

AN EXAMINATION OF THE IMPACTS OF  
THE PROTECTION OF COMMUNITIES AND EXPLOITED PERSONS ACT  
ON COMMUNITY-BASED ORGANIZATIONS

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## Abstract

In *Canada (AG) v. Bedford* (Bedford Ruling), the Supreme Court of Canada (SCC) ruled that three of the provisions included in Canada's Criminal Code, ones that criminalized certain acts related to prostitution, violated the Charter of Rights and Freedoms (the Charter). The SCC determined that the Government of Canada (GoC) needed to make some fundamental legislative changes in order to bring Canada's prostitution laws into harmony with the Charter. If the GoC failed to make legislative changes within one calendar year, the provisions in question would have been stricken from the record. The GoC successfully made legislative changes within the designated timeline by passing *The Protection of Communities and Exploited Persons Act* (PCEPA).

Little research exists that shows the impacts of the PCEPA on the Community-Based Organizations (CBO) who were actively involved with the consultation phases of both the Bedford ruling and the development of the PCEPA. This thesis seeks to fill this gap by offering a qualitative exploration of how the operations of sex worker-focused CBOs were impacted by the implementation of the PCEPA. To accomplish this, the researcher used qualitative research methods to explore whether or not participants' day-to-day operations, funding streams, and delivered programs and services changed to conform to the PCEPA.

The conclusion is reached that the PCEPA is a problematic response to the SCC's ruling, one which potentially made the assisting sex workers more difficult for CBOs. The PCEPA has undermined the field of Canadian sex work advocacy, eroded the forms of capital available to CBOs, and created an environment of anxiety, and legal uncertainty.

## **Acknowledgement**

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## List of Abbreviations

- Canada (AG) v. Bedford. SCC 72 [2013] 3 S.C.R. 1101 (**Bedford Ruling**)
- Canadian Alliance for Sex Work Law Reform (**CASWLR**)
- Community-Based Organization (**CBO**)
- Conservative Party of Canada (**CPC**)
- Department of Justice Canada (**DoJ**)
- Evangelical Fellowship of Canada (**EFC**)
- Global Network of Sex Work Projects (**GNSWP**)
- Government of Canada (**GoC**)
- Loi sur la sécurité intérieure (**LSI**)
- Member of Parliament (**MP**)
- New Zealand's *Prostitution Reform Act of 2003* (**PRA**)
- Non-Governmental Organization (**NGO**)
- Protection of Communities and Exploited Persons Act (**PCEPA**)
- Supreme Court of Canada (**SCC**)
- Standing Committee on Justice and Human Rights (**SCJHR**)
- Standing Committee on Legal and Constitutional Affairs (**SCLCA**)
- United Nations Office on Drugs and Crime (**UNODC**)
- Vancouver Rape Relief and Women's Shelter (**VRRWS**)

## Introduction

On December 20, 2013, the Supreme Court of Canada (SCC) released their ruling on *Canada (AG) v. Bedford* (Bedford ruling), a landmark case wherein Canada's prostitution laws were challenged by three sex worker rights advocates: Terri Jean Bedford, Amy Lebovitch and Valerie Scott. The applicants were all current or former sex workers who advocate for the legitimization of sex work. The three Criminal Code provisions that were challenged by the applicants were:

- Section 210: Living in, owning, leasing, occupying or being inside of a common bawdy house;
- Section 212: Living off the avails of prostitution, either directly as a sex worker or indirectly as a parent, child, relative, friend, co-worker, pimp, madam, or common bawdy house operator; and
- Section 213: Open communication in public for the purpose of prostitution.

The applicants argued that these three provisions of Canada's Criminal Code were in violation of section 7 of Canada's *Charter of Rights and Freedoms* (The Charter). Section 7 of the Charter states that "everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." In order to operate legally, sex workers are often required to operate under dangerous circumstances, because the law denies them legal access to certain safety nets. For example, research shows that sex workers are generally safer when they work in close proximity with other sex workers and having a stable indoor location to operate, but the law prohibited the use of common bawdy houses; in many cases, those living off of the avails of prostitution are not pimps or madams, but children, parents, or others to whom sex workers have a legal and moral obligation, but anyone living off the avails of prostitution was liable under the law; and open



communication is crucial to screening potential clients and setting the sex worker's boundaries regarding the services s/he will and will not provide, but the law prohibited the open communication of sexual services (Sampson 2014).

After careful consideration, the SCC agreed that these provisions caused more harm than good, and ruled in favour of the applicants (Bedford ruling 2013; Lawrence 2014). These provisions were not immediately stricken from the Criminal Code, however: the SCC gave the Government of Canada (GoC) one calendar year to make several key changes to the Criminal Code in order to bring the legislation into accordance with the Charter (Lawrence 2014). If the GoC failed to make the necessary legislative changes in the designated timeframe, then the aforementioned provisions would have been stricken from the Criminal Code, and most, but not all, of the acts related to prostitution would become legal in Canada (Lawrence 2014). The GoC argued that the government had a moral obligation to ensure that prostitution would remain restricted in an effort to reduce the practice (O'Malley 2014). The GoC met the challenge set by the SCC and passed Bill C-36, *the Protection of Communities and Exploited Persons Act* (PCEPA) within the one-year timeframe. The PCEPA received royal assent on November 6, 2014. This chapter outlines the current legal status of prostitution in Canada, discusses the problem this thesis seeks to address, shares the researcher's research questions, and lastly discusses the researcher's qualitative approach used to answer the research questions.

## A. The Current Legal Status of Prostitution in Canada

When determining how to respond to the Bedford ruling, the GoC had four general policy pathways they could have pursued:

- 1) Criminalize, or make all aspects of, and acts related to, prostitution illegal;
- 2) Decriminalize, or lessen the restrictions and criminal punishments associated with prostitution and its related acts;
- 3) Legalize, which is the next step beyond decriminalization: if legalized, prostitution and all its related acts would not only be permissible under the law, but the practice would also be supported by labour laws, health regulations, and other policies; and
- 4) A combination of criminalization and decriminalization, wherein certain aspects of, or acts related to, prostitution remain illegal, but other aspects and acts become unpunishable in a court of law (Mullin 2015).

Mullin (2015) argues that the phrases *legalize* and *decriminalize* are often used interchangeably, despite having different meanings. The GoC ultimately opted for the fourth option: criminal punishments were heavily increased against the purchasers of sexual services, but the restrictions against those selling sex were lowered. According to Mr. Peter MacKay, the Minister of Justice who sponsored the PCEPA, this approach was taken in order to abolish prostitution in Canada (Hansard 2014a).

From a legal perspective, selling sex has always been permissible in Canada, but many of the acts related to prostitution have been, and still are, illegal (Sampson 2014). Navigating the prostitution provisions in the Criminal Code is a difficult task for sex workers, one that has been made all the more difficult by the PCEPA, which introduced a number of confusing and difficult barriers which sex workers will need to navigate carefully. The key changes made to the Criminal Code through the PCEPA include:

- **Section 212 was ultimately repealed**, but sections 279 and 286 were expanded to provide increased sanctions and punishments of those who live off the avails of prostitution;

- **Section 286.1** increases the illegitimacy of communicating the intention to purchase or sell sex in public spaces. Punishments are particularly severe in spaces where children may be present, such as near a school or playground;
- **Section 286.2** increases the punishments of those who receive a financial benefit from the prostitution of others. This everyone from pimps and madams to cab drivers. Exceptions are made for those whom the sex worker has a moral or legal obligation, such as a spouse or child;
- **Section 286.3** increases the punishments for pimps and madams and expands the definition of who a sexual exploiter is to include those who purchase sex. For the first time in Canadian history, the purchase of sex is illegal, regardless of the circumstances;
- **Section 286.4** Increases the criminal punishments against those who advertise sexual services on behalf of sex workers.

While a sex worker is technically allowed by law to sell sexual services, the PCEPA has reinforced that s/he is not allowed to communicate the transaction in public spaces or other spaces where children are reasonably likely to be present, s/he is not allowed to advertise her/his services, nor can anyone knowingly operate a business that supports the practice of prostitution, and s/he is not allowed to operate any business that may be viewed as a brothel. Since the ascension of the PCEPA, purchasing sex has also become illegal (*Technical Paper 2014*).

Research has been conducted that explores how the Bedford ruling and the ascension of the PCEPA would impact sex workers (see Sampson 2014; Bruckert 2015; Campbell 2015), but what about those who actively assist or advocate for sex workers? Certain community-based organizations (CBO), who work closely with sex workers and would logically also be impacted by the ascent of the PCEPA, were actively involved in the consultation phases of both the Bedford ruling and the development of the PCEPA. Further, CBOs often act as conduits of research and information between the government and police agencies, the public, and sex workers themselves (Cordero-Guzman 2004;

DeSantis 2010). Despite their critical role, how the PCEPA has impacted CBOs is still largely unknown. For example, it is unknown how, if at all, their daily operations have changed, or whether or not their funding has been impacted by recent legislative changes. It is largely unknown if certain programs or services have been discontinued or expanded due to recent legislative changes. Thus, a gap exists in the literature, one that is discussed further in the next section.

## **B. Problem Statement**

CBO is a catch-all phrase used to incorporate all third-sector organizations: charity groups, advocacy groups, non-governmental organizations (NGOs), and others. CBOs are often founded in order to provide programs and services that the government and private sectors do not provide, ones that often target marginalized people and communities who may struggle to maintain a reasonable quality of life (Cordero-Guzman 2004; DeSantis 2010). It is important to note that although multiple CBOs might work to improve the lives of the same group, their approaches may differ. For example, while both *Operation Help* and *London Abused Women's Centre* offer sex workers the opportunity to escape the practice, they do so differently. *Operation Help* does so with the help of police who arrest sex workers and take them to the police station where volunteers offer shelter, child care, financial help, medical help, temporary housing and other supports. *London Abused Women's Centre* offers women in abusive situations – not solely sex workers – counselling and other supports in a non-residential setting.

Najam (2000) argues that the mere existence of CBOs can be viewed as a failure of the government: CBOs would not be needed if the government would fulfill its mandate to serve all citizens equally. Najam's (2000) argument appears harsh, however: governments do often recognize their inability to provide every service imaginable to every possible social group, and rather than developing internal programs and services, they instead support CBOs with the delivery of programs and services through grants and other funds (Slaymaker and Christiansen 2005). Further, governments often opt to develop more generally-applicable policies and programs that will have a greater impact on more people from a variety of social groups. Notwithstanding, CBOs sometimes feel neglected by policy makers (Najam 2000). The complex relationships that some CBOs perceive are further exacerbated by a variety of factors, most notably differing interests and priorities in policy development and resource allocation, and adherence to different ideological and political beliefs (Najam 2000; Slaymaker and Christiansen 2005). Recognizing that these different priorities exist, CBOs often seek to influence public policy decisions that are of particular interest to their organization and those they serve (Evans and Shields 2014). Others, however, agree with the government's priorities, and instead seek to work with the government to deliver programs and services (Cordero-Guzman 2004).

Sidanius and Pratto (1999) argue that generally-applicable policies reinforce and propagate power structures, which they describe as *group-based hierarchies*, where social structures place different social groups or individuals into a hierarchical system based on arbitrary socially-constructed and understood traits (race and ethnicity, gender, sexual preferences). Farmer (1995) argues that administrative bodies in the public sector

are heavily influenced by arbitrary socially constructed hierarchies, and policies often reflect the greater social attitudes and discriminations against marginalized groups. McNay (1999) takes this argument a step further by noting that “large-scale social inequalities are established not at the level of direct institutional discrimination but through the subtle inculcation of power relations upon the bodies and dispositions of individuals.” (99). McNay’s argument suggests that it is not the government itself that discriminates, but rather those who work within government agencies who are susceptible to, and propagate, long-standing social attitudes towards marginalized groups. If those who make decisions within a government are harbouring biases against marginalized groups, then the choices they make are less likely to benefit those groups. Further, if these biases are reinforced by the government, an institution with significant authority and legitimacy, these personal biases will also be authorized and legitimated (McNay 1999).

In rare cases, these personal biases contribute to the development of policies and laws that violate basic human rights and CBOs must use the court system to demand policy changes (Gall and Sober 2000). In the Bedford ruling when certain sex worker advocates demanded changes to the Criminal Code, which they believed restricted sex workers from working in groups or at bawdy houses (safety in numbers), from hiring bodyguards, from screening clients through more open communication, and from using the money generated from their sex work to feed, house and clothe their children. With this in mind, if legislation becomes more complex and generates legal insecurity, the work done by CBOs will be impacted in some fashion. The next section discusses this thesis’ research questions in light of this assumption.

### **C. Research Questions**

As discussed in the previous section, complex relationships exist between some CBOs and government agencies that can arguably be traced back to the power structures that are determined by socially constructed hierarchies (see Farmer 1995; McNay 1999; Najam 2000; Sidanius and Pratto 1999; Ho et al. 2012). This thesis aims to better understand how the operation of CBOs who assist and advocate for sex workers have been impacted by recent legislative changes, and what adaption strategies these CBOs have used to conform to the PCEPA. CBOs not only need to adapt to new or changing legislation, they must also navigate their relationships with government agencies, the stigmas associated with the sex workers they serve, and the struggles inherent to assisting those from marginalized backgrounds.

It is important to note that different CBOs have different mandates, objectives, and funding sources than one another: certain CBOs might seem similar in their quest to assist and advocate for sex workers, but the ways in which they operate, their motivations, and their personal and organizational values may vary significantly. This variation may have an impact in how they adapt to legislative changes. As such, this study seeks to answer the following two questions:

- 1) How, if at all, have CBOs who assist sex workers needed to change their operations in order to accommodate the PCEPA?
  - What adaption strategies have CBOs used?
  - In what ways do these strategies differ from one CBO to another?
  - What factors exist that explain these strategic differences?
- 2) How do CBOs articulate their relationships with government agencies and legislation?
  - Do these articulations shed light on the relationships of power between sex workers, CBOs and government agencies?

- How do CBOs navigate these relationships of power?

A qualitative research design and qualitative research methods were used to answer these questions. The remainder of this chapter will be spent discussing this qualitative approach.

#### **D. General Considerations of Qualitative Research**

By design, qualitative research is focused on providing in-depth, personalized data sets (Creswell 2013; Rubin and Rubin 2012; Tierney and Clemens 2011). The benefits to using qualitative research methods often materialize through the depth of the data gathered. Rubin and Rubin (2012) state that qualitative researchers “examine the complexity of the real world by exploring multiple perspectives toward an issue. This approach to data gathering allows one to see life in the round, from all angles” (4). Qualitative research provides researchers with a significant level of depth and understanding of a phenomenon, but the process is not without its share of criticisms, particularly when applied in policy research.

Tierney and Clemens (2011) mention two limitations of qualitative studies that may impact their validity. First, small data sets gathered from niche communities hinder the researcher’s ability to accurately generalize the data and reach conclusions that are applicable to the greater population. Second, the research process is nearly impossible to duplicate. In the realm of public policy, quantitative research is often viewed as more reliable than qualitative research, because quantitative research often provides from larger data sets that are assumed to be generalizable to the greater population while offering policy makers measurable standards for program evaluation (Tierney and



Clemens 2011). Tierney and Clemens (2011) argue, however, that despite these limitations, there still needs to be room for qualitative research in public policy. Qualitative research allows for policy makers to make more informed decisions, by gaining greater knowledge of how policy issues directly impact communities and groups; qualitative research can provide more intimate context to policy issues and greater understanding of a phenomenon.

### **E. Analyzing a Case Study through Bourdieu**

Levy (2008) argues that using case studies as a qualitative research design, despite the prevalence of this approach in the social sciences, is a difficult concept to define due to the nature of qualitative research; determining how a case study should be implemented and analyzed is largely dependent on the group(s) being studied, and consequently no *one-size-fits-all* case study exists. While finding a clear definition of what a case study is may be a difficult task, one can turn to seasoned methodologists who have discussed some of the crucial aspects of case study research. For example, Marshall and Rossman (2011) argue that case studies are “reports of research on a specific organization, program, or process” that are constructed using “historical and document analysis, interviewing” and other research methods (267). Further, George (1979) argues that case studies should be less about describing a historical event, and instead provide researchers with data through which theoretical concepts can be constructed, explored and validated. One can infer from these three methodologists that case studies not only establish a historical overview of an event, but also allow the event to be explored through a theoretical lens.

According to Flyvbjerg (2006), whenever qualitative researchers examine communities and groups in order to better understand a social phenomenon they inevitably create case studies. Flyvbjerg (2006) argues that expertise within a field of study is built upon the “intimate knowledge of several thousand concrete cases” (222). He states that “context-dependent knowledge and experience are at the very heart of expert activity. Such knowledge and expertise also lie at the center of the case study as a research and teaching method or to put it more generally still, as a method of learning” (222). While data collected through case studies as a methodology are difficult to generalize, case studies as a research design are crucial to understanding social phenomena; validity of the case is found not only in its description of an event, but also in the lessons that can be learned and applied to other societal facets (Levy 2008).

As mentioned in section D of this introductory chapter, qualitative research designs and methodologies are often limited by their small data sets, which are difficult to generalize to the greater population, and also by the near-impossibility of duplicating the study (Tierney and Clemens 2011). Bitektine (2008) argues that developing case studies in qualitative research may remove, or at least lessen, these two limitations. He states:

In research contexts where unique phenomena, lack of adequate quantitative measures, or reductionist operationalizations requiring an unacceptable “leap of faith” make the application of quantitative methods unfeasible, insufficient, or not meaningful, theory testing using qualitative case studies can provide a critical test for a theory, similar to a test performed with a single experiment. (160)

Developing a case study of CBOs who assist or advocate for sex workers was a crucial component of this thesis. This study used qualitative research methods to build a case

study regarding the operations of sex worker CBOs, which could then be analyzed through Bourdieu's *theory of practice*, a theoretical framework comprised of several, interrelated concepts (see chapter two).

Bourdieu's (1989, 2002) *theory of practice* hinges on the notions that individuals have access to certain privileges based on their position within a field, the forms of capital they possess, and their habitus (see chapter two for definitions and discussions of these concepts). It is possible to better understand the strategies CBOs used to adapt to changing legislation, as well as how sex worker CBOs experience structural stigma and navigate hierarchal relationships with government agencies and legislation. Moreover, a theoretical framework built on Bourdieu's concepts of capital, field, and habitus allows for a better understanding of the ways in which CBOs were impacted by, and responded to, the PCEPA; how the adaption strategies used may differ from one CBO to another; and how the adaption strategies are influenced by nuanced relationships of power. In order to build a case study that can be analyzed through Bourdieu's theoretical framework, the research employed the use of qualitative research methods.

## **F. Qualitative Research Methods**

To answer this thesis research questions, the researcher used qualitative research methods. The researcher examined 63 briefs submitted by interested parties to the Senate's *Standing Committee on Legal and Constitutional Affairs* (SCLCA) and the results of an online consultation survey conducted by Canada's Department of Justice (DoJ 2014) to provide a foundation of knowledge that would inform two phases of semi-structured interviews. These methods were used to learn how the PCEPA had impacted

the operations of CBOs. The 63 briefs and DoJ (2014) survey results provided a greater understanding regarding the mandates of CBOs, and their positions within the field of sex worker advocacy. During interviews, participants were asked questions regarding their day-to-day operations, their involvement in the Bedford case and the development of the PCEPA, where their funding comes from, the stigmas they and those they assist experience, and how those stigmas are navigated. Through an application of Bourdieu, the researcher used day-to-day processes, funding streams, consultation participation and stigmas as representations of habitus, economic capital, cultural capital and field positioning respectively.

