

Canada's Public Health Experiment

When Valerie Scott was a child growing up in New Brunswick, the northeastern province of Canada just over the border from Maine, she would watch old westerns on rainy afternoons. And that's when she fell in love with saloon girls. "The cowboys running around killing each other bored me, but I lived for the moment when the saloon girls came on," Scott recalls. "The cowboys couldn't pull the wool over their eyes, and sometimes they'd get their own saloon. I knew that's what I wanted to be: a saloon girl."

This was, of course, years before Valerie understood exactly what saloon girls did, but even when she gleaned the truth (from a friend at the age of eleven), she wasn't deterred. After graduating from high school, she majored in science at the University of Guelph in Ontario (near Toronto) and began working as an exotic dancer to pay her way through school.

"One of my first costumes was a nineteenth century saloon girl," Scott says. "I danced for seven years and worked up to feature status." By the early 1980s, she had dropped out of school and was performing burlesque in a different city every night, from Philadelphia, Miami, and New York to Toronto, Vancouver, and San Juan, Puerto Rico. She eventually tired of the constant traveling and, at the age of twenty-four, discovered a new way of working in the sex industry.

"I put a companion ad in the *Globe and Mail* [a major Toronto newspaper] and ran it for one week," Scott says. "I received ninety-three replies, and I threw out the ones with poor grammar, reasoning [that] they probably wouldn't have a very good job. And then I began to work." She

would meet clients in a public place, and if they passed her screening test, she would take them to her apartment or a hotel. Most of her clients were men from Toronto, many of them married. “I remember standing in the hallway of my apartment after the third or fourth client I’d seen and thinking, ‘I could kick myself for not getting into the business sooner,’” she says. “This is a good job. I don’t care what everyone says.”

By the mid ’80s, however, Scott was disgusted, not by the sex work, but by the stigma surrounding it from every facet of society. “I couldn’t handle being treated like I was a disposable person,” she says. “I couldn’t handle my colleagues being treated like that. And I hated lying to my parents and friends about what I was doing.”

In 1985, the conservative government then in power in Canada passed a law that prohibited communicating in a public place for the purpose of engaging in prostitution. Known as the communicating offense, it made life on the streets much more dangerous for streetwalkers, who, because of the fear of being arrested, could no longer take the time they needed to assess clients before they climbed into their cars. What Scott saw politicized her.

“I didn’t work on the street, but too many of my colleagues who did were getting hurt,” Scott says. “I would take women to the police station to have them report the violence, and the police would say to my face, ‘It’s part of their job.’”

One day, Scott was listening to the CBC (Canadian Broadcasting Corporation), and she heard John Crosby, then Canada’s justice minister, talking. “He was carrying on about sex workers like we were vermin,” Scott says. “That was it. That was the moment.”

Scott joined the Canadian Organization for the Rights of Prostitutes (CORP) and became active in the sex workers’ rights movement. The first lawsuit she and CORP filed challenged, on constitutional grounds, the new law making communication for the purpose of prostitution a criminal offense. But in 1990, the Supreme Court of Canada upheld the law. Scott wanted to carry on the fight, but her group didn’t have the money. “Challenging all the [prostitution] laws was a \$200,000 case,” she says. “We had \$40 in our legal fund.”

In Canada, unlike the United States, selling or buying sex itself was not a crime. Instead, Canadian authorities relied on three laws to curb prostitution: a law prohibiting the operation of a bawdy house or brothel; a law against living on the avails of prostitution, which was aimed at pimps but also was used to arrest sex workers' domestic partners, security guards, and business agents; and the law against communicating for the purpose of prostitution.

In the years after the Supreme Court of Canada upheld that last mandate, Canadian researchers amassed a body of research showing that all three criminal codes increased the risk of violence to sex workers and made it more difficult for them to practice safe sex and access health care. Several studies showed that violence against sex workers increased dramatically in the 1990s after the passage of the communicating law, according to a 2006 report by the Canadian House of Commons.¹ Sex worker advocates say the 1985 law against communicating made life particularly dangerous for streetwalkers.

