative data analysis. These methods combine to provide a triangulation of evidence in the analysis of PWAE.

Governmentality for Understanding Migration Governance

Foucault claimed that in contemporary society “the real political task ... is to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them” (Foucault & Rabinow, 1984, p. 6). The literature review introduced Michel Foucault’s discussion of classification and the power of categories. This section expands on Foucault’s notion of governmentality, of which classification and categorization are key state tactics. Foucault’s governmentality, drawn from his 1977-1978 lectures at the Collège de France

on *Security, Territory and Population* (Foucault, 2009), inform the perspective of this thesis' analysis and discussion. Prior to detailing the relationship between governmentality and migration, I first summarize Foucault's definition of governmentality which he described as the "conduct of conduct" (Foucault, 2009, p. 192-193).

Foucault defined governmentality in three ways: first, as an "ensemble formed by the institutions, procedures, analyses, reflections, calculations and tactics that allow the exercise of this very specific, albeit complex power, that has as its target population... and apparatuses of security as its essential technical instrument"(Foucault, 2009, p. 108). Second governmentality refers to a tendency that "has steadily led to the pre-eminence over all other forms - sovereignty, discipline and so on - of this type of power, that we can call 'government' which has led to the development of a series of specific governmental apparatuses (*appareils*) on the one hand, [and, on the other] to the development of a series of knowledges (*savoir*)" (Foucault, 2009). Finally, governmentality is the process resulting in the state becoming 'governmentalized', which refers to the concept of a center-less state; a state without essence but rather composed of the sum of practices, techniques and "tactics of government that allow the continual definition of what should or should not fall within the state's domain" (Foucault, 2009, p. 109).

Studies of governmentality seek to unpack the political rationalities that define and identify problems, and set the parameters of how the given problem should be addressed. This characterization of governmentality understands power as operating from "specific rationalizations and directed toward certain ends that arise within" (Rose et al., 2016, p. 84). An analysis of governmentality seeks to understand the practice of government, and the rationality of government. Rose et al. (2016) refer to this process of governing as the art of governing, which they argue embodies the questions "Who or what is to be governed? Why should they be governed? How should they be governed? To what ends should they be governed?" (pp. 84-85). Gordon (1991, p. 3)

summarizes governmentality as the “rationality of government” or “a way or system of thinking about the nature of the practice of government” which is “capable of making some form of that activity thinkable and practicable both to its practitioners and to those upon whom it was practised” (Gordon, 1991, p. 3).

Migration is an object of governmentality and states adopt political rationalities that produce strategies and techniques to identify, differentiate, monitor, control and discipline migrants and citizens towards specific objectives. Studies of migration and governmentality are concerned with examining “the institutions, procedures, actions and reflections that have populations as objects” in order to “complicate questions of control” and to relate “power and administration of the state to the subjugation and subjectivation of individuals (Fassin, 2011, p. 214). There is a growing field of critical migration research that draws on the themes and concepts of governmentality to unpack complicated relationships including that of migration and security (Bigo, 2002), the construction of borders and boundaries to produce ‘otherness’ (Fassin, 2011), the role of geography and law in producing asylum claims (Mountz, 2010), the use of biopolitics to regulate the bodies and movement of female trafficked migrants (FitzGerald, 2010), and the production of migrant inclusion through exclusion (De Genova, 2013), among many others.

One of the basic tenets of Foucauldian governmentality is that power is not only repressive but also productive; it produces bodies and subjects. This flexible conceptualization of power allows studies of governmentality to analyze strategies, techniques, programs and technologies that aim to manage, direct and shape the conduct of others. Migration laws, policies and governance are at their core, mechanisms that shape migrant conduct and produce and differentiate between migrants and citizens. Giddens (1991) argues that the state’s monopoly of the legitimate means of movement relies its ability to define who belongs and who does not belong. Migration laws and policies that produce

these categories and classify subjects into 'us' and 'other' are important sites where state strategies, techniques and rationalities are made visible.

Classification and dividing practices are an important part of governmentality, and chapter three discussed the importance of classification for migration governance. Foucault indicates that individuals embody the terms and criteria employed to demarcate or delimit classifications which produce their subjectivities; categories mediate how subjects construct themselves and their social world (Foucault & Rabinow, 1984; Haggerty, 2001, p. 48). Legg (2009) indicates that governmentality is responsible for the production of knowledge and certain discourses, which individuals internalise and which then guide the behaviour of a population. According to Haggerty (2001), this process provides states with the powerful ability to normalize otherwise arbitrary divisions (p. 48). Migration governance is a textbook study of the normalization of arbitrary division. Foucault explains that these "forms of normalisation [are] peculiar to security" (2009, p. 397). This last point is important since concepts of risk and protection have very specific links to security and the normalization of the category of 'Vulnerable Foreign Workers' has implications for securitization and migrant security.

Yet basing my analysis of PWAE on Foucault's theory of governmentality alone provides an incomplete framework that does not account for the specific gender implications of this migration governance. FitzGerald (2010) indicates that a common feminist critique of Foucault's work is his lack of attention or regard for gender. According to McLaren (2002) Foucault's work has "an almost total neglect of gender, women's issues, feminism and sexual specificity" which has led many feminists to "accuse Foucault of being gender-blind" (pp. 17-18). In particular, McLaren (2002) indicates that many feminists have questioned the usefulness of Foucault's concept of power as (re)productive since this notion does not account for asymmetrical power relations based on gender differences. However, in outlining debates around the usefulness of Foucault to feminism, McLaren (2002) also indicates that certain streams of feminism have embraced Foucault's theories precisely for his notion of

(re)productive power. The reasoning behind this is that Foucault's notion of power provides a lens for analysing and understanding sites where power relations, including patriarchal power relations are (re)produced (McLaren, 2002). Bartky (2002) is among feminists who draw on Foucault's theories in her analysis of how the female body is constructed and inscribed with inferiority.

This thesis engages with the latter conversations about the usefulness of Foucault to feminism, and joins scholars that combine feminist epistemologies and theories with Foucauldian theories. My analysis therefore places governmentality into conversation with feminist interdisciplinary theory in order to produce a more useful concept of governmentality with the power to interrogate the gender dimensions of power manipulations (re)produced by and in PWAE.

Intersectionality Theory: Intersecting Migrant Identities

Intersectionality theory complements governmentality discussions of socially constructed classification for understanding migration. Both theories deny and challenge essentialist notions of identity, but intersectionality theory extends Foucauldian notions by exploring how individuals occupy multiple social categories, locations or identities, and examines how these identities interact and intersect to produce different subjectivities and experiences of oppression and privilege. Bastia (2014) indicates that migration researchers have drawn on intersectionality theory to "visibiliz[e] the interconnected and constitutive nature of multiple forms of oppression (and privilege...) in migration processes" (p. 238). Prior to outlining the contributions of intersectional research to migration research, I first outline the origins and application of intersectionality theory.

Crenshaw is credited with coining the term 'Intersectionality' in 1989, but the theory emerged in the 1980s as a feminist and critical race approach to unravelling the multiple origins of women's different oppressions (Crenshaw, 1991; McCall, 2005; Nash, 2008; Staunæs, 2003). The theory was an analytical response to feminist and anti-racist research and movements of the 1970s which ignored

intra-group differences and advanced the myth of racially neutral, gendered sameness, which implicitly assumes middle class 'whiteness' (Hill Collins, 2009; hooks, 2000). Bastia (2014) indicates that "intersectionality was proposed as an alternative approach aimed at challenging the essentializing notions present in identity politics" (p. 238).

Theories of intersectionality hold that social identities, such as gender, race and class, interact to produce unique experiences of privilege, oppression or inequality. These social identities should not be considered parallel axis that co-exist in mutually exclusive terrains (Crenshaw, 1991). Rather, binaries must be subverted to examine how categories of difference intertwine to create multiple and mutually influential oppressions (Nash, 2008). In other words, social identities shape, and are shaped by each other; general indifference or concern with violence experienced by women is often shaped but their class and race, as is the propensity for women to experience violence (Crenshaw, 1991).

Research utilizing the framework of intersectionality must therefore examine multiple axes of inequality to identify intra-axis and inter-axis differences, based on race, class, gender, sexuality, geography, age, level of education, among others. This thesis examines how intra-axis and inter-axis difference (re)produce immigration official's classification of migrants as 'Vulnerable Foreign Workers'. Social categories should not be understood as isolated or homogenized classifications, and crosscutting interactions between different social identities and positions should be analyzed to disrupt notions of essentialism that assume a monolithic experience independent of other social factors. McCall (2005) indicates that intersectional research must identify and analyze "the relationships among multiple dimensions and modalities of social relationships and subject formations" (p. 1771). Intersectional research therefore demonstrates and demarcates how power is interwoven around and through social categories.

Traditional research and policy in the field of migration have largely remained gender blind, or gender neutral, and have thus largely ignored the experiences of migrant women (Hennebry et al., 2016a). Intersectional theories and approaches have opened new spaces in migration research to name and understand multiple sites and experiences of exclusions and inequalities. Bürkner (2012) argues that intersectional approaches are vital to understanding “the specific dynamics of interplay and agency” in (im)migration studies and experiences (p. 188). According to Bürkner (2012) gender, age, race, ethnicity, and the body (bodyism or embodiment, of issues of health, or risk) are important indicators of migrant exclusion or inclusion that must be examined through an intersectional lens. Pickering & Ham (2014) apply an intersectional analysis to immigration officer decision making at the Australian border to understand how social differences signal risk and how this is connected to “how sexuality is constructed in migration” (p. 2). They argue that an intersectional framework allowed their study to unpack “The power relations that produce and act through categories of social difference [to] shape institutions, social interactions, individual and collective experiences, subjectivities and identities” (p. 3). In their discussion of transnationalism and location, Mountz and Hyndman (2006) argue that “Nationality, gender, race, religion, class, caste, age, nation, ability, and sexuality represent unequal locations within a web of relationships that transcend political borders and scale the global and the intimate simultaneously” (p. 460). Intersectionality theory is therefore well positioned to guide this thesis’ interrogation of power and difference in Canadian migration governance.

Governmentality and Intersectionality for understanding PWAE

Governmentality and intersectionality communicate in interesting and salient ways for this thesis. Combining governmentality with intersectionality creates a framework to analyze the power dynamics, ideologies and discourse embedded in the regulation, examine the decision making process of Canadian immigration officers, and understand the impacts of PWAE on the lived experiences of women migrants. Together, governmentality and intersectionality provide a foundation from which to

examine how vulnerability to exploitation is constructed and (re)produced in Canadian immigration law, and how knowledges about different social locations determine who is constructed as 'at-risk' or 'risk-bearing' subjects.

As described, Foucault's notions of governmentality helps to unpack how power/knowledge (re)produces subjectivities by relying on dividing practices to classify migrants into the category of 'Vulnerable Foreign Workers'. It thus provides a rich theoretical framework to analyze the discourses of the regulation and understanding the power of categorization towards governing migration. It guides this thesis' analysis of the strategies, objectives, rationalities and knowledges that inform PWAE, how these are translated into practice, how and what subjectivities are produced by PWAE and how this then reproduces certain forms of migration governance. Combining Foucault's notion of governmentality with intersectionality theory allows this thesis to provide a rounded argument about the social locations that define and influence classifications into categories. The concept of intersectionality is a useful analytical notion for examining the social locations that inform the category of 'Vulnerable Foreign Workers' and unpacks the logics that inform immigration officials positioning of certain women migrants as risky, troublesome and undesirable, marginalized, or naturally vulnerable.

By combining the two theories, it is possible to examine the relationship between power and social difference and the categories and classifications which emerge from these interactions. While intersectionality is used to examine how visa officers draw on multiple social identities to classify women migrants (Pickering & Ham, 2014), governmentality guides an analysis of the rationalities, knowledges, discourses and practices that produce and are produced by PWAE. Together, these theories provide a framework to unpack how the state attempts to regulate women's mobility by relying on, and manipulating, an essentialized notion of women migrant's vulnerability. The theories provide the perspective that informs this thesis' conceptualization of the ways the state produces and

manages the category of 'Vulnerable Foreign Workers' in order to exert control over migrant women and discipline their options and choices. By manipulating the notions of vulnerability and protection, and classifying women migrants into an undesirable category, the state draws on biopolitical knowledge and intersecting social locations in order to advance an anti- immigration agenda (Fitzgerald, 2010; Huysmans, 2006).

Research Design

As described above, migration is interdisciplinary, and an analysis of migration issues are often best served by multimethodological approaches. Foucault claims that political theory too often attends to analysis of institutions, and too little to the practices and actions of politics (paraphrased by Gordon, 1991, p. 4). Political policies are more than textual documents, they have very real and immediate consequences. PWAE contains particular values and provides guidelines to government officials with the goal of achieving certain objectives. What is unique to this policy is that that the actions that emerge from the guidelines strategically target already marginalized women, and impact those individuals' rights, lives, safety and health in negative ways. It is therefore inadequate to simply examine the text of this policy to uncover representations and discourse without also unpacking how these are understood and operationalized by immigration officers, and detailing the consequences of the policy. Understanding the application and consequences of the policy also reveals the values embedded in the policy text.

Fairclough and Fairclough (2012) suggest that the core of politics is making decisions and choices towards attaining goals or in response to circumstances. When governments choose a particular policy, actions follow based on practical argumentation, or reasoning (Fairclough & Fairclough, 2012). As such, political discourse provides the basis from which to act and respond to political situations with particular strategies and policies which prompt a certain kind of action.

Accordingly, Fairclough & Fairclough (2012) argue that when analyzing political discourse it is *as* important to recognize the representations of people, events and circumstances, *as* it is to analyze the actions that agents take, “*genres* [semiotic ways of acting and interacting] must be given at least as much attention as *discourses*” (emphasis by authors, p. 4).

Responding to challenge put forth by both Foucault, and Fairclough and Fairclough, to expand analysis of political documents, I utilize a multimethod approach to analyze the policy ‘Protecting Workers from Abuse and Exploitation’. Starting with a feminist critical discourse analysis (CDA) of the policy text, I also conducted semi-structured interviews with the immigration officers and with migrant advocates and analyzed government data identifying the foreign nationals who are targeted by the policy.

Feminist Critical Discourse Analysis of PWAE

A feminist CDA adopts the method of CDA but with a particular focus on gender. For the purpose of this thesis, feminist CDA is understood to synthesize my theoretical and methodological approaches, drawing together intersectional theories to challenge simple gender dichotomies and representations to examine power and dominance. As such, feminist CDA melds and intertwines philosophical premises regarding the role of language and image in the social construction of the world, with the theoretical models of governmentality and intersectionality (Jørgensen & Phillips, 2002).

