

The Canadian Regulation of Adult Sex Work: Its impact on the health, safety, and well-being of PWSI

Frances M. Shaver (Concordia University) & Jacqueline Lewis (University of Windsor)

Abstract: The status of sex work (prostitution) in Canada is paradoxical. The buying and selling of sexual services is legal, nevertheless, it is a highly stigmatized form of work and there are many laws and policies at several governmental levels that make it difficult to buy and sell sexual services without running into conflict with the law. This paper in an evidence-based opinion piece focusing on the ways in which off-street and street-based adult sex work are regulated in the Canadian context and the impact of its regulation on the health, safety and well-being of people working in the sex industry (PWSI). In particular we will explore how policies impact negatively on the work and personal lives of individual workers. We will also explore policy alternatives and how these can improve the situation for adult sex workers.

SHAVER has been conducting fieldwork with street-based sex workers for over 20 years and LEWIS has been conducting research primarily with off-street sex workers since 1994. We joined forces in the late 1990s with several community partners 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 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 project (Sex Trade Advocacy and Research – STAR) website contains many of these resources: www.uwindsor.ca/star.

We intend to use data from the numerous studies we have conducted (jointly and separately) to frame our paper and the analysis we present.



Our research approach is fourfold. It involves:

•Collaboration with sex workers and other interested parties [police and other justice personnel, social service and health providers, community organizations, city officials]

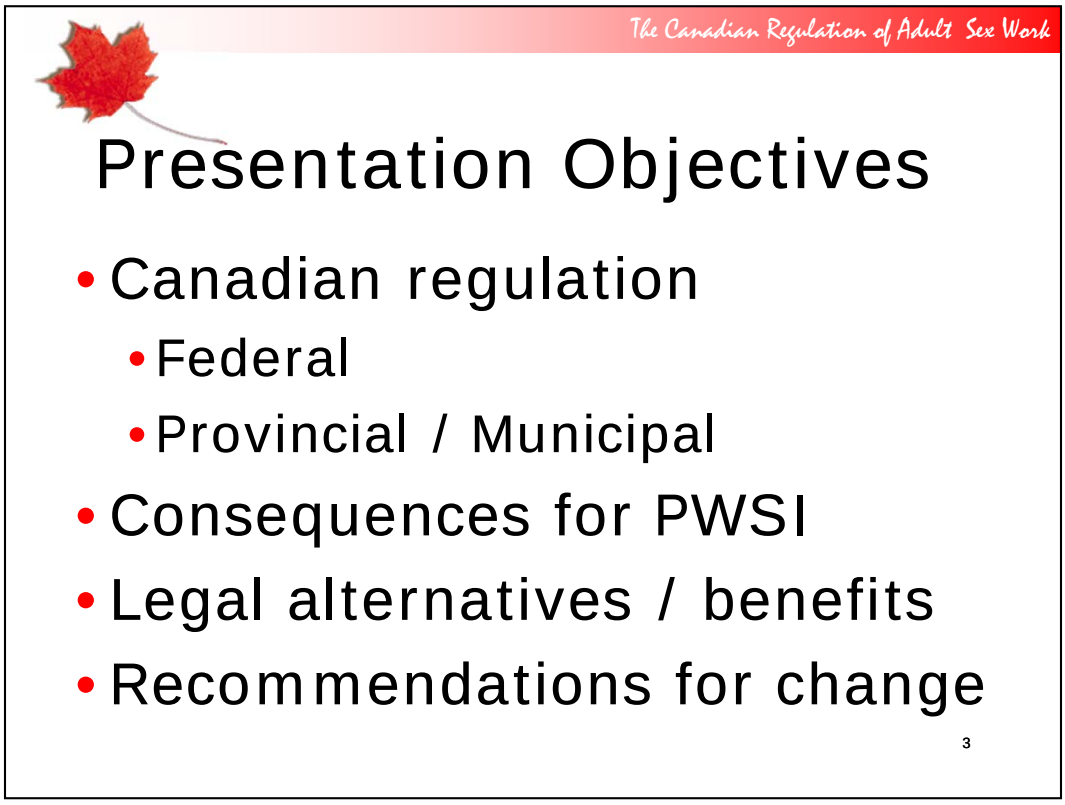
•Rigorous sampling strategies

•Semi-structured & open-ended interviews

•Comparative approach

- •Gender
- •Geographic location (SF, Montreal, Toronto, Windsor)
- •Different sectors of the sex trade
- •Sex work and other service work jobs (hospital workers)

