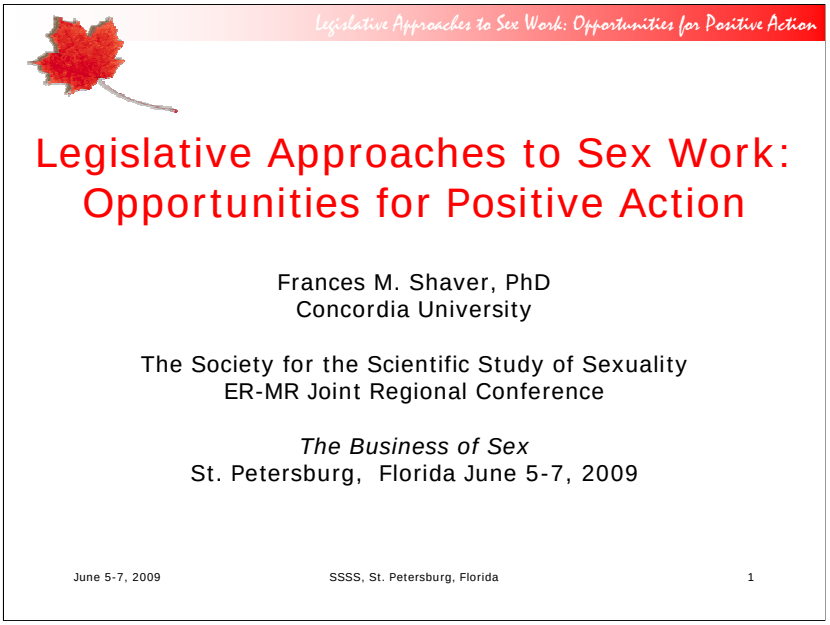
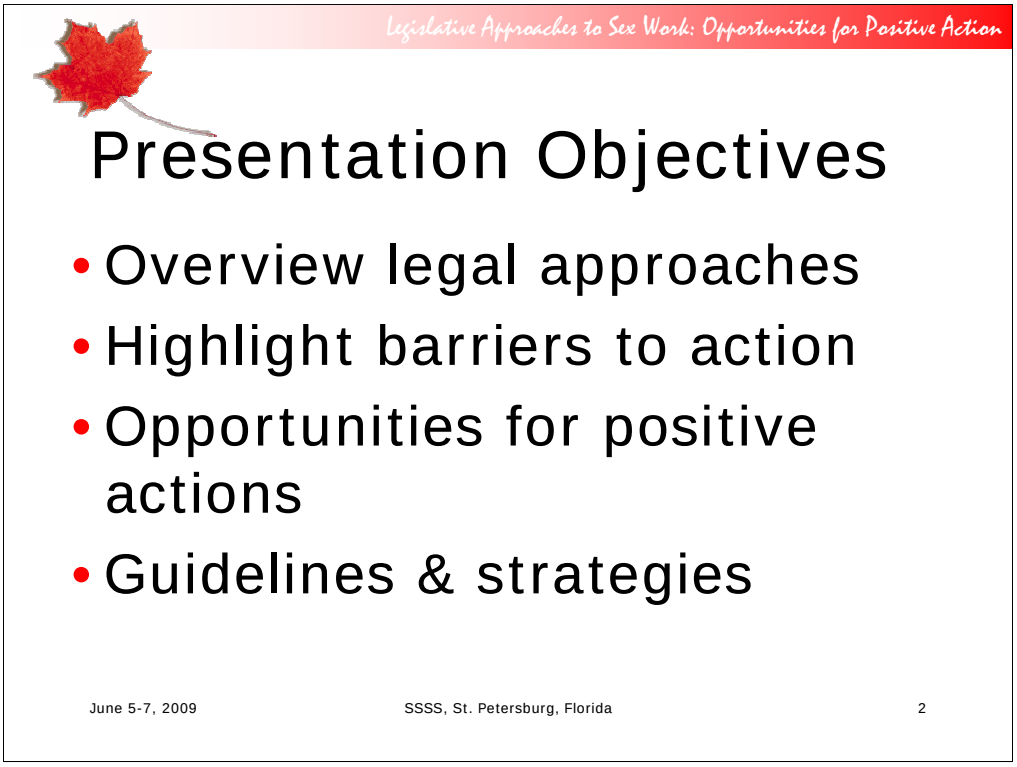