CDA in all of its manifestations is overtly political and concerned with all forms of injustice and social inequality (Lazar, 2005, p. 2). According to van Dijk (1993) a CDA is “unabashedly normative”, partisan, political, and denies any claim to ‘neutrality’ (van Dijk, 1993, p. 253). As a normative exercise, CDA does not just describe existing realities, but also seeks to explain them and “evaluates them, assesses the extent to which they match up to values that are taken (contentiously) to be fundamental

for just or decent societies (Fairclough, 2013, p. 178). The focus of analysis in CDA is on “*the role of discourse in the (re)production and challenge of dominance*” (van Dijk, 1993, p. 249, emphasis added by author).

This thesis adopts a Foucauldian understanding of discourse as a site of struggle for the production and contestation of the social (Lazar, 2005, p. 4). According to Foucault discourse is more than words and signifying elements, it is “practices that systematically form the objects of which they speak” (Foucault, 1989, p. 49). Hall (2001) explains that in a Foucauldian sense, discourse is that which “governs the way that a topic can be meaningfully talked about and reasoned about. It also influences how ideas are put into practice and used to regulate the conduct of others” (p. 72). Fairclough & Wodak (1997) further this description of discourse as unstable social practices that are both constitutive of and constituted by social identities and relations. Discourse becomes an important site of analysis when considering its power to shape knowledge and practice since as Foucault claimed, knowledge linked to power has the ability to become ‘truth’ (Foucault, 1977).

As a pioneer and leading researcher in the field of CDA, Fairclough established CDA as a theoretical and methodological perspective which extends Foucauldian notions of discourse, power and society (Diaz-Bone et al., 2008). CDA is a method that allows researchers to unpack the relationships between social practices and the structures of discourse in order to uncover the ways in which dominance is discursively (re)produced (Lazar, 2005, p. 4). A concern with power and inequality makes CDA an inherently feminist research method, well-suited to feminist scholars (Lazar, 2005, p. 3). As mentioned, what distinguishes a distinctly feminist CDA from other streams of CDA is its overt focus on gender, which can be used to analyze the “insidious and oppressive nature of gender as an omni-relevant category in most social practices” (Lazar, 2005, p. 3). Feminist CDAs are useful for analyzing and unlocking how gendered discourse (re)produces, mediates and predetermines actions, relationships and possibilities (Lazar, 2005, p. 6). Lazar indicates that the aim of a feminist CDA is to

unpack discursive constructions of gender which legitimate gendered structuring of social relations, including patriarchy, colonialism and capitalism, among others (Lazar, 2005).

An important tenet of all streams of CDA is that discourse cannot be understood without analyzing its history and context (Fairclough, 1985; Jørgensen & Phillips, 2002; van Dijk, 1993). Chapter two of this thesis began by situating PWAE in Canadian history and global context. This history and context provide important clues to the values, goals, strategies and objectives of PWAE, and I continue to refer to the history and context throughout the analysis and discussion of PWAE.

Government policy is in an important site for feminist CDA since power and dominance are often institutionalized in patriarchal government structures, legitimated through laws, courts, and government authorities, which are sustained by ideology which are then reproduced by media, text etc. (van Dijk, 1993 p. 255). Yeatman, (1990) understands political policy texts as the outcome of political struggles over meaning in the politics of discourse, and the language employed serves political purpose. Fairclough & Fairclough (2012) outline a framework for political discourse analysis based on argumentation as the foundation of all forms of political speak. The authors theorize that political strategies are advanced through *claims* based on *values*, which support *actions* towards certain political *goals*. Following this framework, Fairclough & Fairclough (2012) suggest that analysts review political documents to identify claims to action, goals, circumstances and context, values and rebuttals to counter-claims or justifications that are utilized to advance a political argument. The structure of the analysis follows Fairclough & Fairclough's (2012) framework to analyze political discourse.

Widdowson (1998) indicates that any form of CDA is incomplete without speaking with the producers and the consumers of a text. According to Widdowson (1998), CDAs of text alone can cause analysts to easily slip into imposing meanings where none were intended or are interpreted. This creates assumptions about the intentions of the creators of the text, and assumes that audiences are

passive recipients of information (Widdowson, 1998). Cameron (2001) also indicates that a limit and criticism of CDA is that it relies on the analyst's interpretation of the text. In an effort to address these limitations of CDA, my analysis considers intertextuality, comparing PWAE to other policies created by the same government in the same timeframe, and refers back to the history and context of PWAE to ascertain meaning. Regardless, I admit that this does not fully satisfy Widdowson's (1998) assertion that the authors of a text should be consulted. Additionally, in an effort to understand the creation and implementation of the text and supplement the textual analysis, semi-structured interviews were conducted with the consumers of the text; visa officers who interpret and operationalize the policy. And since this is a political policy which prompts actions that affect lives, a migrant sex work advocate was interviewed to uncover how the discourse and application of PWAE have influenced migrants lived realities.

Semi-Structured Interviews

Bryman et al., (2012) define semi-structured interviews as flexible and open-ended, interested in the interviewee's perspective, allowing for questions to be adjusted as new issues emerge. The purpose of semi-structured interviews is to "bring out how interviewees themselves interpret and make sense of issues and events" (Bryman et al., 2012, p. 166). According to Lofland and Lofland, (1995) questions in semi-structured interviews should be constructed around what is puzzling the researcher about a particular issue in order to explore the perspective of the interviewees rather than test the researcher's own ideas.

Chapter three of this thesis reviewed literature around migration governance, and pointed to a small body of literature that examines Canadian immigration officials' decision making process. Canadian immigration officials are responsible for evaluating ambiguous situations and information to fit migrants into highly structured categories that are outlined in the IRPA and IRPR. Semi-structured

interviews with officials who interpret and apply PWAE allows officers to reveal how they understand and operationalize the policy, and explain what knowledges that influence their decisions.

The interview with advocates of migrant sex workers provides an understanding of how this policy shapes the lived realities of migrants destined for and currently working in the sectors restricted by PWAE. Since migrant sex workers are a highly vulnerable group, marginalised by both social stigma associated with the sex industries and their illegalized migratory status, I felt it imprudent to speak directly to migrant sex workers. However interviewing advocates of migrant sex workers still produces a window into understanding how PWAE produces the lived experiences of migrant sex workers, and how they might resist.

Semi-structured interviews address, if not completely, the limitations of CDA and I use them to supplement the findings of the textual analysis. Additionally, further insight is provided through a basic analysis of statistical data obtained from IRCC pertaining to migrants who have been refused entry to Canada under the refusal code R200(3) of which PWAE is a subsection.

Data and Methods

1) Text of the Policy: Feminist CDA

The ministerial instructions introducing PWAE, the IRPR regulations, and the guidelines explaining the MI and policy to officers are all publicly available on the IRCC website. The regulations are short and factual, written in legal language. In order to conduct a rounded analysis of PWAE, I engaged with the MI, policy description and guidelines provided on the IRCC website, supplemented by the descriptions of the policy included in Bill C-57, Bill C-10, and in the *Canada Gazette*; the official Canadian Government newspaper which by law is required to announce “new statutes and regulations, proposed regulations, decisions of administrative boards and an assortment of government notices” (Public Works and Government Services Canada, 2008). Comparing, PWAE to

additional political texts allows for interdiscursive analysis, or the ways in which “discourses, genres and styles are drawn upon in a text and how they are articulated together” (Fairclough, 1995, p. 7).

Utilizing the method of feminist CDA I began with an analysis of the title and searched the text for overarching discourses, based in rationalities, knowledges and strategies, that (re)produce hierarchical knowledges about migrants, and women migrants in particular. Following Fairclough & Fairclough’s (2012) framework for political discourse I searched the text for the claim to action, the explicit and implicit goals embedded in PWAE, and strategy applied to achieve the goals, and the tactics and techniques that would allow the goals to be achieved. In order to identify these different elements, I conducted a dialectical analysis of PWAE, analysing the text for particular intonation, lexical style (choice of words that imply negative or positive evaluations) and rhetorical figures or bias.

I also examined the text for ‘recuperative reflexivity’ which is a unique characteristic of a feminist CDA. ‘Recuperative reflexivity’ is a strategy of the powerful wherein language, signs and ideologies are recuperated, or incorporated by power and hegemonies without the intention of honouring their values or meaning. Lazar (2007) explains that by engaging in ‘recuperative reflexivity’, hegemonies subvert the political force of an ideology, language, etc. and use it to “project an enlightened self-image” (p. 152-153). Lazar (2007) indicates that this type of ‘recuperative reflexivity’ can also be used for persuasive effects.

Finally, through identifying the dominant discourse of PWAE, I also unmask which discourses are marginalized or excluded since they are perceived as morally or legally illegitimate, or otherwise unacceptable (van Dijk, 1993). This exercise uncovers which voices or opinions are dominant, and which are censored or ignored, and whose discourse participation rights are limited.

2) Administrative Data

It was my hope that government administrative data accounting for refusal made by IRCC under PWAE would provide a nuanced understanding of the social locations that inform the application of PWAE. I requested a report from the Canadian Government under the Access to Information Act, however, the information requested was excluded under the Act as expressed by s.68 of the Act “published material or material available for purchase by the public” (*R.S.C., 1985, c. A-1*). However, regulation 314 of IRPA allows for the production of customized reports for immigration statistical data that have not been published by IRCC (SC, 2001, c.27), and I was able to request the report directly from IRCC’s statistical department.

Data was requested from IRCC for all temporary foreign worker applicants who were refused work permits since July 14th, 2012, under IRPR s.200(3) “This employer is ineligible to participate in the Temporary Foreign Worker Program”, with the case remarks that indicate R200(3)(g.1) “the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massage” (SOR/2002-227). The request to IRCC included the following information for each of the rejected applicants:

- 1) Number of times the refusal and rejection code had been applied
- 2) Gender of the applicants who have been refused under these regulations
- 3) Country of origin or habitual residence of applicants who have been refused
- 4) Age of applicants who have been refused
- 5) Race or ethnicity of applicants who have been refused
- 6) State employment of applicants who have been refused
- 7) Point of Refusal of applicants (at port-of-entrance, in-land, or overseas immigration office)

The report provided by IRCC evidenced an absence of data regarding temporary foreign worker refusals associated with PWAE. IRCC provided a report of all work permit applications and extensions rejected since July 14th, 2012 under IRPR s.200(3), but they were unable to specify which refusals were specifically attributed to PWAE. According to an IRCC representative, specific information about reasons for migrant work permit rejections, including all case remarks, are entered

into case notes in Canada's Global Case Management System (GCMS). Unfortunately, reports cannot be generated based on case remarks in the notes section of GCMS. There is therefore no way of creating a report that differentiates between specific reasons for the refusal of a migrant's work permit. Additionally, in interview responses, it was indicated that there are inconsistencies in the codes and reasons that officers use to record and thus justify a work permit refusal.

There are several different subsections of refusals under the refusal code R200(3), "This employer is ineligible to participate in the Temporary Foreign Worker Program" (SOR/2002-227). These reasons include applications refused for missing a Quebec Acceptance Certificate (migrant destined to Quebec), suspicion that a migrant would be a strike-breaker, failure to meet TFWP stream requirements, that the migrant is already engaged in unauthorized work or study, that an employer hasn't paid the LMIA-exempt compliance fee, that the employer is ineligible, the migrant inadmissible, and finally, that the "employer regularly provide striptease, erotic dance, escort services or erotic massage [R200(3)(g.1)]" (SOR/2002-227).

Since IRCC was only able to produce a report based on the larger category of R200(3), without differentiating between subsections for refusal, the report obtained lumped together work permit refusals due to incomplete applications with those of 'Vulnerable Foreign Workers' suspected of being at risk of sexual abuse or exploitation. The extensive report contained over 15,000 work permit refusals and provided most of the demographic information requested for each of the refused migrants. Though it was not particularly useful for discerning which common characteristics flag migrants as 'at-risk' of sexual abuse and exploitation, the absence of data speaks loudly. The implications of this absence are discussed in chapter six of this thesis.

3) Semi-Structured Interviews: Immigration Officials and Migrant Advocates

Based on the discourse analysis of the text of the policy, and data related to the policy application, I approached the semi-structured interviews with immigration officials and migrant advocates with a fairly clear focus and specific questions and gaps that needed to be addressed.

Access to Canadian immigration officials is a complicated endeavor. Though I was able to contact officers directly through personal connections, these officials would not respond to any interview questions without authorization from management at national headquarters (HQ) in Ottawa. IRCC's Code of Conduct has clear guidelines about when employees can or cannot speak publicly about departmental policies and activities, and authorization was necessary from the International Network (IN) at HQ before I could access any officials for interview. IN management eventually granted access to speak to an official that was vetted by HQ, and additionally, questions were submitted in writing to HQ where I was assured that they would be referred to the appropriate individuals or branch for a response. The written response to the questions from HQ offered little more insight than outlining the official processing instructions for the application of the regulations as per IRPA and IRPR. I was also able to speak with a retired immigration official who also offered insight into the history of the policy, and the reasoning that informs current immigration officials' decision making.

Despite my efforts, the challenge for gaining access produced a limited number of participants for the semi-structured interviews and this has implications for this thesis. Due to the nature of the tightly controlled information available from immigration officials, this thesis must be satisfied with the access that was provided through IRCC management vetting interviewees and responses. The small number of participants also means that there is no possibility to verify and compare answers to questions across a large sample group to ensure that the research represents a generalizable reflection of the discretionary work of visa officers. Rather, the information gained from the interviews

can be understood as an 'official' government response, which represents the official messaging of IRCC management at HQ.

Migrant advocates were somewhat easier to contact, though speaking with advocates of migrant sex workers has its own difficulties. As mentioned above, migrant sex workers are a very vulnerable population, and persons working with these groups were somewhat reluctant to participate in the study. Many advocacy groups do not have publicly available phone numbers, and most had generic public email addresses. I was fortunate enough to contact a university professor who operated as a gatekeeper to supply me the personal email addresses of employees of a migrant advocacy group. Two advocates from different groups and geographical locations in Canada agreed to participate and discuss the impact of PWAE on migrant workers and on their work as advocates. But only one migrant advocate was able to respond to the interview questions due to time constraints. This situation again limits the ability for this thesis to make larger generalizable claims about the migrant population whose lives are influenced by PWAE.

An interview guide was utilized for the semi-structured interview with the migrant sex worker advocate and the immigration officials (see appendix 2). The interview guides contained specific questions that I wished to have addressed. Immigration officials were questioned about how they determined the validity of a work permit application, and what characteristics may influence their decisions. They were also specifically asked about what they flag as suspicious and how they determine if a migrant is at risk of abuse and exploitation. I was careful not to lead officers into suggesting that gender, race or geography were associated with decisions, and though the immigration official currently employed by IRCC was more careful and diplomatic than was the former immigration official in response to questions, it was inadvertently revealed that gender, geography and class, were important factors for measuring risk, suspicion, and potential for migrant abuse and

exploitation. Visa officials were also questioned about record keeping and communication with migrants.