In an effort to better understand the debate that occurred during the development of the PCEPA, the researcher turned to two sources: the 63 briefs written by CBOs and other interested parties that were received and read by the Senate's *Standing Committee on Legislation and Constitutional Affairs* (SCLCA) and the results of an online consultation survey conducted by the Department of Justice (DoJ 2014). These sources were sought for three reasons. First, many of the briefs were submitted by CBOs who the researcher was unsuccessful in interviewing. Second, these sources might reveal information regarding the positions, mandates, and operations of CBOs. Third, these sources might provide a foundation of the debates that occurred during the development of the PCEPA. The information gathered from these two sources successfully gave the researcher a better understanding of this debate, the mandates of CBOs and positions taken on each side. This foundation served to better inform the data collected from two phases of semi-structured interviews.

The researcher used Nvivo 10 for Windows to find common elements between data sources, first by comparing the text between each of the 63 briefs submitted to the SCLCA, then again later with the transcripts from each semi-structured interview. PDF copies of each brief into a master folder, which was then uploaded into Nvivo. The researcher then ran a simple word count query to see which words were most frequently used by those who submitted briefs to the SCLCA. Frequently used words were grouped into categorical nodes (for example, mentions of prostitute were placed into the same node as mentions of sex worker). The researcher then expanded his queries to examine the sentences and paragraphs where these frequently-used words appeared in order to better understand the context of their usage, and the author's intended meaning. Further, the researcher examined the language used by each brief's author to determine whether the author was for or against the PCEPA (for example, those who were generally for the PCEPA tended to frame their arguments around prostitution and prostitutes, whereas those who were generally against the PCEPA tended to frame their arguments around sex work and sex workers). The content within these nodes formed a thematic foundation of the debate that occurred during the SCLCA. The themes discovered by this analysis were used to form a general list of arguments made by those who submitted briefs, which is included and further discussed in section 3.1 of this thesis. By grouping like words into nodes, and then grouping unified nodes into general themes, the researcher was better able to understand both the key issues being debated as well as each author's position within the debate. Transcripts of semi-structured interviews were also uploaded to Nvivo, where the researcher followed a similar process of identifying themes.

Semi-structured interviews are appropriate when “the researcher is looking for rich and detailed information, not for yes-or-no, agree-or-disagree responses. He or she is looking for examples, for experiences, for narratives and stories” (Rubin and Rubin 2012, 29). Rubin and Rubin (2012) note that this style of interview includes open-ended questions, which can be explored further during the interview. Further, researchers using semi-structured interviews often prepare a list of interview questions that help guide the conversation, but are flexible to new developments that might lead the conversation another direction. To this end, the researcher entered each interview with a pre-set interview guide, but was prepared to deviate from the interview guide if needed. The researcher wanted each participant to freely share their experiences, and their organization’s experiences, and found that some of the most interesting data came from portions of the interview where the discussion had deviated from the interview guide.

The first interview phase consisted of four semi-structured interviews. The interview guide for this phase included five questions which were designed to solicit open-ended responses. In the researcher’s early exploration of this topic, he found that he was too focused on how organizations as a whole were impacted by the PCEPA; he should have been focusing more on how participants themselves were impacted. The researcher used this insight to adjust the interview guide for the second phase of interviews, which focused more heavily on the experiences of CBO workers. He found that once his focus shifted, he was still learning how the PCEPA impacted the operations of these organizations, but was also able to solicit a more experiential account of how the PCEPA has impacted CBO workers, which led to greater depth in the responses received. The second phase consisted of three semi-structured interviews.

All participants must have belonged to an organization who either participated in the consultation phases of the Bedford ruling or whose work would be directly impacted by the PCEPA. These organizations may include sex worker advocacy and activist groups, CBOs, crown prosecutors and police officers with experience in enforcing prostitution laws, and government administrators who assist crown prosecutors and police officers. The participants themselves must have been engaged in working with one of the aforementioned organization categories from June 1st, 2013 through to December 1st, 2014. This time period includes the time from the Bedford case deliberation and ruling up to, and including, a few weeks following the royal assent of the PCEPA on November 6th, 2014. By making this time period a necessary criterion for participation, the researcher was able to ensure that participants witnessed these legislative changes and experienced some of their impacts on their organization first-hand. A pool of potential candidates was gathered from three sources: the list of interveners in the Bedford ruling (see Bedford ruling 2013), the list of witnesses who participated in the Parliamentary Standing Committee on Justice and Human Rights (SCJHR) (see *Bill C-36: Report and Government Response* 2014), and the list of briefs submitted to the Senate Standing Committee on Legal and Constitutional Affairs (SCLCA) (see *Brief Index: Bill C-36* 2014). Many of the individuals and organizations included on these three lists overlapped, as they consulted during multiple steps of this process. Roughly 130 individuals were approached using the pool of potential participants, 71 of whom were successfully contacted. Of those 71, 65 either work with a CBO or advocate for sex workers independently, 2 were lawyers with extensive

experience in handling prostitution cases, and 4 were government program administrators.

In total, only seven interviews (9.86% of those successfully contacted) were conducted. Four interviews were with CBO workers and two were with program administrators. The remaining participant is a member of a national government work group that closely monitors any and all court cases where defendants have been charged under the PCEPA. Interviews were conducted with participants from Saskatchewan, British Columbia and Quebec. Two of the interviews occurred face-to-face, and the remainder of interviews occurred over Skype’s VoIP telephone service. The audio from each interview was recorded, except in one instance where the participant was uncomfortable with being recorded. The researcher transcribed the audio for each interview; the text, including the researcher’s notes for the interview where no audio was recorded, was later analyzed in NVivo to find themes and common elements, as well as uncommon elements that are interesting and worth noting. The researcher received approval from the University of Regina’s Human Research Ethics Board on September 1st, 2015 (the Certificate of Ethics Approval is found in Appendix A). Participants were pulled from three provinces: British Columbia, Saskatchewan and Quebec. The breakdown of each participant’s role and province is as follows:

**Table 1: Participant Pseudonyms**

<b>Pseudonym</b>	<b>Role</b>	<b>Province</b>	<b>Interview Phase</b>
Red	Program administration	Saskatchewan	1
Purple	National Research Group member	Saskatchewan	1



Pink	Program administration	Saskatchewan	1
Yellow	CBO Worker	British Columbia	1
Blue	CBO Worker	British Columbia	2
Green	CBO Worker	British Columbia	2
Gold	CBO Worker	Quebec	2

Source: The information depicted in this table was collected by the researcher during this thesis' interview phase.

Successfully contacting potential interview participants and gaining their consent to participate proved to be a more significant challenge than the researcher anticipated. In many cases, the inability to conduct more interviews can be attributed to potential participants responding to initial contact, but not responding to follow-ups. Other factors that may have attributed to a low response rate are more nuanced and complicated. Sex worker advocacy in Canada is a niche industry. There are only a handful of organizations that specifically advocate for and assist sex workers. The researcher came to learn that sex worker advocates can be deeply protective of those they assist, and are skeptical of outsiders as a result. The ambiguous legal status of prostitution in Canada compounds their skepticism, as participants are sometimes unsure if they are able to trust researchers, especially those viewed as outsiders, with sensitive, and potentially illegal or criminal, information (Bott 2010; Kurotani 2004).

Expanding on the participant requirements to add numbers to the data pool was considered. The option to conduct interviews with those in complementary fields, or perhaps expanding the criteria to allow for international advocacy groups, was explored, but ultimately not taken. The participation criteria were established to ensure that those interviewed would have first-hand experience with the PCEPA and its impacts on their

organization's operations. Expanding the criteria for participation would have certainly yielded additional data, but there was a risk that this additional data would be irrelevant to this thesis. The interview data that was gathered, however, does allow a better understanding of how the PCEPA has directly impacted the CBOs who assist sex workers (see Tierney and Clemens 2011). While it would certainly be difficult to generalize the data gathered from seven interviews with members of a niche group to the general population, the information contained within those seven interviews is nonetheless valuable. The data gathered provides a significant understanding of the impacts of the PCEPA on CBOs. Nevertheless, the concern that seven interviews would not yield sufficient data persisted. This presents a limitation that is discussed further in section 4.5 of this thesis.

## **Chapter 1 – Literature Review**

Prostitution in Canada is nothing new, and neither is the existence of legislation that seeks to restrict and prohibit the practice. Technically speaking, the act of selling sexual services is not, nor has it ever been, illegal in Canada, but many of the acts related to prostitution are, and have been, illegal (Sampson 2014). In order to understand the changes made to Canada's prostitution laws through the PCEPA, and its impacts on the operations of CBOs, it is important to first examine Canada's historical approach to prostitution legislation and the social climate that led to the Bedford ruling. Better understanding the history of Canada's prostitution laws helps inform the role of CBOs in the discourse. This chapter seeks to provide this understanding by offering insight into how CBOs operate in assisting sex workers and influencing policy change. An outline of the history of prostitution legislation in Canada is given, starting with a brief sociohistorical account of Canada's legislative approach. This is followed by a discussion of the Bedford case, the GoC's response to the Bedford ruling, and lastly introduces alternative legislative models the GoC could have adopted while developing the PCEPA. First, a sociological glimpse at who sex workers are is required; to better understand CBOs and the programs and services they deliver, it is necessary to have a grasp of their clients.

### **1.1 Prostitution Demographics and Gender and Racial Dynamics**

Due to the largely criminal nature of prostitution, researchers (such as Kramer and Berg 2003; and Morton, Klein and Gorzalka 2012) argue that it is difficult to paint a full demographical picture of the phenomenon within the Canadian context. Researchers

(such as Kramer and Berg 2003; and Morton, Klein and Gorzalka 2012) have attempted to gain greater understanding of who sex workers are and why they enter prostitution, but ultimately most of what is known about this group is based on normative assumptions (Morton, Klein and Gorzalka 2012). Normative assumptions of sex work in Canada deem sex workers to have little education, belong to ethnic or racial minority groups; be victims of abuse (physical, sexual and emotional), suffer from a substance addiction, and in many cases have suffered some sort of violence in the home (Kramer and Berg 2003; Morton, Klein and Gorzalka 2012). According to a recent study conducted by Benoit and colleagues (2014), most of these normative assumptions are founded in studies conducted by researchers who are primarily looking to examine two phenomena:

- 1) The individual characteristics of sex workers; and
- 2) The relationships sex workers have with others, particularly during times of crisis.

Researchers are, according to Benoit and colleagues (2014), looking to find the root cause for prostitution, or the common aspects that would lead someone to becoming a sex worker in the first place, in an effort to ensure that programs and services offered can help assuage the fundamental reasons that might lead someone to practice prostitution. Benoit and colleagues (2014) sought to paint a broader picture of who sex workers are by conducting an extensive survey of sex workers, their managers, and clients. The results of this study corroborate some of the aforementioned normative assumptions, but potentially invalidate others. The remainder of this section will discuss some of the normative assumptions, demographics, and gender dynamics.

Kramer and Berg (2003) note that most known sex workers are predominantly women or girls, which is corroborated by Morton, Klein and Gorzalka (2012) who note that the Canadian public believe that female sex workers greatly outnumber male sex workers. According to Benoit and colleagues' (2014) study, 77% of Canadian sex workers identify as women. 17% of sex workers identify as men, and the remaining 6% identify as other genders, such as transgender or gender fluid. Conversely, 98% of those who purchase sex identify as men, which confirms the general beliefs of the Canadian public as noted by Morton, Klein and Gorzalka (2012). This shows that the sex industry overwhelmingly caters to men, and those selling sex are mostly women.

Another normative assumption noted by Kramer and Berg (2003) is that sex workers generally have less education than non-sex workers. This is corroborated by Benoit and colleagues' study (2014), which indicates that only 15% of sex workers in Canada have completed an undergraduate degree, compared to the 24% of non-sex workers who have completed an undergraduate degree. Likewise, 67% of sex workers have completed high school, compared to 87% of Canadians generally (Benoit and colleagues 2014; Statistics Canada 2015). Benoit and colleagues (2014) compared these statistics with those in other service-oriented professions, such as food and drink servers, stylists and nurse aides, who by comparison have finished high school at rates of 19%, 96% and 88%, respectively.<sup>1</sup> This corroborates the normative assumption that sex workers are generally less educated than those in other professions, but this does not

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<sup>1</sup> These statistics include 15 to 25 year olds who may be currently in the process of completing their high school degrees. As alarming as the *19% of food and drink servers have finished high school* statistic seems, it does not paint a full picture of the phenomenon.

mean they are ultimately worse off than those in other service professions. Less education does not necessarily lead to less income, for example.

An examination of income reveals that the average sex worker surveyed by Benoit and colleagues (2014) earns \$39,500 per year. According to Statistics Canada (2016), the average earner in the accommodation and food services industry earns \$14,462 per annum as of November, 2015. The average earner in all of Canada's service producing industries – this includes those working in accounting, finance and insurance management, health care, and education – is \$46,345 per annum, which is not a significant increase over the average income of sex workers (Statistics Canada 2016). This data tends to oppose the notion that sex workers are generally financially desperate. Benoit and colleagues (2014) argue that some feel like they have made a logical choice in pursuing sex work as a vocation, one that gives them access to observable financial benefits, excellent work/life balance, and a significant level of control over their working conditions. It should be noted, however, that the notion of choice in the pursuit of prostitution as a profession has been challenged by many researchers (for example Leidholdt 1993; Farley, Lynne and Cotton 2005).

The gender dynamics in prostitution are, as Murphy (2013) argues, a perpetuation of the age-old patriarchal value systems that permeates throughout Canadian society. Murphy (2013) and Smiley (2015) argue that women within the sex industry are inherently exploited simply due the very nature of the industry: in the process of selling sexual services, women and their bodies are necessarily commodified, objectified and sold. This is further compounded when racial dynamics are introduced: Benoit and colleagues (2014) note that a significant amount of sex workers in Canada (ranging from

3% to over 25%, depending on the local market being examined) belong to a visible minority group. This is important to note, because as Benoit and colleagues (2014) argue, women who belong to visible minority groups are more likely to operate as outdoor sex workers, which carries significantly higher risks than indoor sex work (see section 1.2).

Smiley (2015) argues that First Nations are disproportionately represented amongst sex workers belonging to visible minority groups. The disproportionately high involvement of First Nations women in sex work is exacerbated by their increased risk in facing violence in all its forms (Smiley 2015). Over the course of time, thousands of First Nations women have disappeared in Canada, some of whom are later found dead, but many of whom were never heard from again (Smiley 2015). Canadians are currently engaged in confronting how to end the increased risks First Nations women face, and Smiley (2015) argues that many of these issues could be solved finding a way to end the practice of prostitution in Canada. Many of these women are known, or believed, to have ties to prostitution. The violence and risks of violence First Nations women risks face are further compounded by the increased likelihood of First Nations women to operate as outdoor sex workers.

## **1.2 Increased Risks for Outdoor Sex Workers**

As mentioned in section 1.1, exact statistics and demographical data measuring how many sex workers there are in Canada, and exactly who they are and how they operate, is very difficult to collect, given the reluctance sex workers have with making their participation in the practice known (Kramer and Berg 2003; and Morton, Klein and

Gorzalka 2012). There have been attempts in the past to gather demographical data, but the results have been underwhelming and inconclusive. Similarly, the statistics regarding what percentage of sex workers operate on the streets can range from 5% to 40% depending on the source one examines (see *Quick Facts: Prostitution in Canada* 2014; Parliament of Canada 2014). For example, Benoit and colleagues (2014) state that 17% of sex workers operate on the streets, whereas the Parliament of Canada notes that the number of outdoor sex workers may be as low as 5%. Those who work on the streets face increased risks compared to those who work indoors. Benoit and Shumka (2015) note three:

- 1) Sex workers who solicit on the street are more visible to the police, which can result in their being charged with breaking prostitution laws, holding a criminal record and/or spending time in jail.
- 2) Working on the street can also carry serious health and safety concerns for some sex workers, especially those who work on “strolls,” that is stretches of road where sex workers regularly solicit clients, which are located in impoverished areas of cities or towns. These areas often lack access to clean water and sanitary toilets, well-lit areas that can protect workers from assault, areas where workers can find warm and dry shelter, and access to outreach services such as health clinics, shelters, and needle exchanges.
- 3) Many people who work on the street do not have stable housing or safe places to conduct transactions with clients. (3-4)

Sex work is considered to be a dangerous practice, and much of the danger comes from examining those who operate on the streets (Benoit et al. 2014; Benoit and Shumka 2015). Indoor sex work is considered to be much safer, because sex workers have access to safe, clean, controlled environments, where additional safety measures can be implemented and sex workers can communicate openly with clients (Benoit et al. 2014; Benoit and Shumka 2015). Concern over the increased risk of harm outdoor sex workers face was a central aspect of the SCC’s final decision in the Bedford ruling, and a core



consideration for CBOs during the consultation phase. By arguing for access to greater safety measures for outdoor sex workers, CBOs were able to convince the SCC to require legislative change. Some of the strategies CBOs use to influence policy change are discussed in the next section.

### **1.3 Current Research on CBO Operations**

DeSantis (2010) notes that much of the research regarding CBOs focuses on either their relationships with government agencies (see Najam 2000) or their organizational structure and processes (see Harvie 2002). According to DeSantis (2010), this research is important to understanding how CBOs fulfil their mandate, provide programs and services, and advocate for policy change; the CBOs' ability to effectively operate and influence policy change is directly related to their network, organizational structure and capacity. CBOs are notorious for operating under heavy budgetary constraints and with limited capacity (Cordero-Guzman 2004; DeSantis 2010). According to Cordero-Guzman (2004), CBOs often face these challenges by building collaborative networks with one another to maximize capacity and program delivery, while continuing to operate under heavy budgetary constraints. There are three primary reasons for building collaborative networks:

- 1) Internal motivations, including sharing resources and building capacity in an effort to meet client-driven pressures to expand on, and enhance, the number and types of services available. One CBO might be able to deliver programs and services that another is unable to – and *vice versa* – and a collaborative partnership between these two organizations might allow both organizations to expand their support network while providing much-needed services to clients;
- 2) Funding-related motivations, wherein CBOs might partner with one another to seek program and services funding from a granting agency to provide a much-needed service to clients; and

- 3) Government-related reasons, which may include collaborating with the government to build capacity and offer additional services, or contrarily for government agencies use the expertise CBOs have in order to enhance its own programming.

As Najam (2000) argues, CBOs often provide services that government agencies do not, but, as Cordero-Guzman contends, in many cases the government relies on, and assists in funding, programs and services provided by CBOs, who arguably have greater working knowledge and expertise on the needs of a particular social group. It often makes sense, from an administrative point of view, for governments to participate in, and offer funding to, these collaborative networks, rather than build the capacity to manage these programs internally (Cordero-Guzman 2004). Najam's (2000) concern, however, is not with governments and CBOs building collaborative networks to ensure that programs and services are available to marginalized groups: rather, he is concerned with those organizations who are ultimately unable to participate in these collaborative networks, whether due to the nature of their services, the perceived criminality of those they service or some other reason. Certain organizations fall through the cracks, and their clients remain without much-needed programs and services as a result.

