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SELLING SEX

Experience, Advocacy, and Research
on Sex Work in Canada



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This book is dedicated
to the sex workers' rights movement.

In solidarity, we have included the red umbrella,
an important symbol of the movement,
on the book's cover.



Contents

Acknowledgments / xi

Introduction / 1

Emily van der Meulen, Elya M. Durisin, and Victoria Love

Part 1: Realities, Experiences, and Perspectives / 27

- 1** Work, Sex, or Theatre? A Brief History of Toronto Strippers and Sex Work Identity / 29

Deborah Clipperton

- 2** Myths and Realities of Male Sex Work: A Personal Perspective / 45

River Redwood

- 3** Champagne, Strawberries, and Truck-Stop Motels: On Subjectivity and Sex Work / 58

Victoria Love

- 4** Trans Sex Workers: Negotiating Sex, Gender, and Non-Normative Desire / 65

Tor Fletcher

- 5** We Speak for Ourselves: Anti-Colonial and Self-Determined Responses to Young People Involved in the Sex Trade / 74

JJ

- 6 Decolonizing Sex Work: Developing an Intersectional Indigenous Approach / 82

Sarah Hunt

- 7 Transitioning Out of Sex Work: Exploring Sex Workers' Experiences and Perspectives / 101

Tuulia Law

Part 2: Organizing and Social Change / 111

- 8 Working for Change: Sex Workers in the Union Struggle / 113

Jenn Clamen, Kara Gillies, and Trish Salah

- 9 Overcoming Challenges: Vancouver's Sex Worker Movement / 130

Joyce Arthur, Susan Davis, and Esther Shannon

- 10 *Né dans le Redlight*: The Sex Workers' Movement in Montreal / 147

Anna-Louise Crago and Jenn Clamen

- 11 Stepping All Over the Stones: Negotiating Feminism and Harm Reduction in Halifax / 165

Gayle MacDonald, Leslie Ann Jeffrey, Karolyn Martin, and Rene Ross

- 12 Are Feminists Leaving Women Behind? The Casting of Sexually Assaulted and Sex-Working Women / 181

Jane Doe

- 13 Going 'round Again: The Persistence of Prostitution-Related Stigma / 198

Jacqueline Lewis, Frances M. Shaver, and Eleanor Maticka-Tyndale

Part 3: The Politics of Regulation / 209

- 14 Regulating Women's Sexuality: Social Movements and Internal Exclusion / 211

Michael Goodyear and Cheryl Auger

- 15 Crown Expert-Witness Testimony in *Bedford v. Canada*: Evidence-Based Argument or Victim-Paradigm Hyperbole? / 230

John Lowman

- 16** Repeat Performance? Human Trafficking and the 2010 Vancouver Winter Olympic Games / 251
Annalee Lepp
- 17** A Wolf in Sheep's Clothing: Canadian Anti-Pimping Law and How It Harms Sex Workers / 269
Kara Gillies
- 18** Still Punishing to "Protect": Youth Prostitution Law and Policy Reform / 279
Steven Bittle
- 19** To Serve and Protect? Structural Stigma, Social Profiling, and the Abuse of Police Power in Ottawa / 297
Chris Bruckert and Stacey Hannem
- 20** Beyond the Criminal Code: Municipal Licensing and Zoning Bylaws / 314
Emily van der Meulen and Mariana Valverde
- Afterword / 323
Alan Young
- List of Contributors / 327
- Index / 336

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SELLING SEX

Introduction

EMILY VAN DER MEULEN, ELYA M. DURISIN, AND VICTORIA LOVE

There are few subjects that garner more interest and intrigue than prostitution and other forms of sex work. This interest, however, often takes the form of sensationalist or inflammatory reaction to concerns – real or imagined – about who is participating, where it is happening, and the particular form it takes. Nuanced understandings of sex work coming from sex workers, advocates, and researchers in Canada are too often neglected in favour of polemics that are not grounded in the lived experiences of people in the industry. This collection is, in part, our collaborative intervention into dominant discourse. Key to the methodological approach adopted in this text is the location of sex workers as legitimate sources of knowledge about their work, which does not necessarily mean unanimity and agreement on all aspects of it. As the chapters in this collection attest, there are many differing positions, opinions, and perspectives. By presenting the diverse voices of a range of contributors, we aim to advance sex work theorizations, research praxis, and political organizing in support of sex workers' rights.

This collection represents a unique dialogue between and among academics, sex workers, and advocates, emphasizing the importance of personal perspectives and experiences as the basis for new and more nuanced conceptualizations of sex work. Our three-member editorial team exemplifies this dialogue since we ourselves occupy these three categories. From our different vantage points we are able to draw on our respective experiences researching, advocating, and/or working within the sex industry to ground our analyses in sex workers' lived realities. Thus, we alternate between using the first person (our, we) and

the third person (their, them) when we talk about sex work; this is to allow each editor to locate herself.

We begin this introduction with a note on language and a discussion of the central themes, concepts, and structure of *Selling Sex*. From there we move to a brief overview of the history of prostitution policy and politics in Canada from 1860 to the present. Since a major priority of this collection is to provide an in-depth analysis of the contemporary politics of criminalization in Canada and sex workers' resilience and resistance to it, it is important to contextualize the present in its historical context. We then turn our attention to the controversial and politically charged topic of conceptualizations of sex work. Our aims are to briefly recount the feminist and legislative debates, and to advance the sexual labour or 'sex-work-is-work' paradigm drawn on throughout this book.

"Sex Work" and "Prostitution"

Within the sex workers' rights movement, the language used to talk about prostitution and sex work constitutes a critical framework through which sex workers articulate their realities. As Kempadoo (1998, 3) explains, "The idea of the sex worker is inextricably related to struggles for the recognition of women's work, for basic human rights and for decent working conditions." We choose to use "sex work" and "sex workers" because this language is used by our sex-working friends and colleagues, and also by the Canadian and international sex workers' rights movements. We understand sex work as both a type of labour and an income-generating activity (Kempadoo and Doezema 1998). It is also a useful term because of its flexibility in describing activities related to the exchange of sexual services for remuneration. This can include, but is not limited to, escorting, street-based sex work, massage, prostitution, dance, pornography acting/performing, professional domination and submission, fetish, and phone sex work. We recognize, however, that this term also has its limitations. Since sex work is a highly stigmatized and criminalized activity, many do not identify themselves as sex workers or even as people who are employed in the industry. This is a challenge for a political movement focused on the identity "sex worker." We highlight this as an issue for sex work activism, one that will continue to shape the focus and goals of the movement.