The migrant sex worker advocate was asked more open-ended questions. The goal of the interview was to allow the advocate to outline how the policy has affected the lives of migrant sex workers. Though I had an idea of what the consequences would be based on the testimony to the standing committee opposing the policy prior to the regulation change, I wanted to allow the advocate to identify any unexpected consequences that have emerged since the policy has become law. Open ended questions were therefore asked along with this intention, asking about the working conditions of migrant in the Canadian sex industries, the impact on migrant workers of restricting employment in the sex trade, if there was a specific group targeted by restricting the sex industries and asking how migrant sex workers have adapted to these restrictions.

Answers provided by interview participants in both the immigration officials and the migrant sex worker advocate complemented the claims made in the feminist CDA of PWAE. But the administrative data upset many comfortable assumptions about the claim and goal of PWAE.

Chapter 5: Analysis of PWAE

This chapter is organized around Fairclough and Fairclough's (2012) framework for political discourse analysis in order to analyze the rationalities of governance embedded in PWAE. The chapter begins by identifying the *claim to action* that is advanced by PWAE by answering the question; what does PWAE presume to do (Fairclough & Fairclough, 2012, p. 48). Second, the *goals* of PWAE are outlined. A goal refers to the broad outcome that the policy seeks to achieve. It is the "future state of affairs in which" the actual concerns, values, or commitments of the policy are realized (Fairclough & Fairclough, 2012, p. 48). Since my analysis identified two separate goals in PWAE, the remainder of the chapter is divided along the two goals. For each of these goals, I identify the *strategies* (general approach taken to achieve the goal), which are informed by *mean-goals*, or the *tactics and techniques* (tools) that are employed to realize the overall goals of the policy (p. 45). All of these different processes are informed by particular rationalities, values and knowledges which are identified and analyzed throughout the chapter.

Claim: Protecting Migrants From Sexual Abuse and Exploitation in Certain Sectors

Temporary Foreign Worker Program and International Mobility Program: Protecting Workers from Abuse and Exploitation (CIC, 2014)

The title of PWAE misrepresents the actual *claim to action* outlined in the text of the MI, regulations and application guidelines and instructions of PWAE. Wilfrid Laurier University's Ethics Board (REB) identified this distance between the title and content of PWAE in their review of the thesis ethics application. The REB recommended that the title of this project, which featured the policy name "Protecting Workers from Abuse and Exploitation", be amended to reflect the migrants and sectors

that would be examined in the thesis. The REB correctly suggested that abuse and exploitation is present across employment sectors and recommended that the title of the thesis be amended to 'Protecting Sex Trade Workers from Abuse and Exploitation'. The REB's instincts confirm that the title of the policy *misrepresents* its content and concerns.

Summarized in a Sentence

On July 14, 2012, Ministerial Instructions were established for work permit applications submitted from both within and outside of Canada. The instructions state that applications from **foreign nationals seeking to work** for and employer that is **in a sector** where there are reasonable grounds to suspect a risk of **sexual exploitation** are not to be processed.

(CIC, 2014)

The above excerpt referring to the MI that announced PWAE, dispels much of the ambiguity of the title and reveals the actual claim to action in PWAE; that of protecting migrant workers from sexual abuse and exploitation in specific sectors. IRPR s. 185(b), further clarifies the sectors of concern as "businesses related to the sex trade" (SOR/2002-227), and IRPR s.183(1) expands and names specific employment types to include "*striptease, erotic dance, escort services or erotic massages*" (SOR/2002-227). This above excerpt, and the second sentence in particular, is representative of the text as a whole and reveals much about how people, events and actions are categorized in PWAE. The language and grammar of the sentence communicates power and ideologies (Machin & Mayr, 2012, p. 2).

The instructions state that applications from **foreign nationals seeking to work** for and employer that is **in a sector** where there are reasonable grounds to suspect a risk of **sexual exploitation** are not to be processed.

(CIC, 2014)

The passive voice is employed in this sentence which is a form of nominalisation where "verb processes are represented in the form of a noun" (Machin & Mayr, 2012, p. 222). According to van Dijk

(2008), nominalisation is used to conceal agents, to simplify complex processes, and to “hide the negative role of elite actors” (van Dijk, 2008 p. 821). Nominalisation in this sentence conceals the role of immigration officials, indicates that applications (not people) are to be refused, and downplays the role of Canadian employers. A more direct form of communicating this sentence, which would connote a concern for the migrant, might look like:

Officers are instructed not to process temporary foreign worker applications where migrants have been offered employment by Canadian employers and businesses where there are reasonable grounds to suspect that employers or clients will sexual exploit or abuse migrants.

The sentence structure selected by PWAE, utilizes a rhetorical strategy that relieves the state and bureaucratic officials of the obligation to justify the discretion inherent in determining suspicion in order to apply restrictive externalization. The nominalisation in the sentence also positions ‘applications’ as the object of refusal, rather than identifying people as the recipients of the state’s rejection. This phrasing obfuscates the human reality of migration in favour of highlighting the banality of paperwork; the person is neutralized as a file, a number. However, the ‘foreign national’ is still present in this sentence, but associated with a negative connotation. The very term ‘foreign national’ identifies the migrant as ‘other’ or ‘them’, and therefore not entitled to the same structures, laws, respect or considerations as Canadian citizens. The phrasing “*foreign national seeking to work for an employer*” (CIC, 2014) also negatively positions the migrant as actively participating in the conditions of their own exploitation. This is telling of the state’s ideology in terms of migrants, their sexuality, exploitation, and the role of employers and perpetrators of abuse and exploitation. It is therefore fair to suggest that this sentence is laden with powerful ideologies of migrant agency, morality and responsibility, as well as knowledges and assumptions about the sex industries. This sentence therefore exposes many of the governing rationalities informing PWAE, and these would be expanded upon throughout this analysis. The *claim to action* in PWAE misrepresents the goals of the regulations

and policy, which are revealed in the text and the interpretation and application of the text by immigration officials.

First Goal: Prevent Undesirable Migrants From Accessing Canadian Territory

The most clearly communicated goal of PWAE is preventing undesirable migrants from legally accessing the Canadian state. This goal of prevention is evident in the MI instructions to refuse applications; an externalization tactic to keep undesirable migrants out of the state. The implication of undesirable migrants is communicated in the following section of the MI:

Note: Officers should take care not to refuse applications involving businesses where employees have qualifications and credentials that are regulated and certified by provincial authorities, such as massage therapy clinics (CIC, 2014).

This section clearly communicates that the goal of PWAE is not to prevent the entrance of any and all migrants who may be subject to abuse and exploitation, but rather, it is focused on refusing entrance to undesirable migrants, defined as unqualified, uncertified or unregulated workers who have been offered temporary employment in a suspicious sector. The claim to action in PWAE therefore misrepresents the first goal of the policy which is to externalize undesirable migrants from Canada. It is therefore possible to argue that the *claim to action* in PWAE is organized around what Lazar (2007a) refers to as ‘recuperative reflexivity’.

As defined in chapter four of this thesis, ‘recuperative reflexivity’ refers to a state or hegemony organising around or incorporating the signs, language and ideologies of its critics, and then subverting the political force of the recuperated concept to serve the hegemony’s desired goal, in order to project an “enlightened self-image”, with a persuasive effect (Lazar, 2007b, p. 153). The claim to action, which is framed in the language of ‘protection’, ‘abuse’ and ‘exploitation’ demonstrates that the state has framed its claim to action in the humanitarian concerns for protecting migrant workers.

This powerful claim harnesses an international rhetoric advanced by migrants themselves, NGOs, the UN and migration scholars (among other actors) who advocate for the rights of migrants by identifying and criticizing migration governance that produces exploitation. Critics of Canada's Temporary Foreign Worker Program have long declared that the managed migration program constructs precarious work environments and conditions of abuse or exploitation (Bauder, 2005; Foster, 2012; Hennebry, 2011; Preibisch, 2010; Sharma, 2007). Several studies and witness statements have detailed the forms of abuse and exploitation that migrants have endured in the SAWP, LGC, lower paid and even higher paid streams of the Canadian TFWP (Hennebry, 2011; Hennebry et al., 2015; Walia, 2010). Indeed, a former immigration official referred to the TFWP as a "scandal" which creates "an underclass of visible minorities of people who have no protections in the labour market, no mobility and who are in jobs that will never end. The only thing that will end is their legal status" (Jones, personal communication, May 2017).

The framing of the *claim to action* in PWAE demonstrates the states willingness to recuperate the language of its critics in order to advance a positive self-image and persuade onlookers of the positive intention of its goal to securitize against migrants by preventing their access to the state. This *claim to action* empties the powerful words and signs of their potential value as the Canadian state continues to ignore recommendations to improve the TFWP and has neither signed nor ratified the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and their Families (OHCHR, 1990).

But let us return now to the first identified goal of PWAE, that of externalizing undesirable migrants. As discussed, particular migrants are targeted by PWAE, specifically those who embody particular intersecting social characteristics of race, class and gender, which produce conceptualizations of sexuality and power (Hill Collins, 2009). And this goal is achieved by a strategy which legitimizes this discrimination and exclusion.

Strategy: Refuse to Process Work Permits to Undesirable Migrants

IRPR 200. (3) An officer shall not issue a work permit to a foreign national if [...] (g.1) the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; [...] (SOR/2002-227)

Regulation IRPR 200(3)(g.1) institutionalizes a dividing practice to classify migrants offered employment in the sex industry as undesirable, and empowers the state to prevent the legal entrance of the undesirable migrant to Canadian territory. This is a securitization strategy based on several intersecting knowledges and representations, and reliant on negative representations of migration which portray “*migration as the cause of exploitation*” (Sharma, 2005, p. 96). The strategy, which informs officers to “not issue a work permit to a foreign national” (SOR/2002-227, s.200(3)(g.1)), frames migration and the foreign national’s intentions to work in the sex industries as the cause of exploitation. This then generates acceptance for the notion that migrants require protection, and the idea that they are “always better off at ‘home’ is accepted without questions” (Sharma, 2005, p. 96). This anti-immigration strategy, which also invokes a discourse of ‘vulnerability’ by drawing on the affective weight of sexual abuse and exploitation, imbues the Canadian state with “the moral authority of helping a victim” (Sharma, 2005, p. 96). This rationalizes denying entrance to migrants and restricting their mobility in order to eliminate the cause of their exploitation; migration. This strategy is advanced by shifting responsibility for abuse and exploitation onto the migrant, situating PWAE in anti-trafficking debates, and re-introducing discretion in order to profile migrant based on intersecting social characteristics including race, sexuality, gender and class.

Tactics and Techniques

Shifting Responsibility For Abuse and Exploitation Onto the Migrant

... foreign nationals seeking to work for an employer ...

In addition, if a foreign national in the occupation of exotic dancer is destined to a bar or hotel ...

The new regulations prohibit all foreign nationals (that is, visitors, students and workers) from working for these businesses.

... foreign national applying to work in Canada in any occupation for a business...

(CIC, 2014)

R183 (1)(b.1) Subject to section 185. The following conditions are imposed on all temporary residents: *if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages;*

R200 (3)(g.1) *And officer shall not issue a work permit to a foreign national if the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages;*

(SOR/2002-227)

An important technique of PWAE is shifting the responsibility for sexual abuse and exploitation onto the migrant. This technique is present in the dialectical structures in text of the regulation and in the interview responses from immigration officials. The underlined sections above, from the text of the MI, regulations and policy instructions, represent the migrant as an agent who is “seeking”, “destined to”, “working for”, “applying for”, “enter into”, “extend”, “intends to work for” employers or business who offer services related to the sex industries. Each of these sentences position migrants as active participants in their exploitation and advances perceptions of power. This tactic adds to suspicion surrounding migrants which denotes a form of agency for the migrants. It is a negative agency associated with risky and immoral behaviour. This dialectical strategy externalizes the problem of sexual abuse and exploitation; it produces it as something foreign rather than a Canadian

problem. This removes responsibility for abuse and exploitation from the employers and businesses, and rejects any examination of the laws that regulate the sex industries in Canada. By externalizing the problem of sexual abuse and exploitation as something that is foreign, it justifies the action of blocking the entrance of a migrant who has been offered employment by a business related to sex and sexuality. This shifting of responsibility onto the migrant is clearly communicated in the following MI guidelines:

In addition, if a **foreign national in the occupation of exotic dancer** is destined to a **bar or hotel that** only has exotic dance performance occasionally and **would not normally be considered a 'strip club'**, the establishment **will be considered a 'strip club' for the duration of the foreign national's performance** and the business would become ineligible as per the Ministerial Instructions.

(CIC, 2014)

For the purpose of this regulation, the bar or hotel is regarded as a 'strip club' by virtue of employing a migrant who identifies his or herself as an 'exotic dancer'. This sentence unabashedly attributes responsibility and risk to the migrant whose subject position determines the eligibility of a Canadian business. This communicates the negative agency attributed to the risk-seeking and risk-bearing migrant.

This negative agency does not acknowledge that sexual abuse and exploitation is perpetrated onto a body by another party. If sexual abuse or exploitation were inflicted onto a migrant, the source of said abuse would be by employers, clients or other unscrupulous third parties. If this were acknowledged, the laws and policing of the Canadian sex industries would require scrutiny to examine how they produce vulnerability through their regulation of the industries, and prosecution of crimes associated to the industries. By shifting responsibility onto the migrant, the state deflects attention from an internal problem, and also performs a securitization function, positioning the migrant as a risk-taking, risk-bearing subject. This form of negative agency is related to ideologies around classed,

and racialized women and their impure sexuality (Hill Collins, 2009). PWAE fetishizes women's sexual purity and negatively stigmatizes agency related to certain forms of sexuality by certain racialized, gendered bodies.

Interviews with visa officials reflected this externalization of responsibility. One official described how migrants "let themselves be exploited" or "find themselves open to exploitation" (Smith, personal communication, April 2017). This last statement by the official further begins to unravel the representations and understandings of power and agency embedded in the text and application of PWAE, and allows for a closer examination of how gender and race act as codes through PWAE in order to determine the agency and power provided to migrants.

Reintroduction of Discretion in the Parallel Legal Regime for 'Foreign Others'

Clauses 205–208 of Bill C-10 give immigration officers discretion to refuse to authorize foreign nationals to work in Canada if, in the opinion of the officers, the foreign nationals are at risk of being victims of exploitation or abuse.

(Government of Canada, 2012a)

Discretion is an important tactic re-introduced to the IRPA by PWAE. Immigration officials must be provided with discretion in order to classify migrants based on intersecting social elements that create suspicion about the migrant's intentions in Canada. Discretion is therefore a necessary tactic to shape the practice of refusing work permits in order to prevent undesirable migrants from entering Canada. The text of PWAE outlines the burden of evidence that is required for immigration officials to exercise their discretion, and rearticulates it as "reasonable grounds to suspect" (CIC, 2014).