Legislative Approaches to Sex Work: Opportunities for Positive Action

Abstract: This presentation will provide an overview of four common legislative approaches to sex work: criminalization, legalization, decriminalization, and what has come to be known as the Swedish model. Specifically, the session had three objectives: (1) to highlight the differences and similarities between these four models; (2) to summarize the appropriateness and effectiveness of each approach for promoting the security, health, and human rights of sex workers, their families, and the communities in which they work; and (3) to identify—using Canadian examples—opportunities for positive action even when social and legal reforms are slow to materialize.

Shaver has been conducting fieldwork with street-based sex workers for over 20 years. Using rigorous sampling strategies and semi-structured and open-ended interviews, she has studied women, men, and transgendered people involved in street-based sex work in San Francisco, Montreal, and Toronto. Her research is grounded in a sociology-of-work perspective and has involved comparisons along gender, across geographic locations, between sectors of the sex industry, and with other sectors of the service industry, specifically hospital workers. In the late 1990s, she joined forces with two colleagues from Windsor University (Eleanor Matika-Tyndale and Jacqueline Lewis) and several community partners (including Stella of Montreal, the Exotic Dancers Alliance of Ontario, and Maggie's of Toronto) to conduct a 5 year federally funded study to examine a variety of forms of sex work in 2 major Canadian cities. In particular, the project explored the impact of public policy—including criminal law—on the health and well-being of sex workers. Separately and jointly we have produced numerous academic research papers, reports, and presentations on sex work related issues. With our community partners we also produced a series of information pamphlets for workers in the sex industry. Our website—Sex Trade Advocacy and Research (STAR)—contains many of these resources and can be reached at: www.uwindsor.ca/star. Data from these and other studies will be incorporated into this presentation.

Three educational tools will be distributed at the end of the session: a table outlining the basic tenants of the four models; a table summarizing the appropriateness and/or effectiveness of each model; and a list of resources for further reading.



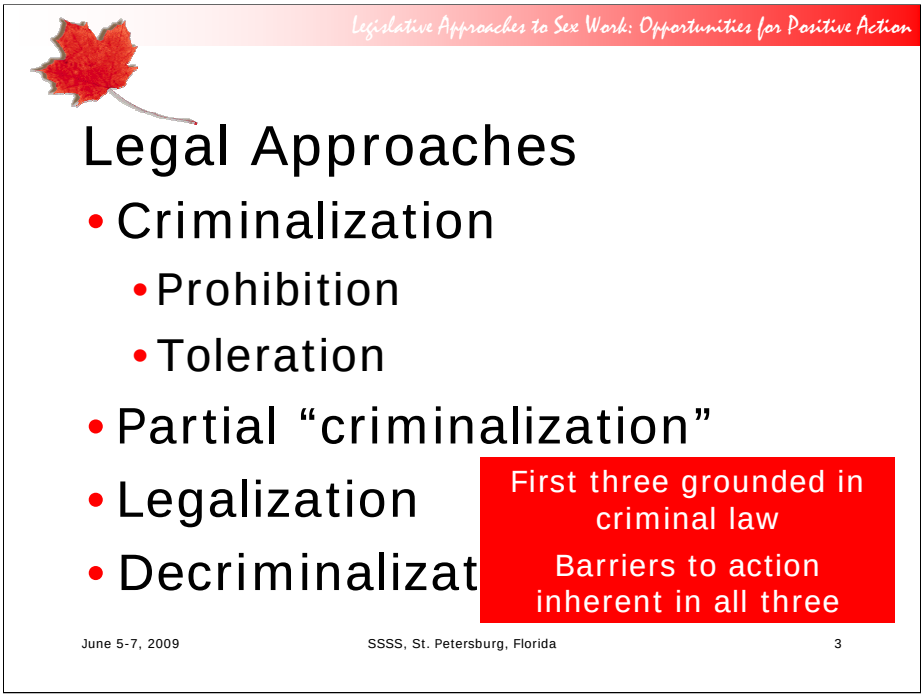
Presentation Objectives (4-fold)

• Provide an overview of four basic legal approaches in order to highlight their differences and similarities

• Highlight some barriers to action inherent in the legal approaches by summarizing the appropriateness and effectiveness of each approach for promoting the security, health, and human rights of sex workers, their families, and the communities in which they work

• Identify – using Canadian examples – opportunities for positive actions already in place in spite of the criminalized environment.