Some of our academic and sex-working colleagues use the words "prostitution" or "prostitute" to describe their own sex industry activities or when a differentiation of labour arrangements is relevant for the context of the situation. "Prostitution" is also used in this collection when certain policies, such as specific sections of the Canadian Criminal Code, are being analyzed, or when

it's historically relevant to the ways in which sex workers are identified. Thus, our use of "prostitute" and "prostitution" does not necessarily reflect how individual sex workers engage with this language, but signals the relevance of these terms for legal and policy matters.

Themes, Concepts, and Structure of the Collection

A number of overarching themes and concepts have been interwoven throughout the chapters that make up this book. Perhaps the most significant of these include sex-work-related stigma, sex workers as knowledge producers, and sex workers' perseverance and resilience. Stigma in particular is raised as an issue by a number of the contributors. Sex workers report being routinely confronted with multiple forms of stigma, ranging from the institutional stigma experienced in our relationships with the police to that faced in our personal lives, as workers, friends, and activists. Although we work in the sex industry, we simultaneously live our lives as daughters, sons, sisters, brothers, mothers, fathers, students, friends, lovers, and numerous other identities. Because of sex-work-related stigma and its relationship to criminalization, however, many of us must live our lives with some degree of secrecy and fear of exposure. The salience of stigma throughout this collection speaks to a particular dimension of sex workers' lived realities.

Our struggle to be understood as knowledge producers, not simply as objects of research or study, is another theme that unites the chapters. Central to our knowledge production as members of the sex workers' rights movement is the social legitimacy of our labour. Although each of us has developed different knowledge based on our unique experiences, and though we do not all share the same opinions or have the same concerns, we are nevertheless in near unanimity about our understanding of sex work as a form of labour. Despite stigma and resistance to locating our knowledge as legitimate knowledge, sex workers have shown tremendous perseverance and resilience. Thus, this text is also unified by our endurance and strength as we continue to live and work in the face of harmful legal regimes and social prejudice. This collection is a testament to our agency and ability to take action, whether as workers trying to get by day-to-day or as activists trying to change the legal system. Regardless of where in the industry we are located or the understanding we have of our work, we are wilful actors; to say we are anything less simply doesn't reflect our experiences.

In order to unpack these themes and concepts, we have divided the book into three parts, each of which includes writing by sex workers, advocates, and

researchers. Part 1 focuses on sex workers' diverse realities, experiences, and perspectives to add nuance and complexity to conceptualizations of sex work. The contributors in Part 1 come from a variety of social locations, and they challenge many of the existing theories of prostitution both by illuminating the remarkable diversity of the industry and by illustrating how interlocking systems of oppression (including racism, classism, sexism, colonialism, homophobia, and transphobia) shape one's experiences of and feelings about sex work. The chapters make visible the complex experiences that are often rendered invisible in both academic and mainstream discourse – namely, those of Aboriginal, youth, male, and trans sex workers. Part 1 also highlights the changing organization of labour within exotic dance, as well as sex workers' challenges with transitioning from sex work to mainstream jobs. Through their analyses, contributors are steadfast that sex work is a socially valuable form of labour and that despite the challenges many face, it can be fulfilling and can offer numerous benefits.

Building on the complexity and diversity of experience presented in Part 1, Part 2 is an exploration and analysis of sex workers' social movements and organizing for social change. Contributors highlight the historical unfolding of the contemporary sex workers' rights movement in Canada and sex workers' attempts to organize against not only poor working conditions in the industry, but also against misperceptions about the work itself. Chapters focus on sex workers' labour organizing with mainstream unions, as well as organizing and struggles for sex workers' rights in various cities, such as Vancouver, Montreal, and Halifax. This part also explores some of the challenges and barriers to the advancement of a sex workers' rights agenda, in particular anti-prostitution feminism and the persistence of stigma and discrimination. Despite the challenges, sex workers across the country, and across the world, continue to organize for improved rights and protections.

Part 3 concludes the book with an analysis of the politics of regulation in Canada. Its chapters are unified through their analyses of the contradictions of Canada's prostitution laws and the significance of the ways in which sex workers have been and continue to be produced as subjects in political discourse. By looking at a recent federal review of prostitution policy and the Ontario constitutional challenge of aspects of the Criminal Code, Part 3 opens with an examination of the impact of differing discourses on policy processes. It also examines anti-trafficking initiatives, procuring laws, and youth prostitution policy to consider the ways in which laws and policies that purport to protect sex workers may instead produce the conditions for harm. Part 3 concludes with a consideration of the politics of regulation in municipal jurisdictions,

looking at police abuse of power in Ottawa as well as various complex and often contradictory municipal bylaw systems across the country. The afterword closes the text with a call for legal changes that will allow sex workers to work in safe and secure conditions.

Selling Sex covers an expansive range of topics, which reflects and encourages a broader shift in research and writing toward increasingly complex understandings of sex work in Canada. Inevitably, though, some important areas of research are not included here. Perhaps the most significant in this respect is the body of work by francophone authors (see Thiboutot 1994; Nadeau 2003; Parent et al. 2010; Mensah, Thiboutot, and Toupin 2011). Important work has also been done in other areas that are considered, but not fully explored, in this book; these include clients and John Schools (see Lowman and Atchison 2006; Atchison 2010; Khan 2011), bondage, domination, and sadomasochism (see Young 2003; Khan 2009), HIV/AIDS and other sexually transmitted infections (see Maticka-Tyndale et al. 1999; Betteridge 2005), and street-based sex work (see Allinott et al. 2004).