The instructions state that applications from foreign nationals seeking to work for an employer that is in a sector where there are **reasonable grounds to suspect** a risk of sexual exploitation are not to be processed.

(MI, CIC, 2014)

For the purpose of these instructions, strip clubs, escort services and massage parlours are considered businesses where **there are reasonable grounds to suspect** a risk of sexual exploitation.(CIC, 2014)

“Reasonable grounds”(CIC, 2015) is not unique to PWAE; it is the balance of evidence that operates throughout the IRPA. This standard of evidence is significantly lower than the burdens of proof required for Canadian administrative law and criminal law. The Canadian immigration Enforcement Manual “ENF 2/OP 18 Evaluating Inadmissibility” (CIC, 2015b,) which provides instructions to immigration officials about how to enforce Canadian immigration law and regulations (IRPA and IRPR), defines “reasonable grounds” as “a bona fide belief in a serious possibility based on credible evidence”, where there is “some objective basis for belief. Put another way, the fact itself need not be proven; it is enough to show reasonable grounds for believing the allegation true.... a standard of proof which lies between mere suspicion and the ‘balance of probabilities’ ” (p. 7). The definition of evidence is never provided in ENF 2, but both interviews with immigration officials indicated that suspicious or inconsistent documents in applications are sufficient evidence to deny applicants their work permits. (Smith and Jones, personal communications, April-May 2017). One immigration official indicated that they would question the credibility of a migrant’s documents based on region, geography and issues of “disparities of power or disparities of economic opportunities” (Smith, personal communication, April 2017). As discussed in above, these are all codes for race, gender and class.

The distance between burdens of proof required to negatively rule against a Canadian citizen and a foreign national, reinforces Sharma's (2007) argument. Sharma (2007) indicates that citizenship and nationalism justify discrimination and social stratification of foreign racialized ‘others’, as inferior, and less deserving. PWAE communicates this inferiority to officers and instructs them to make discretionary decisions based on suspicion generated from circumstantial evidence. “Reasonable grounds to suspect” (CIC, 2014) is therefore a signifier of Canada’s parallel legal and political regimes

applied to migrants. It (re)produces the dominant hegemonic position of migrants as ‘foreign’, ‘other’, ‘inferior’ and ‘less deserving’ than citizens.

Additionally, the immigration enforcement manual ENF 2, suggests that immigration officials assess “reasonable grounds” by asking themselves the question: “Would a rational person with the same information reach the same conclusion?” (CIC, 2015, p. 8). Agustín (2008) indicates that “rationality is perceived differently across time and space” (p. 73). And this is certainly true about Canada’s relationship with migrant sex workers as outlined in chapter two of this thesis. The “rational person” (CIC, 2015, p. 8) of Canadian immigration enforcement assumes a “cultural, universalist ethic” (Agustín, 2008. p. 74) with a shared prostitution abolitionist view of employment related to the sex trade. It also discounts, ignores or erases the rationales that might prompt a migrant to apply for a work permit in a sector that is associated with the sex trades. It infantilizes gendered and racialized migrants as essentialist victim subjects of anti-trafficking narratives, which are outlined in chapter three of this thesis.

Anderson (2012) argues that the rhetoric of ‘protection from harm’ has become popular in international migration governance as a reaction to the increasingly popular victim of trafficking. And unlike refugees whose protection from harm is reliant on entry into a foreign state, “the VoT may be protected by NOT being permitted to enter” (Anderson, 2012, p. 1247). The *claim to action* of PWAE is an operationalization of this logic based on race, gender class, and assumption of power and sexuality.

Yet PWAE is neither a new strategy, nor does it advance a new goal or claim. According to interviews with immigration officials, it formalizes the discretionary process of rejecting suspicion and risk-bearing women migrants that officers previously recorded under alternative refusal codes. Additionally, according to IRCC, since the introduction of PWAE in 2012, there has only been one migrant rejected with the case remarks R200(3)(g.1) “the foreign national intends to work for an

employer who on a regular basis, offers striptease, erotic dance, escort services or erotic massage (SOR /2002-227). The lack of enforcement of R200(3)(g.1) can be explained by its flawed processing instructions.

Situating PWAE in Anti-Trafficking Debates

Are the sex industries exploitative by nature? Are they a source of women's agency and power? Do they tend towards exploitation because of the laws and regulations that govern them? This thesis does not pretend to know the answers to these questions which have been internationally contested and debated in many different contexts and arenas (Agustín, 2007; Sharma, 2005). However, PWAE firmly positions itself on the side of prostitution abolitionism which is communicated in the excerpt below.

For the purpose of these instructions, **strip clubs, escort services and massage parlours** are considered businesses where there are reasonable grounds to suspect a risk of sexual exploitation. These instructions should be applied **to all businesses in these categories**.

(CIC, 2014)

The implications of associating these employment sectors with abuse and exploitation are clear; the sex industries are exploitative and persons employed in these sectors are at-risk of being victimized. This communicates assumptions about power and agency, or rather, the lack thereof. The encoding of race in this argument becomes visible when considering that the businesses explicitly named in PWAE are not restricted to employment for Canadian Citizens. Kempadoo, (2009) argues that migrant sex workers from the global south are constructed in western immigration law "as incapable of making decision about their own lives, forced by overwhelming external powers completely beyond their control into submission and slavery" (p. 12).

By refusing to process the applications of migrants who have been offered employment by a business related to the sex industries, the state communicates its view of racialized women as either unwilling or incapable of speaking for themselves, or of making informed decisions about their migration project to Canada. The executive director of a migrant sex worker advocacy organization underlined the importance of this claim in an interview response; “So what it does it makes the assumption that these [racialized] women can’t speak for themselves, they’re duped into coming here, they’re lied to in coming here. It infantilizes them. So it sees the migrant sex worker as someone who just doesn’t know any better and then the Canadian Government needs to swoop in and prevent them from being exploited” (Roberts, personal communication, April 2017).

An interview response from an immigration official rearticulated this point from the state’s view; “...things that we would consider unacceptable may be happening normally in other places so they might not realize that there’s exploitation that – that’s something that we might see” (Smith, personal communication, April 2017).

The immigration official confirms the state infantilizes the migrant. And additional interview responses revealed how race is coded in the application of PWAE. When questioned why a migrant might be flagged as ‘at-risk’ of sexual abuse and exploitation under of 200(3)(g.1), an immigration official indicated that region (geography), and questions of power and economic disparities are considered flags for the potential for exploitation; “Um, someone coming from the UK is unlikely to let themselves be exploited as easily” (Smith, personal communication, April 2017). This assertion was repeated when the official was questioned about how immigration officials determined a migrant’s risk of abuse and exploitation prior to PWAE; “Again, it was economic disparities, uh, you’re putting people into ah, areas where there could be a higher risk and again it was, it was because of economic disparity. Had we had someone from Sweden or the UK apply for such a job [we] would have been a

little less worried about exploitation because we knew they had other options.” (Smith, personal communication, April 2017).

By indicating countries of desirability, which in both cases are Nordic and Western European countries, the immigration official also highlighted countries of undesirability; the racialized global south. Scholars of intersectionality have outlined how oppression and privilege are (re)produced by intersections of race, gender and class, among other social locations (Crenshaw, 1991; Hill Collins, 2009; McCall, 2005; Nash, 2008). The immigration officers’ reference to disparities in power and economics, even when applied to a region or country that is predominantly white, still encodes class, gender and race.

Finally, when pressed for more details about what migrant characteristics would raise suspicion about a migrant under the current PWAE, an immigration official responded “You may, you know, be more, useful to talk to people currently in the field in places where this kind of thing is happening, and, and East Asia comes to mind” (Smith, personal communication, April 2017).

Each of these responses are encoded with race. Women applicants from predominantly white countries were not considered ‘at risk’ in the same way that women migrants were considered ‘at-risk’ from developing countries which are predominantly inhabited by racialized bodies. The indication that East Asia is a place “where this kind of thing is happening” (Smith, personal communication, April 2017), identifies a specific race that is suspected under PWAE. However, when I filtered the data obtained from IRRC it indicates all racialized bodies appear suspicious when they are applying for a work permit in a category associated with “strip clubs, escort services and massage parlours” (CIC, 2014).

Table 1: LMIA Required Work Permit and Work Permit Extension Applications, NOC Code 5134, Refused under R200(3) between July 14, 2012 and November 30, 2016 (in persons)

Client Gender	Client Age at Final Decision	Citizenship	Final Assessment Date	Application Category	Final Assessment Office World Region	NOC Description
Female	40	Ethiopia	2012	WP	International Region	Dancers
Female	29	Russia	2012	WP	International Region	Dancers
Female	36	Jamaica	2013	WP	International Region	Dancers
Female	32	Jamaica	2013	WP	International Region	Dancers
Male	30	India	2013	WP	International Region	Dancers
Male	30	Jamaica	2013	WP	International Region	Dancers
Female	30	Cambodia	2013	WP	International Region	Dancers
Male	34	India	2016	WP	International Region	Dancers
Male	32	India	2016	WP	International Region	Dancers

(CIC, 2017b, Report No. CR-17-0034_OPPB-DART-2017-0547)

Table 1 is filtered from the report obtained from IRCC that identifies every migrant that has been refused their Canadian work permit since July 14, 2012 (date of introduction of MI of PWAE), under IRPA R.200(3) “This employer is ineligible to participate in the Temporary Foreign Worker Program” (SC 2001, c. 27). The table is filtered based on rejections made when migrants identified their employment as ‘Dancers’ (far right column). Though it is impossible to ascertain if these migrants were rejected based on PWAE (specific data unavailable) the implication of the employment category ‘dancer’, when considered in the context of the former ‘Exotic Dancer Visa Program’ implies that the rejections may have been attributed to R200 (3)(g.1) “the foreign national intends to work for an

employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages” (SOR/200-227).

If this were the case, it is apparent that race is a powerful determinant of suspicion as eight of the nine rejections were actioned against persons from predominantly racialized countries of the global south. Race also appears to produce understandings of gender and sexuality as the men rejected under the category of dancer are from countries with predominantly racialized populations. The one exception in this table is the rejection of the woman migrant from Russia, which is a predominantly white country. This can be attributed to assumptions rooted in the historical context of flows of trafficked women from former Eastern Bloc countries (Macklin, 2003). And these risk characteristics continue to inform immigration official’s profiling of women from these areas.

Both immigration officials interviewed indicated that women from the former Soviet Union were considered particularly ‘at-risk’ for sexual abuse and exploitation after the fall of the Soviet Union in the 1990s. This characterization is more closely associated with political ideologies and the capitalist discourse which associates communism with evil, ignorance and inferiority. This discourse is then inscribed on the women migrant’s body, associating her with ignorance, risk and ‘otherness’; “when we had people from Eastern Europe at that time [1990’s] who were applying in, in this kind of job, who hadn’t travelled before, who were new, ah, new out of the country, ah, that put us, led us to question whether they had, had knowledge of what might happen to them” (Smith, personal communication, April 2017).

Rendering the Category Thinkable and Thus Governable

The processing guidelines for PWAE instruct visa officers to evaluate employment contracts, and more specifically, the business which is offering the contract to migrants, in order to determine if

there are reasonable grounds to suspect a risk of sexual abuse and exploitation. The processing instruction indicate that:

Work permits shall be refused for any foreign national applying to work in Canada in any occupation **for a business** that provides striptease, erotic dance, escort services or erotic massages on a regular basis.

For the purpose of determining whether a business meets the description above [restricted sectors], an officer may wish to consider the following...

(CIC, 2014)

These instructions, followed by a description of questions the visa officers should ask of themselves, are the only processing guidelines or instructions provided to officers. They instruct officers to consider the business that will employ the migrant. This is a confusing instruction considering that in interview responses, immigration officials insisted that visa officers only scrutinize job offers to determine if migrants meet the requirements of the position. In their understanding of the division of labour, ESDC is responsible for evaluating employers, businesses and the validity of employment contracts.

Immigration officials' interview responses indicated that contracts and businesses approved by ESDC through the LMIA process would have been thoroughly examined. Re-examining the business or the terms of the contract is not the responsibility of the visa officers. The two immigration officials interviewed indicated that the responsibility of visa officers is to scrutinize migrant applications, not employer applications. This same information was confirmed by a spokesperson from IRCC who indicated that "The assessing officer will examine the application and the supporting documents to determine if the applicant meets the requirements of the job offer/position" (IRCC spokesperson, personal communication, April 2017).

Additionally, ESDC (then HRSDC) halted the processing of LMIA applications from sectors related to the sex industries in 2012 as per the MI of PWAE (ESDC, 2017). It is possible that officers

are instructed to evaluate employers as a second layer of checks on the work of ESDC. Viewed from this perspective, it may be understood as departmental juggling of responsibility where each department, IRCC and ESDC, deflects responsibility onto the other. However, the conditional modality of the verb structure indicating that “and officer may wish to consider the following...”(CIC, 2014) connotes a lack of authority and commitment to these processing instructions (Machin & Mayr, 2012).

This lack of commitment to instructions for officers to evaluate employers, coupled with the singular refusal under PWAE since its creation in 2012, suggests that the true governing strategy of IRPR 200(3)(g.1) is not the refusal of migrants work permits. Rather, this regulation discursively constructs the undesirable migrant category, ‘Vulnerable Foreign Workers’, which brings this category into the purview of the state, allowing it to become governable.

PWAE discursively produces and institutionalizes the category of ‘Vulnerable Foreign Workers’, which are constructed as gendered, racialized risk-bearing and risk-seeking ‘others’ who embody risky and unappealing sexuality. This discursive production makes the category visible and defines the category as a subject of the state’s domain. This process then renders this category of migrant subordinate to the state’s governing rationalities (Foucault, 2009). And the core rationality involved in this policy emerges; a second, less obvious, yet ever more potent goal; purging the state of the responsibility for, and the presence of, the undesirable migrant.

Second Goal: Exclude Undesirable Migrant from the National Community and Facilitate Their Removal from the State Territory

The second goal of PWAE, as indicated above, involves excluding undesirable migrants from the national community. Community in this sense refers to the group of law-abiding Canadian citizens and temporary residents to Canada. The first strategy of PWAE ensures that 'Vulnerable Migrant Workers' who enter Canada to work in sectors related to the sex industries enter through clandestine routes. This excludes the migrants from the Canadian community, but this exclusion is cemented by the second goal which is also concerned with ensuring that once identified, the undesirable 'Vulnerable Foreign Workers' can be easily detained and removed from the state. And this goal is achieved through the strategy of illegalizing migrant employment in the sex industries.

