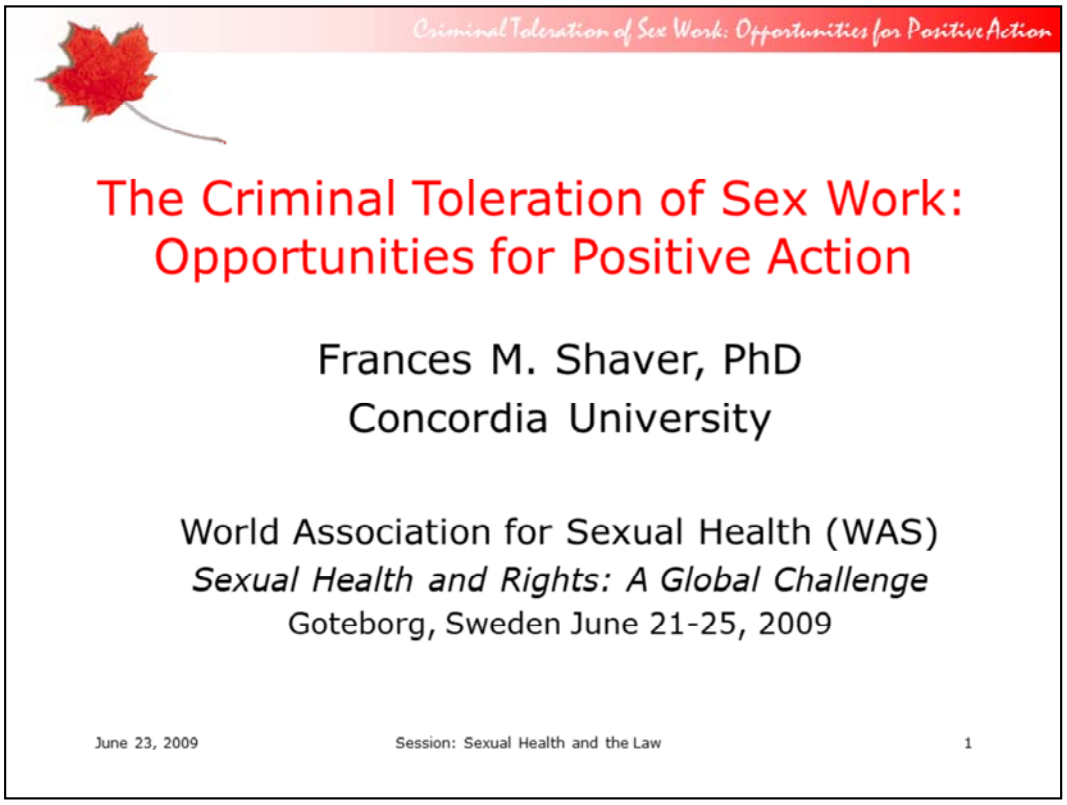
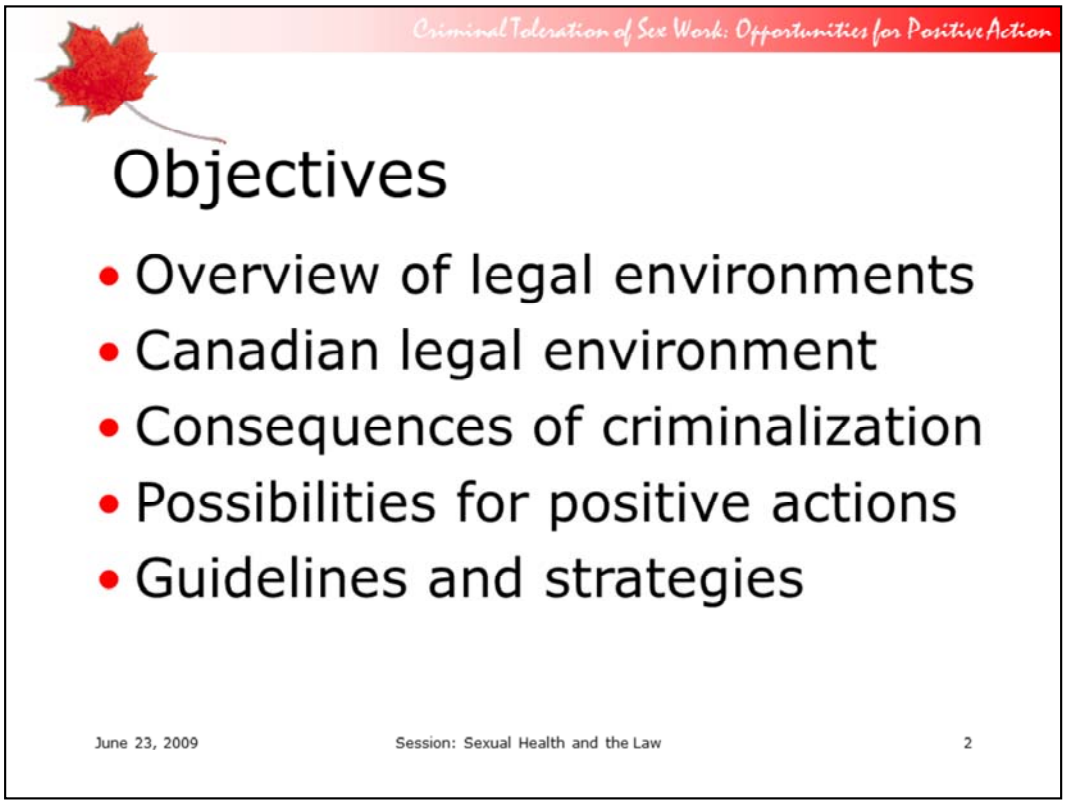