Another key function of CBOs is to influence changes to policy. Stachowiak (2013) argues that CBOs seek to influence policy change when programs and services alone are not enough to meet the needs of their clients. She states:

Advocates of all stripes seek changes in policy as a way to achieve impact at a scale and degree of sustainability that differs from what can be achieved through direct services or programs alone. Advocates and funders each come to policy work with a set of beliefs and assumptions about how change will happen, and these beliefs shape their thinking about what conditions are necessary for success, which tactics to undertake in which situations, and what changes need to be achieved along the way. (1)

Like Cordero-Guzman (2004), Stachowiak (2013) claims that one of the principle methods CBOs use to influence policy change is through collaborative networks. For example, many of those who acted as interveners during *Canada (AG) v. Bedford* were part of the *Canadian Alliance for Sex Work Law Reform (CASWLR)*, a coalition of 23 CBOs with a particular interest in seeing sex work legitimized in the law. Prominent members of this particular coalition include Terri Jean Bedford, Amy Lebovitch and Valerie Scott, the three applicants who challenged Canada's prostitution laws in the SCC, who also form the core team of an Ontario-based CBO. By building a collaborative network, the three applicants were able to work closely with other like-minded parties to successfully argue for legal change in the SCC.

Collaborative networks are not always successful, however, often breaking down due to disagreements between CBOs on incompatible mandates, the primary focus of programs and services, and the definition of the problem they are seeking to address (Cordero-Guzman 2004). This was the case in France during the development of the *Loi sur la sécurité intérieure (LSI)*, a law which strictly prohibits the purchase and sale of sex. CBOs and sex workers in France protested the bill, but were ultimately unable to form a collaborative network. According to Mathieu (2011; 2012), these groups were unable to stop the passing of the law due to their inability to band together under a unified definition of prostitution, either as an inherently harmful practice or a practice that should be legitimized. In essence, there were multiple smaller, and easier to ignore, groups arguing for different issues; contrarily, the Bedford ruling was successful in large part due to the CASWLR's ability to form a cohesive collaborative network.

The research discussed in this section offers greater insight into how CBOs fulfil their mandates, offer programs and services to those they assist, and influence policy change (Cordero-Guzman 2004; DeSantis 2010). As noted above, much of the literature focuses on the operations of CBOs and their relationships with each other and government agencies, but in many cases fails to pay “attention to the relationship between advocacy processes and marginalized people” (DeSantis 2010, 24). This gap in the literature seems odd, because, as Anderson-Droogsmma (2013) notes, many individuals who participate as advocates or choose to work for CBOs are currently, or have been previously, a member of the marginalized group being advocated for. This is particularly observable in the space of sex worker advocacy: some Canadian CBOs focused on assisting sex workers – such as *Sex Workers Action Group Kingston*, *Maggie’s Toronto*, *PACE* and others – are peer-led organizations, meaning that the organizations themselves are managed by either current or former sex workers. Although this thesis focuses on the impacts of the PCEPA on the operations of CBOs, the CBOs and those who operate them are intrinsically wrapped up in the discourse with those they assist, and consequently must navigate many of the same stigmas, social pressures and legal difficulties.

#### **1.4 Early Social Attitudes towards Prostitution**

Shaver (1994) notes that one of the earliest prostitution prohibition laws came to fruition in the *Nova Scotia Act of 1759*, which was focused against vagrancy in all its forms: prostitution was included in this legislation due to the perception that prostitution was a form of vagrant behaviour (see also Backhouse 1985). Brothels were a common sight in this period (Shaver 2014). At the turn of the 20<sup>th</sup> century, with the development of the

Canadian Pacific and Transcontinental railway systems, “came a mass westward migration of mostly single men, here defined as either bachelors or husbands who had temporarily left their wives and children at home” back in Eastern Canada (Shaver 2014, para. 3).

This mass migration created a socioeconomic environment where prostitution thrived. Brothels were established near railway stations and in industrial neighbourhoods. In economic terms, prostitution during the early days of Western Canadian migration could be described simply as a supply-meeting-demand scenario, and “unless they<sup>2</sup> came to the attention of social or moral reformers, little was done to close them” (Shaver 2014, para. 3). It was not until the late 1800s that the government of Canada sought to create legislation that placed greater restrictions on prostitution. McLaren (1986) states:

Between 1867 and 1917 the body of criminal law in Canada on prostitution grew from a small group of provisions directed against both street and residential prostitution as form of vagrancy and defilement of girls under twenty-one years of age secured by false pretenses, to a more complex set of provisions which purported to protect females in general from the wiles of the procurer, pimp and brothel keeper [...] and which gave police wide powers to curb institutionalized prostitution. (126)

McLaren (1986) notes a shift in social attitudes surrounding the value of women and the family, and argues that the influx of new prostitution legislation was intended to protect young women, in particular those twenty-one years of age or younger, from “the moral dangers of the [then] modern world” (126). This supposed determination to “punish exploiters and rescuing women and children from sexual exploitation” was absent from practice: the years following the establishment of these laws saw more

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<sup>2</sup> Here “they” refers to brothels specifically, but could be expanded to include sex workers, johns, pimps, madams, and anyone else involved in prostitution.

convictions being laid against sex workers than those who were supposedly exploiting them (Shaver 2014, para. 9).

Shaver (2014) notes that Canada's original version of the Criminal Code in 1892 included provisions against outdoor prostitution and the operations of bawdy houses. The Criminal Code noted these provisions were against the "unlawful carnal connection" inherent to having sex outside of marriage (Shaver 2014, para. 8). Legislators of the day were not solely opposed to sex work because of its perceived social harms, but rather because of the perceived immorality of the practice. In the following decades, religious purity movements, including those behind the temperance movement, worked to drive sex work further underground: "the social purity movement waned in the 1920s, and the sex industry continued with little public comment for the next 50 years" (Shaver 2014, para. 10).

Many institutions today maintain these attitudes. Dueck (2013), for example, observes that various religious organizations, including the *Evangelical Fellowship of Canada* and *The Christian and Missionary Alliance in Canada*, who intervened during the SCC's proceedings, openly opposed the legalization of prostitution by making the same arguments as the early social and moral reformers (see also McLaren 1986). McLaren (1986) notes the rise in religious eagerness during the Victorian period, or what Shaver (1994) calls "the overt moral fervor of Victorian crusaders" (124). Placing greater legal restrictions on, and giving police greater authority to act against, prostitution was generally accepted during the Victorian era (McLaren 1986; Shaver 1994, 2014). During the following decades, Canada's prostitution laws continued to be refined and adjusted, but remained unchallenged (Shaver 2014). The legislation

itself also still focused its provisions primarily against outdoor sex work, which is admittedly the most visible and dangerous form of sex work (O’Doherty 2011). The trend of primarily legislating against outdoor sex work continued into the modern era, which is discussed further in the next section.

### **1.5 Legislative Reform in the 1970s, 1980s and 1990s**

Few would argue that prostitution is an inherently safe business. Sex workers face considerable dangers just by going to work: they risk contracting sexually transmitted infections, they risk physical and sexual assault, and they face a number of other dangers (Kramer and Berg 2003; Weber et al. 2002). While prostitution may be inherently dangerous, O’Doherty (2011) argues that these dangers are exacerbated by the government’s aggressive quest to keep the practice illegitimate rather than implementing greater safety mechanisms and regulations. Greater criminalization only serves to drive the practice further underground and out of the public eye, which only increases the risks and dangers that sex workers face (O’Doherty 2011), and also creates greater obstacles for CBOs who want to assist and help sex workers in some fashion (McLaren 1986; Shaver 1994). As Bruckert (2015) notes: replace “prostitution with any other occupation – construction, policing, taxi driving – and the statement that nothing can be done to reduce workplace risks becomes unthinkable. The response to danger at work should be, and usually is, to implement safety and security mechanisms” (1-2).

The criminalize/legitimize debate was rekindled in 1970s and 1980s. On one side were certain CBOs who sought legislative reform to provide sex workers with greater safety through lowered criminalization, and on the other side were CBOs with differing mandates and others lobbying for stricter laws against prostitution (Shaver 2014;

Sampson 2014). In both cases, CBOs and advocates sought greater access to safety for sex workers, but their differing ideological beliefs, mandates, and biases led each group to rally behind a different approach to solve the problem. In 1983, in an effort to find a solution to this debate, the federal government formed *The Fraser Committee* (a special committee named after its chairman, Paul Fraser) “to enquire into the issues of pornography and prostitution” (Robertson 2003, para. 24; see also Kanter 1985; DoJ 2015).

The Fraser Committee ultimately recommended that those who purchase sex (commonly referred to as *johns*) should face greater criminal punishments as a deterrent, but sex workers themselves, as a marginalized and exploited group, should have access to greater safety measures and legislative protections. These findings were contradicted by *The Badgley Committee*, a similar initiative formed by the Canadian federal government in the mid-1980s focused on researching youth prostitution. The Badgley Committee recommended that efforts should be made to make prostitution wholly illegitimate through total criminalization, rather than taking steps to make the practice safer, in an effort to deter youth from entering prostitution. The findings of these two committees show significant differences in approaches regarding how to solve the problem of prostitution in Canada.

When considering these recommendations, the government of the day decided to follow the Badgley Committee’s recommendations and discourage the purchasers of sex by instituting legal provisions that would make purchasing sex more difficult, albeit still technically legal under certain circumstances. The sellers of sex, however, were in the same legal position as before, as the government did not make legal changes that would



allow for sex workers to operate under safer conditions (Sampson 2014). These legislative changes did not eliminate prostitution, but rather ultimately drove the practice further underground, consequently leaving sex workers in greater danger than before, as johns sought to remain unseen – literally and figuratively – in an effort to avoid increasingly harsh criminal punishments (Sampson 2014).

The following decades would see an increase in activity from CBOs, multiple court cases, and small reforms to Canada’s prostitution legislation. For example, in the case of *R v. Skinner* (1990), the SCC ruled that the provision against open communication violated The Charter by denying sex workers and johns their freedom of expression (Shaver 1994, 2014; Sampson 2014). This conclusion reached in *R v. Skinner* in 1990 was similar to the conclusion reached in the Bedford ruling, albeit the Bedford ruling found the communication provision violated the sex workers’ security of person rather than freedom of expression. In either case, the laws were determined to deprive sex workers of adequate occupational safety by forcing them to work alone and in secret, without being able to properly scrutinize potentially violent clients (Fine 2013; Sampson 2014). The key difference between 1990 and 2013, however, is that in the *R v. Skinner* ruling, the SCC “refused to strike down the law because it found such a violation to be justified” by section 1 of The Charter<sup>3</sup> (Shaver 2014, para. 14).

Following the long process of court challenges and appeals in two parallel cases, one in Ontario in 2009 and another in British Columbia in 2012 (Shaver 2014), the SCC

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<sup>3</sup> Section 1 of The Charter states that the freedoms and rights prescribed within the document may be limited in circumstances that are deemed to be demonstrably justifiable. While the SCC in the *R v. Skinner* case found limiting the open communication of prostitution to be a justifiable violation of one’s freedom of expression, the SCC in the Bedford ruling did not find limiting communication to be a justifiable measure in restricting sex worker’s security of person.

met to hear the case of applicants Terri-Jean Bedford, Amy Lebovitch and Valerie Scott, in what would later become known as *Canada (AG) v. Bedford* (Bedford ruling).

### **1.6 Canada (AG) v. Bedford**

As mentioned earlier in this thesis, the three applicants, Bedford, Lebovitch and Scott, challenged the following three provisions of Canada's Criminal Code:

- Section 210: Living in, owning, leasing, occupying or being inside of a common bawdy house;
- Section 212: Living off the avails of prostitution, either directly as a sex worker or indirectly as a parent, child, relative, friend, co-worker, pimp, madam, or common bawdy house operator; and
- Section 213: Open communication in public for the purpose of prostitution.

The applicants argued that these provisions placed sex workers in harm's way unnecessarily by preventing them from implementing safety measures that would allow sex workers to protect themselves (Bedford ruling 2013). For example, common bawdy houses often allow for greater safety for sex workers by giving them a safe and stable indoor location to work, while also allowing for the increased safety that comes from having other people around; those living off of the avails of prostitution are not always those who would exploit the sex worker, but rather the sex worker's child or other family member to whom the sex worker has a moral and legal obligation to; and open communication with clients prior to a date is a crucial component to both scrutinize clients while also allowing the sex worker to clearly outline the services s/he is willing to offer (Sampson 2014; Shaver 2014).

The nine judges in the SCC unanimously agreed that these provisions placed sex workers in a precarious position. The SCC determined that these provisions violated

section 7 of The Charter, which guarantees the individual's security of person, by making it unjustifiably difficult for sex workers to safely operate in an industry that has historically never been illegal in Canada (Sampson 2014). The Bedford ruling required the federal government to make significant changes to three provisions in the Criminal Code, which were deemed to be in violation of the Charter. These provisions needed to change in order for the Criminal Code to pass Charter muster (Bedford ruling 2013).

The laws were not immediately stricken from the books, however: the federal government was given one year to amend the Criminal Code in a manner that conformed to the Bedford ruling (2013; Sampson 2014). The GoC was given one calendar year to amend the laws in a manner that reflected the Bedford ruling. If the government failed to introduce adequate amendments by the prescribed deadline, then the three challenged provisions would be stricken from the law, which would legitimize many of the activities related to prostitution in the process. The next section will give a brief overview of the legislative model the GoC chose to emulate, as well as other legislative models that could have been used.

### **1.7 The PCEPA and the Nordic Model: Objectives, Limitations and Alternatives**

The SCC gave the GoC one calendar year to bring Canada's prostitution laws into harmony with the Charter, but if changes were not made in time, then sections 210, 212 and 213 of the Criminal Code would have been stricken from the books, legitimizing many of the acts related to prostitution in the process. The GoC had several options they could have taken in order to address the SCC's concerns. For example, the GoC could have done nothing and let the above mentioned provisions be stricken from the Criminal

Code. Although doing nothing was one potential approach, it was not considered viable by the GoC. The GoC's position, as expressed by Mr. Peter MacKay was to keep prostitution as restricted as possible (Hansard 2014a). Mr. MacKay argued that his government "does not accept the proposition that prostitution is inevitable and therefore that we must legitimize and regulate it" (Hansard 2014a, 1). He continued to reaffirm that the GoC believed prostitution to be an inherently harmful practice, one that "would only grow and be exacerbated in a regime that perpetrates and condones the exploitation of vulnerable individuals through legalized prostitution" (Hansard 2014a, 1). The legislation implemented by the GoC needed to both meet the requirements established by the SCC in the Bedford ruling, while also adhering to the attitudes and views promoted by Minister MacKay and the government he represented: to this end, the GoC based the PCEPA mainly on the "*Nordic model*".

In 1999, the Swedish government implemented the *Sex Purchase Act*, which increased criminal sanctions against exploiters while decriminalizing sex workers. Within the next decade, this law was adopted by Norway and Iceland, in 2008 and 2009 respectively, and has since become known colloquially as the "Nordic model" (Hersh 2013; Goldberg 2014). The Nordic model "promotes the idea that selling sex for money is intrinsically wrong, irrespective of context" (Chambers 2015, para. 3). At the core of this model is the belief that sex workers are victims of human trafficking and sexual assault, and consequently should not be criminalized; instead, the onus for prostitution should rest on pimps, purchasers and other exploiters, who ought to be severely criminalized (Schwartz 2014). The Nordic model follows the logic that "if nobody paid for sex, sex trafficking would not exist" (Trafficking in Persons Report 2011, 19;

GNWSP 2011). The Nordic model has also been adopted by other countries, including the UK and France, and, most relevantly, Canada (Hersh 2013). France enacted similar legislation on prostitution when its government passed the *Loi sur la sécurité intérieure* (LSI), which roughly translates to *the Internal Security Act*, in 2003. The LSI is similar to the Nordic laws in most respects, except it also took an aggressive stance against those selling sex (Mathieu 2011; 2012). In the French context, sex workers are viewed legally as both victims of trafficking and traffickers, with established legal provisions that can help assist sex workers, and other provisions which can be used by enforcers to criminally punish sex workers. In France, whether or not sex workers are helped or hurt by the law largely depends on who catches them in the act. This is a legal stance which Mathieu (2011; 2012) argues causes confusion, fear and anxieties amongst both sex workers and their advocates regarding what will happen if they are caught. To react to this confusing law, French sex workers have largely gone further underground, operating outside of the scrutiny of police and government agencies (Mathieu 2011; 2012). However, in 2016, a new legislation was adopted in France, which placed greater emphasis on the criminalization of purchasers rather than sellers.

Thus, the Nordic model, and by extension the PCEPA, seeks to criminalize the purchasers of sex, while leaving sex workers blameless, in an effort to abolish prostitution by removing the demand for it (Schwartz 2014). Despite the Nordic model's policy influence, there are alternative legislative models. Two examples of alternative models were enacted in Germany and New Zealand. In 2002, Germany enacted the *German Prostitution Reform Law*, which treats sex work like any other legitimate profession: sex workers have access to health insurance, employment insurance and

pensions (Schwartz 2014). New Zealand enacted a similar law in 2003, the *Prostitution Reform Act of 2003* (PRA) (Schwartz 2014). In New Zealand, sex work is legal and sex workers are protected by the country's employment and public health laws (Schwartz 2014). Harmful, exploitative, non-consensual forms of sex work are still illegal and heavily policed in both Germany and New Zealand. The primary difference between German and New Zealand models and the Nordic model can be found in their definition of sex work. Neither Germany nor New Zealand defines sex work as inherently harmful. Those engaging in consensual sex transactions are not only free to do so, but also receive the same employment benefits as those in other professions. Germany and New Zealand do recognize that human trafficking occurs, and those who exploit others are not protected by these laws. The German and New Zealand models have received praise from sex workers and their advocates for reducing some of the dangers associated with sex work, while also increasing sex workers' access to health care and police services (Chambers 2015). Opponents to these models argue that the German and New Zealand governments have enabled those who would exploit others to operate freely without the risk of criminal punishments (Hersh 2013).

The German and New Zealand models have both met varying degrees of success and failure. For example, the years following Germany's legitimization of prostitution saw a flood of sex workers migrating to the country in order to practice legally. This had the unintended consequence of driving wages down as many sex workers needed to lower their rates in order to compete in an oversaturated market (Aleem 2015). Nevertheless, the German model was successful in giving sex workers greater access to medical care and police services without the fear of criminal punishments (Aleem 2015).

This context is not present in New Zealand, however, where the numbers of sex workers has remained relatively stable (Bass 2015). To measure the success of legitimization, in 2008, the New Zealand government commissioned a committee to review the PRA. The committee produced a report called the *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (PRA Report 2008). As the committee reports:

The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalization of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously. (168)

The PRA Report (2008) argued that New Zealand's PRA was, in most respects, working. Despite its general success, however, the committee did find room for improvement. For example, the PRA Report (2008) notes that there were still reports coming in of sex workers operating in exploitative working conditions, of sex workers being forced to take clients against their will, and of sex workers being abused and assaulted by managers and clients. It should be noted that the Canadian Alliance for Sex Work Law Reform (CASWLR), a coalition of sex worker CBOs, has openly expressed support of the New Zealand model, because the model is generally considered to provide safer working conditions for sex workers (see CASWLR 2014; CBC News 2014).