One study, for instance, showed that up to 98 percent of women who worked the streets of Vancouver's poorest area, the Downtown Eastside, experienced violence from clients, pimps, and others.² Another, more recent study, published in the *British Medical Journal* in 2009, found that of 237 streetwalkers throughout Vancouver, more than half (57 percent) had experienced physical or sexual violence at least once in an eighteen-month period.³ As lead researcher Kate Shannon said, "These women continue to be pushed to work in isolated spaces, with limited access to housing and drug treatment, which further compounds their risk of being physically assaulted or raped."⁴

What this research revealed was that violence was not intrinsic to sex work—women working indoors were much less likely than street workers to be assaulted. Rather, it showed that the laws prohibiting women from working in brothels, communicating with clients, and living on the avails of prostitution were largely responsible for the violence against sex workers. For example, a 2011 study of Vancouver sex workers found that Canada's prostitution laws made it more difficult for them to secure housing and practice safe sex.⁵ Published in *Social Science & Medicine*,

this study found that criminalization made it difficult for sex workers to live and work together in indoor spaces and thus forced them out on the streets, where it was harder for them to negotiate safe sex. In addition, restrictive curfews and guest polices at many rooming houses in Vancouver's Downtown Eastside forced low-income women out onto the street, where they were at greater risk of being subject to physical violence and contracting sexually transmitted diseases, the study found.⁶

"Normalized violence in street-based cultures often leads women into relationships with older men for protection . . . and these relationships can be physically abusive and economically exploitative," the researchers noted. They concluded that Canada's prostitution laws led to discriminatory and exploitative housing practices that target the most marginalized populations (poor minority women.) The researchers called for the development of women-only housing, which would "promote women's agency and ability to negotiate health, safety and risks of HIV infection."⁷

The Canadian findings echo earlier research in Miami, which found that homelessness and marginal housing increase the risk that sex workers will have unprotected sex. Women who are either homeless or sleeping on a friend's couch are more likely to be desperate for money and have sex with clients who refuse to wear condoms, the Miami studies found.⁸ In yet another study of street-based workers, by the Urban Justice Center of New York, sex workers themselves said that the single most important public health intervention would be stable and affordable housing. As the researchers noted, "Homelessness creates a cycle of deepening impoverishment that may be almost impossible to escape. The lack of a fixed address or a telephone number hinders attempts to find other employment. The high cost of even substandard short-stay accommodation imposes a financial burden that may be hard to meet without resorting to the 'fast money' offered by illegal activities such as prostitution. Temporary accommodation creates an environment that is often not conducive to resolving other contributory problems such as substance dependency."⁹

Since other research shows that drug addiction increases the risk of HIV infection, decriminalizing prostitution and providing more stable

housing for sex workers would reduce the spread of HIV infection and other diseases. (Perhaps this is a good place to point out that the Netherlands, where prostitution has been decriminalized since the 1970s and legalized since 2000, has the lowest rate of HIV infection in the world.¹⁰) The intrinsic link between eliminating laws against prostitution and improving public health is one of the primary reasons why groups as far-flung as the World Health Organization, the United Nations AIDS Advisory Group, Human Rights Watch, and the National Association of Social Workers support the decriminalization of consensual adult prostitution.

While such emerging evidence helped bolster the policy argument against Canada's prostitution laws, what really turned the tide of public (and judicial) sentiment was the discovery that a serial killer had been systematically butchering Aboriginal streetwalkers in Vancouver. Many of these women were part of the generation of Aboriginal Canadians (native Indian, Inuit, and Métis) who had been molested as children after they were taken away from their parents and put in residential schools. According to a recent class action suit against the Canadian government, thousands of Aboriginal children in British Columbia were removed from their own homes and put in non-Aboriginal homes across North America between 1962 and 1996.¹¹

"It was during a period when we wanted to destroy their culture," explains John Lowman, a professor of criminology at Simon Fraser University in British Columbia. "And some of these children were preyed on by pedophiles over and over again. And that's part of the generation that was involved in survival sex. They are the most victimized women in our society."

By the late '90s, dozens of these streetwalkers had gone missing, and everyone on the street knew that a serial killer was on the loose. But police ignored the mounting concerns, Lowman says. In 1997, Robert William (Willy) Pickton, a wealthy pig farmer, was charged with the attempted murder of a sex worker whom he had stabbed on his farm after having sex with her. The woman survived, but because prosecutors believed she would not be a believable witness (she had drug problems),

they stayed the charge. (A stayed charge can be dismissed after one year.) Furthermore, crucial evidence against Pickton was left unexamined in a police storage locker for seven years.¹² In 1999, Canadian police were tipped off that Pickton had a freezer filled with human flesh on his farm. Although police interviewed Pickton and obtained his consent to search his farm, they never did a search.¹³ Not until 2004 did lab testing show that DNA from two missing women were on the clothing and rubber boots seized from Pickton in 1997.