The Criminal Toleration of Sex Work: Opportunities for Positive Action

Abstract: In Canada, the buying and selling of sexual services is legal, but there are laws prohibiting a variety of activities related to sex work that are judged to be harmful. This approach is often referred to as criminalization with toleration. Over the last few years many academic researchers—along with sex workers, their allies, and their groups—have presented evidence supporting the full decriminalization of sex work (Davis 2008; Lowman 1998; O'Doherty 2008; Shaver 1985, 2005a). In spite of this growing body of evidence, social and legal reforms have been slow to materialize. This presentation will provide a brief overview of the legislative approach to sex work in Canada, highlight some barriers to action inherent in this approach, and describe some of the positive actions already in place and that will continue to arise in spite of the reluctance on the part of policy makers to accept the body of evidence before them. The analysis is based on a review of my own research (e.g., Shaver 1985; 2005a), research conducted with several colleagues and community partners (e.g., Lewis et al. 2005; STAR 2005, 2005a), and the research of others (e.g., Jeffrey & MacDonald 2006; Lowman 1998). In conclusion, I set out some guidelines and strategies for continuing to more forward (in spite of the law).

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I have five objectives:

- Provide a BRIEF overview of the four basic legal environments
- Set out the Canadian legal approach to sex work
- Examine the consequences of criminalization.
    - In order to develop an integrated response, we need to be clear about how the law is practised and enforced.
- Describe some of the possibilities for positive actions already in place in Canada (in spite of criminalization)
- Set out some guidelines and strategies for continuing to move forward



Legal environments (legislative approaches) are usually divided into four types. The first one (*criminalization*) can be sub-divided into prohibition & toleration.

- **Criminalization (Prohibition - most of USA)**: where laws are designed to prohibit all forms of sex work including the buying and selling of sexual services.

  Criminalization (Toleration - Canada) : where the buying and selling of sexual services is legal, but there are laws prohibiting a variety of activities related to sex work that are judged to be harmful. But more about that on the next slide.

- **Partial "criminalization":** (often referred to as the Swedish model) where it is legal to sell sexual services but illegal to buy them. This terminology also applies to the UK, Norway, and Finland where recently it has become illegal to purchase sex from "*trafficked*" women.
- **Legalization:** where sex work is regulated—most often through criminal law—and strict requirements are placed on sex workers if they are to work 'legally'. These may include regular STI screens, background checks by police, drug tests, etc. (This is the case in Germany, Austria, Switzerland, Nevada, & some Canadian cities that license dancers and/or escorts).
- **Decriminalization:** where neither sex work, nor activities related to sex work, appear in criminal law (New Zealand; New South Wales, Australia). OHS guidelines are in place to regulate the sex industry and these recognize labour rights & responsibilities. Abusive behaviours (kidnapping, physical & sexual assault, theft etc) continue to be regulated by the criminal code:

Barriers to + action are inherent in these environments, especially the first three (3) environments

- But, first a closer look at the Canadian Criminal Code…..