The Nordic model has been purported as a reasonable approach to legislating prostitution, and a model that will realistically make sex work and sex workers safe (see Hersh 2014; *Technical Paper* 2014). However, some, such as Chambers (2015), argue that the Nordic model has largely failed due to the unintended outcome of driving

prostitution further underground. Others, such as Hersh (2013), argue the exact opposite, stating that prostitution in countries that have adopted the Nordic model has declined (although exact statistics are difficult to attain). According to Goldberg (2014), the reality is more nuanced:

Supporters of the Swedish model say that in countries like the Netherlands, where pimping and brothel-keeping were legalised in 2000, trafficking has increased and the welfare of prostitutes has suffered. They are right. Opponents of the Swedish model, particularly sex worker advocacy groups, say that the law has increased the stigma on sex workers, with occasionally grave repercussions. They are also right. Deciding which model works better is as much an ideological as an empirical question, ultimately depending on whether one believes that prostitution can ever be simply a job like any other. (para. 3).

According to Goldberg (2014), whether or not the Nordic model has been a success or failure is contingent on the person speaking and the data they draw from and present. For instance, the Swedish government claims that its model has resulted in successfully lowering the amount of prostitution occurring in the country, but as Chambers (2015) notes, this claim should be examined carefully due to the Swedish government's inability to accurately conduct a census of prostitution in the country, and the inability to monitor every single sex transaction. Chambers (2015) argues that Swedish sex workers and their clients have simply changed the ways in which they make transactions in an effort to remain undetected by government and enforcement agencies, and thus avoid criminal punishment.

One of the most contested aspects of the Nordic model is in how it defines sex workers. The *Global Network of Sex Work Projects* (GNSWP) (2011) argues that Nordic model conflates all sex work with human trafficking, an approach the organization finds to be problematic. The conflation of all sex work with human trafficking is not an



accident, nor a misunderstanding, but rather “is a conscious attempt to abolish prostitution and prevent people, in particular women, from [practicing sex work]” (2). GNSWP (2011) argues that the insistence on conflating all sex work with human trafficking is common in the international community. This is a view that Mr. Irwin Colter (2014), a former MP who was engaged heavily in this debate, considers to be problematic. He states:

Much of the rhetoric thus far from the Government – and its in-person consultation invitees – has focused on the issue of trafficked women, yet not all persons in sex work are trafficked and not all trafficked persons are forced into sex work. By conflating them, the government is likely to produce policy with undesirable results for sex workers and victims or survivors of human trafficking. (para. 8)

By conflating sex work with human trafficking in the PCEPA, the GoC joined an international community that risks over-policing sex work (GNSWP 2011).

It seems that no perfect prostitution legislative model exists. The German and New Zealand models have been successful in providing sex workers with greater safety nets, such as access to medical care, pensions, but they have also been unsuccessful at removing the harms associated with prostitution, at reducing the number of individuals relying on sex work to meet basic needs, and may have even made it more difficult to earn a decent wage while trading in sex (PRA Report 2008; Schwartz 2014; Aleem 2015). Conversely, the Nordic model is viewed by some as a successful approach, due to its ability to reduce prostitution in the country (Hersh 2013). This claim is called into question, however, with some arguing that the approach did not lower prostitution, but rather required sex workers and their clients to find creative ways to avoid the scrutiny of government and policing agencies (Chambers 2015). Regardless of its overall success or

failure, the Nordic model has nonetheless become influential in other Western countries, and it was ultimately the model adopted by the GoC (Hersh 2013; Goldberg 2014).

## Chapter 2 –Theoretical Framework

Canada's history with prostitution is rife with examples of complex power structures reinforced through legislation, but the laws themselves have not always tackled prostitution directly. For example, early pre-Victorian prostitution laws were focused more on removing vagrants from city streets. These early laws were more influenced by the middle and upper class citizens' desire to not have to interact with impoverished peoples on the street, and their desire to push these folks out of sight and out of mind (McLaren 1986). Shaver (1994, 2014) notes that the re-ignition of Canada's prostitution debates in the 1970s and 1980s were similarly pre-empted by a growing public concern of the *increasing visibility* of outdoor sex workers. Prostitution laws are now framed as an effort to rescue victims of sexual exploitation and human trafficking, but it should be noted that prostitution is still commonly considered an immoral and perverse practice (Morton, Klein and Gorzalka 2012).

These examples suggest that sex workers are only considered a policy problem when they are visible. The history of Canada's prostitution legislation highlights the existence of institutionalized discrimination against sex workers, and by extension the CBOs that assist them, which is further compounded by a variety of social factors that may lead sex workers to begin practicing prostitution in the first place. As detailed in the previous chapter, Kramer and Berg (2003) and Benoit and colleagues (2014) show that sex workers are predominantly women or girls, and those who purchase sex are overwhelmingly men. Kramer and Berg (2003) argue that sex workers often have little education, may have been the victims of physical, sexual and emotional abuse in their youth, and are disproportionately members of racial and ethnic minority groups. As a

singular group, sex workers are disadvantaged and stigmatized, but many sex workers also experience intersectionality with other disadvantaged and stigmatized groups.

This intersectionality of disadvantage and stigma highlights the complex power relationships CBOs, advocates and sex workers navigate regularly. In order to properly understand how the operations of CBOs have been impacted by, and changed in response to, the PCEPA, a theoretical framework specifically designed to explore such complex power structures is needed. To this end, a theoretical framework based on the works Pierre Bourdieu, a sociologist who was concerned with the seemingly mundane and microscopic mechanisms of official forms of power, was used. Bourdieu dedicated his career to exploring complex power structures, and as such has amassed a significant library of works and academic followers. His works include a number of interrelated theories used to explain complex power structures. In order to keep this thesis' analysis as cohesive as possible, the researcher will focus his theoretical framework on just three of Bourdieu's concepts: *habitus*, *capital*, and *field*. Bourdieu argued that these three concepts work together to form the framework of a *theory of practice*, which influences how one will behave or act in any given situation. This chapter will offer discussions on Bourdieu's theoretical framework, which includes three primary components: *the field*, *capital*, and *habitus*.

## **2.1 General Considerations of Bourdieu's Theoretical Framework**

Bourdieu's theoretical framework is built on the foundation of social structures that are enforced and propagated through one's interactions with her/his environment and others. At the core of social structures are what Bourdieu calls *doxa*, or "the unexamined and

unspoken presuppositions about the world” (Holton 1997, p. 43). To Bourdieu, doxa is synonymous with common sense, common opinion, and common understanding needed for those within a social group to understand a social structure as valid (Holton 1997; Bourdieu 1989; 2002).

Social structures are central to the works of many sociologists and social philosophers. A short list of such theorists includes Judith Butler (2011), Chris Weedon (1987) and Pierre Bourdieu (1989; 2002). Each theorist interprets and uses the concept of social structures in different ways. Butler (2011), for example, uses structure as the foundation for her discussion of performativity, or the learned, practiced, perfected and propagating gender roles. These structures are at the core of socialization; children learn how to properly interact with both their environment and others by emulating the doxa displayed by their parents, which in turn both reinforces and propagates those value systems (Butler 2011; Weedon 1987).

How theorists understand and apply social structures in their own work varies, but the central concept remains the same. Social structures are created, propagated and enforced through interaction with others; individuals understand their own realities by engaging with others through many complex and nuanced interactions. But, the understanding of a social structure is itself limited by social structure: language, situational contexts, religious beliefs, understandings of race and gender, ideologies, and every other social aspect that human beings participate in are both structured by existing structures and work to reinforce and propagate social structures (Butler 2011; Weedon 1987). To this end, social structures also work to reinforce and propagate the group-based hierarchies discussed by Sidanius and Pratto (1999). The structures have been

analyzed in their overarching, macro forms by Foucault (see Hannus and Simola 2010), Butler (2011), Weedon (1987) and others.

The macro analysis, while certainly interesting, is not particularly useful to this thesis. An analysis of the grand, overarching systems of power that work almost subliminally to dictate a society's collective conscience would reveal little about how a sex worker advocate has needed to change her/his operations to fit within the confines of new legislation. Bourdieu's academic focus was on the nuanced micro-interactions that take place between individuals in the mundanity of daily life. Hannus and Simola (2010) argue that Bourdieu "carefully analyses the effects on patterns of social access, social justice and changes in inequality" (5). While Bourdieu was certainly interested in macro-level power structures, his focus on how these structures impact the daily lives of individuals and communities is what attracted the researcher to use his theoretical framework for this thesis. The strategies CBOs use to navigate power structures are central to this thesis, and as such Bourdieu's theoretical framework is critical to this thesis' analysis. The next section discusses the first component of Bourdieu's theoretical framework, *the field*.

## **2.2 The Field**

Bourdieu's (1989, 2002) *theory of practice* hinges on the notion that individuals have access to certain privileges based on their position within a *field*. Thomson (2014) described the relationship between individuals and the field in terms of a football game:

A football field is a bounded site where a game is played. In order to play the game, players have set positions – when the football field is represented in visual form, it is as a square with internal divisions and an external boundary, with set positions marked in predetermined places. The

game has specific rules which novice players must learn, together with basic skills, as they begin to play. What players can do, and where they can go during the game, depends on their field position. The actual physical condition of the field (whether it is wet, dry, well grassed or full of potholes), also has an effect on what players can do and thus how the game can be played. (66-67)

According to Bourdieu (1998; 2013), positions within the field are ranked through an arbitrary system of hierarchies, with some intersectional positions offering greater access to power mechanisms than others (see also Sidanius and Pratto 1999; Ho et al. 2012). Fields are built around doxa – common understandings of social concepts, such as race, ethnicity, gender, sexual preferences, social class, monetary wealth, and others, and the positions one is ostensibly allowed to occupy are calculated based on the forms and amount of *capital* attributed to their position within the field.

### **2.3 Capital**

Power structures within a field are impacted by one's capacity to obtain whichever *capital* is most highly valued within that field. Capital can take many forms: money, fame, comfortable housing, adequate medical care, and access to education are all examples of potential forms of capital (Bourdieu 1989; 2002; Gauntlett 2011). Someone with a high amount of capital likely belongs to groups that are socially advantaged; this person will, for example, have greater access to education, medicine, stable income, and adequate housing than someone with a low position within the field. Bourdieu (1989; 2002) argues that capital, in all its forms, can be divided into one of three categories: *economic capital*, *cultural capital* and *social capital*.

Economic capital is best described as forms of currency: money, financial investments, equity, real property – and the ability to gain these either through social status, inheritance or working in well-respected professions – are forms of economic capital (Bourdieu 1986; 2002). Cultural capital includes cultural goods of services, including education, language, literature, music, and others. Cultural capital is the culmination of all the forms of informational systems that are disseminated to an entire social group. The ability to communicate ideas, thoughts, theories or other forms of understanding with any sort of authority is cultural capital; in essence, common sense, or doxa, assumptions are by extension forms of cultural capital as well (Bourdieu 1986; 2002; Casey 2008). Bourdieu (2002) describes social capital as a series of social obligations, or the social networks an individual belongs to and is obliged to adhere to. These may include familial units, cliques at school or work, professional networks, alumni associations and others. Social capital is a culmination of economic and cultural capital, because the amount of monetary wealth and cultural goods and services one has access to often influences, and is simultaneously influenced by, one's social capital (Bourdieu and Champagne 1999).

An understanding of capital is important to this study, because Kramer and Berg (2003) argue that sex workers often find themselves in the intersection of multiple disadvantaged groups and consequently are eligible for obtaining little capital – in all its forms – within the various field positions they occupy. By extension, CBOs who provide programs and services to sex workers often also find themselves with little access to capital. Capital in all its forms culminate and concentrate into what Bourdieu (1998) refers to as *metacapital*. In essence, metacapital enables the government to use its



authority to determine who has access to capital, and what form(s) of capital they have access to. Bourdieu (1998) states:

The state is the *culmination of a process of concentration of different species of capital*: capital of physical force or instruments of coercion (army, police), economic capital, cultural or (better) informational capital, and symbolic capital. It is this concentration as such which constitutes the state as the holder of a sort of metacapital granting power over other species of capital and over their holders [...] which enables the state to exercise power over the different fields and over the different particular species of capital. (41-42).

Metacapital can be thought of as the supreme form of capital held by legitimized governments. The holders of metacapital must still interact with economic, cultural, social and symbolic capital within the fields they occupy, but they also have the legitimized authority to dictate who else in the field gets what form(s) of capital, and in what amounts. When multiple CBOs apply for limited government funding, and the government agency picks who receives that funding, the government is exercising metacapital. Further, legislative and policy change is an exercise in metacapital, because changing legislation allows the government to alter the field and redistribute capital as it sees fit, which in turn may also have an impact on the third main factor in Bourdieu's theoretical framework, *habitus*.

## **2.4 Habitus**

At face value, the concepts of the field and capital suggest that one's station in life is determined by her/his position within a field and the amount of capital s/he is able to access. Bourdieu insists, however, that individuals can make choices within a field, although the choices themselves may be limited by structures (Bourdieu 2013). To account for choice, Bourdieu discusses *habitus*, a concept which states that one's

*dispositions*, or behaviours and actions – in the past, present and future – are generally predetermined by, or can at least be influenced by, one’s past behaviours and actions (Bourdieu 2013; see also Maton 2014). One’s habitus is derived from the concept of habitual behavior, or the actions one regularly takes, often without conscious thought (see also Crossley 2004; Cargile 2011; Maton 2014). In essence, the structures a person navigates are largely determined by her/his own choices and actions. Habitus, then, is a structure or series of structures of a person’s own making, as the choices s/he makes in the past influence the choices s/he might make in the present and future, although the influence of habitus is flexible and individuals may consciously choose to disregard their habitus at any time (Bourdieu 2013; Maton 2014). Bourdieu’s (2013) definition of habitus, then, presents an inherently individualistic concept as one’s personal actions form a structure that influences one’s future actions.

Crossley (2004) argues that, in habitus, the choices and actions available to an individual are also dependent on “social and historical forces” (239). One’s position in a field, as determined by social structures such as race, class, gender and others, impacts habitus. Likewise, the forms of capital available to an individual also impact his or her habitus. Thus, habitus must be considered alongside the social structures inherent to the field and the forms of capital. Bourdieu (1986) describes the relationship between the field, capital and habitus as the following equation:  $(\textit{habitus} \times \textit{capital}(s)) + \textit{field} = \textit{practice}$  (101). According to Maton (2014), “this equation can be unpacked by stating: one’s practice results from relations between one’s dispositions (habitus) and one’s positions in a field (capital), within the current state of play of that social arena (field)” (50).

King (2000) argues that the concepts of field and capital are at odds with habitus. Habitus suggests that individuals are able to make meaningful choices, but the choices themselves are largely predetermined by one's position in the field and the capital s/he has access to. This dilemma is discussed further in the next section.

## **2.5 The Dilemma of Choice**

Habitus suggests that individuals are able to make substantive and meaningful choices, but the choices available are predetermined by one's position in a field and the forms and amount and forms of capital s/he has available. A dilemma exists within Bourdieu's theoretical framework wherein individuals merely have the *illusion* of choice rather than being able to make meaningful or substantial choices (King 2000). Maton (2014) notes that, despite often feeling like agentic beings, the choices individuals can make are largely predicated on her/his surroundings, upbringing, social status and previous behaviours. Maton (2014) notes that while "working class kids tend to get working class jobs" and "middle-class kids tend to enjoy middlebrow literature [...] there are no explicit rules dictating such practices" (49). Although there are no explicit rules dictating that individuals must make choices within the confines of a strict set of structures, it would be difficult to do so, if not impossible, because those structures act as the lens through which individuals view, understand and interact with their social surroundings (King 2000).

The concept of habitus is thus at odds with the concepts of field and capital. The structures one navigates on a daily basis determine, or at least influence, what choices are available. Nevertheless, habitus is still a crucial component of Bourdieu's theoretical

framework: ultimately, individuals must still make choices, even if the choice itself is determined by structures. This dilemma of choice is at the core of the discussion of prostitution in the Canadian context. Some CBOs and advocates consider that sex workers are making a reasoned decision in choosing sex work as a viable alternative to other forms of labour (see chapters 3 and 4). This stance is incompatible with many feminists, who argue that sex work is not a choice one can truly make, but rather a form of patriarchal exploitation; prostitution itself is the product of an inherent lack of choice, an option that only appears viable to desperate individuals with no other occupational alternatives (Mickelwait 2015). This attitude is further solidified by a dominant social assumption that no one would ever freely choose prostitution as an occupation, because doing so means putting oneself in harm's way (see Jeffreys 2009; Oselin 2014).

A common question in this debate – one that influences the mandates, operations and services delivered by CBOs, depending on the answer they follow – asks whether or not sex workers can clearly choose to become sex workers (Murphy 2013). Some sex workers feel like they are making a vocational choice by participating in sex work (Benoit et al. 2014), but the patriarchal, gendered, and racial structures in place must give one pause to consider the possibility that no meaningful choice is possible (Murphy 2013). Much like King's (2000) critique of habitus, sex workers may argue they are making a personal choice, but the choice itself is so entrenched in established structures that no meaningful choice outside of those structures is deemed possible. It is plausible that whether or not one finds sex work to be a viable vocational alternative to traditional forms of labour can be, according to Bourdieu (1984; 1998; 2013), traced to the capital

they had access to and their position in a field *before* they first chose to conduct sex work.

The next section discusses a form of capital: the ability to name or define one's own circumstances, identity and reality.

## **2.6 Power in Language and the Ability to Define**

An analysis of language is central to Bourdieu's *theory of practice*, because language is often the tool used to both construct and propagate social structures. Bourdieu (2003) argues that the "act of naming," or the ability to define, is central to establishing structures, and the more successful someone is in convincing others of a particular naming schema, the more power that individual has (105). As Bourdieu (2003) notes, the power and efficacy of language lies not only in its ability to communicate and propagate social values, but also in the ability to further define structures and lead the discussion. In other words, the person or group who is able to name or define an issue in a dominant manner also dominates the conversation of that issue, and is ultimately also able to solidify their view of the issue as dominant in the public discourse, which inevitably creates another structure to navigate. This desire to lead the conversation and define prostitution in the Canadian context is prevalent amongst CBOs, many of whom regularly publish their own research and opinion pieces (see Benoit and Colleagues 2014; and GNSWP 2011 for examples).

This ability to define one's own circumstances, identity, and reality is something everyone desires to have, according to Bourdieu (2003). In terms of how language usage has informed the debate on sex workers, Koken (2010) argues that the definition of

prostitution has changed over time in an effort to curtail the conflation of all sex workers into a single homogenous – and marginalized – group. She states:

The term *prostitute* was once seen as a standard ‘neutral’ term used in research and scholarly writing [...] as a simple descriptor of a person who engages in paid sex. However, some researchers feel that *prostitute* has become a pejorative label loaded with the stigma attached to those who engage in prostitution. (31)

Koken’s (2010) example shows a shift in how social scientists approach the term prostitute. While the term was once considered value-neutral, this has since changed as research emerged which showed that the term carries a significant amount of stigma. The term *prostitute*, as a defining term, is inextricably linked to all of the stigmas associated with the term, and all those whose occupation can be labelled as prostitution become conflated with the stigmas associated with the term. Thus, all those who offer a paid sex service become *prostitutes* in the socially-dominant context once the term is applied. It should be noted, however, that this change in terminology was brought by social researchers and academics, those with high-levels of education who are often viewed as *experts* in their respective fields. In this instance, the terminological shift from *prostitution* to *sex work* was able to gain traction and redefine the sex industry because those propagating the term have a high-level of power within their respective fields.