Pickton was finally arrested and brought to trial in 2006. He was convicted of killing six women; another twenty murder charges against him were stayed, although police believe the sixty-four-year-old farmer may have murdered as many as forty-nine women, mostly street-based prostitutes.¹⁴ He was sentenced to life in prison with no possibility of parole for twenty-five years. “It was a national disgrace,” Lowman says. “But it created a sea change in attitudes—a woman doesn’t deserve to die because she’s involved in sex work.”

Lowman, who wears his long white hair in a ponytail and has a mischievous twinkle in his blue eyes, began studying sex workers even before he obtained his Ph.D. His dissertation focused on the effects of law enforcement on crime patterns, including the displacement of sex workers from indoor locations onto the street. That research developed into a career-long interest in sex work and the law, and starting in the early 1980s, Lowman received federal funding to do a series of studies on how Canada’s laws were affecting sex workers. Between 1984 and 2002, Canada’s Department of Justice provided funding for Lowman to conduct eight studies of prostitution law enforcement.

In 2002, Lowman was introduced to Alan Young, a law professor at Toronto’s York University, who was thinking of mounting a constitutional challenge to Canada’s prostitution laws. In the late 1990s, Young had represented a dominatrix by the name of Terri-Jean Bedford, who had been arrested for running a bawdy house in Toronto. Bedford, who went by the name of Madame de Sade, dressed in black leather, and often brought her whip to court, was ultimately convicted of the charge after a long legal battle. But Young realized there just might be a case for

challenging the laws themselves on the grounds that they violated sex workers' rights to liberty and security of the person under the Charter of Rights and Freedoms, adopted as part of Canada's constitution in 1982.

I caught up with Young by phone one day in July 2014. He was holding court with his students and said he had only twenty minutes to talk. Young explained that he had decided in 1990 that he would systematically challenge every consensual crime under the Canadian criminal code—as an academic exercise. But it wasn't until police caught Robert Pickton and “were digging up bodies on the farm” that he turned his attention to the laws against adult prostitution. “I felt it was time to take on the prostitution laws,” Young says. “The criminal law is a blunt instrument; it's not a good panacea for social problems.”

Around the same time, Valerie Scott and her organization, now renamed Sex Professionals of Canada (SPOC), were searching for a lawyer who would take on a legal challenge on a pro bono basis. One day, Young came across SPOC's newly posted website, found Scott's phone number on it, and called her. “We were looking for him and he was looking for us,” Scott says.

By 2006, Scott and Terri-Jean Bedford had agreed to be plaintiffs in a constitutional challenge to Canada's prostitution laws. By then, however, both women had pretty much retired from sex work—Scott was forty-eight and Bedford forty-seven—and they needed to find someone who was still doing sex work and willing to go public as the suit's third plaintiff. Scott, who has long wavy brown hair, strong cheekbones, and a dancer's poise, was making a living rehabilitating sick and injured wildlife at wildlife centers in and around Toronto, but she continued to devote most of her spare time to sex workers' rights activism. Given the enormous stigma of working in the sex trade and the fact that the families and friends of many sex workers have no idea how they earn a living, Scott knew that finding a third plaintiff who was willing to weather the publicity around the case would not be easy. She decided to approach a twenty-seven-year-old sex worker by the name of Amy Lebovitch, who was already active in SPOC and had been in the public eye to a certain extent as a spokeswoman for the organization.

At the time, Lebovitch, a sultry blonde with blue come-hither eyes, was working as an escort in Toronto. She had grown up in Montreal, the offspring of middle-class Jewish parents, and had left home at the age of eighteen because of family problems that, in an interview, she said she would rather not talk about. By the time she walked out, she had gone to the Canadian equivalent of community college for two years and was thinking of going on to a four-year university. Without a place to live or means to support herself, Lebovitch began doing sex work on the streets of Montreal.

“I needed money quickly and it just made sense,” she says. After a few months, she moved to Ottawa, about two hours west of Montreal, and began taking classes at the University of Ottawa. She also began doing mostly indoor sex work. Occasionally, when she didn’t have money to advertise, she would go back on the stroll.

“It’s not the safest way to work and I didn’t enjoy it,” she says. “But without criminalization, without the fear of the police and not being able to properly screen clients, it could be safe. We need to make it safer so people are able to have a conversation with someone before getting into the vehicle.”