Canada, as I mentioned earlier, is an example of toleration.

Unlike the situation in most of the United States, is it **legal** to buy and sell sexual services in Canada. However, there are **three areas/activities** related to sex work that do appear in the *Criminal Code.* These prohibit :

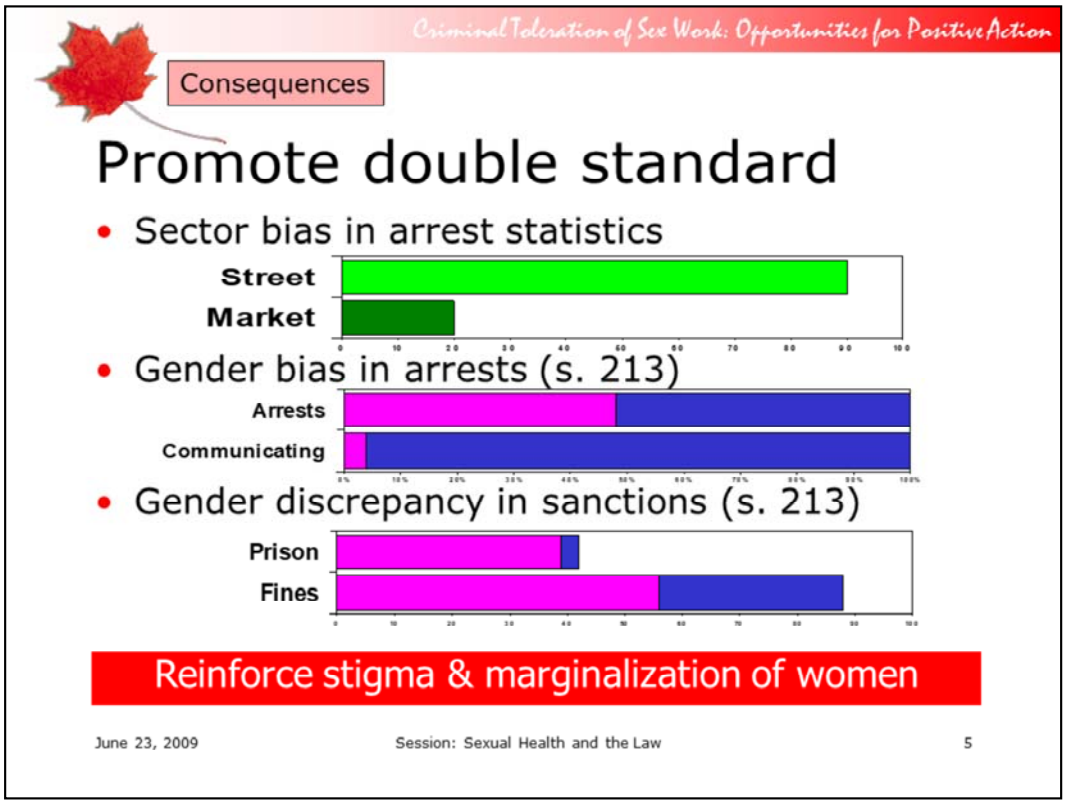
• Communication in a public place for the purpose of buying or selling sexual services (s.213). This includes *approaching or attempting to approach* someone for the purpose of prostitution & *Indecent or immoral acts/performances* (s.167 & 173)

• Third party involvement such as procuring and living on the avails of prostitution (s.212) and

• What Canadian law refers to as the bawdy houses provisions. These make in-call work and sexual contact in strip clubs or massage parlours illegal (s.210, 211).

These laws have negative consequences for PWSI.

[Bawdy House: Place where sex for money regularly occurs.]



The laws have negative consequences:

(1) The current laws promote a double standard

Visible in the extent to which enforcement patterns are biased

- Sector bias in arrest statistics (Shaver, 1993)

  Prostitution arrests: 90% street-based

  Market share: 20% street-based; 80% indoor

- Gender bias in arrests (women charged more often than men) (Shaver, 1993)