The ability to name or define something can inevitably lead to the authoritative usage of that thing within its relevant field. Official definitions can be viewed as an exercise of metacapital (see section 2.3). For example, the GoC’s insistence on using *prostitute* instead of *sex worker* in the PCEPA placed an authoritative stamp on the term within the legislation – an authoritative document. This authoritative stamp not only shows the GoC’s view against the possibility for prostitution to be considered a

profession within the Canadian context, but also legitimates the conflation of all sex workers into a single category that defines them all as human trafficking victims. Thus, in this context, no choice can be made by sex workers, because the authoritative definition has painted them all as mere victims of a bad situation rather than as agentic beings.

As discussed in section 1.5, there are CBOs who agree with the GoC's authoritative definition of sex workers as human trafficking victims. Others, however, disagree. Regardless of whether CBOs agree with the GoC's definition of sex workers as human trafficking victims, they are all impacted and influenced by the social structures established and enforced by the law. The PCEPA was, in effect, an exercise in metacapital, in that the GoC changed the laws in ways that added capital to some CBOs, while removing forms of capital for others, depending on whether or not they agree with the authoritative definition (see chapters three and four for examples). The next section discusses the role of legislation in creating and propagating social structures.

## **2.7 The Role of Legislation in Propagating Social Structures**

At its core, legislation is designed to regulate how people behave by establishing the legal parameters for what people can do, and when (Todorov 2005). This control is often indirect, without requiring authoritative figures to exert direct, coercive control over others. Todorov (2005) explains that “in behavior analytic terms, control is not synonymous with coercion, but quite often we think of laws as implying aversive control” (86). This aversive control suggests an indirect policing approach, whereby authoritative figures only need to submit lawbreakers to predetermined punishments (jail

time, heavy fines, deportation if relevant, and others) in the event that a law is actually broken.

Authoritative figures do not need to constantly lord over others to ensure norms are obeyed, because the mere threat of punishment is often an adequate control mechanism. In many cases, though, aversive control is not enough of a deterrent to stop individuals from breaking social norms; rather, the individual breaking the norm seeks to do so in a manner that is outside of the prying eyes of the authoritative figure: if the norm-breaker is not caught breaking a norm, then no punishment can be administered (Freeman 1996). This is often the case in the field of Canadian prostitution. The act of prostitution merely happens out of sight, because both the sellers and buyers fear the prospect of being caught and punished with a heavy fine and/or a jail sentence (Sampson 2014; Shaver 1994, 2014). As will be discussed in chapters three and four, CBOs must also observe how prostitution legislation evolves, and alter the programs and services available to sex workers in order to keep their operations legal and avoid criminal punishments.

The goal with any piece of legislation is not to introduce new behaviors into the social realm, but rather to enforce the “proper” behaviors as determined by social structures (Todorov 2005; Weedon 1987). Social structures are created and propagated through interaction: individuals understand their own realities by engaging with others through many cultural interactions: language, situational contexts, religion, understandings of race and gender, governing ideologies, and every other social aspect that humans engage in is simultaneously propagated and understood through social structure (Butler 2011; Weedon 1987). Social structures skew how individuals can view



and interact with their environment. For example, why is a couch considered to be a *couch* and not a *bed*? Why is a dinner table a *dinner table* and not a *desk*? These are ordinary objects that are understood and interacted with differently, even though they can arguably serve the same purposes as other, similar objects: somewhere to rest, lounge or sleep; somewhere to work or eat.

Social structures influence social meanings. The ways in which people understand their environment is largely dependent on the results of countless interactions between countless individuals. Social structures do not only impact the social meanings of inanimate objects, however. Complex structures of power emerge as common sense assumptions, or doxa, are internalized by multiple individual members within a group, thus creating additional social structures and doxa that influence how the group can understand and interact with another group, or how one person can understand and interact with another person. How groups and/or individuals interact with one another is often based on doxa, and legislation serves to confirm and legitimize doxa (Holton 1997; Todorov 2005; Weedon 1987; Butler 2011).

## **2.8 Doxa and Power Structures**

For Bourdieu (1984), power structures are culturally and symbolically created and perpetuated through countless micro-interactions between individuals. Power structures are largely dependent on capital and field positioning: those in a position of power will have greater access to capital than those without a position of power. The power structures within a field ultimately become ubiquitous, unchallenged and unexamined: in other words, power structures become doxa (Holton 1997). Doxa assists in the creation

of the group-based hierarchies discussed by Sidanius and Pratto (1999), because it is “an adherence to relations of order which, because they structure inseparably both the real world and the thought world, are accepted as self-evident” (Bourdieu 1984, 471). Doxa appears at the intersection of field, capital and habitus. Like habitus, doxa can theoretically change. If an individual is free to make meaningful choices, then it stands to reason that other structures can change as well. Doxa is ultimately a reflection of common sense notions of power, so if those notions change, then by extension doxa changes as well. Legislation has an interesting relationship with doxa: on the one hand, legislation is merely a reflection of common sense assumptions of power; on the other, it also acts as an authoritative voice in propagating common sense assumptions.

The debate between CBOs, the GoC and other stakeholders about whether or not sex work is a profession is largely defined by whoever is leading the discussion (Erickson 2012). As Koken (2012) notes, this debate is largely a matter of framing, and the language used in the discussion is crucial. She argues that the terminology used to describe the practice of prostitution, “from *prostitutes*, *prostituted women* to *sex work* and *commercial sex workers*, or even *whores*,” are “by no means equivalent in meaning,” but that “the choice of terminology acts as a positioning device, as the meanings embedded in these phrases locates the speaker on a political and epistemological spectrum” (31). The various forms of sex work are often conflated into a single, homogenous group. This is evidenced by the PCEPA’s insistence on treating all sex workers as human trafficking victims (Colter 2014; NSW 2011). The GoC framed all sex workers as human trafficking victims regardless of their backgrounds, the location of their business, whether they work indoors or outdoors, or whether there is a pimp

standing in the shadows (Bruckert 2014; see also Koken 2012). The PCEPA acts as an authoritative voice, a document that individuals can turn to in an effort to confirm and/or influence their own biases on sex work, although the document itself can also be interpreted as a reflection and perpetuation of the greater social attitudes they already possess.

## **Chapter 3 – Bourdieu Applied: The Impacts of the PCEPA on CBOs**

As discussed in section C of this thesis' introductory chapter, the researcher began this study by asking the following research questions:

- 3) How, if at all, have CBOs who assist sex workers needed to change their operations in order to accommodate the PCEPA?
  - What adaption strategies have CBOs used?
  - In what ways do these strategies differ from one CBO to another?
  - What factors exist that explain these strategic differences?
- 1) How do CBOs articulate their relationships with government agencies and legislation?
  - Do these articulations shed light on the relationships of power between sex workers, CBOs and government agencies?
  - How do CBOs navigate these relationships of power?

To answer these questions, the researcher used qualitative research methods. The researcher examined 63 briefs submitted by interested parties to the Senate's *Standing Committee on Legal and Constitutional Affairs* (SCLCA) and the results of an online consultation survey conducted by Canada's Department of Justice (DoJ) to provide a foundation of knowledge that would inform two phases of semi-structured interviews. These methods were used to learn how the PCEPA had impacted the operations of CBOs. The 63 briefs and DoJ (2014) survey results provided a greater understanding regarding the mandates of CBOs, and their positions within the field of sex worker advocacy. During interviews, participants were asked questions regarding their day-to-day operations, their involvement in the Bedford case and the development of the PCEPA, where their funding comes from, the stigmas they and those they assist experience, and how those stigmas are navigated. Through an application of Bourdieu, the researcher used day-to-day processes, funding streams, consultation participation and

stigmas as representations of habitus, economic capital, cultural capital and field positioning respectively.

During the analysis of the data, it was discovered that most of the impacts to habitus, economic capital and cultural capital were negligible: day-to-day operations, funding streams and relationships with government agencies have not been notably impacted by the PCEPA. However, there have been impacts to social capital, which were significant enough to disrupt the field of Canadian sex worker advocacy. This chapter includes an exploration of the PCEPA's impacts on CBOs' day-to-day operations, available funding streams, and their relationship to government agencies. It begins, however, with an examination of the consultation activities the GoC and Parliament engaged in during the development of the PCEPA. The first section is an analysis of the briefs submitted by 63 interested parties to the Senate's *Standing Committee on Legal and Constitutional Affairs* (SCLCA). The second section is an overview of the results of an online consultation survey conducted by Canada's Department of Justice (DoJ).

### **3.1 Analysis of the 63 Briefs Received by the Senate**

Standard procedure during the development of any legislation allows Parliamentarians to rigorously debate and scrutinize proposed legislation in an effort to ensure the legislation's viability<sup>4</sup>. This process allows Parliament to adequately consult with

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<sup>4</sup> The steps needed for a Bill to be ascended into law are extensive. Proposed Bills are drafted and first presented to the Government house wherein it originated (usually the House of Commons); the proposed Bill is then debated in the House. This process is repeated a second time, at which point members of the Government House vote on whether or not the Bill should proceed further. If the vote succeeds, the Bill continues on to the committee stage where it is studied carefully by a select group of MPs from each of the governing political parties. It is during the committee stage that extensive research on the potential impacts of the proposed Bill is conducted. The committee often calls on experts and witnesses, often from both sides of the debate, to aid them in their research. Once the committee's research has concluded, the

stakeholders at multiple points and gain greater understanding of how the proposed legislation might ultimately impact the legislation's target demographic. In the case of PCEPA, Parliament consulted with a variety of stakeholders, both for and against the PCEPA, including a variety of CBOs (see *Technical Paper 2014, Brief Index: Bill C-36 2014*; DoJ 2014). The consultation process is effectively an opportunity for CBOs to exercise cultural capital: the sharing of their views and position on the issue with the hope that they can convince the GoC to exercise its metacapital in a manner that benefits their organization and those they serve.

During its committee stage, the Senate's SCLCA received briefs from 63 interested parties, including current and former sex workers, sex worker advocates, front-line service organizations, academics, religious organizations, municipal governments and anti-prostitution organizations. A similar committee was conducted in the House of Commons during the *Standing Committee on Justice and Human Rights (SCJHR)*; the SCJHR's consultation process was different, however, in that they heard from witnesses directly rather than reading submitted textual briefs. The researcher chose to evaluate these 63 briefs for two reasons: first, as a way to better understand the positions and mandates of some of the CBOs he was unsuccessful in interviewing; and second, to see if the briefs submitted by CBOs revealed anything regarding how their operations would be impacted by the PCEPA. The researcher analyzed these briefs in an attempt to find common themes, trends and arguments between submitters, as well as uncommon elements that are interesting and worth noting. Ultimately, the briefs did not reveal much

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committee issues a report on its findings and the Bill returns to the House where it is debated for a third time and voted on for a second time. If the second vote is successful, the Bill is passed to the other Government House (usually the Senate), where this entire process is repeated. If the Bill successfully passes through both Houses, the Bill is presented to the Governor General who signs it into law (*Process of Passing a Bill* n.d.).

regarding the operations of the CBOs, but they did reveal the positions argued by CBOs as part of an exercise of cultural capital. These briefs provided a solid foundation of data, through which the general debates that occurred in Parliament during the development of the PCEPA can be reviewed and discussed (for a full listing of the parties who provided written briefs to the SCLCA, please refer to Appendix A).

The CBOs who submitted briefs had varying reasons to do so. Some parties, such as Jeanne Sarson and Linda MacDonald, sought to voice their support for the bill. Others, such as The Anglican Church of Canada and the Canadian HIV/AIDS Legal Network, sought to voice their rejection of the bill. Most interested parties fell in between these two extremes, however. Some, such as the City of Calgary and the Canadian Women's Foundation, offered a more nuanced approach, suggesting that the bill would receive their support once certain amendments were made and clarifications were offered.<sup>5</sup> There was some difference of opinion in this nuanced, middle group, with some being generally in favour of the bill, but recognizing the need for improvement, and others being generally against the bill, but suggesting that they could be persuaded to support it after certain amendments were made. Many of those who were ultimately against the PCEPA appreciated certain aspects, and those who were in favour of the PCEPA did not necessarily praise the legislation without critique. For example, the *Canadian Women's Foundation* submitted a brief that ultimately agreed with the GoC's general approach, but also expressed the organization's concern that increased criminalization of johns would inadvertently lead to an increased criminalization of sex workers. In each instance, the

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<sup>5</sup> The briefs submitted to the SCLCA, including the ones specifically mentioned here, can be found at: <http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/C36Briefs-e.htm>.

CBOs sought to use the cultural capital available to them in an attempt to influence the development of the PCEPA.

The 63 briefs represent a diversity of individuals and organizations, each with different motivations and goals. Although the motives and mandates of each organization may vary, a trend arose wherein those generally in favour or against the PCEPA tended to present similar arguments as one another, a sample of the arguments for and against the PCEPA are provided below<sup>6</sup>:

**Sample Arguments of those who are generally in favour of the PCEPA:**

- Prostitution is an inherently violent and exploitative practice, which means sex workers are, by extension, inherently harmed and exploited;
- Prostitution is a form of human trafficking, and as such must be eradicated;
- The PCEPA's approach to criminalizing johns is an effective deterrent to prostitution. By removing the demand for prostitution, the supply will inevitably decrease;
- The PCEPA's focus is on reducing harms to sex workers by targeting the purveyors and perpetrators of prostitution – pimps, johns, etc. – rather than the victims;
- The PCEPA understands that poverty, lack of education, experiencing one or more forms of abuse, and other social determinants might cause desperate individuals to enter prostitution. As such, entering prostitution cannot be a choice someone makes; rather entering prostitution exemplifies a distinct lack of choice in alternative forms of subsistence; and
- The act of prostitution, both the purchasing and selling, is socially and morally repugnant.

**Sample Arguments of those who are generally against the PCEPA:**

- The PCEPA misses the point of the Bedford ruling by potentially creating more harms than it solves (this is discussed in greater detail in chapter 5);
- The PCEPA places sex workers in a precarious position by removing certain safety nets, such as the ability to work indoors or in groups;

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<sup>6</sup> Please note that the two lists of arguments for or against the PCEPA are not comprehensive, and are rather given as to highlight the primary points in this debate.



- johns, who have all the majority of power in sex transactions, will demand sex workers to operate further out of sight and away from others in an effort to avoid being caught;
- The inability to openly communicate with clients, both to screen clients and set the expectations of the services provided, puts additional risks on sex workers;
- Treating all sex workers as victims is disempowering;
- The PCEPA ignores that sex work is a varied industry, instead choosing to focus solely on street work, which, while certainly the most visible and potentially harmful form of prostitution, only represents a minority of all sex workers; and
- The PCEPA’s focus on exiting sex work is flawed in that it requires a “victim” to first be victimized. Rather, the focus should be on funding programs that remove social barriers (poverty, education, substance addiction, etc.) that might encourage someone to turn to sex work in the first place.

A closer examination of these arguments reveals that those on opposite sides of this debate are debating fundamentally different things. Those in favour of the PCEPA are arguing against exploitation and human trafficking. According to the United Nations Office on Drugs and Crime (UNODC) (*Human Trafficking* 2016), human trafficking is defined as:

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. (para. 2)

Those against the PCEPA, while not denying that human trafficking is a harmful, exploitative practice, are viewing this debate through the lens of workers’ rights. When developing the PCEPA, the GoC relied heavily on the concept that sex work, in all its forms, is an act of human trafficking.<sup>7</sup> It should be noted that the criminalize/illegitimate side of this debate submitted far fewer briefs than the legitimization side (20 briefs

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<sup>7</sup> Those interviewed by the researcher tended to argue that sex work between consensual adults is fundamentally different and separate from human trafficking, but this argument is questioned in the literature. See section 6.5 for a brief discussion on this limitation.

versus 43 briefs, to be exact), but the criminalize/illegitimate side of this debate appear to have had more influence over the GoC's development of the PCEPA, because more of their arguments were included in the PCEPA (Allen 2014; Sampson 2014; Shaver 2014; Coyne 2015; Kilpatrick 2015).

### **3.2 The Results of the Department of Justice's Online Consultation Survey**

The DoJ (2014) administered an online consultation survey in an effort to better understand how the Canadians perceived the issue of prostitution. The DoJ (2014) received over 31,000 responses to the survey, which asked respondents to answer the following six questions:

- 1) Do you think that purchasing sexual services from an adult should be a criminal offence? Should there be any exceptions?
- 2) Do you think that selling sexual services by an adult should be a criminal offence? Should there be any exceptions?
- 3) If you support allowing the sale or purchase of sexual services, what limitations should there be, if any, on where or how this can be conducted?
- 4) Do you think that it should be a criminal offence for a person to benefit economically from the prostitution of an adult? Should there be any exceptions?
- 5) Are there any other comments you wish to offer to inform the Government's response to the Bedford decision?
- 6) Are you writing on behalf of an organization? If so, please identify the organization and your title or role.

The results of this survey showed that 66% of the respondents felt that those selling sexual services should not be criminalized, while 56% felt that those who purchase sex should be criminalized (DoJ 2014, 3-4).

Out of over 31,000 responses, only 117 (0.40%) were identified as being part of a CBO or advocacy group. This lack of participation from CBOs or advocates is negligible, because the purpose of public opinion surveys is to gather information on how the

general public feels about a topic or issue. However, the lack of CBO participation is important to this study, because the responses of CBOs risk becoming lost when compared to the significant responses from the general public. Further, as a public opinion survey, this data was crucial in understanding the doxa, or common-sense notions, of sex work in Canada. Doxa and stigma are synonymous with one another; stigmas are often based on perceived, and often negative, common-sense values that, while based on misinformation or assumptions without evidence, serve to create socially constructed hierarchies (Sidanius and Pratto 1999). Whether or not a CBO's response is heard as part of this consultation exercise depends on whether or not their organization's mandate conforms to the doxa that socially governs the field of Canadian sex work.

This online consultation survey had a significant impact on the development of the PCEPA: the legislative model the GoC ultimately chose to follow was influenced, at least in part, by this public opinion survey and the doxa the responses represent. Public opinion polls are valuable tools for policy makers, who can test the public's response to emerging or changing laws and policies before actually committing to them (Irvin and Stansbury 2004). Public opinion polls are usually only one of many consultation activities, however. The GoC came under fire during the development of the PCEPA, because the law itself appeared to be drafted before the results of the online consultation survey were published, and before any additional consultation with stakeholders and interested parties took place (Colter 2014). Colter (2014) argues that the questions presented in the survey were leading, and purposefully directed respondents towards specific responses. Colter (2014) continues to note the GoC's problematic approach to consultation by noting that "while an in-person consultation was held, the Government's

information indicates 20 groups were invited to a single session lasting approximately two hours” (para. 3). Colter’s (2014) allegations have serious implications: if true, then the GoC’s response to the Bedford ruling would have already been determined before any meaningful consultation had taken place. Colter’s (2014) allegation implies that the GoC was heavily influenced by the doxa, or common-sense notions, of Canadian sex work during its development of the PCEPA. Second, the PCEPA was an exercise in metacapital that favours those CBOs who conform to the doxa of Canadian sex work.