A year later, Lebovitch moved to Toronto and began taking social work classes at Ryerson University. And that’s when she met Valerie Scott. “I did an interview with her about SPOC for one of my social work papers,” Lebovitch says. “We talked for hours, and it was sort of like this world opened up in my mind about activism and organizing. I was really intrigued about the idea of meeting and working with other sex workers, so I emailed Valerie and said, ‘I didn’t tell you at our meeting but I am a sex worker and I’d like to come to your meetings.’”

Lebovitch joined SPOC in 2003 and became a spokesperson for the organization. Her family, of course, had no idea she was doing sex work, and she wasn’t about to tell them. “I didn’t think the little publicity I did would get to Montreal, so they wouldn’t see it,” she says. “And they didn’t.” But all that changed a few years later, when Valerie Scott approached her about being the third plaintiff in their case.

“Alan [Young] did a pretty good job explaining the magnitude of

what might happen,” Lebovitch says. “But I don’t think I truly appreciated how big the impact could be.”

As the three plaintiffs worked with Young and others to prepare the paperwork for the lawsuit, a subcommittee of Canada’s House of Commons released a report that examined the country’s laws against prostitution and concluded that they did more harm than good. Prostitution was “above all a public health issue,” the subcommittee concluded, and it recommended that the Canadian government engage in a “process of law reform” and move toward a more pragmatic, decriminalized approach that recognized the importance of prevention, education, treatment, and harm-reduction measures for people involved in selling sex.¹⁵

“The 2006 report was the most important in a series of government reports that came out [on the issue of Canada’s prostitution laws],” Lowman says. “It spelled out the one thing that all the parties agreed on—that the current laws are unacceptable.”

In 2007, Alan Young filed the constitutional challenge, which argued that Canada’s prostitution laws violated sex workers’ charter rights to liberty and security of the person and that these charter violations were not in accordance with the principles of fundamental justice (as set out by the charter). The lawsuit also argued that the communicating law violated sex workers’ rights to free expression and that none of these violations were justified in a free and democratic society.

In September 2010, Ontario Superior Court Justice Susan Himel ruled that all three laws violated the rights of sex workers to safety and security and that they could no longer be used to arrest people involved in sex (except in cases of underage prostitution and trafficking). Canada’s conservative government appealed the ruling, and in a March 2012 decision, the Ontario Court of Appeal agreed with Himel on the bawdy house law but did not strike down the laws against living on the avails of prostitution and muddied the language of the living-on-the-avails law. Young’s team appealed the ruling, essentially kicking the ball up to the Supreme Court. As it proceeded through the courts, the Bedford case (named after Terri-Jean Bedford, the first plaintiff in the case) stirred up a hornet’s nest of publicity, thrusting its three plaintiffs into the national

media glare. The families of Valerie Scott and Terri-Jean Bedford were already aware of the two women's occupations. Scott says that when she came out to her family, her mother was upset, but mostly because of concern about her daughter's safety. Indeed, Scott, whose family is of Scottish ancestry, attributes her fighting spirit to her mother, who was a schoolteacher and set up the very first home for battered women in New Brunswick "in the days when people didn't want to talk" about domestic violence. And while Scott has a son (whom she raised as a single mother), he was grown by the time she mounted the constitutional challenge. She says he is proud of his mother's activism and accepted her livelihood a long time ago. "He's fine with it," she says. "He was raised to be fine with it."

While all three women were mocked in the media, the publicity surrounding the case exacted the biggest toll on Amy Lebovitch. Sometime after the Court of Appeal ruling, her family connected the dots, and in 2012, decided to cut all ties with her. "My last name is not that common," Amy says.

In June 2013, the Supreme Court heard arguments from both sides of the case, including dozens of witnesses who testified about the pros and cons of criminalizing prostitution. On December 20 of the same year, the court issued its momentous ruling, striking down all three laws governing Canada's sex trade as being in violation of sex workers' right to security. In a unanimous seventy-one-page decision, Chief Justice Beverley McLachlin wrote, "Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes. . . . [The prohibitions] do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing *dangerous* conditions on prostitution; they prevent people engaged in a risky—but legal—activity from taking steps to protect themselves from the risks."¹⁶

The night before the ruling was due, Amy Lebovitch says she couldn't sleep. "I was in an Ottawa hotel room waiting for the verdict, and in my mind, I was moving around all the possibilities of what might happen," she says. "But one of those possibilities was not that we would win."

When the Supreme Court announced its decision, Lebovitch said it

felt like a dream, “very emotional and shocking.” But reality soon set in. The court had suspended its ruling for one year to give Parliament time to respond, and officials in the conservative ruling party soon made it clear they had no intention of allowing prostitution in Canada to be decriminalized.