Canadian Sex Work Policy and Politics

Prostitution Policy Development in Canada (1860-1915)

Contemporary configurations of sex work and sex work policy in Canada have emerged out of a complex and contested history. Before criminal law became the jurisdiction of the federal government in 1867, the criminalization of prostitution-related activities in Canada was primarily focused in two areas: provisions were aimed at reducing residential brothels, street prostitution, and vagrancy, and at protecting girls and women under twenty-one years of age from defilement by “false pretenses” (McLaren 1986). The laws were, in part, based on a social understanding of the monetary and proprietary value of women in relation to a male counterpart, their husband, brother, or father. Some cities and communities tolerated a certain level of prostitution in recognition “of the need to service the large surplus male population” (ibid., 127). Other cities, however, saw prostitution as a nuisance, and police focused on reducing the trade. Prostitution was classified as a status offence, which meant that women were subject to vagrancy charges and detention merely for *being* prostitutes.

Canadian criminal laws and social values at the time were greatly influenced by the moral and social purity movements in Britain, including those surrounding the Contagious Diseases Acts (CDA) (Walkowitz 1982; Phoenix 1999) and white slavery panics in the United States (Rosen 1982). Canada implemented its own Contagious Diseases Act from 1865 to 1870, which meant that

women could be detained on the suspicion of having a venereal disease, as it was called at the time, and forcibly confined in a certified “lock hospital” for up to three months (McLaren 1986). Because no such hospitals were certified during this time, the Canadian CDA was never really enacted, and it expired with very little impact in 1870.

In 1869, the year before the Canadian CDA was to end, Canadian politicians passed a law intended to prevent occurrences of prostitution. Titled An Act Respecting Vagrants, the Vagrancy Act maintained the existing status offence for prostitution and added new provisions that criminalized men who were found to be “living on the avails.”²¹ On paper, the Vagrancy Act was relatively more equitable as it equally targeted and criminalized the procurers, prostitutes, and managers/owners of bawdy-houses. In practice, however, women were disproportionately charged (C. Backhouse 1991). Major social and political changes occurred at the federal level between the 1869 Vagrancy Act and the 1892 ratification of Canada’s first Criminal Code. Legal historian Backhouse (ibid., 255) has argued that these changes were a “response to a growing outcry from middle-class social reformers against the sexual exploitation of women.” The campaign for social and moral reform, she continues, was really an attempt to eradicate sexual double standards and to encourage the same (female) standard of chastity and purity for both genders. Moral reformers saw the strengthening of family values as a way to save society from moral decay, and since women were viewed as the guardians of the family’s welfare, they in particular needed to be shielded from male licentiousness; eradicating prostitution was seen as a good place to start. In response, Canadian laws pertaining to prostitution were developed into a highly complex series of provisions that sought to protect women from the wiles of the procurer, pimp, and brothel keeper, and also included increased penalties for convictions (McLaren 1986).

Codified in 1892, Canada’s first federal Criminal Code contained an inclusive and wide-ranging series of provisions against prostitution and other “offences against morality,” including: the seduction of “previously chaste girls” of fourteen to sixteen years of age as well as women under twenty-one “with promise of marriage”; the protection from procuring for women who were under twenty-one and were not prostitutes or “of known immoral character”; the provision that no woman or girl could be enticed into a “house of ill-fame” for the purposes of prostitution; and the protection from procurement by their parent or guardian to have “carnal connection” with a man (*Criminal Code, 1892*, ss. 181-82, 185(a), 185(b), 186). Bawdy-house offences, previously dealt with under the Vagrancy Act, were also made stricter and subsumed into the Criminal Code.

Despite the rhetoric of saving innocent girls and women from the evils of carnal knowledge and those who would force it upon them, the first Criminal Code did not contain legislation directed at prostitutes' customers. It is here that the unique, and somewhat contradictory, social positioning of prostitution is most apparent. On the one hand, it was argued that prostitutes were victims in need of legal protection. On the other hand, it was thought that prostitution provided a necessary and inevitable outlet for male sexual needs, which should not be criminalized; thus, prostitution was both a necessary evil and a social ill. As the moral reform movement grew and gained mainstream popularity across North America during the early twentieth century, the social positioning of prostitution as a necessary evil that could be regulated began to erode, and it was increasingly characterized as a social ill that needed to be prohibited (Rosen 1982). This ideological and legislative shift also corresponded to the early-twentieth-century white slavery panic (Ringdal 2004), whereby Canadian and international policies were created to prohibit occurrences of white girls and women being lured into prostitution (Donovan 2006).² In 1913, the Canadian Criminal Code was accordingly adapted to include additional punishments for offenders, both in number and severity.

In the subsequent decades, the federal government did little to modify the Criminal Code in relation to prostitution. In effect, during the fifty-five years surrounding the enactment of the first Criminal Code, from 1860 to 1915, Canada's laws on prostitution developed from a set of segmented offences directed at protecting young women and girls and reducing street nuisances to complicated and far-reaching measures applied to a series of unlawful activities with stricter penalties for all in violation (F.M. Shaver 1996). For the next fifty-five years, from 1915 to 1970, the Criminal Code remained almost entirely unchanged in its criminalization of prostitution-related activities.

Recent Changes to Prostitution Legislation (1970-2000)

Since it had remained almost entirely unmodified since 1892, the vagrancy section of the Criminal Code relating to sex work continued to read that a woman, if found walking alone at night, needed to "give a satisfactory account of herself" or risk arrest (Robertson 2003; see also *Criminal Code, 1892*, s. 207(i)). Thus, women could be charged for what they were presumed to be, not for what they actually did. Police officers subjected women to overnight detentions and mandatory medical exams, all of which were legitimate according to the vagrancy laws (Brock 1998). It wasn't until 1972, when it was argued that the status offence of vagrancy was in violation of the 1960 Bill of Rights,

that the whole of the vagrancy legislation was revoked and replaced by laws that prohibited soliciting. Since the original bawdy-house and procuring sections of the Criminal Code were separate from the vagrancy sections, they remained in effect along with the new soliciting offence. Thus, *being* a prostitute was no longer illegal; instead, the law criminalized the activities that surrounded it.