•Over 450 sex workers interviewed



Presentation Objectives (4-fold)

• Provide an overview of sex work legislation/regulation in Canada (federal, provincial, municipal)

• Discuss the consequences of Canadian sex work legislation for the work and personal lives of PWSI

• Describe the four basic legal alternatives; their differences & similarities / advantages & disadvantages

• Provide recommendations for legislative change and beyond



Canada is an example of criminal 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.

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



Provincial & Municipal Laws

•Traffic laws (one-way streets)

•Pedestrian traffic (interfering w/ cars)

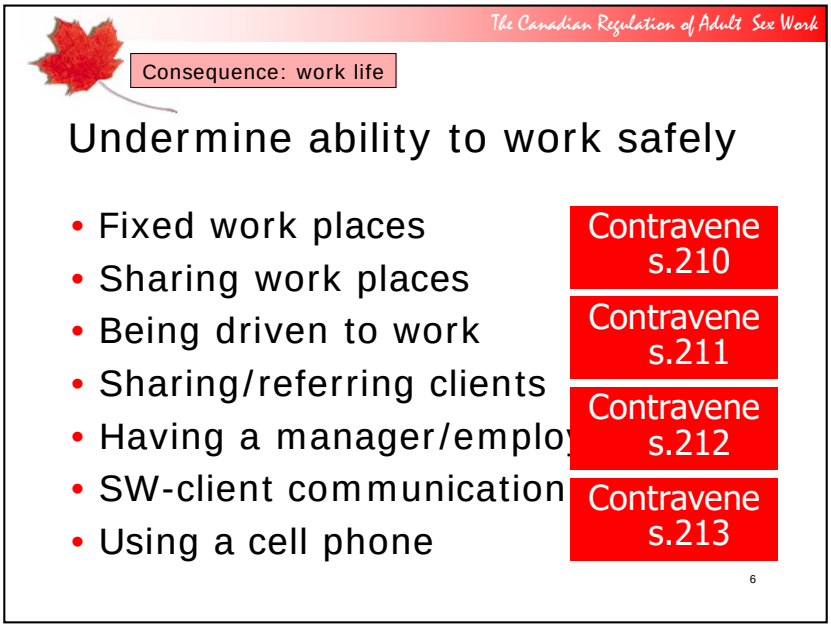
•Zoning bylaws (location of clubs)

•Licensing bylaws (escort agencies)

•Crime Victim's Compensation

In addition to the federal legislation there are provincial and municipal statutes that can apply to adults selling sexual services including legislation dealing with vehicular traffic, jaywalking, zoning, and licensing of businesses and occupations. Traffic bylaws, for example, have a direct impact on street-based workers through laws that control vehicular traffic (by establishing one-way streets) and pedestrian traffic (by prohibiting pedestrians from interfering with vehicular traffic). Zoning bylaws control the location of massage parlors, strip clubs, and escort agencies. A growing number of Canadian cities are using licensing bylaws to regulate both the businesses and/or workers involved in escorting, exotic massage/body rub, and exotic dancing. Provincial Crime Victim's Compensation legislation can also apply to PWSI if they are victims of a crime such as assault, sexual assault, robbery and violence. As we report below, the impact of provincial and municipal legislation often has a negative impact on both the work and private lives of PWSI..

In combination these Federal, Provincial, & Municipal laws have serious negative consequences on the work and personal lives of PWSI.