Further, the Hansard records (2014a; 2014b) reveal that the PCEPA was drafted and submitted to Parliament for review prior to publishing the comprehensive results of these consultation activities. On the July 7, 2014, session of the *Standing Committee on Justice and Human Rights* (SCJHR), both Ms. Francoise Boivin and Mr. Sean Casey questioned GoC Justice Minister Peter MacKay regarding when they would be able to see the comprehensive results, meaning that the PCEPA had reached the committee stage without having a significant piece of data to adequately review the Bill. Former MP Irwin Colter (2014) lamented that the GoC only released a brief statistical overview of the online consultation results; no comprehensive textual responses to questions to survey questions, nor any documentation derived from the two-hour consultation meeting, were ever made available to the public. Further, “when asked whether the Minister of Justice would review responses, the answer was that only *some* of the answers would make their way to the Minister of Justice's office, without a clear explanation how submissions were selected for this purpose” (Colter 2014, para. 3). This consultation data was framed as paramount to the development of the PCEPA, however nobody on the Parliamentary committee had seen a comprehensive transcript of textual responses (Colter 2014; Allen

2014; Coyne 2015). The MPs in the committee were nonetheless expected to scrutinize the PCEPA and make recommendations to improve the legislation.

### **3.3 The Impacts of the PCEPA on Day-to-Day Processes**

To measure the PCEPA's impacts to the day-to-day operations of CBOs, responses were examined to see if participants noted any significant changes to their daily routine, significant changes to the funding received from government grants or private donors, or the organization needing to alter services offered to sex workers in an effort to remain in good standing with the law. The PCEPA is considered to be landmark legislation, meaning that the act made significant changes to the Criminal Code, R.S.C. 1985, c. C-46. Given the significance of these changes, one might think that CBOs who directly work with sex workers would be significantly impacted. Changes made to the day-to-day operations of CBOs might offer insight into their habitus and whether or not their habitus has changed in some fashion. However, the impacts on the day-to-day operations of CBOs were minimal for most of those interviewed.

[Yellow]'s organization is a legal institution that uses its expertise to advocate for the rights of marginalized groups, including, but not solely focused on, sex workers. Her organization was heavily involved in both the Bedford ruling and in the consultation process for the PCEPA. She says, "in terms of how operationally we've changed our work since before the law, [Organization] has not changed it very much. Other organizations that I know continue to work as much as they can, the way they did before." [Yellow]'s organization has not seen a significant impact to day-to-day operations. Nor have [Red] and [Pink], whose organization works closely with police

agencies and criminal lawyers to ensure that convicted johns do not re-offend by confiscating their vehicles as an incentive to seek rehabilitation; vehicles are only returned to the offender once a rehabilitation course is successfully completed. [Red] and [Pink]'s organization had to seek legal counsel to find a new provision in the PCEPA that would allow them to continue operating, but their day-to-day operations were not impacted. [Purple] is a government employee and a member of a national research group that follows court cases related to a variety of laws, including the PCEPA. As a government employee who monitors court cases related to a variety of laws, he has not felt a significant impact to his day-to-day operations. As of the time of the interview, [Purple] had not heard of a single court case that might challenge the PCEPA in some way. [Gold] is a sociology and women's studies university professor. Her sex worker advocacy work is largely related to her personal research, not in service delivery, and as such she has not felt a significant impact to her day-to-day operations. Lastly, [Blue] is the Executive Director of a peer-led CBO based in Victoria, BC. Her work has not been significantly impacted, but that is partially due to the liberal atmosphere present in Victoria and Vancouver. Only [Green] noted a substantial impact to her organization's day-to-day operations, but the rest of those interviewed have been able to continue operating without any significant disruptions or impacts. The disruptions [Green]'s organization has faced are discussed further in section 5.1.

At this point, the full impacts of the PCEPA are still unknown. Many lawmakers and enforcers nationwide remain unsure of how to apply the PCEPA, and this uncertainty has bred fears and anxieties amongst sex workers and advocates alike (CBC News 2014). While the day-to-day operations, or habitus, of most CBOs remain generally unchanged,

the PCEPA has certainly impacted the operations of others. The same cannot be said, however, for the funding streams available to CBOs: those interviewed did not feel any significant changes to available funding due to the development and passing of the PCEPA, which is discussed further in the next section.

### **3.4 The Impacts of the PCEPA on Funding and Service Delivery**

The intent in asking participants about the funding they receive was to see if the ascent of the PCEPA impacted the willingness of various government agencies and private donors to offer financial support to sex worker CBOs, many of whom rely heavily on grants and bursaries from municipal, provincial and federal government agencies. Measuring the changes to funding gives a clear example of how the economic capital available to CBOs has been impacted by the PCEPA. Similar to the impacts on the day-to-day operations of CBOs, most of those interviewed did not experience any significant changes to funding since the ascent of the PCEPA. [Red], [Pink], [Purple], and [Gold] had little to say in regards to funding. This may be because the researcher's questions focused on the changes to funding perceived to be a direct correlation to the implementation of the PCEPA, an impact these participants would not have felt first-hand due to the nature of their respective organizations and roles – program administrators, a lawyer involved in a national work group that follows cases related to the PCEPA, and a university professor. [Blue], [Yellow] and [Green] did have some interesting things to say about funding that offered insight into how their respective organizations operate, but at the same time none of them felt any significant increase or decrease as a direct result of the PCEPA.

[Blue] informed the researcher that much of the government funding her organization receives comes from grants that are intended to pay for specific programs and services, such as HIV prevention and business empowerment. Likewise, much of the funding [Green]'s organization receives is largely intended for specific programs and services. In essence, government funding for specific programs and services is itself an exercise of metacapital; the government provides economic capital intended to enhance other, specific forms of economic and social capital, which may take the form of better housing, health care, education, or others. [Blue] continues on to mention that she has not felt a significant change in funding since the Bedford ruling and the PCEPA. While finding funding has always been a difficult task for many sex worker CBOs, the organizations that offer grants to CBOs are still granting those funds despite the changes to the legislation: "I wouldn't say that certain organizations or funding pots have shut down." [Yellow] mentions that her organization is fortunate, because its operational structure is capable of resisting impacts that might disrupt services, such as a sudden drop in funding streams. She states:

Relative to other organizations, I think we've seen possibly less organizational change. We work alongside a lot of peer organizations, and some of those organizations fight constantly for funding, some of them do not have charitable status – and they've chosen that, because charitable status does limit what you can do as an organization. So some of them run on very small budgets or are almost completely volunteer, and that necessarily makes them a little more precarious, and we're not in that position. We have a staff, we have an internal administrative structure, and that carries on regardless.

While gaining funding is always a challenge for many CBOs, [Yellow] expressed that her organization is structured in a manner that allows it to worry less about funding than



other organizations do<sup>8</sup>. For example, [Green] mentioned that seeking funding can often be a frustrating process, but her excitement was palpable when she mentioned a new funding stream she found.

[Green]'s organization often acts as an agent for indoor sex workers by mediating disputes with managers, ensuring occupational health and safety standards are upheld, and offering other services that a labour union would normally provide. Since the assent of the PCEPA, she has been able to gain additional forms of funding, but it is unclear whether or not this is directly linked to the PCEPA itself, or more demonstrable of her personal ability to seek and obtain funding for programs and services. In regards to an exciting new funding opportunity, she states:

I wrote a very strongly-worded application through a labour lens, and just talking about how this is an unregulated work sector, and these women's human rights aren't being upheld, and also they don't have occupational health and safety standards that the managers or owners of [Establishments] need to follow. In [Organization] we often get calls to intervene in issues that normally a union would intervene and resolve, so that was the lens that I wrote to [union] and they funded me. I'm so happy about that.

As illustrated by [Green]'s newfound funding opportunity, the ability to gain additional funding often boils down to framing. As [Blue] mentioned earlier, much of the grant funds gained from government agencies is earmarked towards specific programs and services. CBOs will receive funding for a specific purpose. Grant applications need to be framed in a specific manner in order to show that the advocate's organization can provide the service the granting agency is seeking to fund, in essence using their

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<sup>8</sup> [Yellow]'s organization is part of a well-funded network that works to further the human rights of various marginalized groups. Given the varied nature of the organization, they are able to secure funding from a wide variety of granting agencies, making obtaining funding less difficult than it is for smaller, more niche organizations.

knowledge of various discourses and using specific forms of language to influence the government to exercise metacapital in their favour

Likewise, private funders will seek to maximize their personal donations to organizations by donating to organizations that they not only feel will provide services that are in line with their personal values, but also to programs that they feel are more deserving of their money. [Green] mentioned that receiving funding often comes down to the funder deciding who is more deserving of their donation. The funding streams available to CBOs to assist sex workers is often dependent on who the perceived deserving and underserving victims are. [Green] states:

[Receiving funding] comes down to who the deserving and undeserving victim is. For sex workers in the [Vancouver] downtown eastside – because it's all mixed up with poverty, and mental health, and addictions and that – you don't have to frame that in a particular way, because a lot of people want to donate to that cause. When it comes to the women that we support, if they're not seen as trafficking victims – which they aren't, I've been here since four to six years now, in [establishments] every month and in condos, and I have not met one trafficking victim yet – so, if we dispel those myths about who these women are, they become undeserving victims, or undeserving women. 'So you're saying that they aren't trafficked, and they're choosing to do this work, so why as a funder, or a person in the community, should donate to this cause?'

Both granting agencies and private donators want to ensure that their donations will go to those who need the most help. Interestingly, this is a form of economic capital that is only available to those perceived to be more disparaged than others. In order to obtain this form of economic capital, sex workers and CBOs must be willing to accept a higher level of marginalization: gaining this form of economic capital leads to a decrease in cultural and social capital, because accepting funds intended to provide services to the most victimized and impoverished sex workers perpetuates the doxa that these same sex

workers are victims. This is interesting in terms of better understanding how certain CBOs seek and apply for funding, but ultimately the funding streams available to CBOs have not been significantly impacted by the ascent of the PCEPA. The agencies that provide grants and funds to sex worker CBOs continue to provide grants and funds in the same manner they previously have.

There is, however, an additional opportunity for certain CBOs to obtain additional funding from the federal government, but none of those I interviewed qualify for this new funding stream. As part of the PCEPA, the government implemented a 20-million-dollar fund to be divided amongst organizations that assist sex workers with leaving the sex industry. This approach is problematic, however, in that the additional funding only assists those looking to exit the industry, not those who remain heavily invested in sex work for one reason or another (for example, poverty, substance addiction, etc.). [Green]'s organization, which actively works to make sex work safer by supplying condoms and other health remediation items to sex workers who might not be able to purchase the items themselves, does not qualify for a portion of this fund, because she and her organization do not offer any programs that are specifically dedicated to helping sex workers exit prostitution. While the organization is willing to help sex workers exit if they request the help to do so, the requests themselves do not happen often: [Green] mentioned only receiving one such request in the past year. Providing additional funding to organizations, like [Green]'s and [Blue]'s, would help make sex work safer, but the GoC did not increase funding for the types of services these organizations offer, opting instead to focus new funding initiatives solely on exiting the industry. This new funding stream is a new form of economic capital introduced into the

field, one that is only accessible by those organizations whose mandates agree with the GoC's authoritative definition of prostitution. [Yellow], [Green] and [Blue] each articulated having some frustration with the PCEPA's approach to funding, a frustration that extends into their overall relationship with the GoC. The relationships between CBOs and governments is discussed further in the next section.

### **3.5 CBO Relationships with Government Agencies**

An examination of the relationship CBOs have with government agencies can provide insight into their position within the field. As discussed in section 2.3, government agencies are the holders of metacapital, a form of capital that allows for the authoritative redistribution of other forms of capital. While the redistribution of capital can include funds, as discussed in section 3.2, it can also include other forms of social and cultural capital, examples of which might include access to social services, supporting the building of support networks through working partnerships and initiatives, or being allowed to consult with the government during the development of new laws that would perceptibly impact the CBOs and those they service. Thus, the capital CBOs have access to, which impacts their position within the field, is at least partially contingent on their relationship with government agencies.

Participants' articulation of their relationship with government was largely dependent on the level of government being discussed. For example, [Yellow], [Blue] and [Green] all noted having generally good working relationships with municipal governments in Victoria and Vancouver, and with the BC Provincial government, but all three also discussed feeling frustrated with, and generally ignored by, the federal

government. [Blue] expressed feeling frustrated by the GoC's insistence on labelling all sex workers as human trafficking victims, something she viewed to be a clear attempt to propagate stigma against sex workers and their advocates and keep sex work illegitimate. Similarly, [Green] expressed her frustration that the conversation during the PCEPA's consultation process was heavily focused on human trafficking, not sex work.

[Blue] and [Green] both discussed the partnerships they have built with municipal governments and provincial to develop and implement programs and services. [Blue] spoke fondly of those at the local government level who assisted her and her organization with providing services to sex workers. [Red], [Pink] and [Purple] are part of organizations that work closely with government and police agencies, and all three were reluctant to discuss their working relationship with government and police agencies with me. [Gold] is a professor at a public university, so her relationship with the government is similar to [Red], [Pink] and [Purple], albeit a little more nuanced, because her job security is not intrinsically tied to her personal views and opinions of the government of the day. She did not articulate a direct relationship, working or otherwise, with government or police agencies. The relationship that CBOs have with government agencies depended largely on their organizations' mandates, geographical location, and whether or not their sole focus is on assisting sex workers.

Much of the work [Green] and her organization does focuses on educating the public, public service and police agencies on the realities of those her organization assists. [Green]'s organization focuses its services on those working in massage parlours. These sex workers are often immigrants to Canada, and operate closely under a manager (often characterized as a "pimp"). Due to the nature of who her clients are and how they

operate, they are often harassed by police who mistake them for human trafficking victims. This has caused a significant amount of distrust between her clients, the government and the police: [Green]'s organization often acts as a mediator between these groups. Much of this work revolves around educating police agencies who she feels unfairly prioritizes criminalizing her clients over others. By educating public servants and police agencies, [Green] and other CBOs actively seek to change the discourses underlying the social structures that work against sex workers.

Whether or not public education is an effective way to change social structures is dependent on political, regional and ideological factors. For example, Police departments in Vancouver, Victoria, Saskatoon and Montreal ultimately rejected the PCEPA, declaring publicly that no changes would be made to how their organizations police prostitution (Eschner 2015; Gorokhovski 2015). This approach by police in rejecting the PCEPA is influenced, at least in part, by the education efforts of CBOs, such as [Green] and [Blue] who actively engage in public education activities. Ontario Premier Kathleen Wynne noted that Ontario-based police services would honour the law for the time being, but noted her commitment to a review of the potential harms in the PCEPA – an approach dependent on becoming educated on the issue (Eschner 2015). Should her review of the PCEPA reveal the law to be harmful, Ms. Wynne has committed to challenge the law in the courts (Eschner 2015). While the police in Vancouver and Victoria, and the provincial government in Ontario support, or at least seem open to supporting, sex workers in their jurisdictions, it should be noted that these regions are traditionally more liberal. Governments and police agencies in more conservative parts of the country have not rejected, in whole or in part, the PCEPA. Police in Calgary and Regina, for example,

have begun prosecuting under the PCEPA, but to date none of the charges have been challenged in the courts (2015). This shows that there is a disconnection between the policy developers and policy implementers.

Laws are only impactful if they are enforced: those who develop laws and those who enforce them do not always see eye-to-eye, nor do they have the same priorities, and the degree to which an organization has been impacted by the PCEPA, and their position within the field of Canadian sex work and sex work advocacy, is largely impacted by these political, regional and ideological factors. The observable impacts of the PCEPA on CBOs have been minimal. Day-to-day operations of most participants were not impacted in any significant ways, nor have the available funding streams changed. The most significant impacts of the PCEPA on CBOs correlated the form of the unknown outcomes of the PCEPA, the *what ifs?* and the unknowns that have served only to generate concerns in the field of Canadian sex work advocacy.

As discussed in section 1.3, CBOs often form larger support networks with each other and the sex workers they serve in an effort to build capacity and deliver more programs and services that individual CBOs would be able to deliver on their own (Cordero-Guzman 2004). The unknowns introduced by the PCEPA have served to undermine the field, and has disrupted part of the support networks CBOs have with one another, and with those they serve, in the following three key ways:

- 1) The removal of safety nets has made assisting sex workers more difficult for some CBOs; and
- 2) Certain CBOs have advocated for a change to how sex workers are portrayed in public discourse, which has had a significant impact on the development of the PCEPA. The discursive image of sex workers is, as some interviewed argue, based on stigma and stereotypes;

3) Legal uncertainty has contributed to the destabilization of the field.

These *what ifs?* are discussed further in the rest of this chapter.

### **3.6 Disrupting the Field by Removing Forms of Social Capital**

The inherent dangers and criminality of sex work (see Kramer and Berg 2003; Weber et al. 2002) poses unique challenges for CBOs. Some of those interviewed argue that the PCEPA has removed some of the safety nets previously available to sex workers, and by doing so sex workers have been potentially placed in more dangerous situations; by extension, the removal of safety nets for sex workers has made the work done by some CBOs more difficult. The criminalization of johns, the inability to openly communicate sexual services, and the inability to operate in a brothel or other indoor establishment serves to drive sex work further underground, and further away from CBOs who may be able to assist a sex worker if a harm occurs. This is a use of metacapital to weaken the support networks between CBOs and sex workers by removing certain forms of social capital.

The purpose behind the criminalization of johns was to reduce the chances of sex being purchased in the first place, thus removing the demand for prostitution. While this may deter some purchasers from purchasing sex, it will not completely remove the demand (Chambers 2015). Purchasing sex, while previously legal, has always had legal limitations that made the act difficult to navigate, but these difficulties did not stop the practice from occurring. Further, the act of purchasing sex has been, and still is, stigmatized, but despite this stigma, it still occurs (see Funk 2004). This new provision may not be as effective at removing the demand to purchase sex, but some interviewed



believe that it has increased the dangers faced by sex workers. [Yellow] describes the dangers sex workers may face as a result of criminalizing johns thusly:

If a client is potentially criminalized in any transaction with a sex worker, the client – who easily holds the power in this relationship – is going to be fearful of detection and is going to insist even more on going to isolated areas, on transacting in haste and using euphemistic language.

[Yellow]'s argument suggests that sex workers will move further away from those who would help them – including CBOs – in order to ensure that their clients feel safe in completing a sex transaction. The dangers [Yellow] describes in the above quote largely relate to the PCEPA's prohibition of public communication of sex transactions. In this regard, sex workers themselves are still at risk of facing criminal charges.