In the years directly following the ratification of the solicitation law, both the police and the courts were confused and unsure as to how to interpret the legislation. Further, despite the gender neutrality in the wording of the law, the police were still predominantly arresting and charging women. After six years of confusion and conflicting court rulings, in 1978, the Supreme Court ruled in *Hutt v. R.* that if a prostitute were to be criminally charged, solicitation must be “pressing or persistent,” which reduced police powers of arrest (Sturdy 1997; Boritch 2005; Jeffrey 2004; see also *Hutt v. R.* 1978). Residents’ groups, politicians, and the police publicly critiqued the now almost unenforceable law: residents’ groups charged that street prostitution was increasing; municipalities attempted to control the trade through city bylaws (which were later deemed *ultra vires*, or invalid); and the police complained that they were left with little power to lay charges (Brock 1998).

It was around the same time that sex workers themselves were beginning to form organizations across North America, partially in response to increased public focus on their work. In 1977, Canada saw its first sex work organization, BEAVER (Better End All Vicious Erotic Repression), which soon changed its name to CASH (Committee against Street Harassment). Not long after, in 1982, sex workers and allies in Vancouver created the Alliance for the Safety of Prostitutes (ASP), and in 1983, the Canadian Organization for the Rights of Prostitutes (CORP) was formed in Toronto. Also, at the same time, urban spaces were gentrifying as middle-class residents were increasingly moving from suburban areas into what were then becoming more desirable downtown locations. Inner-city geographies, which had been home to sex workers and the urban poor, were becoming contested spaces. Further, the second wave of the women’s movement was engaged in heated arguments around issues of gender and sexuality. These extra- and intra-movement debates, commonly called the sex wars, would see conceptualizations of prostitution and pornography as disputed terrain (Vance 1984; Duggan and Hunter 1995).

With mounting pressure from the courts, police associations, residents’ groups, and mayors of the country’s largest cities, the federal minister of justice, appointed by the ruling Liberal Party, decreed that the national “problems” of prostitution and pornography needed a national solution. In June of 1983, the Special Committee on Pornography and Prostitution was created. Commonly

called the Fraser Committee after its chairperson, Paul Fraser, it was to research, through a socio-legal frame, pornography and prostitution in Canada (Special Committee on Pornography and Prostitution 1985). During its nearly three years of public consultation and research, the committee heard from only a small number of sex workers.

Public reaction to the release of the committee's final report varied considerably, with the media focusing on one of the most controversial of its 105 recommendations – the loosening of brothel, pimping, and licensing laws. The Fraser Committee argued that it should be allowable for “small numbers of prostitutes to organize their activities out of a place of residence” and that the Criminal Code should not prevent the “provinces from permitting and regulating small-scale, non-residential commercial prostitution establishments employing adult prostitutes” (ibid., 684). Although some women's organizations and civil liberties associations as well as individual social workers and sex workers were in support of the findings, criticisms came from many radical feminists, municipal politicians, and representatives of religious groups. Less than a week after its release, the newly appointed Progressive Conservative minister of justice introduced Bill C-49, which would come to have devastating effects on sex workers in Canada.

The main crux of Bill C-49 was its proposal to make “communication” for the purpose of engaging in prostitution a Criminal Code offence for both sex workers and clients, and to eradicate the earlier ruling that solicitation had to be pressing or persistent, which would make sex workers liable for arrest at the mere suggestion of sex. Additionally, Bill C-49 proposed to turn parked cars into public places, making it illegal to engage in commercial sex in one's own vehicle. Within six months, and in direct contravention of the Fraser Committee recommendations, Bill C-49 was passed by Parliament with a wide majority vote.³ Shortly afterward, it became section 195.1 of the Criminal Code (now section 213). Three years later, the mandatory review of the communication law concluded there was a drastic inequity in enforcing prostitution laws and that many sex workers “simply have longer criminal records” (DoJ-C 1989, 118). It also stated that the criminalization of communication had not succeeded in curbing prostitution, as originally intended, claiming “the main effect was to move street prostitutes from one downtown area to another, thereby displacing the problem” (ibid., 119). In addition to being disproportionately charged and displaced under the new legislation, sex workers, many of whom began working after the 1978 “pressing or persistent” ruling, were also reporting an increase of violence on the streets and more punitive policing measures including detentions, curfews, and strict bail conditions (Brock 1998).

In the late 1980s, the constitutionality of the communication and bawdy-house laws was put to the test and challenged on the basis that they violate the Charter of Rights and Freedoms, particularly the freedom of expression and freedom of association. In 1990, the Supreme Court upheld the constitutionality of both laws, concluding that the prohibition against keeping a common bawdy-house does not violate one's Charter rights, and that although the communication section might indeed be an infringement, this infringement was within reasonable limits (*Reference re ss. 193 and 195.1(1)(c)* 1990).⁴

Another review of Canada's prostitution policy was initiated in 1992. Called the Federal-Provincial-Territorial Working Group on Prostitution, it focused primarily on youth sex workers and street-based sex work (Working Group 1998). Among its recommendations, the Working Group suggested that youth prostitution laws be made easier to enforce and that sentences for procurers and customers should be increased and/or made mandatory.

After the constitutional challenge of the communication and bawdy-house laws in the late 1980s, the early 1990s saw three other cases brought before the Supreme Court on the basis that the prostitution-related sections of the Criminal Code were in violation of the Charter.⁵ In each instance, the Supreme Court ruled against the challenges and concluded that when and if the prostitution laws have infringed one's rights, this infringement was again a justifiable reasonable limit.

Between 1991 and 1995, sixty-three known prostitutes, sixty of whom were women, were murdered in Canada. It was thought that most were killed by men posing as clients (Lowman 1998). In a study of violence toward sex workers in British Columbia before and after the communicating law, Lowman and Fraser (1996) found that twelve sex workers were murdered in the six years preceding the legislative change (an average of two per year) compared to the four murders in 1985, the year the new law was enacted, and an average of five murders per year from 1986 through to 1995. From 1996 to 2006, an average of seven sex workers were murdered per year (*Bedford v. Canada* 2010, 296). Lowman and Fraser argue that the communicating law created a symbolic marginalization of sex workers that contributed to their displacement and made them easier targets of violence.