•Set out some guidelines & strategies for continuing to more forward (in spite of the criminalized environment)



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

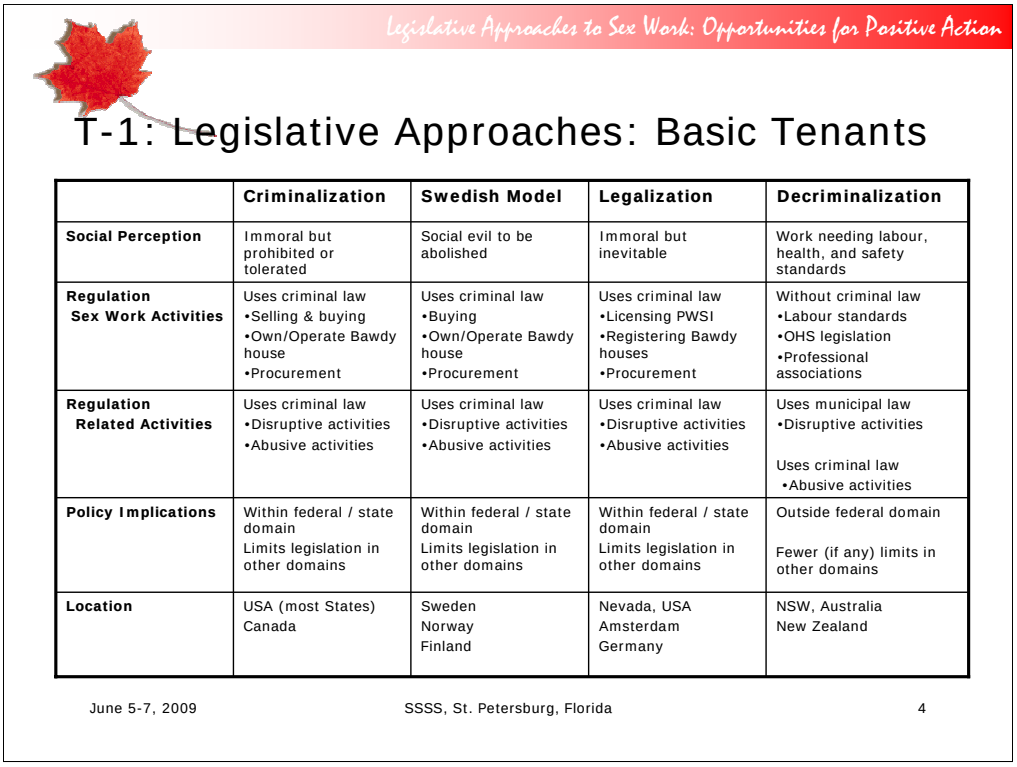
- **Criminalization (Prohibition - most of USA)**: where laws are designed to prohibit all forms of sex work including the buying and selling of sexual services

  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. *[[Note: These include communicating for the purposes of prostitution in a public place (s 213), third party involvement such as procuring and living on the avails of prostitution (s 212), and the bawdy houses provisions that make in-call work and sexual contact in strip clubs or massage parlours illegal (s.210, 211). These laws federal but enforcement patterns vary regionally. This the one of the keys to creating positive opportunities.]]*