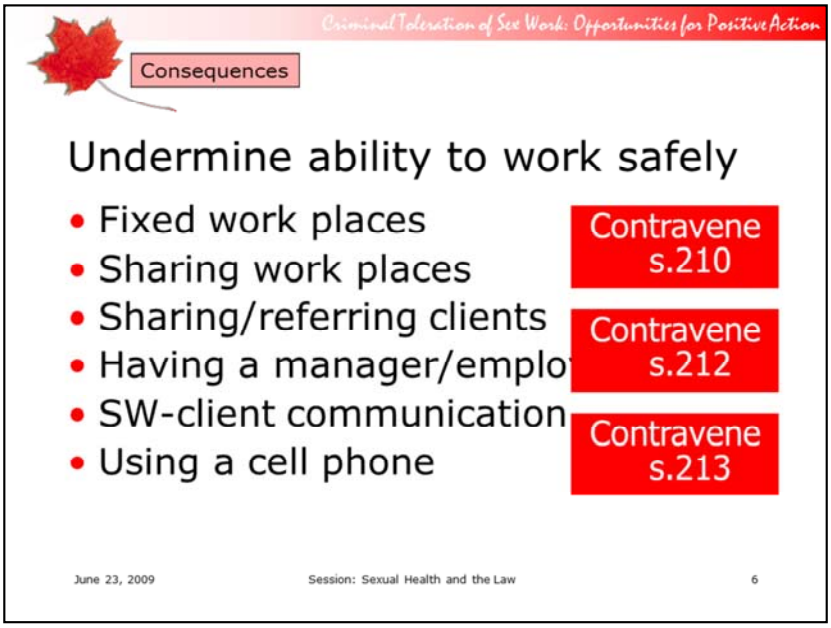
  Communication arrests: women 48% - men 52%

  Actually communicating: women 4% - men 96%

- Gender discrepancy in sanctions for communicating (more severe for women than for men (i.e. clients) (Duchesne, 1996)
  - Prison sentences: 39% women charged w/ s.213 vs 3%men
  - Fines: 56% women charged w/ s.213 vs 32% men

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Reinforce the stigma & marginalization of women



(2) Current Laws undermine the ability to work safely/securely :

• Actions taken to enhance security often contravene the law (3 examples):

• Fixed work locations / sharing work locations is a safer way to work

- but both contravene s.210 of the *Criminal Code* (bawdy house)

• Sharing/Referring clients enhances security as does having a manager or employer

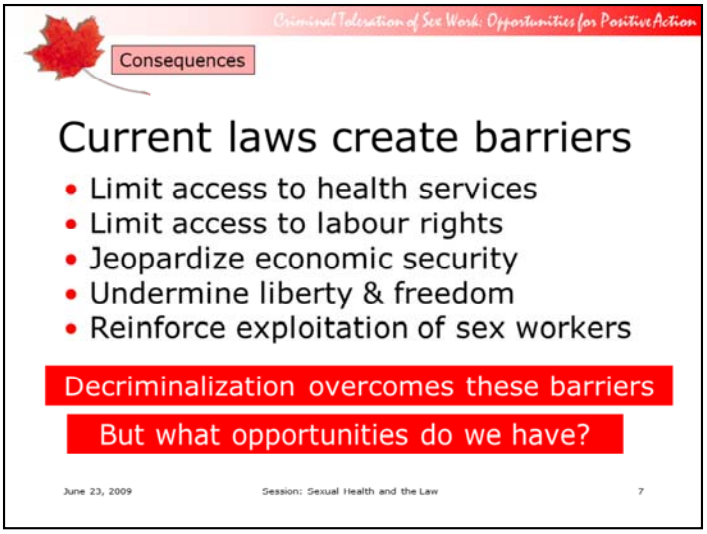
- but both contravene s.212 (procuring)

• Sex worker-client communication enhances security as does using a cell phone to arrange client appointments

- but both contravene s.213 (Communicating)

See Lewis et al. *Health, Security, & Sex Work Policy.* May 2, 2005 for detailed examples. See also STAR 2005 *Safety, Security and the Well-being of Sex Workers*. Full Policy report submitted to the House of Commons Subcommittee on Solicitation Laws (June). Both are available at www.uwindsor.ca/star

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(3) The current laws create additional barriers :

• Limit access to health services

- e.g., stigma an ongoing barrier to health and other social services

• Limit access to labour rights & protections

• Jeopardize economic security

- e.g., "proceeds of crime" legislation hinders the capacity to save or invest in future

• Undermine liberty & freedom of association

- e.g., bail & sentencing conditions prohibit workers from interacting w/ friends, colleagues in the business