While communicating the intent to purchase or sell sexual services in public spaces has always been illegal in Canada, the PCEPA has increased the punishments against open communication in spaces where children are likely to be present, which could, as [Yellow] argues, be anywhere. [Yellow] notes that the PCEPA “makes it illegal to communicate in a public area [...] so a sex worker who is working outside is still at risk of being arrested for communicating in a lot of urban areas.” [Blue] and [Green] echo this sentiment: by enhancing the sex worker's inability to openly communicate with clients, sex workers are not only potentially liable for an indictable offence, but they are also unable to scrutinize clients in advance and discuss the expectations of a date. [Green] notes that by ensuring that sex workers cannot properly communicate their services with clients, sex workers can be placed in a dangerous situations; “if you can't be clear about what you will and will not provide [...] when someone shows up at your door and an argument ensues due to a miscommunication... that just creates the potential

for danger.” The provisions against the open communication of sex work have posed challenges for CBOs as well.

[Green] and her organization have faced substantial changes in how they communicate their services in public spaces. Part of [Green]’s ability to properly advocate for sex workers requires her to discuss her organization’s services candidly with sex workers, funders, the government and other stakeholders. She also needs to be able to openly discuss the realities of sex work in order to ensure that sex workers are working safely. The ability to straightforwardly discuss her organization’s services, and sex work generally, has been stymied by the PCEPA, which makes all forms of communication that can be interpreted as either advertising sex work or encouraging sex work an offence (*Technical Paper* 2014). This has caused [Green] and her organization to change how they discuss their services in public. As [Green] states:

We had to become somewhat vague. We don’t say ‘sex work,’ we just say ‘we’re an organization that supports women who work indoors,’ [...] ‘we provide harm reduction supplies and we connect you to nurses.’ We’ve had to be careful with our ads as well, because we don’t want to incriminate ourselves in some way to be seen by authorities to be promoting the sex work sector.

Removing the ability of [Green] and her organization to speak openly with clients and other stakeholders was a clear exercise of metacapital by the GoC, one which ultimately removed a key form of social capital – the ability to speak openly about the organization’s services – from [Green] and those her organizations assists.

[Green] continues to note that the requirement to avoid accidentally advertising sex work has impacted how they approach one particular program, which was funded by the federal government before and, for a brief time, after the ascent of the PCEPA. The

program is an online outreach initiative that uses social media to inform sex workers of the services [Organization] can offer them. This online initiative could be seen as advertising for, or encouraging, sex work, and is thus illegal according to the PCEPA. There is a certain irony here, as the program was once funded by the same federal government that deemed initiatives like this to be illegal, as [Green] explains:

Two years ago we started an online outreach program, and we're very active on BackPage and Craigslist [...] and we're proactively, not in a harassing way, but like we do in person, we're like, 'hi, we're here, if you ever need us, just so you know this service exists.' In the first year, that program, that online outreach program, was funded by the federal government. During that project funding was when the new legislation came in that advertising on behalf of anyone else was illegal, so on the one hand you had the federal government funding us to do this online outreach, and on the other hand they were saying online advertisement was illegal now, so we were in this bind.

The PCEPA has created an environment wherein sex worker CBOs cannot publicly discuss the services they offer to sex workers. The ability to discuss sex work openly is crucial to helping CBOs provide sex workers with programs and services that will improve their lives, but the ability to speak candidly about prostitution is a form of social capital that has been disrupted. Sex workers and their advocates have a more difficult time maintaining their support networks without the ability to candidly discuss sex work.

### **3.7 Exercising Cultural Capital and Metacapital to Define and Propagate the Image of the “Prostitute”**

As discussed in section 2.3 of this thesis, cultural capital is the ability to communicate ideas, thoughts, theories or other forms of understanding; those who exercise cultural capital do so with the hope that their way of understanding might become the normative

way of understanding (Bourdieu 1986; 2002; Casey 2008). This includes using language to define or frame something. The PCEPA has authoritatively used language to define “prostitutes” as a single, homogenous social group, an image that is at odds with the sociological view of “sex workers”, and one certain interview participants, including [Yellow], [Green], [Blue] and [Gold] actively work to change. This image is heavily influential in the development of laws designed to govern prostitution, however. [Yellow] discusses this image thusly:

There are young women who are sometimes placed in bad situations that involve violence and sometimes involve bad internal family structures, and are sometimes using drugs, but the whole picture that we get painted of trafficking is a very illusory one, and there have been very, very, very few documented cases of trafficking in Canada in the ten years the [human trafficking] laws have been in place, and yet there’s a myth that’s being propagated.

[Blue] and [Green] echo [Yellow]’s discussion of the image of the “prostitute”. For [Blue], the image is propagated because the narrative of the helpless, trafficked, victimized “prostitute” is more compelling than accepting the seemingly boring reality, which is often that sex workers are “just like [us],” ordinary people who “happen to do sex work, and it’s no big deal.” The image of the “prostitute” also allows certain CBOs to benefit from conflating all sex workers as human trafficking victims. [Yellow] discusses this phenomenon thusly:

There is a big campaign going on by organizations that get a lot of funding for talking about trafficking to conflate all sex work with trafficking, and the fact is that even within Canada, there are very few young women who are being kidnapped or lured off the reserve or out of small towns by the typical thuggish, pimpish boyfriend with drugs.

By adhering to the image of the “prostitute” the GoC designed a funding program in the PCEPA that not only fails to address the actual needs of the majority of sex workers, but

also gives certain organizations monetary incentives (economic capital). It seems, then, that there is a division within the field of sex worker advocacy, where some CBOs will benefit from agreeing with, and adhering to, the GoC's definition of sex workers. There are multiple applications of cultural capital on both sides of this debate that seem necessarily at odds with one another. The risk here is that this will divide the field of sex worker advocacy in a similar fashion as France in the early 2000s (see section 1.3; and Mathieu 2011; 2012).

### **3.8 Undermining the Field through Increased Legal Uncertainty**

While the day-to-day operations of most interviewed and the funding streams available to all interviewed have not been significantly impacted by the PCEPA, there is nonetheless a significant number of *what ifs*, the ultimate impact of which is still unknown. The PCEPA has created an environment of legal uncertainty regarding how the PCEPA will be applied in a court of law. Legal certainty is a form of cultural capital, one which CBOs and program administrators are not privy to. Prior to the ascent of the PCEPA, many CBOs and sex workers were able to nuance their services in such a way that they could operate legally, but now many are unsure of how they will be able to continue operating under the PCEPA. As [Green] notes:

There was some change around, I would say October/November 2014. It was just before the new laws were implemented. There was a lot of fear and anxiety around that time, and we started receiving a lot of phone calls, a lot of requests for legal information – ‘what does it mean, what does this mean for me’ [...] and that was difficult, because the laws are so unclear, that until they have some cases in court we don't know what they mean, and I don't think police and lawyers know what they mean.

[Yellow] echoes this sentiment by noting that some of the sex workers she regularly works and associates with “never interact with the criminal justice system,” but now “some of them are worried more now under the current law than they ever were in the past about potentially being hassled.” Further, CBOs, particularly peer-led organizations, who were previously able to operate undisturbed now worry that continuing to operate as they had prior to the ascent of the PCEPA could be a violation of the law. [Yellow] states:

There are fears among peer-led organizations [...] who provide advice to other sex workers on how to work safely – and that could be in terms of dealing face-to-face with a customer [...] or how to phrase your ads so you’re not captured by the new law – they could be seen to be encouraging sex work, and they might run afoul of the law.

These concerns are compounded by the stigmas both CBOs and sex workers face. [Green] notes that many of the stigmas and misconceptions surrounding sex work have made sex workers skeptical of any *outsiders*, or non-sex workers, but her organization has worked hard over the years to gain their trust. Yet, the PCEPA seems to have disrupted this trust, as many sex workers fear that working with CBOs would be an admission of sex work, which might make them and their clients vulnerable to police intervention and enforcement.

The ascent of the PCEPA has heightened the skepticism felt by many of sex workers [Green]’s organization assists, and by extension has affected the work [Green] and her organization are able to do. She expresses this issue thusly:

We had to be more sensitive around that time as well in some of our outreach activities, and that was very unfortunate. We’ve worked very hard over ten years to build these relationships with these women. These women are very skeptical of all outsiders, and sometimes if a [police] raid happens we’ll be accused of tipping off the police, which is just horrifying

for us. Around that time when the new laws were being passed, there was so much fear and anxiety that we got shut out – literally doors slammed in our face – because inviting us in would be an admission that there was sex work occurring on the premises. [...] This was so disheartening to us, and this is really how the law was counterproductive, because here was the one sex work organization that has spent up to 10 years trying to get into some of these places, and now the doors were being slammed in our faces, and the only outlet they had should exploitation or anything else happen was now being cut off. [...] At that time, as well, managers of [establishments] started to refuse accepting condoms from us, because again it would be an admission that there was sex work, so again very disturbing for us. Sex workers who can't access workplace protections like condoms, and that could potentially lead to a public health crisis and that is not what we want to see on the job, so again that was very disturbing for us as well.

This makes advocating for and assisting sex workers more difficult in some cases, and generates several concerns amongst both CBOs and sex workers alike.

However, no real impacts to the day-to-day operations of sex worker advocates were noted in the collected data. CBOs continue to operate in largely the same manner that they always have. Although the day-to-day operations of CBOs remain largely unchanged, the PCEPA has nonetheless disrupted the support networks between CBOs and sex workers, which makes assisting sex workers more difficult and sex work itself more dangerous. This chapter has shown that the PCEPA has had a mixed impact on the field of Canadian sex work. While the day-to-day routine and operations of those interviewed largely continues much as it had prior to the PCEPA, the field itself has been destabilized. The impacts of the PCEPA are found in the disruption of support networks between sex workers and their advocates, in the redistribution of much needed forms of capital, and in the inability for CBOs to publicly state that they assist sex workers. The long-term impacts of the PCEPA are still unknown, but many sex workers and their

advocates remain concerned of the potential negative legal impacts that may come forth in the future.



## Chapter 4 – Discussions and Conclusions

Prior to the PCEPA, purchasing and selling sexual services was technically legal in Canada, although many acts related to it were illegal (Sampson 2014). The legal status of prostitution in Canada has caused confusion amongst, and potential harm to, both sex workers and CBOs who may have had difficulty operating in a legal manner. This confusion and potential harm formed the foundation of the argument made by Bedford, Lebovitch and Scott in the *Canada (AG) v. Bedford* SCC case. A national debate regarding prostitution in Canada emerged during the Bedford ruling and the development of the PCEPA, the key points of which were discussed in section 3.1 of this thesis. The briefs submitted to the SCLCA highlighted the attempts of CBOs to exercise cultural capital – knowledge and expertise – and influence the legislative changes being brought forth by the GoC.

The debate revealed that those on opposing sides of this debate were arguing for fundamentally different things: on one hand were those arguing that prostitution is inherently harmful, exploitative and dangerous, and should consequently remain illegal and illegitimate; on the other hand were those arguing that sex work, as a technically legal practice, should be fully decriminalized in an effort to further the labour rights of those employed in the practice. The GoC agreed with those who argued that prostitution is inherently harmful, and this is reflected in the PCEPA. This attitude was also reflective of the DoJ's (2014) online consultation survey, which showed that the majority of Canadians felt that prostitutes, as victims of human trafficking and other harms, should not be punished under the law, but those who would exploit prostitutes, including purchasers for the first time in Canadian history, should face stronger criminal

punishments. As Morton, Klein and Gorzalka (2012) argue that the average Canadian is likely unaware of the status of prostitution's legality in Canada. These individuals who are unaware of prostitution's legal status in Canada would likely feel that the PCEPA's approach to only criminalize johns instead of sex workers *and* johns would seem like a fair and balanced approach: the average Canadian might view the law as an effort to increase the illegitimacy and inherent criminal nature of prostitution, while also showing leniency to those who are exploited by the practice. This approach would allow the GoC to create a law that appeared to uphold the spirit of the PCEPA, and make sex work safer for sex workers, but in practice would keep the practice illegitimate (Allen 2014; Warnica 2015).

Various CBOs were actively involved in the consultation processes of both the Bedford ruling and the development of the PCEPA. This thesis has sought to explore how the operations of these CBOs have been impacted by the PCEPA. Sex workers and their advocates are necessarily intertwined in this issue: if sex work itself becomes more criminalized, and sex workers are driven further underground, then assisting and advocating for sex workers becomes more difficult. Further, if assisting sex workers becomes more difficult, by extension sex workers lose some of their safety nets, and the networks formed between these groups is disrupted. This chapter offers discussions on: this thesis' research questions, the impacts of the PCEPA on CBOs, how the PCEPA was an exercise in metacapital, recommendations for policy change, and lastly this thesis' limitations.

#### **4.1 General Considerations of the Field of Canadian Sex Work Advocacy**

This thesis sought to develop a case study of CBOs who assist sex workers by exploring how their operations have changed in response to the PCEPA. The data gathered in this case study was then explored through the lens of Bourdieu's (1989, 2002) *theory of practice*, which hinges on the notion that individuals have access to certain privileges based on their position within a *field*. Fields are built around doxa, or common sense understandings of social concepts, such as race, ethnicity, gender, sexual preferences, social class, monetary wealth, and others, and the positions one is ostensibly allowed to occupy are calculated based on the level of social wealth, or *capital*, attributed to their position within the field.

The field presented in this thesis has been founded upon a nation-wide debate on sex work and legislative change, with some CBOs championing for the legitimization of sex work as a profession and others championing for increased criminalization of the practice. This field is filled with different players who are particularly seeking to vie for resources in order to define what sex work means in the Canadian context. The GoC's insistence on using *prostitute* instead of *sex worker* (or some other term) in the PCEPA reinforced the authoritative definition of prostitution that was first made authoritative by Canadian legislation in the late 1800s, early 1900s. However, as discussed in section 2.8, the term one chooses to use is framed by the ideology he/she adheres to, and acts to position them within the debate. For instance, the GoC's reluctance to use the term "sex worker" makes sense given their rejection of the practice as legitimate work.

Prior to and during the Victorian era, sex work was framed as “the great social evil,” one that required legislators to stop (Sanders, O’Neill and Pitcher 2009, 112). The Victorian reformers claimed to increase policing against prostitution in an effort to save women and children from the moral dangers and exploitations inherent to the practice, a sentiment echoed by the modern GoC and the PCEPA, but the majority of those convicted on charges related to prostitution have historically been the women who are considered exploited, not the exploiters (Shaver 1994; 2014). These early legislative movements against prostitution legitimated the social attitudes of the day that defined sex work as both immoral and harmful. These attitudes serve as the foundational power structures that modern CBOs and sex workers regularly navigate.

#### **4.2 Application of Bourdieu’s Theory of Practice to the Research Questions**

As discussed in chapter 2 of this thesis, Bourdieu (1986) argues that his *theory of practice* can be thought of in terms of the following equation:  $(habitus \times capital(s)) + field = practice$ . Maton (2014) unpacks this equation by stating that one’s practice is the outcome of the sum of their dispositions and behaviours, or habitus, and the forms of capital s/he has access to, and whether or not these forms of capital are valued within a respective field (50). Bourdieu’s theoretical framework was used by the researcher as a way to determine the impacts of the PCEPA on the operations of CBOs who assist or advocate for sex workers. This thesis has sought to provide data that fits within Bourdieu’s equation, which would add clarity to whether or not the operations of CBOs were impacted by the PCEPA. In order to accomplish this, the researcher needed to better understand the CBO’s habitus (as measured by changes to day-to-day operations), changes to the forms of capital the CBO has access to (as measured by changes to

funding streams, ongoing service delivery and access to support networks), and lastly their position within the field (as measured by stigma faces by the CBOs and those they assist, and the CBO's relationships with government and police agencies).

In order to unpack this equation, this project took a twofold approach: to see how CBOs have needed to change their operations in order to remain legitimate, and explore the strategies used to do so, while also seeking greater understanding of the power structures CBOs navigate. Consequently, this thesis sought to answer the following questions:

- 1) How, if at all, have CBOs who assist sex workers needed to change their operations in order to accommodate the PCEPA?
  - What adaption strategies have CBOs used?
  - In what ways do these strategies differ from one CBO to another?
  - What factors exist that explain these strategic differences?
- 2) How do CBOs articulate their relationships with government agencies and legislation?
  - Do these articulations shed light on the relationships of power between sex workers, CBOs and government agencies?
  - How do CBOs navigate these relationships of power?

#### **4.2.1 How have Operations Changed?**

In seeking to answer the first research question, the researcher sought to better understand the how, if at all, the habitus of CBOs has changed to conform to the PCEPA, and sought to discover whether or not their day-to-day operations had changed as a way to measure this. The researcher also asked participants whether or not the funding streams available to their organizations had changed, as a measurement of capital. Some of those interviewed perceived that the changes to the law have had a significantly negative impact in their work and the work of the sex workers they assist. In practice,

however, for all except [Green] the impact has been minimal. The day-to-day routine of CBOs has not changed significantly, nor have the available funding streams. Nevertheless, some participants felt impacted by the as of yet unknown outcomes of the PCEPA. The unknown impacts have created an environment of uncertainty wherein neither CBOs, advocates, sex workers, nor lawyers or program administrators can predict exactly how the PCEPA will impact their operations in the long term. In the short term, however, the work performed by CBOs continues on in much the same fashion as it had prior to the Bedford ruling and the PCEPA. Thus, while habitus and economic capital have not been impacted, forms of social and cultural capital have been. These impacts, whether observable or not, ultimately do impact the practice of CBOs. Different strategies are needed to adapt to these impacts.

Most of those interviewed did not observe a direct impact to their day-to-day operations or funding streams, and by extension have not needed adaption strategies. [Green], however, did: her organization's operations briefly shifted from service delivery to public education in order to assist their clients with the new legal uncertainties introduced by the PCEPA. Further, [Green]'s organization had to embrace being vague about the services they offer in public, in order to simultaneously protect their clients, while also remaining within the realm of legality themselves. Conversely, [Yellow] discussed some peer-led CBOs that she collaborates with who have deliberately decided to not let the PCEPA change how they operate. It is possible that these CBOs that [Yellow] collaborates with are in breach of certain provisions of the law, but they ultimately feel that the risk is needed to ensure that their clients have access to much-needed services. Ignoring legal changes and pressing forward to ensure clients continue

receiving much-seeded services is another strategy some CBOs use. Whether or not CBOs have needed to employ adaption strategies is also dependent on the relationship they have with government agencies, which leads to the second research question.

#### **4.2.2 How Did Participants Articulate Their Relationships with Government Agencies?**

Participants' articulation of their relationship with government was largely dependent on the level of government being discussed. For example, [Blue] mentioned partnering and working closely with municipal governments to develop and implement programs and services. She spoke fondly of those at the local government level who assisted her and her organization with providing services to sex workers. Conversely, she spoke of the GoC with disappointment: throughout her interview, the rhetoric she used when speaking of the GoC was harsh and unforgiving. She lamented at the GoC's insistence on labelling all sex workers as human trafficking victims, something she viewed to be a clear attempt to maintain structures of stigma against sex workers and their advocates. [Blue]'s views were echoed by [Green], [Yellow] and [Gold], all of whom were likewise frustrated by the manner in which the GoC handled the consultation process during the development of the PCEPA.