Current Policy Status (2000-Present)

The most recent federal review of Canada's prostitution laws was initiated in response to the continued violence against sex workers, in particular those who worked in Vancouver's Downtown Eastside and went missing or were murdered. Called the Subcommittee on Solicitation Laws Review (SSLR), it included

representatives from all the major political parties, and its mandate was to review Canada's prostitution policies in order to make recommendations to reduce exploitation and violence (Davies 2003). Over the course of 2005, the SSLR held consultations, both closed session and public, with nearly three hundred witnesses representing police services, community and residents' associations, women's groups, advocacy and rehabilitation organizations, researchers, and sex workers themselves. Unlike the previous Fraser Committee, which saw only a limited number of sex workers, the SSLR heard, either directly or indirectly, from well over a hundred (Allinott et al. 2004; Clamen 2005a, 2005b). Sex workers' and researchers' near unanimous support for decriminalization did influence the subcommittee, with all but one member endorsing at least partial decriminalization, saying "sexual activities between consenting adults that do not harm others, whether or not payment is involved, should not be prohibited by the state" (SSLR 2006, 90). Despite this, in their final report, SSLR members agreed on just six recommendations, including increased resources to combat youth sex work and trafficking, increased education to prevent people from entering sex work, and better exit strategies for those who want to leave. The Conservative Party's framing of sex work as exploitation and (most) sex workers as powerless to protect themselves may be one reason why the SSLR failed in its mandate to improve safety and reduce exploitation; instead, the status quo for sex workers has continued to exist over the past decade.

As it currently stands, prostitution and the sale of sexual services are not illegal in Canada, yet the laws that surround prostitution-related activities make it extremely difficult to work without breaking the law. Indeed, sex workers are forced to choose between working safely or risking arrest. Four areas of federal law continue to regulate how, where, and between whom transactions can take place, and each produces its own set of problems and dangers for workers. The first area of law criminalizes keeping, being an inmate of, or being found in a common bawdy-house (*Criminal Code*, 1985, s. 210). Since section 197.1 of the *Criminal Code* defines a common bawdy-house as any location that is "kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or the practice of acts of indecency," it is unlawful for sex workers to work in any fixed location by themselves or with others. In 2010, keeping a bawdy house was further defined as a "serious offence" for the purposes of the organized crime provisions of the *Criminal Code*, which could impact sex workers who work together in a fixed location. As well, Canadian case law dictates that neither sexual intercourse nor full nudity have to take place for the act to be considered prostitution; "the definition of prostitution merely requires

proof that the woman offered her body for lewdness or for the purposes of the commission of an unlawful act in return for payment” (Bruckert, Parent, and Robitaille 2003, 13). Therefore, the broad bawdy-house section of the Criminal Code can encompass many more workplaces than simply brothels; strip clubs, massage parlours, dungeons, and other locations can also be criminalized.

The second area of legislation adds to the criminalization of a sex worker’s common work activities through the prohibition of directing or transporting, or offering to direct or transport, someone to a bawdy-house (*Criminal Code*, 1985, s. 211). While rarely used, this law applies to an individual who drives another to work as well as, conceivably, to referrals among and between clients, sex workers, hotel concierges, taxi drivers, and the like who provide “directions” to a bawdy-house (these types of referrals are also criminalized under the procuring provisions). Thus, section 211 can both detract from sex workers’ business by prohibiting word-of-mouth recommendations and add to their vulnerability by criminalizing drivers, who are often the first people to be contacted by workers in instances of an undesirable or difficult client, and who are also responsible for safely transporting workers to various locations.

The third major area of law that prohibits prostitution activities is related to procuring offences, including living on the avails of a sex worker’s earnings and owning or operating an establishment where sexual services are provided for a fee (*ibid.*, s. 212). It further deems guilty any individual who is “habitually in the company of a prostitute ... in the absence of evidence to the contrary.” Canadian case law has determined that the “habitually in the company of” relationship needs to be “parasitic” (*R. v. Grilo* 1991; *R. v. Bramwell* 1993; *R. v. Celebrity Enterprises* 1998), yet the definition of parasitic remains vague (Barnett 2008; van der Meulen 2010). In effect, this section potentially exposes sex workers’ partners and friends to charges of pimping, even if coercion cannot be proven. It further disallows employer-employee relationships and prevents sex workers from being able to organize unions to protect their labour rights. Section 212 additionally includes specific provisions, with increased penalties, for paying for the sexual services of youth.

The final area of federal law – used in over 90 percent of prostitution-related charges – criminalizes public communication for the purposes of engaging in prostitution (*Criminal Code*, 1985, s. 213). Communication is prohibited in any public place, or place open to public view, including the inside of a car, hotel lobbies, restaurants, and bars. Because of this section, sex workers are often forced to go with clients to private and potentially dangerous locations before the negotiation of sexual services can take place. This law disproportionately affects sex workers in outdoor and public locations, yet Canadian research has

indicated that outdoor sex work accounts for less than 20 percent of the overall sex trade (F. Shaver 1993; Lowman 2005; Childs et al. 2006).

Despite the sanctions outlined in sections 210-13 of the Criminal Code, there are ways in which sex workers are able to provide their services without putting themselves in legal jeopardy; for example, they may work independently, see clients in a different location each time, communicate only in private areas, and remain isolated from co-workers, family, and friends. Needless to say, though such measures might prevent criminal charges, they can dramatically decrease both safety and quality of life (Allinott et al. 2004; Betteridge 2005). Thus, sex workers and allies have been steadfast in their endorsement of decriminalization and have engaged in social and legal efforts to remove these sections from the Criminal Code.

In 2007, one current and two former sex workers in Ontario and a registered non-profit society run by and for current and former sex workers from Vancouver's Downtown Eastside, with an individual former sex worker, filed constitutional challenges in their respective provinces against the prostitution-related sections of the Criminal Code. The BC challenge was initially dismissed in 2008 for lack of standing, on the grounds that a group could not be considered at risk of the laws in question and the individual plaintiff was a former sex worker to whom the laws no longer applied. In the fall of 2012, the Supreme Court of Canada ruled that the BC constitutional challenge could indeed proceed and that the group could be granted public interest standing. This was a significant decision in Canadian constitutional law as it opened the door for additional Charter challenges to be brought forward by groups and organizations, not solely by individuals.