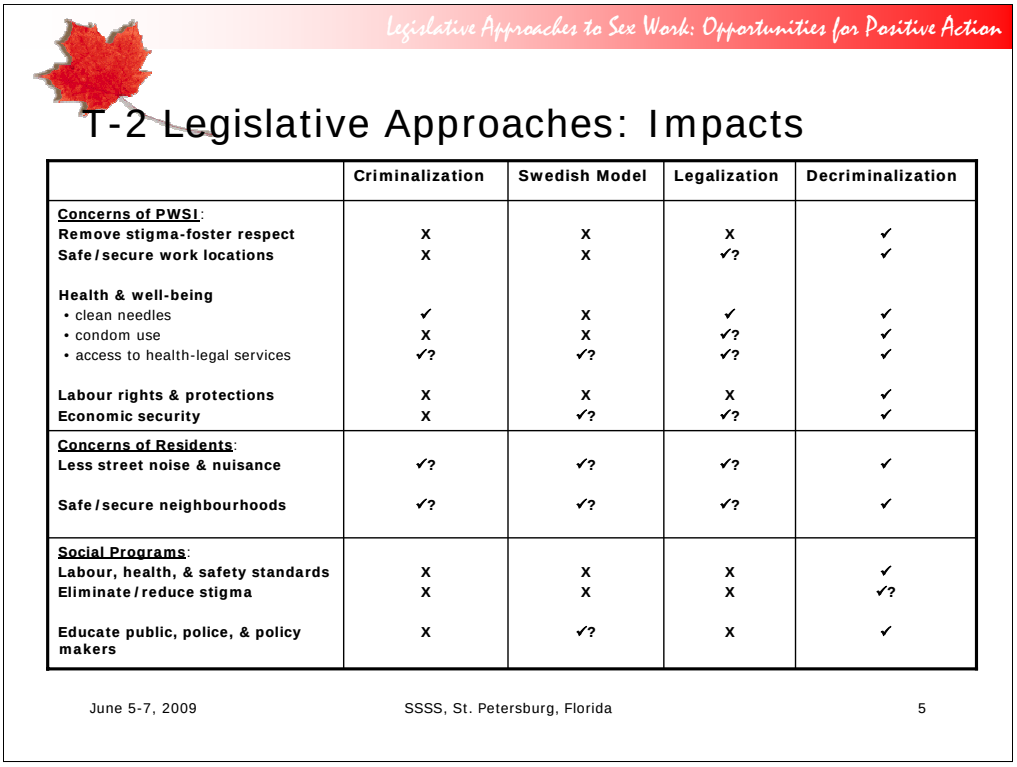
- **Partial "criminalization":** (often referred to as the Swedish model) where it is legal to sell sexual services but illegal to buy them.
- **Legalization:** where sex work is regulated through licensing, with various requirements placed on sex workers if they are to work 'legally'. These may include regular STI screens, background checks by police, drug tests (Germany, Austria, Switzerland, the Amsterdam, 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 that recognize labour rights & responsibilities. Abusive behaviours (kidnapping, physical & sexual assault, theft etc) continue to be regulated by the criminal code:

  The first three are all grounded in criminal law

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



	Criminalization	Swedish Model	Legalization	Decriminalization
Social Perception	Immoral but prohibited or tolerated	Social evil to be abolished	Immoral but inevitable	Work needing labour, health, and safety standards
Regulation Sex Work Activities	Uses criminal law •Selling & buying •Own/Operate Bawdy house •Procurement	Uses criminal law •Buying •Own/Operate Bawdy house •Procurement	Uses criminal law •Licensing PWSI •Registering Bawdy houses •Procurement	Without criminal law •Labour standards •OHS legislation •Professional associations
Regulation Related Activities	Uses criminal law •Disruptive activities •Abusive activities	Uses criminal law •Disruptive activities •Abusive activities	Uses criminal law •Disruptive activities •Abusive activities	Uses municipal law •Disruptive activities Uses criminal law •Abusive activities
Policy Implications	Within federal / state domain Limits legislation in other domains	Within federal / state domain Limits legislation in other domains	Within federal / state domain Limits legislation in other domains	Outside federal domain Fewer (if any) limits in other domains
Location	USA (most States) Canada	Sweden Norway Finland	Nevada, USA Amsterdam Germany	NSW, Australia New Zealand