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

• Actions taken to enhance security often contravene the law (4 examples):

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

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

• Being driven to work contravenes s.211

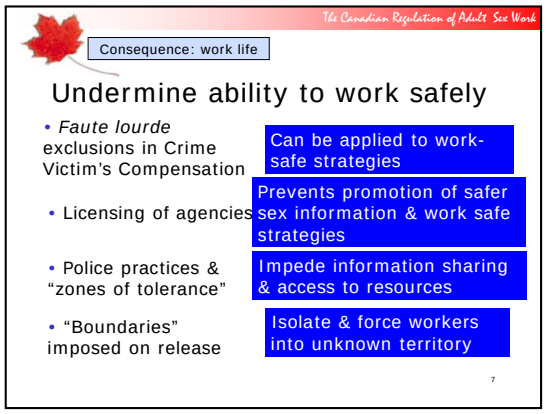
• Sharing/Referring clients enhances security as does having a manager or employer

•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



(B) Provincial & Municipal Legislation & Practices also undermine the ability to work safely/securely :

The measures that sex workers take to enhance their security also conflict with other policies.

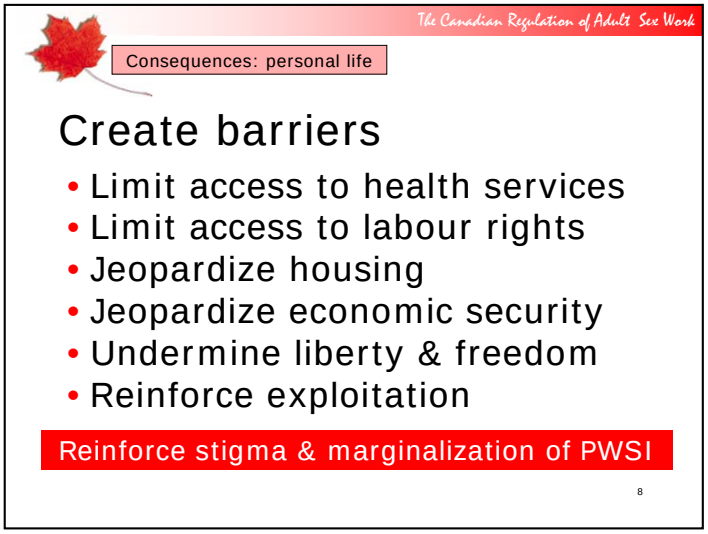
(1) In Quebec and Ontario, and similarly in most other provinces, crime victim's legislation provides for state funded benefits to victims of certain crimes such as those involving assault or violence.

- The law, however, excludes from coverage those victims who have committed a *faute lourde* (i.e., an act that contributed to their injuries or an act that indicates they were aware of the danger and could have prevented it but did not).
- In some cases this exclusionary clause has been applied to sex workers because the actions they take to maximize security are taken to indicate awareness that their work is inherently dangerous, constituting a *faute lourde*. For example, checking for exits, calling a friend, checking the placement of car door locks, having a friend take down the licence number. We note that exceptions have been made depending on the circumstances of each case. However, these have most often been in the case of exotic dancers rather than other forms of sex work. (In Quebec, for example, appeal decisions acknowledge that dancing involves a risk of violence, but it is deemed to be unpredictable, unlike the violence involved in street prostitution (cf. Lippel et al. 2002)).

(2) Information sharing among sex workers is a form of solidarity that empowers sex workers, increases their access to resources, and helps them identify situations of enhanced security or insecurity. When police practices and zoning policies make it difficult for sex workers to communicate with each other, they undermine workers' abilities to exchange information. Several examples were evident in our research:

- When the local establishments where sex workers meet or take a break become the focus of police attention, sex worker communication is affected.
- When municipalities and local police locate zones of tolerance (areas where it is felt that commercial sex activity will not disturb residents or businesses) far from amenities such as transportation, restaurants, public telephones, and other facilities, opportunities for information sharing are jeopardized as well as the security and comfort of the working environment.