Strategy: Illegalize All Migrant Employment in the Sex Industries

***R183** imposes conditions on all foreign nationals entering Canada **by operation of law**. The relevant position of subsection 183(1) has been changed to the following:*

*R183(1) subject to section 185, the following conditions are **imposed on all temporary residents**:*

[...]

(b.1) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers erotic dance, escort services or erotic massages; [...]

(SOR/2002-227)

The new regulations prohibit all foreign nationals (that is, **visitors, students and workers**) from working for these businesses, regardless of how they are authorized to work (e.g., **work off campus, work without a permit, have an open work permit**).

(CIC, 2014)

This strategy completes the discursive construction of the 'Vulnerable Foreign Workers', by alerting authorities that they should be suspicious of the sexuality of all gendered and racialized migrants, no matter what legal migration channel they have utilised. The excerpt above acknowledges that the state is aware that most migrants entering sectors related to the sex industries in Canada do

so without applying for work permits for employers in the sex industries; they come as students, visitors and workers. This reality was also expressed by a former immigration official who indicated migrants working in the sex industries “don’t come through a very formal selection process they usually travel as visitors.... Often from countries that don’t require visas” (Jones, personal communication, May 2017). And this was echoed by the executive director of a migrant sex worker advocacy group who indicated that woman migrants also obtain legal visitor visas prior to working in the sex industries “there are so many women that are just here for a short time. They come on a visitor visa and just work here for less than six months” (Roberts, personal communication, April 2017).

This underscores the performative nature of the first goal of PWAE which constructs a category to be governed. The discursive construction of the ‘Vulnerable Migrant Workers’ produces the possibility of the second goal, and its governing strategy which instructs Canadian law enforcement in Canada to racially profile gendered and sexualized migrants as potential victims of sexual abuse and exploitation. It also provides the Canadian Border Security Agency (CBSA) with the legislative authority to remove the undesirable ‘Vulnerable Foreign Workers’ from the state. As with the first goal, this strategy is upheld by tactics and techniques which are outlined below.

Tactics and Techniques

Communicating Delinquency to the Community

As per **subsection 185(b)** of the Immigration and Refugee Protection Regulations, **all open work permits shall have the following condition** placed in the **visible remarks** section of the document:

This condition informs the work permit holder that **employment, self-employment, or contract services** in this sector are not permissible.

(CIC, 2014)

An important technique for excluding ‘Vulnerable Foreign Workers’ from the Canadian community is the visible remarks printed on all work permits, including student visas, which indicate that it is illegal for migrants to work in businesses related to the sex industries. This tactic completes the discursive construction of the ‘Vulnerable Migrant Workers’ by explicitly naming and illegalizing all forms of employment that may take place within business related to the sex industries; “employment, self-employment or contract services” (CIC, 2014).

This tactic ensures that migrants are aware that their employment in the sex industries is illegal which means that they cannot claim ignorance as a defence if they are detained. It also communicates to the Canadian community, and unscrupulous persons outside of the community, that migrant participation in the sex industries is a form of delinquency. This technique provokes two effects. First, it raises suspicion of gendered and racialized migrants in the wider Canadian community. Canadians who are required to verify migrant legal documents, which is commonly done to set up bank accounts, register migrants and their children for school, obtain a health card, and many more circumstances, are confronted with the visible remarks on migrant work and study permits. This tactic alerts private citizens to the presence of ‘Vulnerable Foreign Workers’ in Canada, and engages private citizens to profile, monitor and police suspicious migrants.

The second effect of the tactic is that it alerts predators of the illegalized status of migrants in the sex industries which tightens their means of coercion. The illegalized status of the migrant sex worker increases the ability of an unscrupulous subject to infringe on the rights of the ‘Vulnerable Migrant Workers’. This is developed further in the discussion section of this thesis, and I turn now to a second tactic, that of framing which allows the goal of PWAE to be advanced.

Framing PWAE in Protection

The framing of PWAE is essential to advancing its *claim to action* of protecting migrants from sexual abuse and exploitation. The tactic that PWAE utilizes to enforce its claim that it is concerned with the wellbeing of migrants, is to explicitly identify consequences for employers found to be employing migrant sex workers.

If an employer operating a business in any of these sectors did hire a holder of an open work permit, it **would potentially** be in violation of A124 for employing “a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed”. This **could lead** to the punishment of the employer by a fine of up to \$50,000 or imprisonment for a term of up to two years.

(CIC, 2014)

This excerpt from the processing instructions of PWAE appears to recognize the role of Canadian employers and assign a consequence to them. This tactic communicates an effort to address the businesses who create and maintain conditions of exploitation or subject migrants to sexual abuse. Yet a closer analysis at this section reveals that rhetorical strategies are employed that minimize employer responsibility. The verb tenses in this section are written in a conditional modal form. According to Fairclough (2003, p. 166), modality in language textures identity. Fairclough explains that the author’s identity can be understood by evaluating what they commit to, versus what they show caution about. Language conveys information but also “gauge[s] how speakers relate to this information” (2003, p. 189). Conditional tenses ‘would potentially’ and ‘could’ denote a hesitation on the part of the state to impose any punishments or consequence on Canadian employers. The hesitation is especially potent when contrasted with the direct and affirmative language, “not valid” “not permissible”, “imposes conditions” “prohibits” (CIC, 2014) which illegalizes migrant participation in the sex industries.

This hesitancy can be read as the Canadian state confirming that they are more committed and beholden to Canadian business interests than to migrants. The state is therefore reluctant to clearly associate businesses with the crimes of sexually exploiting women migrants, which corroborates this thesis earlier determination that the regulations frame sexual abuse and exploitation as a 'foreign' problem.

However, by communicating hesitancy in disciplining Canadian employers, the IRCC is most probably also communicating about their power and authority. According to Machin and Mayr (2012), the use of modals can also imply how much power and authority over knowledge that the author has, or believes they have, over a subject (p. 190). The modal tense of "would potentially" and "could lead to" (CIC, 2014), communicate not only a lack of commitment but also a lack of authority to act or impose consequences on Canadian businesses suspected of employing foreign nationals in prohibited sectors. This argument is supported by reports authored by the Canadian state which indicated that IRCC, and ESDC lack the authority to verify the compliance of employers except for through employer compliance reviews that are conducted at the time of applications for LMIA or work permit applications (Government of Canada, 2013). The technique of identifying employers and assigning consequences for their misbehaviour, though it may appear to advance the protection of migrants on the surface, is thinly communicated through a rhetorical strategy that admits to a lack of will and authority.

Unscrupulous employers would undoubtedly realize that consequences for their actions were little more than threats, considering that IRCC publishes a list of employers who have not complied with IRPA regulations. This list includes the names of only seven businesses. None of the seven businesses were found to be un-compliant based on PWAE (IRPR R209.2(1)(a)(iv) or R209.3(1)(a)(v)),

and the maximum consequence imposed on the seven businesses has been a two-year ban from the TFWP, or a fine of \$1,250 (CIC, 2017).

Chapter 6: Discussing the Implications of PWAE

To summarize the analysis, PWAE advances a *claim to action* of protecting migrants from sexual abuse and exploitation in businesses related to the sex industries. PWAE presumes to achieve this claim through two goals. First, by preventing undesirable migrants from legally accessing the Canadian territory. And second, by excluding undesirable migrants from the Canadian community and facilitating the removal of the undesirable migrant from Canadian territory. The first goal advances a governing strategy which employs discursive tactics and techniques to produce the suspicious and risky subject of the 'Vulnerable Migrant Workers'. This subject is a racialized, gendered, classed and infantilized victim of sexual abuse and exploitation. The 'Vulnerable Migrant Workers' category is informed by prostitution abolitionism and trafficking discourses. Once produced, or made thinkable and knowable, the category of 'Vulnerable Migrant Workers' also becomes governable. This, then allows the state to advance its second goal of excluding and purging the undesirable migrant from the Canadian community and territory. Both goals employ discursive techniques and tactics which allow the state to presume its claim to protection and shift responsibility for the fate of 'Vulnerable Foreign Workers' onto the migrant themselves.

As discussed in the analysis, PWAE has not been effective at deterring migrants from entering Canada and working in the sex industries. Rather, the result of PWAE is that it harms the very people it claims to protect. This section outlines and explains the practices generated by PWAE, and the effects it has had on all migrants, and migrant sex workers in particular. This chapter begins by outlining how PWAE highlights one form of exploitation, thus obfuscating others, outlines how it interacts with Canadian prostitution laws to increase surveillance and monitoring, and discusses the types of vulnerability that PWAE has created for migrant sex workers. The chapter concludes by outlining the government's failure to properly record and monitor the results of PWAE.

Double Criminalization of ‘Vulnerable Foreign Workers’

The prostitution abolitionist ideology encoded in the text of PWAE parallels Canadian anti-prostitution law Bill C-36, introduced by the same Harper Conservative government in the same timeframe as PWAE. Elements of intertextuality are present in PWAE and Bill C-36, and the knowledges, discourses and values of PWAE can be understood in reference to Canadian Bill C-36.

The Canadian criminal code has always treated prostitution and its surrounding activities as illegal, and relied on morality and moral panics to justify these actions. The most recent reforms to the criminal code under Bill C-36 ‘Protection of Communities and Exploited Persons Act’, which came into force December 6, 2014, treats prostitution as “a form of sexual exploitation that disproportionately impacts on women and girls” (S.C. 2014, c. 25). Prostitution is thus understood as inherently exploitative. The new provisions in Bill C-36 do not criminalize the sale of sex, but rather they criminalize all activities surrounding the sex trade, including procuring, advertising, and communicating for the purpose of selling sexual services (S.C. 2014, c. 25). Additionally, as mentioned above, employment in exotic dance or erotic massage is not illegal for Canadians however, advertising for businesses that offer “sexual services for sale, such as erotic massage parlours or strip clubs” is illegal (S.C. 2014, c.25). Finally, and most revealingly for this thesis, Bill C-36 claims to “harmonize the penalties imposed for human trafficking and prostitution-related conduct” (S.C. 2014, c.25).

Canada’s attitude and laws around prostitution underscore the state’s negative understanding of the sex industries and view of sex workers as “exploited persons” (S.C. 2014, c. 25). The Canadian state begins from an understanding of sex workers as infantilized women victims who must be protected for their own sake, and for the sake of the Canadian community. And this is exactly the knowledges that inform PWAE.

The criminalization of the purchase of sex in Canada is rooted in prostitution abolitionism. And though the Canadian state frames both PWAE and Bill C-36 in a gender neutral language of ‘protection’, the true intent of Bill C-36 was expressed by Conservative Senator Donald Plett in 2014, in the proceedings of the Standing Senate Committee on Legal and Constitutional Affairs. Plett indicated that “The overall intent of this legislation is to abolish prostitution, not to make it a safe occupation... Of course, we don’t want to make life safe for prostitutes; we want to do away with prostitution.” (Senate of Canada, 2014, 15:84).

Senator Plett’s comments are significant since they admit to a distaste for sex work and a disregard for the persons working in the industry. The comments also openly reveal the goals of Bill C-36, which as discussed in the analysis, also inform the goals of PWAE. They dispel the false claim of protection or concern for vulnerable populations, and rely on understandings of sex work that highly stigmatize the industries and the persons working in them. When Plett’s comments are considered in reference to PWAE, it becomes clear that abuse and exploitation are expected and even accepted in the Canadian sex industries. Yet the response to this knowledge is not to attempt to improve working conditions in the sex industries, but rather to eliminate this blemish from the Canadian community, and exclude the ‘threat’ posed by ‘foreign’ workers who do this work.

Critics of Bill C-36 argue that by criminalizing all activities surrounding sex work, the bill promotes precarity in the sex industries, and increases the vulnerability of workers (Senate of Canada, 2014). The reason for this, is that by criminalizing the sale of sex, the business of sex is pushed further underground to evade authorities. This displaces sex work to unsafe locations, restricts workers ability to screen potential clients and dissuades workers from contacting authorities or reporting abuse or assault since this would expose their involvement in illegal activities (Galbally, 2016; Senate of Canada, 2014).

Migrants in the sex industries are subject to double enforcement under both Canadian law and immigration law. Additionally, the lower immigration standard of evidence of “reasonable grounds” (CIC, 2015), outlined in chapter five, provides Canadian authorities with more leverage for profiling, monitoring and policing migrant workers in the sex industries. For example, based on “reasonable grounds” (CIC, 2015) a migrant sex worker discovered by authorities in an illegal raid would be subject to consequences regardless of the illegality of the means by which they were encountered. This legal sidestep does not exist for authorities when investigating Canadian Citizens (Galbally, 2016). And though violations of immigration law are administrative offences, migrants found to be working in the sex industries are subject to consequences that are penal in nature, including detainment and deportation.

Thus, the threat to migrant workers of double criminalization has important implications for migrant sex workers whose vulnerabilities are compounded by PWAE which already illegalizes their presence in Canada. The criminalization of the sex industries under the Canadian criminal code means that migrant sex workers are doubly criminalised and disciplined against claiming their rights, accessing necessary health services or reporting abuse or exploitation to authorities, since these activities would alert authorities to the migrant’s illegal status in Canada.

Private Surveillance and Discipline

The surveillance and discipline of migrant sex workers has been extended beyond the exclusive domain of state authorities. The Canadian state has enacted strategies that encourage private Canadian citizens and actors to police and discipline migrant sex workers who are constructed as ‘victims of trafficking’. As discussed in chapter three, the construction of the ‘victim of trafficking’ operationalizes the popular trafficking narrative which infantilizes certain racialized women migrants.

By invoking trafficking narratives, PWAE constructs the woman migrant sex worker as an individual incapable of determining what is best for herself, or of speaking up or deciding for herself.

The Canadian 'National Action Plan to Combat Human Trafficking' (detailed in chapter two) has developed educational information that has been distributed to the public since 2010 (Public Safety Canada, 2015). These campaigns request assistance from private Canadian citizens to identify incidences of trafficking and victims of trafficking. A common element of these campaigns is the assertion that victims of trafficking may "Not self-identify as victims of human trafficking. Victims may not appear to need social services because they have a place to live, food to eat, medical care and what they think is a paying job" (CCSA, 2010).

This sort of campaign and information encourages citizens to profile racialized women for perceived indicators of immorality, promiscuity or improper sexuality. The contribution of PWAE to this endeavour are the visible remarks printed on some migrant work visas which indicate "Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services" (CIC, 2014). As discussed in chapter five, these visible remarks alert the Canadian community to the potential presence of the 'Vulnerable Migrant Workers'. These remarks discursively produce panic about the presence of migrant sex workers who are constructed as victims of trafficking. This represents an additional risk to migrant sex workers and further isolates them from the Canadian community. According to DeGenova (2002), the results of this type of "policing of private spaces... serves to discipline undocumented migrants by surveilling their "illegality" and exacerbating their sense of ever-present vulnerability"(p. 438). Thus PWAE combined with Bill C-36 to promote state and private Canadian citizens monitoring and policing of the sex industries. The double criminalization of employment in the sector transforms mundane everyday actions into illicit acts (Coutin, 2003; De

Genova, 2002; Heyman, 1998). And this disciplines migrant sex worker choices and behaviours both crossing borders and within borders.