	Criminalization	Swedish Model	Legalization	Decriminalization
Concerns of PWSI:				
Remove stigma-foster respect	X	X	X	✓
Safe/secure work locations	X	X	✓?	✓
Health & well-being				
• clean needles	✓	X	✓	✓
• condom use	X	X	✓?	✓
• access to health-legal services	✓?	✓?	✓?	✓
Labour rights & protections	X	X	X	✓
Economic security	X	✓?	✓?	✓
Concerns of Residents:				
Less street noise & nuisance	✓?	✓?	✓?	✓
Safe/secure neighbourhoods	✓?	✓?	✓?	✓
Social Programs:				
Labour, health, & safety standards	X	X	X	✓
Eliminate/reduce stigma	X	X	X	✓?
Educate public, police, & policy makers	X	✓?	X	✓



Current Laws create Barriers to Positive Opportunities : Research by myself and others highlight the barriers created by the first three legal approaches (criminalization, partial-criminalization (the Swedish model), legalization).

<u>These legal approaches (criminalization, partial-criminalization (the Swedish model), legalization):</u>

- **Promote double standard**
  - (Criminalization) between SWs & clients / street & off-street workers
  - (Partial-crim) between SWs & clients & managers / local & migrant workers
  - (Legalization) between licensed & non-licensed workers
- **Reinforce exploitation of sex workers**
  - seen as victims / stigmatized / often unwilling to report work-related violence, theft etc
- **Undermine ability to work safely/securely**
  - Actions taken to enhance security often contravene the 3 legal approaches (e.g., fixed work locations / sharing work locations is safe but contravenes s.210; referring clients enhances security but contravenes s.212 (procuring); sw-client communication enhances security but contravenes s.213 (cf. SSLR report for examples Lewis et al. *Health Security & Sex Work Policy.* May 2, 2005. Available at www.uwindsor.ca/star.
- **Limit access to health services**
  - stigma an ongoing barrier to health and other social services
- **Limit access to labour rights & protections**
- **Laws jeopardize economic security**
  - long term security jeopardized by “proceeds of crime” legislation hinders capacity to safe or invent 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 JUST TO NAME A FEW

Decriminalization often overcomes these barriers.



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** 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)

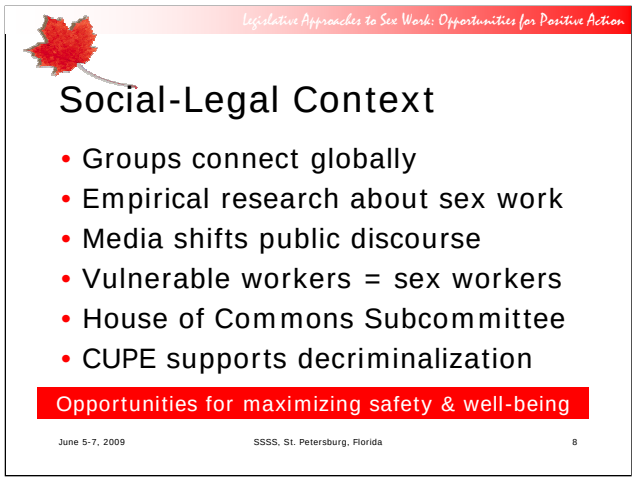
• Third party involvement such as procuring and living on the avails of prostitution (s.212) and

• 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).

The laws are federal (provisions apply across the country) but their enforcement varies from city to city.

This variation is one of the keys to positive opportunities, especially when combined with our Canadian social-legal context.

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



BUT, opportunities for position action exist even here in Canada where sex work is criminalized. **The key is understanding (getting a feel for) the social-legal context 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):

• **Global connections**: 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.

•**Empirical research increased: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.