(3) When judges or police impose "boundaries" on workers' release—or as part of bail or sentencing conditions—that prohibit sex workers from working in the area in which they were charged or arrested, sex workers are forced into new neighbourhoods, isolating them from friends and colleagues, regular clients (who maximize both physical and economic security) and familiar services and facilities that provide opportunities for information sharing and enhance their security (Lowman, SSLR 2005; STAR 2005).



The combination of current legislation (federal, provincial & municipal) creates additional barriers in the personal lives of PWSI that:

• 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

Together these reinforce stigma and marginalization of PWSI



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

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

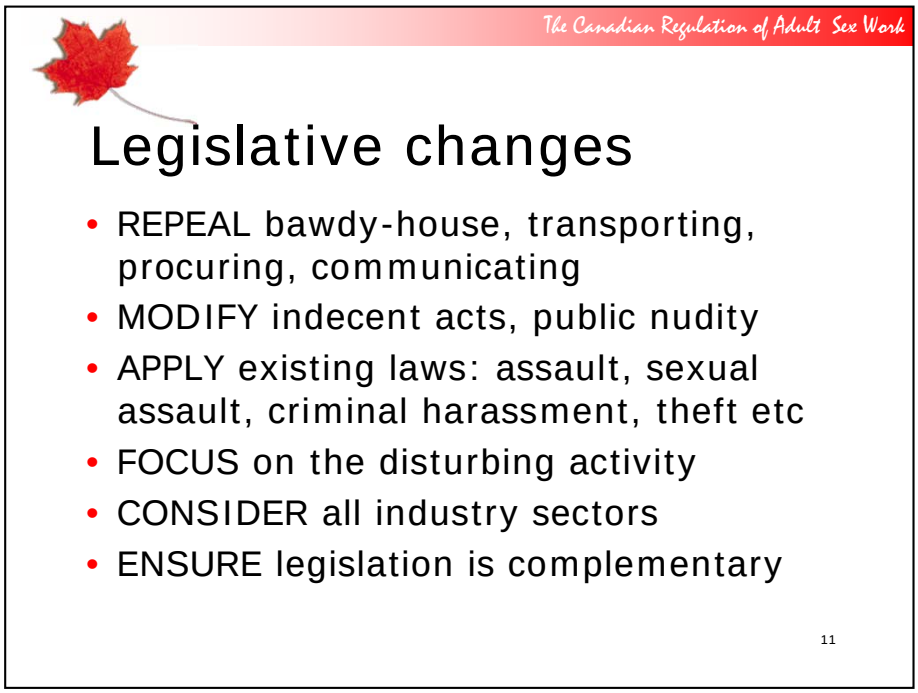
  Criminalization (Toleration – Canada & England): where the buying and selling of sex are legal but brothels, procuring and living on the avails are prohibited.
- **Partial "criminalization":** (often referred to as the "Swedish model") where the purchase of sexual services and third party facilitation are criminalized but not the sale of sexual services (Sweden, Norway, Finland).
- **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, USA).
- **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 / consequently benefits are limited.

Legislative Alternatives: Benefits

Benefits	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/secureneighbourhoods	✓?	✓?	✓?	✓
Social Programs				
Labour, health, & safety standards	X	X	X	✓
Eliminate/reduce stigma	X	X	X	✓?
Educate public, police, & policy makers	X	✓?	X	✓

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Required legislative changes:

1. Repeal all prostitution related laws in the *Criminal Code*:

•.Section 210 (the bawdy-house provision)

•.Section 211 (which prohibits the transportation of anyone to a bawdy-house)

•.Section 212 (1) & (3) (the procuring provision) [Note: s.212 (l) (f) & (g) have to do with international trafficking and my research did not deal with these sections.]