Producing and Maintaining Vulnerability

As discussed in chapter three, a large body of literature documents migrant vulnerabilities regardless of their migration status, and outlines how this vulnerability only increases when migrants travel through clandestine routes (Anderson et al., 2005; De Genova, 2002, 2013; Fassin, 2011; Heyman, 1998; Sharma, 2005, 2011). Hennebry et al. (2016a) indicate that women migrant workers are especially vulnerable when employed illegally as undocumented workers in sectors that do not meet legal definitions of employment.

As outlined above, PWAE works with additional Canadian laws and campaigns to (re)produce and conceal migrant abuse and exploitation in the sex industries and discipline migrant sex worker behaviour. Prior to the official roll out of PWAE, migrant sex worker advocacy groups expressed concerns that PWAE would drive sex work further underground, increasing precarious working conditions (Barnett, 2007).

The impact of PWAE has contributed to migrant sex workers self-disciplining themselves into “docile and exploitable subjects” which is consistent with Foucault & Rabinow (1984), resigned to dealing with abuse and exploitation without reporting crimes or seeking assistance from Canadian authorities. This was communicated by the executive director of a migrant advocacy organization who indicated the disciplinary function of deportation is so strong that it discourages migrants from contacting the authorities even after extreme forms of violence has occurred;

And because of the fear of deportation, many of these women aren't phoning the police themselves, so somebody else (for example, neighbours,) would make a 911 call. I don't mean to say a third party report is always a positive thing. The women have many reasons for not wanting to call the police so when someone else does it on their behalf,

it could result in deportation which is the outcome many of these women want to avoid at all costs. (Roberts, personal communication, April 2017)

The self-discipline produced by PWAE increase vulnerability to coercion and abuse, and this has not gone unnoticed by persons who would benefit from the vulnerability of migrant sex workers. In the same interview, a migrant sex worker advocate indicated that as a result of sex workers underreporting crimes against their person, “predators bank on it that the women aren’t going to report anything that they do to them, whether it’s robbery or assault or any other type of violence” (Roberts, personal communication, April 2017).

The fear of accessing Canadian authorities is directly attributed to the construction of the ‘Vulnerable Foreign Workers’ as both victim and illegalized migrant. As indicated in the analysis, the category constructs migrant sex workers as both ‘risk-bearing’ and ‘risk-seeking’. Persons who are constructed as ‘risky’ are understood to pose a threat both to themselves and also to the community as a whole. ‘Risky’ persons are therefore subjected to therapeutic and/or “disciplinary practices in an effort either to eliminate them completely from communal space or to lower the dangers posed by their risk” (Aradau, 2008, p. 96). The ‘risky’ category of ‘Vulnerable Foreign Workers’ generates suspicion among Canadian authorities and determines how these authorities monitor and interact with migrant sex workers. This was expressed in an interview with a migrant sex worker advocate who indicated:

The police would show up [migrant sex workers] are asked for their ID, and more often than not most police agencies enquire about immigration status...So we’ve seen so many times how the police response flips from victimizing to criminalizing. For example, let’s say it was a sexual assault or an arson. Actually I’ll speak about one of our own experiences. It was an arson-related call but it very quickly flipped to [police asking the migrant]; What is your immigration status?... And so the woman called us and was like; What is going on here? I was just the victim of arson but I am now the target of investigation. (Roberts, personal communication, April 2017)

The above interview response demonstrates that the state is more concerned with addressing the risk associated with illegalized migration and 'risky', undesirable migrants, than it is with prosecuting a serious crime and ensuring the universal protection of human rights. This is an expression of Walia's claim, which is outlined in chapter three, that the 'othering' of migrants shapes "imaginings of who is entitled protection *from* the nation-state ... and who faces violence *by* the nation state because their bodies are deemed not to belong" (Walia, 2013, p. 63). The migrant's 'foreignness' and 'otherness' caused authorities to be less concerned with investigating the indictable offence of arson. Instead, authorities questioned the belonging of the migrant victim of the crime and demonstrated a larger concern for an administrative immigration offence. Intersecting factors including race, gender and markers of sexuality would mark the victim of arson as 'foreign' other. The knowledges produced by PWAE about the 'Vulnerable Migrant Workers' would alert police that the migrant's presence and activities in Canada were undesirable, leading authorities to suspect migrant victims rather than enforce criminal law.

Such encounters with authorities discipline and dissuade migrant sex workers from contact with state authorities, and encourage migrants to limit the attention drawn to themselves, regardless of the peril they face. Migrant sex workers have an interest in isolating themselves from the Canadian community and authorities which encourages them to suffer in silence and provides unscrupulous agents additional power to control, monitor and exploit the migrant.

Missing Data and Records

PWAE provides guidelines that are part of hundreds of regulations and sub-regulations that detail eligibility and admissibility of migrants to Canada. And though one may argue that this policy is driven by statistical information about migrant vulnerability to sex abuse and exploitation, there is an absence of evidence-based research and verifiable data to verify this claim. As outlined in the data and

methods section of chapter four, IRCC was unable to produce a report providing information about migrants refused entrance into Canada under PWAE. Additionally, statistics about migrants who have been deported for working in the sex industries are equally difficult to obtain. A CBSA spokesperson confirmed to Vice News that "A person who is an illegal worker, be it sex work or something else, is contravening immigration laws, and that's coded as illegal work, not specifically sex work"(Noel, 2016).

When pushed to provide an explanation of the missing statistics about work permit refusal under the policy, a representative of the CIC indicated the following:

Our data team has conducted an investigation and found that for the time period of the requested data (July 14, 2012 to November 30, 2016), there is only one refused application that has R200(3)(g.1) associated to it. There was almost no refusals specific to paragraph g.1 in our administrative data system because this type of work permit applications were not even taken into processing according to the Ministerial Instructions stating that applications from foreign nationals seeking to work for an employer that is in a sector where there are reasonable grounds to suspect a risk of sexual exploitation are not to be processed. Basically, these applications wouldn't be refused as this MI is just a pause for processing. (IRCC representative, personal communication, April 2017)

According to this information, applications are not refused, but rather, they are simply not processed, which would generate no documented record of the refusal in the system. This assertion from IRCC and their referral to the Ministerial Instructions does not account for the regulation change that came into force December 31, 2013, which instructed officers to refuse work permit applications under the refusal code R200(3)(g.1). This points to further discrepancies in IRCC recording work permit refusals, and indicates an ambiguity in the processing instructions of the policy. These discrepancies and ambiguities in recording work permit refusals under PWAE, and the absence of data, lead to interesting conclusions.

First, the assertion by an IRCC representative that under PWAE applications are not refused but rather, they are not processed, indicates that PWAE is a piece of administrative migration governance

that opens a grey area providing flexibility and limiting accountability for IRCC. Best (2012) indicates that bureaucratic ambiguity has strategic dimensions related to power dynamics and authority. According to Best (2012) ambiguous governance mechanisms provide an advantage to organizations so that they may interpret and expand the scope of their policies and control, which allows organizations “to define the policy in the way that best suit[s] their interests” (p. 100). PWAE is ambiguous enough to allow for flexibility in its interpretation and application. Additionally, the ambiguous refusal/non-refusal, or processing pause, of applications means that these applications returned under PWAE do not appear in any significant reports, which makes the migrants rejected under PWAE invisible. It also becomes unclear how, and based on what factors decisions are made under PWAE, or who this policy targets. Under PWAE migrants are not informed of the reason for their work permit rejection, but rather they are provided with a standard letter informing them that they are ‘Not Eligible’ for the work permit, and their fees are refunded (CIC, 2014). It is therefore unclear if, or how a migrant might appeal a decision under PWAE. This creates a power asymmetry where IRCC has no need to justify nor provide evidence for their decision, and the target of PWAE is unclear.

Foucault’s discussion of the penitentiary system, (1977), which is outlined in chapter three, allows for an interpretation of the absence of information surrounding the application of PWAE. Much like the penitentiary system is not an exercise in preventing crime (Foucault, 1977), the singular refusal of a work permit under PWAE is not a failure of the PWAE project. Rather, this serves the argument that the goal of PWAE is not to protect vulnerable migrants, nor is it to prevent their entry into the Canadian state. Rather, PWAE serves to produce and construct the subject of the ‘Vulnerable Migrant Workers’ in order to define, normalize and build consensus around an undesirable migrant, and unacceptable migrant behaviour and sexuality. Through the production of this normalized subject, state authorities, and the Canadian community become involved in monitoring and disciplining both

migrants and the sex industries. This contributes to the profiling of migrants along gender and racial social locations, further entrenching the divide between citizens and migrant 'others'.

Once produced, the category of 'Vulnerable Migrant Workers' can then be applied by IRCC and CBSA to a number of different migrants in many different and ambiguous circumstances. The strategy articulated in PWAE of refusing entrance to the 'vulnerable' migrant in order to protect them can be replicated to address other suspicious, 'risk-seeking' or 'risk-bearing' migrants, including asylum seekers and undesirable racialized 'others'. The 'processing hold' rather than the refusal of work permits under PWAE allows for a scope creep to include these additional categories, without having to provide justification for their rejection beyond an indicating a concern for the migrant's safety and well-being in Canada.

The lack of available data connected to the ambiguity of PWAE is consistent with larger international anti-trafficking trends. Though there are a number of publications and government records that attempt to quantify trafficking, most suffer from methodological weaknesses, including compounding statistics of trafficked, smuggled and illegalised migrants, and/or failing to provide detailed methodologies of data collection and analysis, or justifications and limits to their assumptions (Gozdziak & Collett, 2005). Additionally, the clandestine and illegal nature of trafficking complicates any ability to obtain accurate statistics (Kelly, 2005). Trafficking records therefore resort to estimates and generalizations to obtain results or identify patterns (Kelly, 2005; Godziak and Collett, 2005). In the absence of evidence-based research, powerful trafficking narratives and accompanying discourses, rather than verifiable data, inform anti-trafficking legislation and campaigns (Chapkis, 2003). In her analysis of the USA anti-trafficking legislation, '*Trafficking Victims' Protection Act*', Chapkis (2003) determines that the law is based on "slippery statistics and sliding definitions" and is informed by popular trafficking narratives and gender and racial discourses (p. 924). This is significant since the

United Nations often cites trafficking statistics gained from the American state department as evidence to support anti-trafficking campaigns internationally (Gozdziak & Collett, 2005).

The lack of data associated with PWAE and all anti-trafficking campaigns creates a challenge for resistance. Documented evidence, and numerical data is important for identifying discriminatory structures. Without this evidence, power hierarchies remain uninterrupted, and dominant discourses continue to drive the management of inconvenient populations of migrants. Accurate data strengthens efforts to dismantle gender and racial inequalities, especially where these inequalities meet and intersect with additional social factors. An important tactic or technology of governmentality is data collection and management in order to know, monitor and control populations. Yet in the case of PWAE, the ambiguity of the application, refusals and data pertaining to the impact of these regulations produces the state's ability to profile, externalize, monitor and control an undesirable group of 'Vulnerable Foreign Workers'. IRCC's inability to provide evidence of the success or failure of PWAE, which is due to a lack of disaggregation of data along reasons for refusal and deportation, prevents a strong resistance to- and advocacy against the policy. It also eliminates any ability for the state to create new policies or amend current policies to ensure that they are evidence based. This lack of available data both undermines and reinforces the state's claim to this policy, and generates questions about the effectiveness and intention of IRPA in its entirety.

Chapter 7: Concluding Thoughts

This thesis analyzed the Canadian immigration policy, regulations and processing instructions, which together are referred to as 'Protecting Workers from Abuse and Exploitation' (PWAE). It found that PWAE constructs the category of 'Vulnerable Foreign Workers' in order to securitize against undesirable women migrant bodies; legislate their illegality, prevent their access to the Canadian community and provide the state with the authority to monitor, police, profile, detain and deport undesirable migrants. Through constructing the category of 'Vulnerable Migrant Workers', the state brings this subject into governability, and successfully disciplines migrant actions, ensuring that the migrant perform the category and self-govern themselves to avoid public and state attention, while also shifting responsibility for exploitation onto the migrant. Combined with Canadian prostitution legislation, PWAE pushes the entire sex industry further underground "create[ing] and maintain[ing] legal classifications that relegate people to structurally exploitable labour pools with little recourse to rights" (Maynard, 2016). The Canadian state has successfully advanced this anti-immigration and prostitution abolitionist agenda by framing PWAE in the discourses of trafficking and the language of protection. This framing, which portrays the state as a benevolent saviour of victims, allows the state to maintain a liberal and enlightened self-image, which maintains the support of the Canadian community.

Grounded in a theoretical framework that combined Foucauldian governmentality, and feminist intersectionality, this thesis examined the discourses and practices of governance in order to make visible the knowledges and the contexts that inform PWAE and that are (re)produced by PWEA. Further, drawing on feminist theory of intersectionality the analysis demonstrated the gendered and racialized values that inform the construction of the category of 'Vulnerable Migrant Workers.

The analysis of PWAE responded to the questions of what strategies, values and goals inform PWAE, how it is interpreted and applied by Canadian immigration officers, and what have been the consequences of PWAE. The answers to these questions which originally appeared simple, exposed the goals, strategies, techniques and tactics that disrupted assumptions about the presumed claim to action of PWAE. The analysis uncovered the 'truths' produced by PWAE and the consequences of these 'truths' for migrant women working in the sex industries.

Chapter two reflected on Canada's history of migration governance history in the TFWP, documenting the pendulum swing from prohibiting persons under the category of 'Prostitutes etc.' to admitting exotic dancers under the expedited 'stripper visa', and finally reimagining migrants as 'Vulnerable Foreign Workers'. The category name 'Vulnerable Foreign Workers', borrows directly from Bill C-10, (formerly Bill C-56) which originally introduced PWAE and named the migrant category as its target. Unravelling the history of the regulation revealed the intersections of gender, race and moral discrimination that have historically informed Canada's immigration policies, and which continue to impact women migrants' mobility to and in Canada. Yet Canadian migration history did not develop in a vacuum, and chapter 2 also describes the international context of migration securitization and the international preoccupation with human trafficking and smuggling that surrounded the creation of PWAE. The chapter concluded by introducing Canada's National Action Plan to Prevent Human Trafficking, which is the framing used to justify PWAE, and provides the United Nations' definition of trafficking and smuggling.