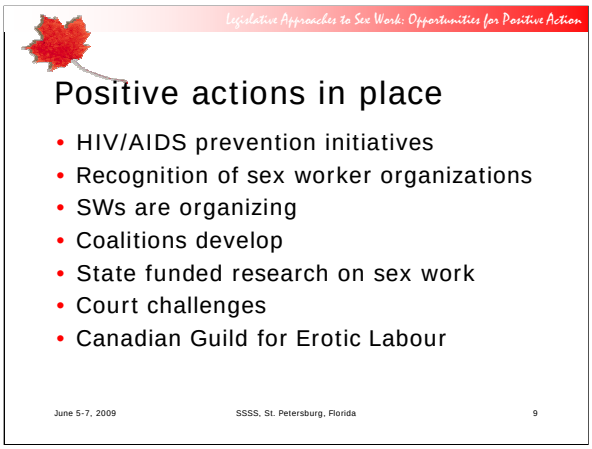
• **Resulting initiatives included**:

  • 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

  • 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 medi-care plans.

This context creates opportunities for maximizing safety, security, and the well-being of sex workers. [The next slide focuses on the positive actions taken and currently in development].



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

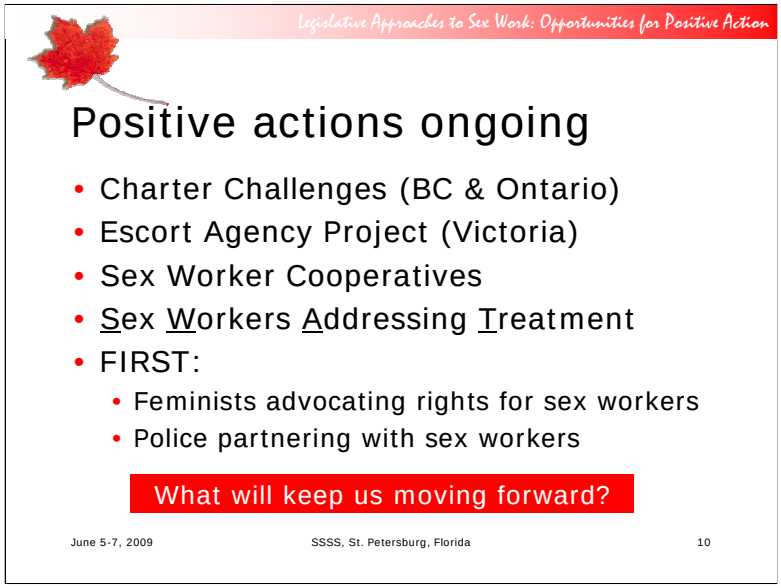
  Awards of excellence: e.g., The *XXX Guide* designers received two Grafika prizes for excellence in graphic design in the humanitarian and "coup de coeur" categories. The Quebec Minister of Health and Social Services awarded Stella the prize for excellence in the category prevention, protection, and 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.
- **State 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 (BC & Ontario)

- The BC challenge rejected but now have the right to appeal this decision.
- Ontario challenge still ongoing.

• Brothel Project (Victoria)

• West Coast Cooperative of Sex Industry Professionals

You will hear more about both of these later today

• 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).

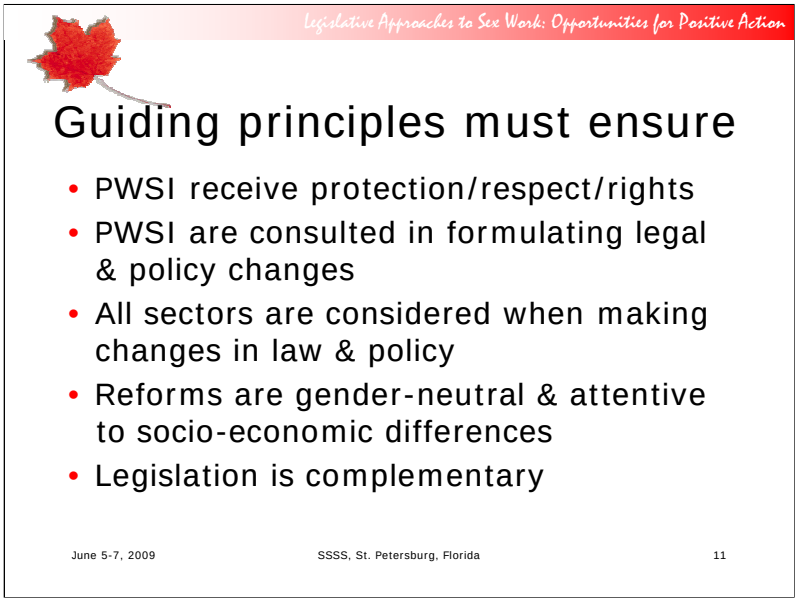
• FIRST (two projects) involving emerging allies

- 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:

• Sex workers receive the protection, respect, and opportunity to fully exercise their rights under the law afforded to all Canadians.