Two years preceding the Supreme Court decision in BC, history was made in Ontario when Madam Justice Himel of the Ontario Superior Court of Justice released her momentous decision in the Ontario Charter challenge *Bedford v. Canada*. She concurred with the three applicants that laws preventing keeping a common bawdy-house, living on the avails of prostitution, and communicating for the purpose of prostitution violate Charter rights to freedom of expression and security of the person, and cannot be saved by the reasonable limits clause. Basing her argument on the evidence before her, Himel stated that the Criminal Code provisions endangered the lives of sex workers: "These laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the person" (*Bedford v. Canada* 2010, 3). The decision was stayed until the appeal was heard in June 2011.

Nearly a year later, in March 2012, the Ontario Court of Appeal (OCA) released its decision, which upheld the law against communicating, modified

the law against living on the avails, and struck down the law against operating a common bawdy-house in Ontario (*Canada (Attorney General) v. Bedford* 2012). The appeal judges concluded that the communication provision does not violate the principles of fundamental justice and is reasonable given the negative effects of prostitution on neighbourhoods. Although this was the majority opinion, two judges out of five issued a strong dissenting opinion and concluded that the communicating provision was indeed unconstitutional. Changes to the bawdy-house law have been stayed, giving the government time to draft new legislation that is compliant with the Charter. The modification to the living on the avails provision should mean that living on the avails will be considered illegal only if it is “exploitative,” although it’s uncertain how future courts will define exploitation. This decision, though significant, is only a partial success for sex workers. Indoor workers in Ontario could benefit from the legal changes, but street-based workers, who experience higher rates of violence, as well as more arrests and contact with law enforcement, are left unprotected.

The OCA decision was appealed by the Crown, and cross-appealed by the complainants. In October 2012 the Supreme Court of Canada granted leave to hear the case in June 2013.

Conceptualizations of Sex Work

Feminist Positions and Legislative Frameworks

Feminists have been extremely vocal in debates on sex work, with differing positions espoused. Feminists and women’s movements have also worked to affect prostitution policy and legislation, to varying degrees of success (Outshoorn 2004). Despite the diversity of politics, however, most conceptualizations tend to conform to one of three positions: sex work as sexual slavery, as a necessary evil, or as labour. In turn, each conceptualization is linked to a particular legislative framework, namely prohibitionism, legalization, or decriminalization.

In an effort to protect prostitutes from perceived harms, the first position – often called prohibitionism, abolitionism, or radical feminism – criminalizes only those actions of individuals who are seen to be controlling or coercing sex workers (Scibelli 1987; Ekberg 2004). In this collection, we have chosen to call this grouping “prohibitionists,” as the term “abolitionist” often has a positive association with the movement to end slavery. Although many anti-prostitution radical feminists call themselves abolitionists, in part because they liken sex work to sexual slavery, we feel that the term “prohibitionist” is more appropriate for this book. Prohibitionist and anti-prostitution feminists, who are highly politically organized and often aligned with conservative religious, government,

and policing interests, support the view that the sex industry can be abolished by punishing those who support it and helping those who are exploited within it. Therefore, “johns,” “pimps,” and “traffickers” are charged and penalized, but sex workers are not. Female sex workers are understood to be the victims of male sexual violence and in need of rescue.

In their arguments in support of criminalizing the “demand-side” of prostitution, prohibitionist feminists have tended to neglect nuanced analyses and to disregard discussions of sex worker agency and self-determination (see Barry 1979, 1995; Farley 1998, 2004; Dworkin 2004). Instead, they conceptualize sex work as a form of gendered exploitation and slavery. Their use of highly emotive and controversial language to describe the commercial sex industry and the people who work in it (as, for example, prostituted women who are bought and sold as sexual slaves, and who suffer from post-traumatic stress disorder) is indicative of their passionate zeal for the topic. Intended to evoke sympathy for victims of abuse and to prompt anger toward male perpetrators of violence, the terminology not only is misleading, but often makes “sweeping claims ... not supported by empirical studies” (Weitzer 2005b, 212) and “is designed for maximum shock value” (Weitzer 2005a, 935). Nevertheless, radical and prohibitionist feminists have been successful in influencing prostitution policy both in Canada and internationally. Indeed, some countries have incorporated the prohibitionist perspective into their legal systems, including Finland, Iceland, Norway, and Sweden. Thus, this policy framework has been dubbed the Swedish Model or the Nordic Model. In practice, however, a number of countries that have taken this approach have continued to criminalize sex workers themselves (NSWP 2011, 3).

The second major framework involves the regulation or legalization of sex work by the state in an effort to control and manage the negative implications of the industry. In this context, sex work is simultaneously understood to be a necessary service and a public nuisance. Unlike prohibitionism, where sex work is seen as a social evil that needs to be eradicated (by punishing the perpetrators and those in demand of sexual services), the legalization stance perceives sex work as a necessary evil that requires strict rules to keep it under control (F. Shaver 1985; Wijers 2004). In this way, sex work is conceptualized as a social problem that will never go away and should therefore be regulated to reduce the most undesirable effects. The three best-known examples of regulation include Nevada in the USA, the Netherlands, and Germany.

Legalized systems also differ from prohibitionist frameworks in that sex workers are recognized as having self-determination and as voluntarily entering the industry. Consequently, discussions of prostitution are often underscored

by a distinction between forced and voluntary sex work. This distinction refers to how one enters the trade: forced workers are generally understood to be victims of trafficking or of unscrupulous third parties, whereas voluntary workers are those who willingly chose the trade. Some researchers have argued that this characterization is imbued with gendered and racialized assumptions of guilt and innocence (Doezema 1998; Ditmore 2005). Others have critiqued regulated contexts for the overly onerous and strict penalties that are applied to those who violate various laws and bylaws (Scibelli 1987; Wijers 2004). Due to the restrictions associated with legalization, it is not uncommon for sex workers to opt to work illegally in underground areas out of state view (Chapkis 1997).