Chapter three provided an overview of the literature documenting the dominant knowledges and strategies that (re)produce migration governance. This chapter discussed the power and violence of governing strategies that classify migrants and strategically construct understanding of good and bad forms of movement, resulting in legislated illegality (Bauder, 2005; De Genova, 2002a; Hennebry et al., 2016a; Schweppe & Sharma, 2015). The chapter then focused on the Canadian context to

outline how migrant populations are classified along gender, racial and geographic lines, and expanded on the logic of producing the migrant as a foreign outsider, relegated to an exploitable class of inferior 'other' (Ferguson & McNally, 2014; Hennebry, 2011; Preibisch, 2010; Satzewich, 1991; Sharma, 2007; Walia, 2010). Following this discussion, securitization and risk governance were introduced and the anti-trafficking undercurrents of PWAE were discussed (Agustín, 2007; Aradau, 2008; Bigo, 2002; Chapkis, 2003; McDonald, 2008; Sharma, 2005). These themes situated the thesis among larger conversations related to migration governance, including externalization tactics (Haddad, 2008; Menjívar, 2014; Mountz, 2010), conceptions of sexuality, vulnerability and morality in migration (FitzGerald, 2010; Pickering & Ham, 2014; Yea, 2015), and the discourses (re)producing bureaucratic discretion (Hyndman, 2010; Mountz, 2004; Satzewich, 2015a; Sharma, 2005).

The interdisciplinarity of the migration field required a multitheoretical and multimethodological approach to analysis. As introduced above, this thesis draws on a theoretical framework which brings into conversation governmentality and intersectionality. Chapter four outlined how these theoretical standpoints weave together to provide a framework for analysis of PWAE, and detailed the mixed methods approach used to answer my research questions. A feminist critical discourse analysis was applied to the text of PWAE to uncover the governance strategies, values and goals embedded in the text. The CDA was supplemented with evidence from semi-structured interviews with Canadian immigration officers (present and former), and with a migrant sex worker advocate. Administrative data obtained from Immigration, Refugee and Citizenship Canada (IRCC) that defined the social locations of migrants who have been refused work permits under this policy. Interestingly, the data produced by this enquiry was less than satisfactory, and the silence of the data, coupled with the interviews undertaken with immigration officers, shifted the analysis from examining PWAE as a externalization tactic, concerned with blocking undesirable migrants from Canadian territory, to a more nuanced understanding of PWAE examining this policy as a securitization

measure to discursively construct an undesirable migrant, exclude this migrant from the Canadian community, police their presence in Canada and facilitate their removal from the state territory.

Contributions, Limitations and Opportunities for Future Research

This thesis makes three important and original contributions to academia. First the set of regulations, policy, procedures and guidelines that comprise PWAE have not been examined in previous research. Satzewich (2015a,b) gained access to overseas Canadian visa offices to conduct an in-depth examination of the discretion employed by Canadian visa officers to determine the credibility and risk of migrants applying to Canada. Sharma (2005) troubled the Canadian state's construction of migrant sex workers as infantilized vulnerable women in need of rescue. However, these scholars' important contributions were made prior to the introduction of PWAE in 2012; Satzewich interviewed officers from 2010 -2012 (Satzewich, 2015a,b), and Sharma explored the partitions that construct migrant women, their identities and experiences, years prior to PWAE (Sharma, 2005). This is significant since as discussed, PWAE reintroduces explicit discretion to IRPA and expressly targets women migrant sex workers; discursively constructing the 'Vulnerable Foreign Worker'. My research on PWAE was able to link the importance of discretion and the construction of women migrant sex worker's identities under PWAE, thus extending conversations about these themes.

Second, and related to the prior point, my research lays bare a new discourse and migrant identity; that of the 'Vulnerable Foreign Worker'. I was able to gather evidence of the flexibility and ambiguity of this category which empowers the state to securitize against undesirable women migrants. This has important implications since the ambiguity and flexibility within PWAE means that we cannot determine precisely how it is used or applied, and thus it can be operationalized in many unexpected ways. PWAE provides the state with a positively framed, ambiguous tool to deny the entrance of migrants based on the lower standard of evidence that is "reasonable grounds suspect"

(CIC, 2014). And this is an important consideration in view of the current international backlash against migrants, and increasingly negative discourse surrounding migration.

Finally, my research examines a nexus where ideas of the nation, the gendered migrant, race and morality are articulated, both in text and in everyday governance. By drawing on triangulated evidence, I was able to examine and analyze the different sites and practices of governance and communication of national belongs and establish groundwork for future research in this area.

Yet, there a number of limitations of this research that future scholarship might strive to address. First, the lack of availability of statistical data regarding refusals explicitly attributed to PWAE limited my ability to make definitive numerical claims about the social locations, knowledges and values that inform temporary foreign worker refusals under PWAE. The conclusions drawn in my research about the racialized and gendered construction of the 'Vulnerable Foreign Worker' would be strengthened by statistical evidence, but this would require a government commitment to collaboration and accurate reporting on migrant rejections. Additionally, the report that I obtained from IRCC of over 15,000 rejections under regulation R200(3) "This employer is ineligible to participate in the Temporary Foreign Worker Program" (SOR/2002-227), merits a more detailed analysis and should be considered in future research interested in Canadian immigration.

A second limitation of this thesis involves my constrained access to immigration officials who are the primary interpreters of PWAE. The difficulties in obtaining permission and access to interviews with visa officers both in Canada and abroad, meant that I had a very small sample group of interview participants (one current officer, one former officer, and questions responded to in writing by an IRCC department representative). Additionally, the interview participants were highly vetted by IRCC management. The immigration officer that I interviewed indicated that the Associate Deputy Minister of IRCC had suggested that my participant respond to my questions. Having said this, the participant

signed my informed consent form without issue, and confirmed to me that there had been no element of coercion by his superiors in his participation in my research.

The limited size of my interview sample group means that I am unable to provide large generalizable claims about the interpretation and application of PWAE by immigration officials. However, the evidence obtained from the interviews clearly supplements and reinforces the findings from the CDA of the text of PWAE. Nonetheless, future research should attempt to further engage with the consumers of PWAE, including visa officers who evaluate temporary foreign worker applications, local law enforcement who respond to reports of suspicious migrant behaviour and crimes committed against migrant sex workers, and CBSA officers responsible for detaining and deporting migrants found to be in violation of Canadian immigration laws. Future research could include institutional ethnographies with the above mentioned groups in order to collect more data pertaining to the interpretation and application of PWAE, which could both affirm or contest the claims made in this thesis.

Similarly my limited contact with sex worker advocates weakens this thesis' ability to make large generalizable claims about the consequences produced by PWAE for this group. Additional research involving a larger sample group of interview participants, or undertaken from a position from within a group of migrant sex workers, would be necessary to address this limitation. The migrant sex worker advocate that I interviewed indicated that sex workers, both migrant and Canadian, and sex work advocates and organizations, are currently organizing an initiative to pressure the federal government to decriminalize the Canadian sex industries (Roberts, personal communication, April 2017). Future research into this movement and the role and contributions of migrant sex workers in resisting PWAE and the criminalization of sex work in Canada, would be influential in shifting discourses surrounding migrant sex workers and sex work in general. This type of contribution would highlight the voices of migrant sex workers which is significant considering that current Canadian anti-

trafficking legislation was created without meaningful consultation of the ‘victims’ that it claims to protect (Maynard, 2016).

This thesis examined PWAE to identify and unpack a site of injustice and inequality. And despite the limitations outlined above, my research and analysis gathered sufficient evidence to begin to map alternatives through changes to policy and practice. The following section concludes this thesis with recommendations based on my findings.

Recommendations: Protecting the RIGHTS of ‘Vulnerable Foreign Workers’

As addressed in chapter five of this thesis, PWAE’s *claim to action* reflects the state’s willingness to organize its policies and regulations around the language and claims of its critics. It is the state’s potential for reflexivity that offers advocates of migrant sex workers an opportunity to demonstrate that PWAE fails in its claim; it does not protect ‘Vulnerable Foreign Workers’ but rather contributes to the conditions of their vulnerability. Anderson (2012) argues that the rhetoric of ‘protection’ justifies and positively reframes enforcement efforts and securitization against undesirable migrants. This same rhetoric of ‘protection’ could be drawn upon to argue that the policy has failed to protect the rights of migrants in the sex industries. But in order to make this argument, the discourse must be changed from one of protecting the person to one of protecting the *rights* of the person. As discussed in chapter six, the lack of available data about the application of PWAE weakens the position of advocates to advance their position, but it also weakens the state’s ability to defend its own position that PWAE has positively contributed to protecting foreign workers in the sex industries.

Resistance to PWAE should therefore invoke the language of ‘protection of rights’ rather than the ‘protection of certain people’ which is currently advanced by PWAE, and which has thus far failed. A rights-based framework would recognize that “migrants are not commodities”, but rather humans

with agency, needs and vulnerabilities (United Nations, 2013, p. 5). The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), of which Canada is a signatory (CEDAW, 2008), outlines the rights of migrant women and details the state's responsibilities in protecting these rights. CEDAW general recommendation No. 26 provides a concise blueprint of how states might achieve their responsibility to protect the rights of women migrant workers (Hennebry, et al, 2016b). General recommendation No. 26 specifically instructs states to "Repeal outright bans and discriminatory restrictions on women's immigration", and "Ensure that occupations dominated by women migrant workers... such as some forms of entertainment, are protected by labour laws... [which] should include mechanisms for monitoring workplace conditions" (2008, p. 11). These recommendations clearly outline the actions required for states to protect the rights of women migrant workers, but Canadian laws that govern the sex industries are a hurdle for invoking CEDAW to protect the rights of migrant sex workers.

Recommendation 1: Decriminalize sex work in Canada, repeal or re-imagine PWAE

Agustín (2007) indicates that "when migrants are women who sell sex, they lose worker status and become 'victims of trafficking'" (p. 191). This assertion is true in Canada for both domestic and foreign sex workers since Canadian anti-trafficking legislation adopts a definition of trafficking that applies to both migrants and Canadian citizens. Additionally, Canadian anti-trafficking laws allow authorities to "deem someone as trafficked even if they do not identify as such" (De Shalit, et al., 2014, p. 386).

In order to change the discourse, surrounding sex workers and sex work in Canada, migrant and Canadian born sex workers must be understood as *workers* and *persons* with consequent labour and human rights rather than as *victims*. This requires shifting the narrative about sex workers and recognizing that the Canadian sex industries are legal and profitable industries. Achieving this shift

requires challenging Canada's prostitution abolitionist discourse, and advocating for decriminalizing the sex industries for Canadian citizens and migrants alike. PWAE must therefore be completely repealed, or reinvented to provide guidelines and mechanisms designed to protect *the rights* of migrant sex workers. Migrant sex workers must be reconceptualised as economic migrants (and Canadian born sex workers as part of the domestic economy), and their participation in the sex industries must be understood as part of labour flows that accompany capital flows (Hennebry et al., 2016a). As such, migrant employment in sex work should be incorporated as a sector, with a NOC code, under the Canadian TFWP. Yet decriminalizing the Canadian sex industries is only a first step towards protecting the rights of 'Vulnerable Foreign Workers'.

Recommendation 2: Address actual sites of abuse and exploitation in the Canadian TFWP

There is documented evidence of migrants being exploited and abused across a variety of *legalized* employment sectors in Canada's TFWP (Hennebry, 2011; Lenard & Straehle, 2012; Preibisch, 2010; Satzewich, 1991; Sharma, 2007; Walia, 2010). And trafficking occurs across all employment sectors (ILO, 2015). Yea (2015) indicates that what differentiates human trafficking from other issues of migration is that it is "defined by the exploitation of labour" (p. 1082). The conflation of human trafficking with sex work minimizes attention to other forms of exploitation and abuse inflicted on migrants, rendering other forms of migrant exploitation banal (Sharma, 2005). Furthermore, it genders human trafficking victims since prostitution and sex work are sectors dominated by women, and this reduces the possibility of men being identified as victims of trafficking in other sectors. Having said this, it is important to admit that sex work is particularly prone to exploitation and abuse due to a near complete lack of labour regulations and standards in the sex industries (Brock et al., 2000; Sharma, 2005).

In order to protect the rights of 'Vulnerable Foreign Workers', the state must re-focus the discourse which constructs the source of exploitation and abuse as migration (and thus positions responsibility on the migrant), to examine the sites and contexts where exploitation and abuse occur. The Canadian Government must adjust policies governing the TFWP to address and eliminate actual sources of migrant worker abuse and exploitation; unscrupulous recruitment practices and under-regulated labour markets that prioritise profit and flexibility over worker's rights.

Canada's sex industries have long been plagued with abuse and exploitation and the state must commit to reinforcing labour standards and prosecuting violations in these industries. The Canadian Government must be involved in efforts to ensure that labour and occupational health and safety codes are applied in strip clubs, massage parlours and other establishments in the sex industries. This would improve workplace environments and assist in ensuring that migrant workers have access to rights rather than simply targeting and penalizing women working in the industries.

Detailed and accurate reporting of migrants entering employment in the sex industries would also be important for ensuring that these migrants have access to their rights. As mentioned in chapter two, the former 'Exotic Dancer Visa Program' was plagued by record keeping ambiguities, and this was one of the major criticisms levied against the program (Macklin, 2003). After decriminalizing the sex industries, including migrant access to these industries, the Canadian Government must ensure that detailed records of migrants working in the sex industries is available to NGOs, labour ministries, health care providers and migrant advocates, in order to establish a strong and responsive framework of multi-stakeholder networks that enhance the migrant's access to their rights.

Building on the above assertions, the Canadian Government must respond to the problems identified across the TFWP, and implement the recommendations in the 2016 Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with

Disabilities (HUMA). The HUMA report indicated that recent new measures have been introduced to the TFWP to protect migrants from abuse and exploitation, including a confidential abuse tip line, workplace inspections and fines and penalties for employers who violate rules and standards (HUMA, 2016). However, the report also indicates that compliance with, and enforcement of, these mechanisms has been lacking (HUMA, 2016). The HUMA report makes several recommendations to the Canadian Government to reinforce commitments to address abuse and exploitation in the TFWP, but unfortunately, very few of these recommendations have not been adopted (HUMA, 2016).

IRCC and the Canadian Government must adopt these evidence-based recommendations, and use existing administrative instruments, including regulations identifying and sanctioning non-compliant employers, to discipline Canadian industries into following Canadian labour laws and standards. This would require a shift in the focus of the TFWP which has primarily used compliance mechanisms to protect Canadian labour markets rather than to protect the rights of migrant workers (Hennebry and Williams, forthcoming).