• Sex workers, 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.

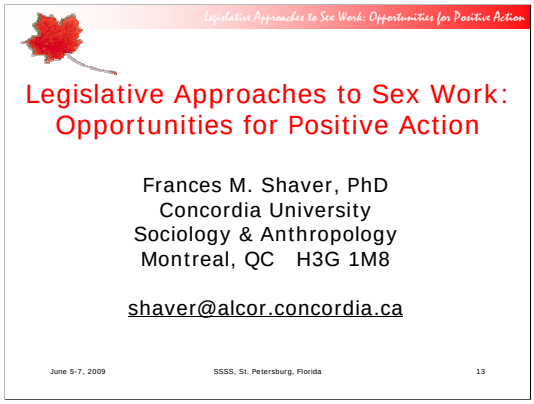
• Legal, social and economic reforms undertaken at the federal, provincial, and municipal levels of government are gender-neutral and attentive to socio-economic differences.

• 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 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



Selected Resources

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Goodyear, M. (2009) Controlling Loose Women: International trends in the regulation of the exchange of sexual services. Available at: http://myweb.dal.ca/mgoodyea/Documents/Regulation%20and%20control/Controlling%20Loose%20Women.doc

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Jeffrey, L. & G. MacDonald (2006) *Work, Stigma, and Resistance: Sex Workers in the Maritimes Talk Back*. UBC Press.

Lewis, J., E. Maticka-Tyndale, F.M. Shaver and H. Schramm (2005) Managing Risk and Safety on the Job: The Experiences of Canadian Sex Workers. *Journal of Psychology and Human Sexuality* 17(1/2), 147-167.

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Ostergren, Petra (2004) Sexworkers Critique of Swedish Prostitution Policy. Available at: http://www.petraostergren.com/content/blogcategory/20/38/

Pivot Legal Society (2006). *Beyond Decriminalization: Sex-work, Human rights and a New Framework for Law Reform.* http://www.pivotlegal.org/pdfs/BeyondDecrimLongReport.pdf

Security Matters A brochure produced by STAR. Available at www.uwindsor.ca/star

Shaver, F.M. (1985) Prostitution: A Critical Analysis of Three Policy Approaches. *Canadian Public Policy* XI (3): 493-503.

Shaver, F.M. 2005. "Sex Work Research: Methodological and Ethical Challenges." *Journal of Interpersonal Violence* Vol XX (X):1-24.

STAR (2005a) *Safety, Security and the Well-being of Sex Workers*. Full Policy report submitted to the House of Commons Subcommittee on Solicitation Laws (June). Available at www.uwindsor.ca/star