The third framework – often referred to as decriminalization – is supported by feminists and others who define sex work as a form of labour and who support efforts to establish rights and protections for sex industry workers. Unlike legalization, where criminal justice policies are most often used in an attempt to manage and control the industry, decriminalized contexts remove oppressive criminal regulations targeting sex work, such as the prostitution-related offences in the Criminal Code. Instead, labour and other policies are relied on to regulate sex workers' activities, thus recognizing the importance of workplace rights and responsibilities. While sex workers are still protected by and subject to the Criminal Code in all work-related, private, and public activities, under decriminalization, sex workers should enjoy improved workplace standards and benefits as defined by labour law (Bindman 1998).

Those who argue against decriminalization, for example prohibitionists, often claim that without the Criminal Code sex workers would be left unprotected from violence. However, with decriminalization, workplace harms and grievances can be judged under more appropriate federal, provincial, or municipal policies. For example, there are existing federal provisions that protect against extortion, sexual assault, forcible confinement, and threat with a weapon – crimes that prohibitionists claim are inherent to sex work. Additionally, businesses causing public disturbances (brothels, for instance) or engaging in illegal activities can face fines and closure. Indeed, in a decriminalized system, bawdy-houses and other commercial sex establishments would be subject to rules, regulations, and standards similar to other businesses. Street solicitation, like other public activities, would be subject to nuisance, loitering, littering, and trespassing laws where appropriate. Further, sex workers could be eligible for worker's compensation, health and disability insurance, and statutory holidays under provincial employment standards and occupational health and safety acts. They could also organize into unions, guilds, and associations

to protect their labour rights with greater ease. Since decriminalizing its sex industry in 2003, New Zealand has seen an improvement in sex work rights and protections (Abel et al. 2010).

Sex-Work-Is-Work Paradigm

The recognition of sex work as a category of labour denotes an important ideological and political shift away from prohibitionist and radical feminist understandings of sex work as sexual slavery, misogyny, or sexual assault (see Barry 1979; Dworkin 1981; Rich 1983; Farley 2007). It is also a shift away from regulationist conceptualizations of sex work as a necessary evil (C. Backhouse 1991; Wijers 2004) or in relation to the forced/voluntary dichotomy (van Doorninck 2002; Gregory 2005).

Conceptualizations of sex work as a form of labour, as existing within a sex-work-is-work paradigm, have been developed in Canada and internationally by sex workers, often through labour and harm reduction advocacy. According to sex worker activist Carol Leigh (2004), also known as Scarlet Harlot, she coined the term “sex work” at the 1978 Women Against Violence in Pornography conference to better describe the diversity of labour performed within the industry. A significant feature of this paradigm is that it permits a shift from conceptualizing sex work exclusively in terms of a gender perspective (prostitution as a metaphor for women’s experiences under patriarchy) to an understanding of how sexual labour is organized within the broader capitalist context, including its class and racial dimensions. Marx (1959, v) who is often credited as the first to analogize prostitution as work, wrote that “prostitution is only a *specific* expression of the *general* prostitution of the *labourer*” (emphasis in original). Whereas some feminist researchers have interpreted this analogy to mean that the prostitute and the labourer are alike in that both sell their bodies (see van der Veen 2001), others have expanded upon Marx’s thinking to explain that because sexual and reproductive labour produces life, satisfies human needs, and reproduces the labouring population, it is a form of productive labour (Truong 1990; Agathangelou 2004).

The sex-work-is-work paradigm also creates space for discussing the complex and varied experiences of people in the industry. In recent decades, a broad range of experiences have been documented within the growing body of writing by sex workers (Bell 1987; Delacoste and Alexander 1998; Leigh 2004; Milne 2005; Sterry and Martin 2009), which highlights not only sex workers’ differing experiences and meanings they attach to their work, but also the operation of racism, classism, and citizenship within the specific hierarchies of a highly complex global industry. These labour-based discourses support the argument

that violence and other forms of criminal exploitation are *not* inherent features of sex work. Instead, they are produced by structural factors, including legal regimes that criminalize prostitution and illegalize migrants, the capitalist organization of the labour process, and gendered and racialized devaluations of work. Given this, calls for the decriminalization of prostitution are among the first demands of the sex workers' rights movement globally.

Looking more closely at the wide variety of sex workers' experiences undermines the assumption that there is a stable and universal object of inquiry (Agustin 2007). Sex workers are differently positioned within the multifaceted sex industry based on our intersecting social locations, which in turn can affect our labour-related experiences. These diverse realities further complicate the notion that sex work is only about sex, or the physical mechanics of two bodies coming together in a specific way, for money (ibid.). Instead, complex emotional and intimate relations can develop and be satisfied. Sex work researchers have built upon Hochschild's (1983) concept of emotional labour, first developed in relation to the labour activities of flight attendants, explicating that sex work is indeed a form of sexual and emotional work (Chapkis 1997; Sanders 2005; van der Meulen 2012). Agustin (2007, 65) suggests that the production of feelings of intimacy is a common feature of work in service occupations and explains that "it is *only* possible to isolate sexual services from other services if sexual communication and touching are accepted as utterly different from all other contact" (emphasis in original). In a similar vein, Bernstein (2007, 6) explains that the consumer marketplace has become intertwined with private-sphere emotional needs in commercial sexual exchanges and coins the term "bounded authenticity" to describe a "recreational sexual ethic [that] derives its primary meaning from the depth of physical sensation and from emotionally bounded erotic exchange." Understanding sex work as a form of labour enables connections to be drawn between it and other forms of emotional, caring, and/or service work, and also – importantly – between the working conditions and experiences of those employed in these respective industries.