-e.g., laws impede the ability to travel & cross borders

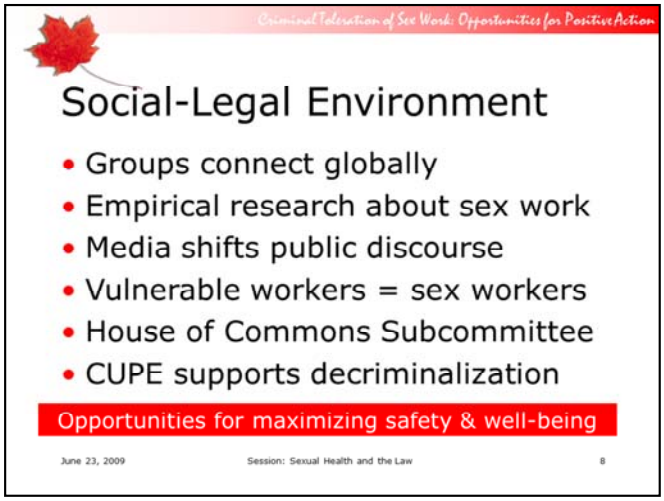
• Reinforce exploitation of sex workers

- seen as victims / stigmatized / often unwilling to report work-related violence, theft etc

Decriminalization overcomes these barriers. We will learn more about this in the next presentation.

But where does that leave those of us operating in the context of criminalization?

What opportunities to we have? The key is in a closer examination of the broader social-legal environment….



Opportunities for position action exist even here in Canada where sex work is criminalized. **The key is understanding (getting a feel for) the broader social-legal environment in which we operate.** The mid-to-late 1990s in Canada heralded several important initiatives / developments that facilitated the safety & security of sex workers in spite of the on-going criminalization of their work (i.e., do not need full decriminalization to move forward with positive initiatives):

• Canadian sex worker advocacy groups (e.g., Stella, Maggie's, perhaps even PEERS) increased their communication with similar organizations world wide that were initiating strategies for decriminalizing sex work and making sex work safer.

•There was a marked increase in empirically grounded research about sex work from a work perspective. This research highlighted the diversity of workers in the industry as well as their vulnerability to assault, substandard and unsafe work conditions, and their marginalization from mainstream social and community institutions.

• Media attention on the violence against sex workers in the late 1990s—particularly about the large number of women reported murdered or missing—shifted the public discourse toward a greater focus on the safety of sex workers.

• Resulting initiatives included:

  • The Law Commission of Canada initiated research on vulnerable workers. Their definition included sex workers.

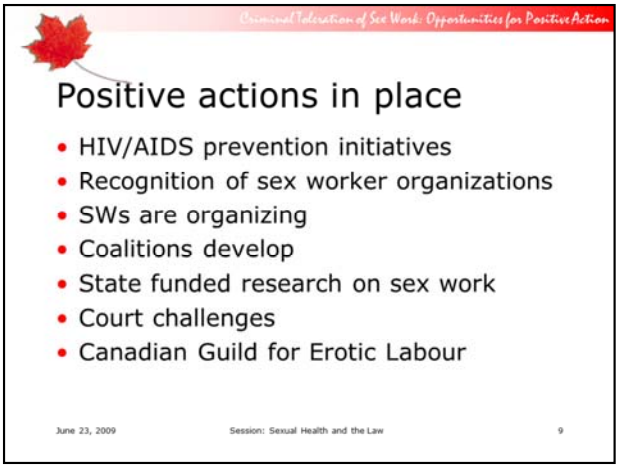
  • The House of Commons Subcommittee on solicitation laws (SSLR) was struck to review the laws in order to improve the safety of sex workers. An important initiative even through their report was disappointing (SSLR Report, 2006).

  • The Canadian Union of Public Employees (CUPE) passed a resolution supporting the decriminalization of sex work. They also took the position that sex work is a form of work that should have union representation. Grounded in a history of a strong labour movement with a social-justice, human rights orientation. Also reflected in our medical-care plans.

This context creates opportunities for maximizing safety, security, and the well-being of sex workers.

[Today I will focus on the positive actions taken and currently in development].