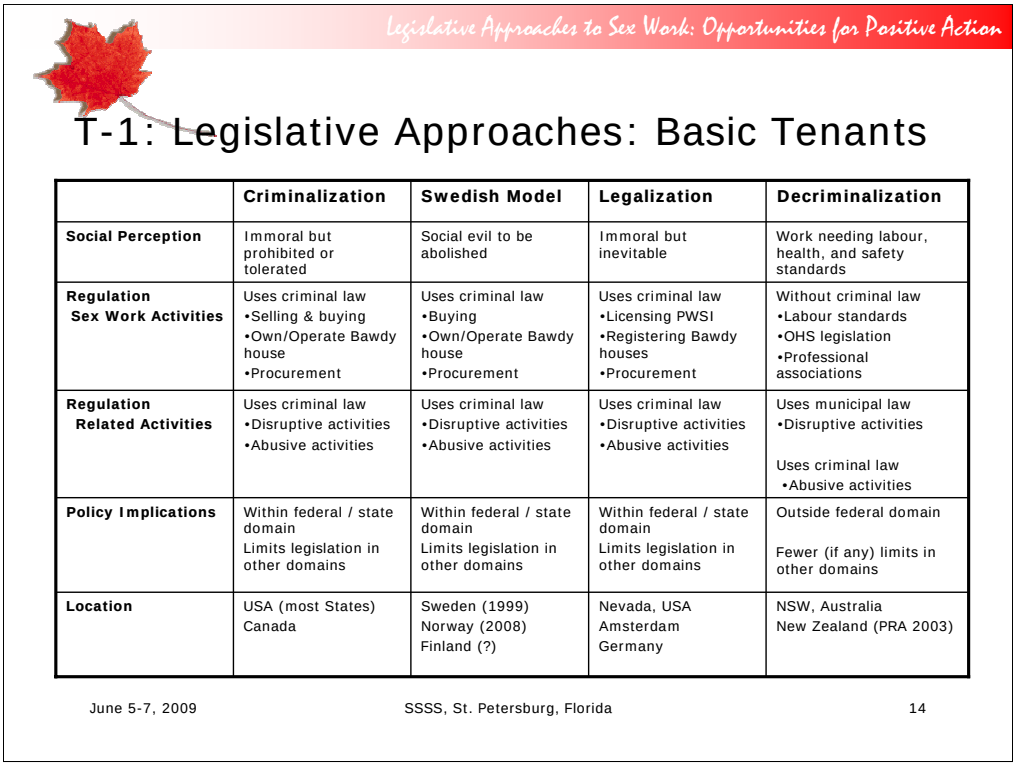
Vanwesenbeeck, I. (2001). Another Decade of Social Scientific Work on Sex Work: A Review of Research 1990-2000. *Annual Review of Sex Research* 12, 242-287.

Websites of interest

FIRST: Feminists advocating for the rights and equality of sex workers. See http://www.firstadvocates.org/

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

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



	Criminalization	Swedish Model	Legalization	Decriminalization
Social Perception	Immoral but prohibited or tolerated	Social evil to be abolished	Immoral but inevitable	Work needing labour, health, and safety standards
Regulation Sex Work Activities	Uses criminal law •Selling & buying •Own/Operate Bawdy house •Procurement	Uses criminal law •Buying •Own/Operate Bawdy house •Procurement	Uses criminal law •Licensing PWSI •Registering Bawdy houses •Procurement	Without criminal law •Labour standards •OHS legislation •Professional associations
Regulation Related Activities	Uses criminal law •Disruptive activities •Abusive activities	Uses criminal law •Disruptive activities •Abusive activities	Uses criminal law •Disruptive activities •Abusive activities	Uses municipal law •Disruptive activities Uses criminal law •Abusive activities
Policy Implications	Within federal / state domain Limits legislation in other domains	Within federal / state domain Limits legislation in other domains	Within federal / state domain Limits legislation in other domains	Outside federal domain Fewer (if any) limits in other domains
Location	USA (most States) Canada	Sweden (1999) Norway (2008) Finland (?)	Nevada, USA Amsterdam Germany	NSW, Australia New Zealand (PRA 2003)

T-2 Legislative Approaches: Impacts

	Criminalization	Swedish Model	Legalization	Decriminalization
Concerns of PWSI:				
Remove stigma-foster respect	X	X	X	✓
Safe/secure work locations	X	X	✓?	✓
Health & well-being				
• clean needles	✓	X	✓	✓
• condom use	X	X	✓?	✓
• access to health-legal services	✓?	✓?	✓?	✓
Labour rights & protections	X	X	X	✓
Economic security	X	✓?	✓?	✓
Concerns of Residents:				
Less street noise & nuisance	✓?	✓?	✓?	✓
Safe/secure neighbourhoods	✓?	✓?	✓?	✓
Social Programs:				
Labour, health, & safety standards	X	X	X	✓
Eliminate/reduce stigma	X	X	X	✓?
Educate public, police, & policy makers	X	✓?	X	✓