Any effort to direct Canadian state resources to address migrant abuse and exploitation in the TFWP, and in particular in the Canadian sex industries, would undoubtedly be met with opposition and resistance. This should be expected in light of the current negative discourses and securitization tactics and narratives surrounding migrants and migration (specifically the construction of 'us' and 'other'). The state and media's framing of initiatives intended to protect migrant worker's rights is important to settling opposition, and the state should position migrant workers as taxpayers, similar to Canadian workers, and communicate the shared benefits to all residents of Canada of improving state mechanisms that monitor workplace conditions.

Recommendation 3: Address unscrupulous recruiters and recruitment practices

Faraday (2014) documents how abuse and exploitation begins at the point of migrant recruitment since unequal power relations exist between recruiter and migrants who are dependent on recruiters for access to foreign labour markets. The HUMA report echoes this assertion and outlines how power imbalances between recruiters and migrants position migrant workers in a precarious situations, vulnerable to coercion, demands for excessive recruitment fees, and the misrepresentation of employment in countries of destination (HUMA, 2016). These “systemic and routine patterns of exploitation”, which are consistent with human trafficking and smuggling, regularly occur in legal Canadian labour migration channels (Faraday, 2014, p. 10), but they are exasperated in irregular migration channels.

In order for PWAE to achieve its claim of ‘protecting’ migrant workers from abuse and exploitation, a mechanism must be introduced that better monitors recruiters and recruitment practices. And as with the above outlined problem with labour standards, there must be political will and resources dedicated to enforcing regulations and disciplining non-complying recruiters. Recommendation 20 of the HUMA report (2016) suggests that provinces develop an information sharing system on recruiters and employers, and that the federal government create a standardized accreditation system for recruiters. These recommendations must be adopted by the Canadian Government under a human rights framework.

Recommendation 4: Address the short term precarity produced by PWAE: ‘Access without Fear’

The above outlined recommendations, decriminalizing the sex industries and migrant access to the industries, improving the Canadian TFWP, and better regulating recruitment practices, are long term endeavours, but the precarity produced by PWAE is immediate. Immediate solutions are therefore required to address current and persistent abuse and exploitation experienced by migrant

sex workers in Canada. And resistance to PWAE would be most effective by focusing attention on the local.

The analysis and discussion of PWAE in chapter five and six indicated that a technique of PWAE is to involve private Canadian citizens and local law enforcement in profiling 'Vulnerable Foreign Workers'. Change must therefore begin at the local level, undoing the dominant discourses surrounding migrant sex workers and trafficking. Public education programs, informed by the voices and experiences of migrant sex workers themselves, should be directed at local policy makers, local law enforcement, and the general public. These education programs must invoke a human rights framework in order to shift the conversation away from saving vulnerable people, towards addressing conditions that compromise the rights of people and constrain their ability to access and fulfill their human rights. Admittedly, this would be a difficult endeavour based on the moral panics surrounding sex work, however, re-educating the public and authorities is an important step towards challenging dominant discourses and narratives that contribute to abuse and exploitation in the sex industry.

Gender responsive training about migrant sex workers is particularly important for law enforcement and immigration officials since they have the legal mandate to interpret, apply and enforce PWAE. Such re-education must be accompanied as well by shifts in policy across all levels of government. The executive director of a migrant sex work advocacy organization indicated that there is currently an initiative to encourage an "Access without fear" framework for policing the sex industries (Roberts, personal communication, April 2017). This 'Don't Ask-Don't Tell' policy would encourage authorities to investigate crimes against sex workers without inquiring about their immigration status or alerting CBSA to the presence of a potentially 'illegalized' migrant. This type of policy framework, if employed across public and private sectors (health, police, banks, etc.) at local levels, would diminish the fear of deportation for migrant sex workers and encourage them to access

necessary healthcare resources, report abuse and other crimes to Canadian authorities and build networks within the Canadian community. This would diminish migrant vulnerabilities to exploitation, abuse, coercion and control by unscrupulous actors. It would contribute to eliminating the intense secrecy surrounding sex work which has been driven the industry and workers underground. Human rights advocates must join together to pressure the government and police to adopt and utilize 'Don't Ask Don't Tell' policies across Canada.

In the context of the growing securitization of migration, the movement of people across borders has continued, yet through new and increasingly risky channels. Migration governance schemes which restrict access to labour markets and commodify migrant labour must be examined and deconstructed to demonstrate how they contribute to abuse and exploitation of 'Vulnerable Foreign Workers'. As demonstrated in this thesis, migration governance mechanisms that claim to protect workers can perpetuate the harm that they claim to prevent. Researchers interested in migration governance must continue to challenge common discourses and binaries, and problematize normalized systems, assumptions and identities. In Canada, this includes troubling migrant categories, gendered employment streams, LMIA processes, visa restrictions, the TFWP itself and all aspects of migration governance that structure 'us' and 'other'.

To conclude this thesis, I would like to again acknowledge that topics pertaining to sex work are hotly contested, fueled by strong moral positions and often genuine concerns for the women in these sectors. Indeed, in the case of PWAE, many would, and have argued that prostitution abolitionist policies and restrictive migration efforts have a positive impact on cleaning up the sex industries and reducing human trafficking for the purpose of sexual abuse and exploitation. To respond to these arguably well-intended assertions, and to conclude this thesis, I offer the final word to someone who represents the voice of migrant sex workers:

I think that would come from someone who hasn't worked on the ground with migrant sex workers. I can see why people with limited understandings of sex work would think that... Um, so no that definitely comes from someone who doesn't work closely with migrant sex workers. And again, it's based on, well, a huge part of the trafficking discourse is that women who work in the sex industry are all victims; don't know how to take care of themselves, and they don't know what's best for themselves. It's just not very feminist to think that there's a group of women who can't speak for themselves, don't know what they should and should not be doing with their own bodies, and that other women, i.e. non-sex workers, know better what they should do.

If you know these women [migrant sex workers] like we do after having done this work for 13 years, one would realize they are strong, resilient, go-getters who migrate for economic reasons and are more than capable of taking care of themselves in the migration process. What would be nice would be to have the option to access the criminal justice system should violence or exploitation occur as currently, [PWAE] prevents them from doing so.

(Roberts, personal communication, April 2017)

Appendix 1: Full Text of Ministerial Instructions and Regulation

Change Protecting Workers from Abuse and Exploitation

5/5/2017

Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation

Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation Ministerial Instructions: Refusal to process work permits

On July 14, 2012, Ministerial Instructions were established for work permit applications submitted from both within and outside of Canada. The instructions state that applications from foreign nationals seeking to work for an employer that is in a sector where there are reasonable grounds to suspect a risk of sexual exploitation are not to be processed.

Guidelines for not processing applications

These instructions apply to all work permit applications where the applicant is destined:

- to work for a business as described below; or

to perform contract work for the business or on its premises (including on a self-employed basis), irrespective of the specific occupation that the applicant is intended to fill at that business.

When in receipt of an application to work in a business that is in a category covered by the instructions (i.e., in a sector where there are reasonable grounds to suspect a risk of sexual exploitation for some workers), officers are instructed not to process these applications. Applicants affected by these instructions shall be informed that their application is not eligible for processing and their processing fee shall be returned.

For the purposes of these instructions, strip clubs, escort services and massage parlours are considered businesses where there are reasonable grounds to suspect a risk of sexual exploitation. These instructions should be applied to all businesses in these categories.

Note: Officers should take care not to refuse applications involving businesses where employees have qualifications and credentials that are regulated and certified by provincial authorities, such as massage therapy clinics.

In addition, if a foreign national in the occupation of exotic dancer is destined to a bar or hotel that only has an exotic dance performance occasionally and would not normally be considered a 'strip club,' the establishment will be considered a 'strip club' for the duration of the foreign national's performance and the business would become ineligible as per the Ministerial Instructions.

Open work permits

As per subsection 185(b) (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-185.html>) of the Immigration and Refugee Protection Regulations, all open work permits shall have the following condition placed in the visible remarks section of the document:

•Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services;

This condition informs the work permit holder that employment, self-employment, or contract services in this sector are not permissible. If an employer operating a business in any of these sectors did hire a holder of an open work permit, it would potentially be in violation of [A124](http://lawslois.justice.gc.ca/eng/acts/l-2.5/section-124.html) (<http://lawslois.justice.gc.ca/eng/acts/l-2.5/section-124.html>) for employing “a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed”. This could lead to the punishment of the employer by a fine of up to \$50,000 or imprisonment for a term of up to two years.

Learn more about [open work permits \(admissibility/open.asp\)](#).

Performing artists – International stage shows

Officers are reminded to first assess whether a work permit is required, in line with [R186\(g\)](http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002227/section-186.html) (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002227/section-186.html>). International stage shows that do not require work permits as per R186(g) are not covered by the Ministerial Instructions.

Processing instructions

GCMS release 3.3 on July 28 introduced new functionality to support the processing of these applications.

Before July 28

After the application has been promoted from ‘Prospective’ to ‘Open’, cancel the application with a reason of ‘Other’. Send the ‘MI Not Eligible’ letter. Refund the processing fees.

After July 28

After the application has been promoted from ‘Prospective’ to ‘Open’, input ‘MI6’ in the new Ministerial Instructions field on the TR application applet.

Then enter an Eligibility assessment of ‘Not Met’. GCMS will automatically generate an ‘MI Not Eligible’ letter in the Correspondence - Outgoing view. Note this letter is a Word template letter. Proceed to refund cost recovery fee paid in the Fees view and then navigate to the History – Application Status view and record the App Status as ‘Cancelled’ with an App Status Reason of ‘Ministerial Instructions’.

Field Operations Support System (FOSS)

REMARK ON OPEN WORK PERMIT:

Before July 28: The remark does not have to be added manually.

Effective July 28: GCMS and FOSS will automatically generate the remark on open work permits, when the correct NOC Code of 9999 is used. Any other NOC Code would make the work permit occupational specific and therefore not require the remark.

Regulation change December 31, 2013: Protecting foreign nationals from the risk of abuse and exploitation

The regulatory changes came into force on December 31, 2013. The new regulations prohibit all foreign nationals (that is, visitors, students and workers) from working for these businesses, regardless of how they are authorized to work (e.g., work off campus, work without a permit, have an open work permit).

R183 (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-183.html>) imposes conditions on all foreign nationals entering Canada by operation of law. The relevant portion of subsection 183(1) has been changed to the following:

•183. (1) Subject to section 185, the following conditions are imposed on all temporary residents:

[...]

(b.1) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; [...]

R200(3) (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html>) provides for situations where an officer shall not issue a work permit. The following situation has been added to this subsection that is relevant to these instructions:

•200. (3) An officer shall not issue a work permit to a foreign national if

[...]

(g.1) the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; [...]

Work permits shall be refused for any foreign national applying to work in Canada in any occupation for a business that provides striptease, erotic dance, escort services or erotic massages on a regular basis.

These instructions apply to all foreign nationals entering or already in Canada. Foreign nationals are prohibited from working in any capacity (e.g., janitor, cook or dancer) for any business in Canada that offers striptease, erotic dance, escort services or erotic massages on a regular basis. Foreign nationals entering Canada as work permit exempt or on open work permits are prohibited, as per the new regulations, from entering into employment with employers who offer these activities.

“Employment Agreement” is any arrangement which creates an employment relationship or a contract for individual services where the contractor renders direct service to a Canadian business (e.g., direct hire or performing artist contract). It is any situation where the Canadian business has the right to direct and control the type, manner and timing of the employee’s work (e.g., the business is responsible for scheduling when, where and how the contractor will provide their services).

“Business offering striptease, erotic dance, escort services or erotic massage on a regular basis”

For the purpose of determining whether a business meets the description above, an officer may wish to consider the following: Are these activities the ‘normal’ form of entertainment or services provided by the business? Yes or no.

- If yes, the work permit should be refused as per [R200\(3\)\(g.1\)](#)
- (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html>).

If no, consider the following questions:

Is it the business that is offering these services as opposed to the business simply hosting the event (e.g., strip club or bar presenting an entertainer, or a hotel renting out a conference room)?

Note: If the venue is not the 'host', then the employer would be whoever signed the contract (employment or services) with the foreign national.

Where the business is offering the services, are these services offered regularly such as once or more a week/month (as opposed to periodically such as once a year)?

If the answers to questions 1 and 2 is yes, then the work permit should be refused as per [R200\(3\)\(g.1\)](#) that the employer is a business that offers striptease, erotic dance, escort services or erotic massage.

Refusal code

IRPAR200(3) "This employer is ineligible to participate in the Temporary Foreign Worker Program"
Case Remarks should indicate [R200\(3\)\(g.1\)](#) in order to differentiate from [R200\(3\)\(h\)](#) refusals.

Date Modified:

2014-09-16

<http://www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp>

Appendix 2: Interview Guides

Immigration Officials

1. To begin the interview, could you please indicate your current position, and when you became employed in your current position?
2. How much experience do you have working with the TFW program?
3. Could you please describe all aspects of processing a work permit application?
4. What makes for an easy or a difficult decision to deny a work permit application?
5. What would be considered the ideal characteristics of a migrant worker to be accepted for a work permit?
 - Follow-up: Does this vary by gender or region?
6. What profiles or flags would cause you to suspect that a migrant applying for a work permit would be at risk of abuse or exploitation?
7. What is the main reason that is most commonly used to identify someone for being at risk of abuse or exploitation?
8. What occurs after you have identified someone of being at risk?
9. Are you required to provide any evidence when applying regulation IRPR 183(1)(b) and 200(3)(g.1), 'Protecting workers from abuse and exploitation'? And if so, what evidence is necessary or acceptable?
10. If you identify evidence of a known trafficker or exploitative employer offering employment to a migrant, is this communicated to the migrant?
 - Why or why not?
11. What do you think are the benefits of this regulation? Do you think that it enables you to do what is intended by the regulation?
12. What additional guidance or resources are you provided to assist you in applying this regulation? Is there specific training or is there specific operational notes that you can refer to? And if so, did you receive this training – and do you refer to these operational notes, and in what kind of cases?
13. I have requested a report for work permit refusals made under R(200)(g.1) and IRCC has responded that they do not collect this level of data. Is this true? If so, how CIC measure the success or failure of these regulations?
14. Is there anything you'd like to add? Do you have any last comments or would you like to introduce an additional point that you think that I failed to address?

Migrant Sex Worker Advocates

1. Please tell me about your positions, how you've been working at this job, and how you and your organization work with migrants?
2. How do the migrants that you work with define themselves?
3. Do you know if an estimate is available of how many migrants in Canada are involved in the sex industries or in sex work?

4. What has been the impact of the regulations on the migrant workers that you, your community that you're work with?
5. Have you seen any change over time in the working conditions or the treatment of the migrants, comparing before and after the regulations?
6. What could change to create a positive impact for the migrant population?
7. How would you respond to the argument that decriminalizing sex work and removing these regulations would human trafficking for the purposes of sexual exploitation?
8. Is there anything that I'm missing? Is there any question that I haven't asked that I should be asking? Is there an element here that I'm not seeing?

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