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Positive actions in place (even with criminalization):

- HIV/AIDS prevention initiatives

  Needle exchanges / condom distribution (NZ pre-PRA, Mtl, Vancouver)

  Safe injection site (Vancouver)

- Recognition of sex worker organizations

  State funding for projects & activities

  Awards of excellence: e.g., The *XXX Guide* designers received two Grafika prizes for excellence in graphic design in the humanitarian and "coup de coeur" categories. The Quebec Minister of Health and Social Services awarded Stella the prize for excellence in the category prevention, protection, and promotion of health and well-being for *XXX Guide* and the *Art of Striptease*.

- SWs are organizing

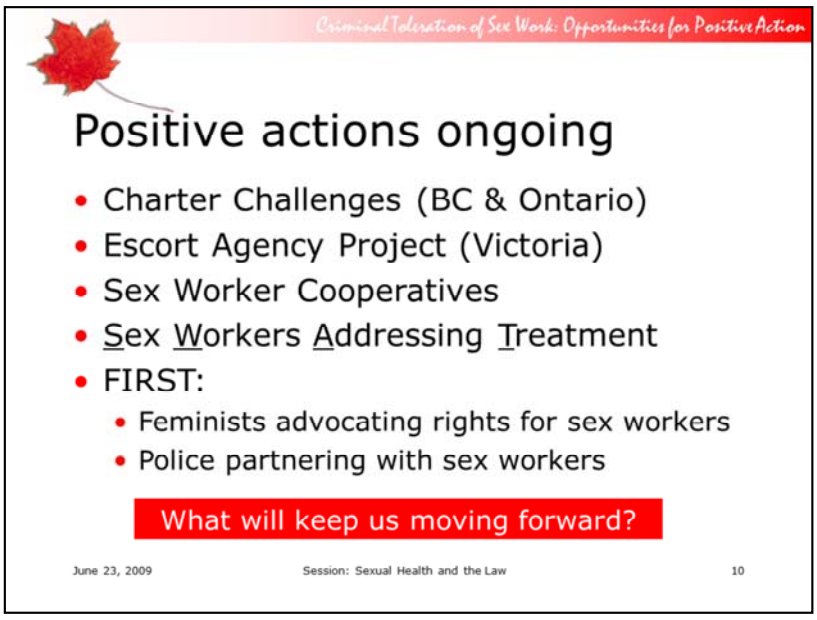
  Guidelines for safe practices proliferate e.g., Star Brochures (Safety Matters Health Matters etc) & Stella materials (XXX Guide, Art of Striptease, Dear Client Manual for Clients, Guide Dope, Bad Trick Sheet etc)

  SWs developing and promoting safe individual work practices

- Coalitions developed (between SW groups and between SW groups & others e.g., in 1999 Stella joined the Fédération des femmes du Québec (Federation of Quebec Women – FFQ) and Stella representatives were elected to the board of Directors for 2001-2002. (Note: They also joined the Committee on Violence on the National Coalition of Women against Poverty and Violence.) A tense relationship, on and off through a number of issues.
- Government funded research on sex work proliferates
- Court challenges: (Stella ticketing story) In 1998, Stella initiated a collective defence of street-based sex workers against discriminatory ticketing practices (jay walking, loitering etc). SWs were asked to plead not guilty and to bring their tickets to Stella. 3 years later (October 31, 2001) the Municipal Court rendered its verdict. It was only a partial win since there is no legislation on the books regarding the discriminatory nature of the practice. But it was still a win: the

prosecutor dropped all charges (no one was required to pay the fines)

- Canadian Guild for Erotic Labour & Exotic dancers union in place (San Francisco)



Positive actions ongoing (even with criminalization):

• Charter Challenges in BC & Ontario (Note: the BC one was rejected but has been given the right to appeal that decision)

• Brothel Project (Victoria): This project involves the development of a safe-space escort agency using recommendations from the study *Behind Closed Doors.* The goal is for profits to be dispersed into programs/services for survival sex workers. Progress is being tracked in a documentary film.

• West Coast Cooperative of Sex Industry Professionals: This group is leading the way on the West coast of Canada with strategic planning for sex industry stability, especially with respect to the most vulnerable sex workers at the street level. The ultimate goal is to end the survival sex trade (see http://www.wccsip.ca/).

•SWAT: Sex Workers Addressing Treatment: an addictions treatment model specifically for sex workers & designed by sex workers that addresses issues pertaining to working in the sex industry that are not openly addressed in traditional models. Funded by Canadian Council on Learning (CCL) & Ministry of Public Safety and in coalition with the Canadian National Coalition of Experiential Women (CNCEW).