They made good on that threat. In early December 2014, the Canadian Parliament passed a law that prohibits the purchase of sex (akin to the Swedish model); bans the sale of sex near a playground, school, or day care center; and prohibits anyone from directly profiting from commercial sex. The law essentially makes it illegal for any sex worker to hire a bodyguard, driver, or business partner, much as the previous living-on-the-avails law had done. In a new twist, the legislation also bans the advertising of sexual services, although a sex worker would not be prosecuted if she advertised herself. (The sale of sex itself also is not prohibited per se.) But anyone who posts a prostitute’s ads on websites or in newspapers such as Toronto’s *NOW* (which had eleven pages of sex-related ads in a 2014 issue) could face jail sentences and fines.

Joy Smith, the conservative MP (member of Parliament) who cosponsored the new legislation, says the law is designed to curb the demand for commercial sex by criminalizing buyers and penalizing pimps and traffickers. “I’m against criminalizing the prostitutes,” she said in a July 2014 phone interview. “This bill recognizes that prostitution is an unsafe and violent thing, and it requires that \$20 million be put in place to help with exit services.”

Smith contended that more than 98 percent of Canadians involved in prostitution are victims and only 1 percent are doing it by choice. However, a number of Canadian studies contradict her claim and suggest that, for many sex workers, the decision to do sex work is a rational economic decision.¹⁷ Many of these women choose sex work over minimum-wage jobs in the service sector and see themselves not as victims but as entrepreneurs.

In our interview, Smith also claimed that the majority of Canadian prostitutes begin sex work when they are underage. Her assertion is undercut by several studies showing that the average age of entry among

both street and indoor prostitutes in British Columbia is between eighteen and twenty-two.¹⁸

Smith is certain the new legislation will withstand a court challenge. Some researchers and sex worker advocates, however, say it simply reproduces all the safety and security problems for sex workers that caused the Supreme Court to strike down the previous laws. And the ban on the purchase of sex will violate Canada's Charter of Rights and Freedoms in a completely new way as well. "Section 15 of the charter guarantees equality, but when you have two consenting adults involved in a sexual transaction in which only one of them will be penalized, you have a classic case of inequality and discrimination," Lowman says.

Advocates for sex workers agree that the new law will simply force sex workers from the relative safety of their homes or brothels into spaces that are less safe. "They will go where the clients are, but because they are being criminalized, the clients will want to be less visible. So sex workers will be forced into those clandestine, in-the-shadow spaces where sex work is less safe," says Jenn Clamen, thirty-eight, a community mobilizer for Stella, a Montreal-based sex worker advocacy group run for and by sex workers. Clamen, a longtime advocate for sex workers' rights, also teaches part-time at the Simone de Beauvoir Institute, a college of Concordia University that studies feminism and issues of social justice. Clamen says the new law will inevitably expose Canada's sex workers to more violence. "It means they will have to deal with the same kind of thing that was demonstrated with the Pickton [murders]," she says.

Alan Young agrees. "By criminalizing the purchase of sex, the government will make it impossible for sex workers to move indoors. Johns are not going to go indoors and be sitting ducks for law enforcement. They're going to circle around with their cars in the dark," he says. "So the new law will create more problems, more violence, and result in the one outcome that not one Canadian wants, which is a burgeoning street prostitution problem."

Advocates say the conservative government is deluded if it thinks that prostitution can be eradicated by criminalizing buyers; this didn't work in Sweden and it won't work in Canada. "Women decide to work in the sex

industry for a variety of reasons, whether it is to pay their bills, support their children, get an education, or support their drug habit," Clamen says. "These women will continue to work in the industry, but they will be more likely to be involved in unsafe situations." The new legislation ignores all the reasons why women and men work in the sex industry, she says. "If they were really concerned about prostitution, the government should be targeting issues like poverty, lack of education, drug use," Clamen says. "But the new law doesn't do any of that."

Clamen says Canada's sex worker community is disheartened by the new legislation but determined to fight it. At some point, someone will challenge the constitutionality of the new law in court, she says, and Canada's disparate sex work community will band together to support that challenge.

"People are very disheartened, and it's just going to have to be that way," Clamen says. "Keep in mind the Bedford case was a seven-year process. So we will have to go through that all over again or wait until a government with a more human rights approach comes into office and starts addressing the real issues. You can't just force people to get out of the sex industry, just like you can't force them to stop taking drugs."