•.Section 213 (the communicating provision)

2. Repeal or modify the following sections of the *Criminal Code*:

•.Section 173 (engaging in indecent acts)

•.Section 174 (public nudity). They have resulted in an expansive interpretation of "public space" to include areas that are well out of the public "eye" and that would normally be considered private

3. Use existing legislation to counteract any criminal activity or other negative outcomes related to prostitution:

•.Criminal laws to protect sex workers (e.g., assault in various forms (s.265, s.276, s.268); sexual assault (s.271, s.272, s.273), criminal harassment (s.264), forcible confinement (s.279(2)) etc.)

•.Criminal & civil public disturbance laws to protect public from nuisance (ensure that the focus is on the disturbing activity and not the individual)

4. CONSIDER all industry sectors (not just street-based work) are when formulating changes in law and policy.

5. ENSURE legislation is complementary such that systems are developed to facilitate the drafting of municipal, provincial, and federal legislation to ensure they operate in a complementary rather than contradictory manner.



Beyond legislative changes:

Although legislative change in the form of decriminalization is clearly needed, it will not suffice to improve the situation for PWSI (see also Canadian HIV/AIDS Legal Network, 2005, Fraser Committee 1985; Shaver 1985; Benoit & Miller 2001). The role of public attitude and opinion and the stigma attached to sex work also operate to produce a negative impact on the safety, security and well-being of workers. **Thus, social and economic changes are also necessary to improve their safety and security. Such required changes include**:

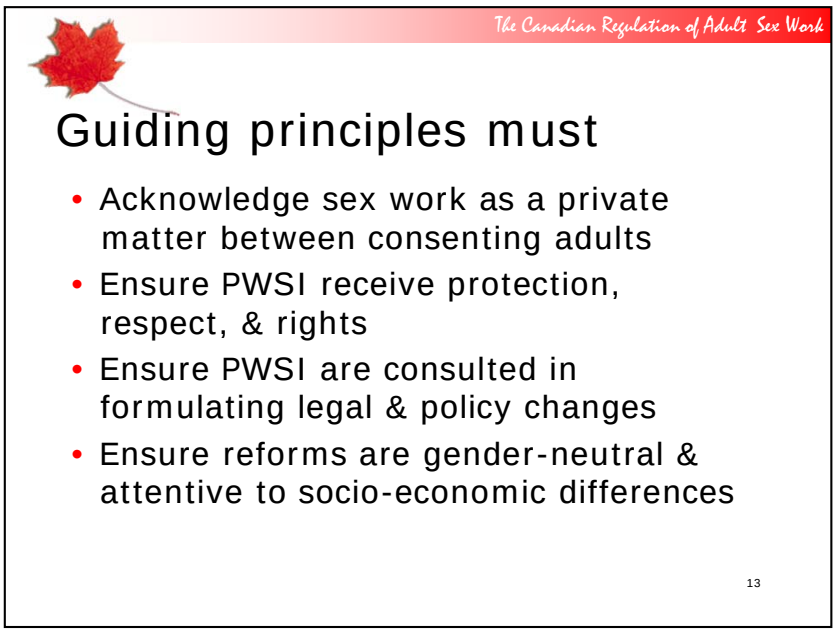
•Integrating social and educational programs with legal changes.

•Educating the public, criminal justice system personnel, and policy makers about the diversity in sex work and the lives of PWSI.

•Providing economic and organizational support for sex work organizations.

•Providing education and job training for those workers who want to leave the industry.

NOTE: Community-based organizations are an essential component to achieving these goals since they are in the best position to assist in the design and implementation of programs providing education, advocacy, and support.



We recommend that the development of new social, legal, and economic policies designed to improve the security, safety, and well-being of PWSI be guided by the following four principles. They must:

• Acknowledge sex work as a private matter between consenting adults

• Ensure that PWSI receive the protection, respect, and opportunity to fully exercise their rights under the law afforded to all Canadians.

• Ensure that 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.

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

NOTE: The principles we outline above echo those set out on the international agenda by the Network of Sex Work Projects (Wolffers & van Beelen 2003; Bidman & Doezema 1997) and in the report by Pivot Legal Society (2004): *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*.



Selected Resources