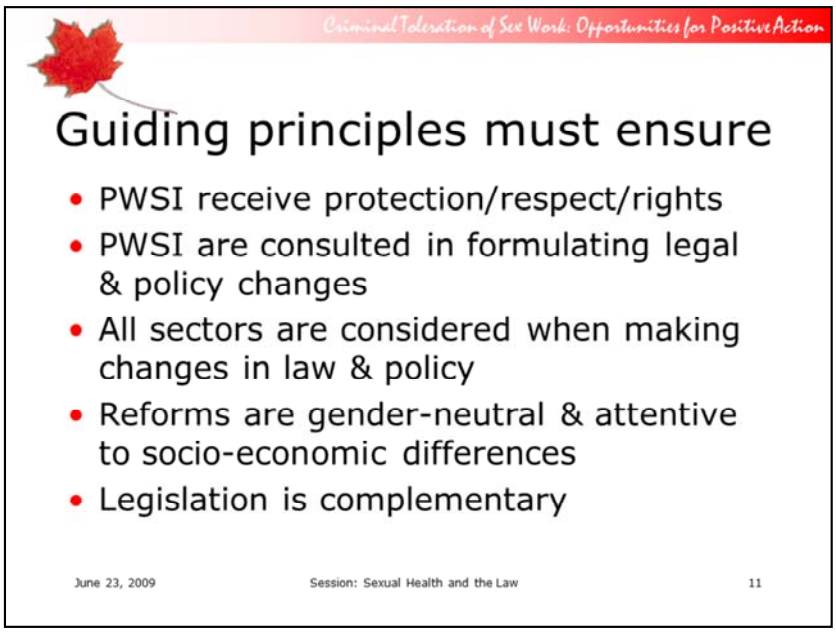
• FIRST (two projects) involving emerging allies

- Feminists advocating for the rights and equality of sex industry workers
- Police partnering with the sex industry to address safety

•These last two initiatives are particularly interesting because they represent alliances between communities that have historically experienced adverse relations.

What will keep us moving forward?

There are some Guiding Principles & Key Strategies.



Guiding principles are important for moving forward toward new social, legal and economic policies. They must ensure that:

• People working in the Sex Industry (PWSI) receive the protection, respect, and opportunity to fully exercise their rights under the law afforded to all Canadians.

• PWSI, sex worker advocacy groups, and other community organizations providing services to sex workers are consulted in formulating legal and policy changes that affect sex workers.

• All sectors of the sex industry (not just street-based work) are considered in formulating changes in law and policy.

• Legal, social and economic reforms undertaken at the federal, provincial, and municipal levels of government are gender-neutral and attentive to socio-economic differences.

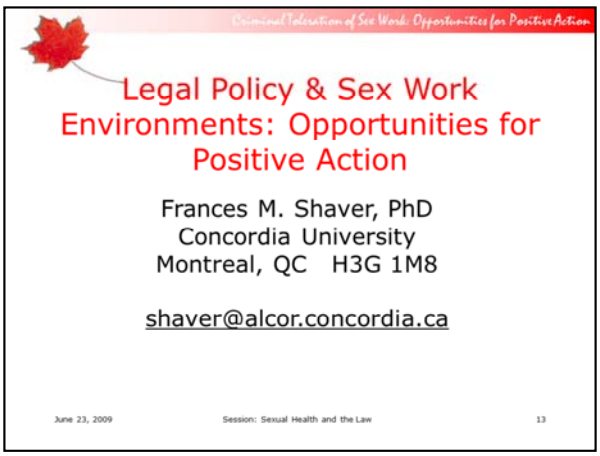
• Systems are developed to facilitate the drafting of municipal, provincial, and federal legislation to ensure they operate in a complementary rather than contradictory manner.



Key Operating Principles / Strategies for moving forward:

- Integrate legal & social reform
- Continue strategic dialogue when opportunities present
- Develop strategic coalitions
- Continue with education strategies & publications
- Build on the actions/activities where we are strong (i.e., build on what is working rather than complain when things are not)
- Organize to strengthen from within

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•STAR: Sex Trade Advocacy and Research. See www.uwindsor.ca/star

•Stella: By and for sex workers in Montreal. See http://www.chezstella.org

•West Coast Cooperative of Sex Industry Professionals. See http://www.wccsip.ca/