Transnational, anti-racist, and Indigenous feminists have drawn attention to the centrality of race in the organization, and stratification, of labour in the sex industry as well as to the manifestation of racism in both the sex workers' rights movement and academic writing on the topic. Histories of colonialism and racism have resulted in the exoticization of women who are considered to be different from the dominant group because of their ethnic, racial, and/or cultural backgrounds. Kempadoo (1998), for example, explains that this exoticization, in addition to economic factors, is particularly important in positioning groups of women, specifically women of colour, in sex work.⁶ Not unlike other

industries, the sex industry is stratified, with white workers (i.e., those defined by others as white or those who can enact whiteness) often occupying the better paying jobs in safer working conditions, and with racialized and Indigenous workers overrepresented as the targets of state, police, neighbourhood, and male violence.

Despite their decades of resisting these conceptualizations and realities, some Western academic feminists have tended to portray racialized women/sex workers from the global South as homogeneous, ignorant, and easily duped (Mohanty 1991), a construct that lines up easily with contemporary discourses and impulses to ‘save’ the victims of sex slavery and trafficking.⁷ Relatedly, there has been a tendency within North American sex workers’ rights movements, like other social movements, to decentre the lived experiences and concerns of Indigenous and racialized sex workers as well as their presence in organizing and resistance efforts (see Kempadoo 1998; *Spread Magazine* 2011).

Sex workers have been organizing in international contexts for longer than in North America and Western Europe (see Kempadoo and Doezema 1998; Jeffrey 2002). Many of the sex worker groups in the South are highly organized and similarly articulate their demands through a language of “rights” and “labour.” However, their struggles reflect the local circumstances of the workers and are not exported versions of North American or Western European discourses (Kempadoo 1998). Even so, there are a number of similarities in the demands expressed across international contexts, such as those for sexual autonomy and self-determination, access to health information, broader social understandings of prostitution as work, and the eradication of police and other violence against sex workers.⁸ Comparable demands are also being made by organizations advocating for and with sex workers in a number of Eastern European states, such as the Czech Republic and Hungary, among others.⁹

Sex worker organizing in international contexts has also sought to redefine discourses of migration and human trafficking, and to position migrant sex workers as definitive sources of expertise on issues of forced and coerced labour in the global industry. As international attention to prostitution, migration for sex work, and sex tourism continues to increase, so too does sex worker organizing against feminist prohibitionist and anti-prostitution campaigns that largely define sex workers as victims (Pattanaik 2002). Writers such as Agustin (2007), Andrijasevic (2010), and Zheng (2010) capture the complexity of the situation of migrant workers in the sex industry, showing how workers’ own experiences of labour and migration undermine dominant narratives of trafficking. These authors illustrate how women’s migration projects are complex, develop from a variety of motivations and circumstances, and involve varying degrees of

agency and coercion. Careful attention to the experiences of sex workers globally is imperative given the trend toward the criminalization of prostitution and reduction of legal avenues for women's migration in the name of anti-trafficking efforts and initiatives. Defining sex workers as victims or as necessary but undesirable makes it possible to dismiss their experiential knowledge. The labour-based positioning of sex work as work and the advocacy of decriminalization locate sex workers as actors and agents deserving of full labour rights both on and off the job; the chapters in this collection are a testament to precisely this understanding.

An appreciation of the Canadian context in relation to its global counterpart is increasingly significant for understanding the complexity of sex work experiences but also for the formation of policy. The Canadian state's conceptualization of and approach to prostitution are evidenced not only within its criminal law, but also in development initiatives, projects designed to combat international organized crime, and changes in domestic criminal laws and immigration policies in light of concerns about human trafficking. Its actions affect the experiences of people working in both the domestic and the global sex industry, though in the latter, in ways that are only beginning to be perceptible.

The chapters in this book, then, take up the challenges and possibilities faced by sex workers, advocates, and researchers in the current Canadian legal and policy context. Court decisions striking down key provisions in the criminalization of sex work have left the field in flux, providing the opportunity for new ways of conceptualizing sex work as work but also potentially opening the door to renewed forms of criminalization, regulation, or prohibition. The contributors to this volume, who come from differing positions within and in relation to the sex industry, as well as from various geographic locations across Canada, offer powerful accounts that can help us navigate these changing contexts.

Notes

- 1 The Vagrancy Act criminalized "1) all common prostitutes, or nightwalkers wandering in the fields, public streets or highways, lanes or places of public meeting or gathering of people, not giving a satisfactory account of themselves; 2) all keepers of bawdy houses and houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves; and 3) all persons who have no peaceable profession or calling to maintain themselves by, but who do for the most part support themselves by the avails of prostitution" (quoted in C. Backhouse 1985, 394-95).
- 2 Moral and social reformers in Europe and North America coined the term "white slavery" to describe the moral panic of white girls and women being lured into prostitution. There are conflicting reports as to the extent of white slavery and whether it accurately described women's entry into prostitution (C. Backhouse 1985; McLaren 1986).
- 3 The vote was 111 for to 35 against.

- 4 Over the ten-year period following the enactment of the communication law, from 1986 to 1995, between six and ten thousand prostitution-related charges were generally laid per year (Duchesne 1997). Although the communication section of the Criminal Code was deemed a reasonable infringement of freedom of expression and freedom of speech, 92 percent of the 7,165 charges laid in 1995 alone came under that section (ibid.).
- 5 *R. v. Stagnitta* [1990]; *R. v. Skinner* [1990]; *R. v. Downey* [1992].
- 6 In certain geographic locations, Eastern European women are similarly exoticized in relation to Western European women (Stenvoll 2002; Marttila 2008).
- 7 The “global North and South” refers to a political and socio-economic divide between wealthier countries, generally located in Western Europe and North America (the North), and poorer nations, often called “developing countries,” such as those in Africa and Asia (the South).
- 8 For relevant organizations, see South Africa’s SWEAT, <http://www.sweat.org.za>; India’s Durbar Mahila Samanwaya Committee, <http://www.durbar.org/>; Thailand’s Empower Foundation, <http://www.empowerfoundation.org/>; the Global Network of Sex Work Projects, <http://www.nswp.org/>; and the Asia Pacific Network of Sex Workers, <http://apnsw.wordpress.com/>.
- 9 For relevant organizations, see the Sex Worker’s Rights Advocacy Network, <http://swannet.org/>.

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