There is a clear gap between the relationship [Blue], [Green] and [Yellow] – and their organizations – have with local and provincial governments and the GoC. Certain factors exist that might account for this. For example, their organizations operate in a notoriously liberal part of Canada (British Columbia), where both the Victoria and Vancouver police agencies have been hesitant or unwilling to enforce the PCEPA (see

section 3.5). Second, as a notoriously liberal part of Canada, the local government and police agencies adhere to a different political ideology than those in other parts of the country (Eschner 2015; Gorokhovski 2015). It is plausible that CBOs in more conservative parts of Canada would articulate their relationships with local government and police agencies in a different fashion; for example, the Calgary Police Service's enforcement of the PCEPA might mean that they have a different relationship with Calgary-based CBOs than the CBOs have with police in Vancouver or Saskatoon where the police have chosen not to enforce the PCEPA (Eschner 2015; Gorokhovski 2015). Thus, the relationships CBOs have with government and police agencies may be dependent on the level of government in question, the political parties or individuals at the helm of those governments and geographical location.

The enforcement of laws by police agencies allows to observe relationships of power between authority figures and those in potentially criminalized groups. As discussed in section 3.3, the impacts of laws only extend as far as the law is enforced. The work done by CBOs to assist sex workers is plausibly frustrated more in regions where police agencies are adamant about enforcing the PCEPA, such as Calgary, than it is in regions where police agencies are not keen about the PCEPA, such as in Vancouver or Saskatoon. But these relationships of power with local enforcers are not anything new. As [Green] discussed, due to the nature of who her clients are and how they operate – often immigrants working in indoor brothel-like locations – her clients are often harassed by police who mistake them for human trafficking victims. Actively seeking to educate government officials, public servants, police agencies and others is a key way in which CBOs navigate relationships of power: knowledge and information is a form of cultural



capital (Bourdieu 1986; 2002), and is a crucial component to one's position in a field. By actively seeking to correct the information relied upon by police and government agencies, CBOs, such as those interviewed, seek to change the discourses underlying structures of power, which is discussed further in the next section.

### **4.3 The PCEPA Exercised Metacapital to Reinforce Existing Power Structures**

The GoC's response to the Bedford ruling was to exercise their metacapital to reinforce existing power structures and propagate the image of the "prostitute." The GoC did this largely by creating a new funding model that only offers grants to those CBOs whose mandates are compatible with the GoC's definitions of sex workers and prostitution, and only for providing services designed to assist sex workers with exiting the industry.

The GoC stated that the purpose of the PCEPA was to end sex work by making the practice riskier for both sellers and buyers. Prostitution will not suddenly end as a result of the PCEPA, but it may be driven further underground. Through the PCEPA, the GoC destabilized the field of Canada's sex industry by eroding certain forms of capital previously available to CBOs and sex workers. The PCEPA increased the restrictions on where sex work can take place, retained the inability to openly and publicly discuss sex work, and made it wholly illegal to purchase sexual services. Further, the PCEPA increased the criminalization against all forms of public presentation that can be construed as advertising or promoting prostitution, a provision which may negatively impact the ability of CBOs to make their services known to their clients. If the work of CBOs can be perceived as encouraging sex workers to conduct sex work, then CBOs are violating the law and can face criminal punishments. In response to this, certain CBOs,

including [Green]'s, have had to become vague in how they present their services in public. By limiting who sex worker CBOs can talk to, the PCEPA has disrupted a crucial form of social capital, one which allows sex workers and CBOs to maintain their support network. These increased fears and anxieties are not observable impacts, but rather perceived ones. A paradox exists wherein the real impacts of the PCEPA have been minimal, but the perceived impacts have been significant. Ultimately, the field of Canadian sex work has been undermined by the uncertain legal standing of sex workers and their advocates. The field has been further undermined by removing the ability for sex workers and their advocates to openly and publicly discuss sex work, a crucial component to maintaining support networks and social capital.

Ultimately, some CBOs have opted to ignore the GoC's problematic definition of prostitution and continue on with their work. In certain parts of the country, sex workers and CBOs have additional support from municipal governments and police agencies who also recognize the problems inherent to the PCEPA. For example, police departments in Vancouver, Victoria, Saskatoon and Montreal rejected the PCEPA, declaring publicly that no changes would be made to how their organizations police prostitution (Eschner 2015; Gorokhovski 2015). Canadian police are not unified in their rejection of the PCEPA, however, as police in Calgary, Regina and parts of Ontario actively enforce the new provisions included in the PCEPA (Eschner 2015). This exemplifies a lack of homogeneity in the field of Canadian sex work, and whether or not sex workers and CBOs have reason to fear additional punishments is largely region-dependent. This lack of solidarity ultimately serves to further undermine the field and disrupt support networks between CBOs and their clients.

This thesis has shown the PCEPA to be problematic, but the law can be changed in a manner that assists CBOs with offering services to sex workers and ultimately makes sex worker a safer practice. The next, and final, section of this thesis offers a series of recommendations for improving the PCEPA.

#### **4.4 Policy recommendations**

This thesis has argued that the GoC's legislative response to the Bedford ruling was problematic, but there is an opportunity for improvement. On October 19, 2016, Canadians took to the polls and elected a government with a Liberal Party majority being led by Mr. Justin Trudeau. During the final Parliamentary vote to determine if the PCEPA would pass, all but three Liberal MPs voted against the PCEPA (Open Parliament 2014). Since the ascent of the PCEPA, several Liberal MPs have committed to change the law, although no timeline for such an action has been given (Goldsbie 2015). This shows that there is support amongst Liberal MPs to make some critical changes to the PCEPA and bring the law into harmony with the Bedford ruling.

A more balanced approach to legislative change could have still included a bolstering of Canada's human trafficking laws to include greater sanctions against those who exploit others, while simultaneously offering greater safety nets to sex workers who are not exploited. The GoC chose to emulate the Nordic model of prostitution legislation, but incorporating aspects from either the German or New Zealand models would have provided the balance needed to both protect victims of sexual exploitation and human trafficking, while also giving sex workers greater access to certain safety nets, like the ability to openly communicate with, and screen, clients, or work in an indoor location

with other sex workers, or to communicate openly with advocates and front-line service workers whose primary purpose is to make their work safer. The law can be changed in a manner that allows for a balance between ensuring sex workers have access to much-needed safety nets, while simultaneously reducing harmful forms of sex trafficking. To this end, the researcher recommends that the following three changes be made to the PCEPA:

- 1) Legalize and regulate sex work
- 2) Clarify the Official Definition of Prostitution
- 3) Change the PCEPA's funding structure

The remainder of this section will discuss these three recommendations in greater detail. These recommendations show that the PCEPA can be improved to meet its intended objective of making sex work safer for sex workers.

#### **4.4.1 Legalize and Regulate Sex Work**

As discussed in section 1.7, sex workers in Germany and New Zealand are able to access social supports – such as employment insurance, health insurance, pensions, and others. The German and New Zealand governments are able to regulate the sex industry and ensure occupational health and safety standards are met, while collecting from an additional tax revenue stream in the process. The first recommendation is for Canada to take a similar approach as Germany and New Zealand: legalize sex work as a first step towards legitimizing the practice as a viable profession. This would allow labour laws to be changed to include sex work in order to give sex workers access to the same protections and benefits of other legitimate professions, while also opening up another tax revenue stream and gaining the ability to regulate the practice. Not only would this

greatly improve the quality of life of sex workers, but the legitimization of the practice would be a significant step to overcoming the stigma associated with prostitution, while allowing sex workers to operate under a high standard of occupational health and safety. Further, as in Germany and New Zealand, this would not allow for the existence of human trafficking, a crime both countries still take seriously and actively seek to squash.

#### **4.4.2 Clarify the Official Definition of Prostitution**

Sex work may be inherently dangerous (Weber et al. 2002; O'Doherty 2011), but many of the dangers are exacerbated by increases to criminalization, which result in sex workers operating underground, away from safety, in order to avoid criminal punishments for either themselves or their clients. Under the current legislation, police agencies are required to assume all sex workers are victims of human trafficking, which is problematic. This research has shown that many sex workers do not feel exploited, but rather have made a personal choice to participate in a vocation that, while heavily stigmatized, has never been illegal. Ultimately, the PCEPA sought to eliminate the demand for prostitution in an effort to reduce the harms sex workers face, but it has muddied the waters in the process. The act of selling sex is not illegal, but purchasing sex is, as is advertising sexual services, communicating services, or operating any official business that might resemble a brothel. The GoC's approach to prostitution legislation is confusing and needs to be clarified. Further, a better official definition of prostitution can help differentiate between sex work that occurs between consensual adults and human trafficking.

#### **4.4.3 Change the PCEPA's Funding Structure**

This research has shown that the 20-million-dollar funding schema included in the PCEPA is problematic. The fund is focused solely for programs that assist sex workers with exiting the sex industry by offering temporary housing, crisis counselling, addiction recovery services, medical care, transportation if needed, and other services. These services are certainly needed, but not just by those who seek to exit. Further, these services only solve temporary problems. If the primary goal of the PCEPA is for sex workers to leave the sex industry, then sex workers will need to be able to replace their income. Without a viable long-term income alternative to pay for one's day-to-day expenses, these individuals will likely return to prostitution. More funding should be made available for programs and services that assist sex workers in the long-term. Sex workers need stable housing, access to social services, child care, health care, education and skill training, and others. By tweaking the funding schema in the PCEPA to allow for CBOs who offer programs and services geared towards assisting sex workers, albeit not directly focused on exiting the sex industry, the PCEPA would ultimately do more to assist sex workers, while also creating an environment where those who do want to leave are better able to do so.

#### **4.5 Thesis Limitations**

As mentioned in section F of the introductory chapter, this thesis was limited by a difficulty the researcher faced in finding willing interview participants using the criteria established (see section F of the introductory chapter). The researcher argued that the data collected during interviews allowed for a better understanding of how the PCEPA

impacted the operations of CBOs; however, this limitation does not exist in the quality of the data, but rather in the quantity. Seven interviews do not provide enough data to reach any generalizable conclusions. The conclusions reached are certainly applicable to the analysis of the operations of those interviewed, but the researcher simply does not know whether or not the conclusions reached apply to the organizations not interviewed in this study. Likewise, George (1979) and Levy (2008) argue that well-executed case studies can allow for researchers to explore and validate theoretical concepts. The case study built in this thesis allowed for the exploration of Bourdieu's *theory of practice*, but the validation of that theory may be limited considering the data did not allow the researcher to reach any generalizable conclusions.

Further, the participants the researcher was able to interview fell squarely into two categories: CBO workers who actively advocate for the legalization of prostitution in Canada and government program administrators who are duty-bound to remain impartial in political matters. As such, the data presented only showed one side of this debate: the side that favours the legalization of prostitution. This is a limitation to this study, because the views expressed by participants influenced the outcomes and conclusions reached by the researcher. It is plausible that different conclusions could have been reached if the interviewer was able to interview CBO workers who represent organizations that favour criminalization of prostitution. Perhaps those organizations were impacted in different ways. There is not enough data to determine whether or not CBOs on both sides of the debate were impacted in the same ways. Likewise, some of the participants interviewed argued that, while harmful forms of sex trafficking exist, most sex workers that they work with believe that they made a conscious, logical choice

in pursuing sex work. While this may be true, certain researchers make the opposite argument (see Leidholdt 1993; Farley, Lynne, and Cotton 2005). By not being able to interview participants on both sides of this debate, this thesis lacks the data needed to reach a conclusion in this matter. Further research would be required.



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## **Appendix A: List of Organizations Who Submitted Briefs to the Standing Committee on Legal and Constitutional Affairs**

The briefs listed below were discussed in section 1.8 of this thesis. Each brief can be found by visiting: <http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/C36Briefs-e.htm>.

The briefs, in alphabetical order:

- Allison, Gwendolyne
- Anglican Church of Canada
- Asian Women Coalition Ending Prostitution
- Action Santé Travesti(e)s & Transsexuel (le)s du Québec
- Atchison, Chris
- British Columbia Coalition of Experiential Communities
- Benoit, Cecilia
- Big Susie's
- Bruckert, Chris
- Butterfly Asian and Migrant Sex Workers Support Network
- Calgary, City of
- Canadian Association of Sexual Assault Centres
- Canadian Association of Social Workers (CASW)
- Canadian Bar Association
- Canadian Criminal Justice Association
- Canadian HIV / AIDS Legal Network
- Canadian Women's Foundation
- CEASE
- Concertation des luttes contre l'exploitation sexuelle
- Conseil du statut de la femme
- Crago, Anna-Louise
- DeVries, Maggie
- Defend Dignity
- Edward Herold
- Égale Canada
- Evangelical Fellowship of Canada
- Federal Ombudsman for Victims of Crime
- Feminist Coalition in Support of Full Legitimization and the Human and Labour Rights of Sex Workers
- FIRST Legitimize Sex Work
- Forrester, Monica

- Global Network of Sex Work Projects (NSWP)
- Global Alliance Against Traffic in Women
- Human Rights Watch
- Humanist Association of Ottawa
- Living in Community
- London Abused Womens Centre (Sex Trade 101) / EVE-Dukes
- Lowman, John
- Madame Dolly
- Northern Women's Connection
- OASIS
- O'Connor, Karen
- PACE Society
- PEERS
- PIECE Edmonton
- PIVOT Legal Society
- POWER (Prostitutes of Ottawa-Gatineau Work, Educate and Resist)
- REAL Women of Canada
- Jeanne Sarson – Linda MacDonald
- Sayers, Naomi
- Servants Anonymous Society of Calgary
- Shaver, Frances
- Stella
- Supporting Women's Alternatives Network (SWAN)
- Symington, David
- Trans Equality Society of Alberta (TESA)
- Vancouver, City of
- Vancouver Rape Relief and Women's Shelter
- Victoria, City of
- Victoria Sexual Assault Centre
- Walk With Me Canada
- Waterloo Region Crime Prevention Council
- Waltman, Max
- Wiggins, Jim

# Appendix B: Certification of Research Ethics Board Approval

University  
of Regina

## Research Ethics Board Certificate of Approval

PRINCIPAL INVESTIGATOR  
Daniel Hiatt

DEPARTMENT  
Faculty of Graduate Studies and Research

REB#  
2015-129

SUPERVISOR  
Dr. Bruno Depeyron

FUNDER(S)  
Awarded  
University of Regina

TITLE  
Complex Power Dynamics and Canada's Prostitution Laws: An Examination of How Advocates Adapt When Legislation Changes

APPROVAL OF  
Application for Behavioural Research Ethics Review  
Contact Email Template  
Consent Form

APPROVED ON  
September 1, 2015

RENEWAL DATE  
September 1, 2016

Full Board Meeting

Delegated Review

### CERTIFICATION

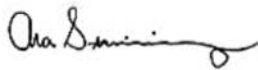
The University of Regina Research Ethics Board has reviewed the above-named research project. The proposal was found to be acceptable on ethical grounds. The principal investigator has the responsibility for any other administrative or regulatory approvals that may pertain to this research project, and for ensuring that the authorized research is carried out according to the conditions outlined in the original protocol submitted for ethics review. This Certificate of Approval is valid for the above time period provided there is no change in experimental protocol, consent process or documents.

Any significant changes to your proposed method, or your consent and recruitment procedures should be reported to the Chair for Research Ethics Board consideration in advance of its implementation.

### ONGOING REVIEW REQUIREMENTS

In order to receive annual renewal, a renewal report must be submitted to the REB Chair for Board consideration within one month of the current expiry date each year the study remains open, and upon study completion.

Please refer to the following website for further instructions: <http://www.uregina.ca/research/for-faculty-staff/ethics-compliance/human/forms1/ethics-forms.html>



University of Regina  
Research Ethics Board

Please send all correspondence to:

Research Office  
University of Regina  
Research and Innovation Centre 109  
Regina, SK S4S 0A2  
Telephone: (306) 585-4775 Fax: (306) 585-4893

[research.ethics@uregina.ca](mailto:research.ethics@uregina.ca)

## Appendix C: Interview Guides

### Phase One Interview Guide

- 1) Please tell me a little about your organization and how you became involved.
  - a. Brief history?
  - b. Mandate?
  - c. What drew you to this work?
- 2) Please tell me a little bit about what you/your organization does to advocate for/assist sex workers.
  - a. What programs/services are offered?
  - b. Solely focused on sex workers? Indirectly?
  - c. Advocating for safer sex work?
  - d. Public education/Public health?
  - e. Focused on getting sex workers out of the industry?
- 3) How, if at all, has the PCEPA impact you, your organization, and those you advocate for/assist?
  - a. Were you or your organization aware of the Canada v. Bedford case? Did the results change anything for you?
  - b. Has your work routine changed?
  - c. Do you operate differently now?
  - d. Has the PCEPA impacted your ability to obtain funding?
- 4) Is advocating for and assisting sex workers easier following the Supreme Court's decision, or more difficult?
  - a. In what ways is this evident?
- 5) What strategies, if any, have you or your organization employed to adapt your work to this changing legislation?
- 6) Please tell me about your organization's relationship with the government. With the police.
  - a. Does the gov't help fund programming?
  - b. Are any gov't agencies directly involved?
  - c. Do you work independently with governments and police, or independently?
- 7) Do you or your organization ever encounter resistance from the government or public for the work you do?
  - a. If yes, how so?
  - b. How do you deal with resistance/stigma?



## Phase Two Interview Guide

- 1) Please tell me a little about your organization.
  - a. Brief history?
  - b. Mandate?
- 2) Please tell me about the work you personally do at [organization].
  - a. What's your role?
  - b. Where do you fit into the greater organizational structure?
- 3) What lead you to becoming a sex worker advocate?
- 4) Please tell me a little bit about what [organization] does to advocate for/assist sex workers.
  - a. What programs/services are offered?
  - b. Solely focused on sex workers? Indirectly?
  - c. Advocating for safer sex work?
  - d. Public education/Public health?
  - e. Focused on getting sex workers out of the industry?
- 5) Do you or your organization work closely with government agencies and police services?
  - a. Does the gov't help fund programming?
  - b. Are any gov't agencies directly involved?
  - c. Do you work independently with governments and police, or independently?
  - d. Are you opposed to working with government agencies and police services? Why?
  - e. Do you rely on government agencies and police services? Why?
- 6) How is your organization funded?
  - a. Is finding funding difficult?
  - b. Have you noticed a change in the amount of funding you receive since the *Protection of Communities and Exploited Persons Act* (PCEPA) was passed?
  - c. Is this your full-time job or are you a volunteer?
- 7) Have you or your organization ever encountered resistance from the government or public for the work you do?
  - a. If yes, how so?
  - b. Do you feel stigmatized by the public? By the government?
  - c. Has this improved or worsened since the passing of PCEPA?
  - d. How do you deal with stigma?

- 8) Has the work you do changed since the Bedford case decision? Since the passing of the PCEPA?
  - a. How, if at all, did these legislative changes impact you? Your organization? Those you advocate for or assist?
- 9) Is advocating for and assisting sex workers easier following the Bedford case decision and the passing of the PCEPA? Is it more difficult?
  - a. In what ways is this evident?
- 10) What strategies, if any, have you or your organization employed to adapt your work to this changing legislation?
  - a. How have you coped with these legislative changes? How has your organization coped?
  - b. Is there a noticeable difference in how you work now that the laws have changed?
  - c. Has your organization had to change any of its policies to match the new laws?
  - d. Are there any lingering concerns you have with these changes that have not been addressed yet?