

Understanding the Potential for Sex Work Policy Reform in Canada

Major Research Paper

University of Ottawa - Graduate School of Public and International Affairs

Gillian Aldridge, 300261257

Dr. Christine Straehle

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Abstract

Sex work laws in Canada and abroad have historically shaped the health, safety, and overall wellbeing of sex workers. Designed with the specific mandate of protecting vulnerable young girls and women from exploitation and reducing the social harms associated with sex work, the *Protection of Communities and Exploited Persons Act* (PCEPA) has faced increased debate in light of its contrary implications for the sex work industry in Canada.

In particular, this major research paper aimed to explicate the ways in which the PCEPA has contributed to increased surveillance and harassment from law enforcement, worse outcomes related to occupational health and safety, limited access to critical health and social services, and economic precarity for sex workers - all of which is compounded by intersectional forms of violence and discrimination to create further harm for (im)migrant, transgender, and racialized sex workers. In conducting this research, first-hand accounts from sex workers and both qualitative and quantitative research from academics and organizations were leveraged to paint a full picture of the environment created under criminalization and to determine potential recommendations for mitigating the harms experienced by sex workers.

A comprehensive analysis of alternative policy models and their implications was conducted between the legalization of sex work in the Netherlands and decriminalization in New Zealand. With specific attention to the ongoing threats of incrimination, stigma, and exploitative relationships under legalization and the potential for reduced discrimination and improved access to health, safety, and legal measures under decriminalization, this analysis detailed how decriminalization and the enforcement of sex workers' civil and labour rights is the best way forward to ensure that sex workers remain safe, protected, and eligible to the same rights and benefits procured under all other forms of work.

Introduction

As one of the oldest professions in the world, conversations surrounding the nature and implications of sex work are not new. Currently, sex work legislation in Canada is characterized by a criminal justice approach under the *Protection of Communities and Exploited Persons Act* (PCEPA) that acts to prosecute the clients of sex workers and third parties who receive material benefits from sex work (Argento et al., 2019). More specifically, the PCEPA prohibits “obtaining sexual services for consideration, or communicating in any place for that purpose,” “knowingly advertising an offer to buy sexual services”, “receiving a financial or other material benefit obtained... from the commission of the purchasing offence,” and “procuring a person to offer or provide sexual services” (Justice Canada, 2014). This framework of criminalizing the demand of sex work while leaving the actual sale of sex work legal is better known as the Nordic Model, which is replicated in countries such as Norway and France with the stated goal of reducing the demand for sex work. The PCEPA was developed in line with the principles of safety, equity, and liberty and sought to address sex work as a social problem in need of correction while ensuring that sex workers and their dignity are protected in the process.

The PCEPA, and the broader model of criminalization, garners large support from those that believe sex work is an inherent form of exploitation and who link sex work with human trafficking and abuse. They advocate for the reduction, and eventually the eradication, of sex work as a means of protecting the women and girls who engage in it. This is done through criminalizing the demand for sex work, encouraging those who engage in sex work to leave the industry, and seeking to protect communities and society by denouncing the commercialization and institutionalization of sex work on a larger scale (Kunimoto, 2018). Some of the primary groups that champion this model are social conservatives, human rights bodies, radical feminists

who similarly oppose other sex practices like pornography, and the Canadian state - who have kept sex work legislation largely unchallenged and out of broader policy debates since the creation of the PCEPA in 2014. This status quo has been supported for so long because it's driven by the goal of eliminating gendered violence and larger systems of social inequality that exploit and harm girls and women, which is a commendable mission.

However, there has been a great deal of contention over whether this goal is actually being achieved and there is a lack of empirical evidence to support the claim that a model of criminalization best upholds the safety and wellbeing of sex workers. Despite the ongoing support of the PCEPA, many sex workers and activists within the community argue that it produces significant consequences that are important to recognize. For instance, they claim that the PCEPA replicates the same harm found under previous legislation that aimed to prohibit sex work completely, including increased risks of violence and abuse, limited access to justice, and heightened stigma and discrimination that impedes the ability of sex workers to procure safe and secure housing and non-discriminatory health and social protections (Argento et al., 2019).

In light of the injustices that sex workers in Canada continue to experience and the lack of attention that the topic of sex work has received in mainstream policy discourses following the adoption of the PCEPA in 2014, this research paper will aim to examine the current framework of criminalization in Canada and the adverse repercussions that sex workers have faced as a direct result of it. Additionally, this paper will analyze the potential for policy reform going forward and will draw a comparison between the processes of decriminalization in New Zealand and legalization in the Netherlands to determine the most viable policy option for the safety and wellbeing of sex workers in Canada. In sum, it will be argued that decriminalization and the adoption of a comprehensive labour framework that aligns with the experience and needs of sex

workers is the optimal policy model for ensuring that sex workers in Canada are protected and are able to conduct their work safely and securely.

The History of Sex Work Policy and Criminalization in Canada

Legislative History and the Role of Morality

Sex work has an expansive history, with its origins dated as far back as 2400 BCE (ProCon, 2013). Throughout this time many governments have adopted different frameworks to address sex work, and the evolution of moral values and priorities regarding sex work have provided a background for these changes.

In Canada, the first laws pertaining to sex work manifested in the early 1800s as a package of prohibitions against “vagrancy” that effectively criminalized the status of “prostitute” and aimed to remove so-called undesirables from the street (Justice Canada, 2021). These laws were primarily based on the construction of sex workers as a risk to the moral and physical health of communities and the public perception of sex workers as being “dirty”, “immoral”, and “vectors of disease” (Hannem & Bruckert, 2014). Sex workers and clients were both persecuted under these laws, but the primary aim was to repress women performing sex work in areas where they were deemed a particular threat to “respectable” members of the population (Shaver, 2016). The anti-prostitution laws seen in Canada at this time were modelled closely after the Vagrancy Act of 1824 and similar legislation found in Britain that criminalized prostitution and homelessness and that reflected broader views regarding religiosity, morality, and the need to respond to social ills and poverty with the strong hand of the state (Economy Team, 2018).

Characterized as being a “loose, idle, or disorderly” person, legislation seen in Canada during this era outlined the various ways in which someone could be deemed a convictable

public nuisance as a means of promoting community wellbeing (Poutanen, n.d.). In later years, the regulation of street-based sex work was incorporated under the Vagrancy provisions of the Criminal Code, section 175.1(c), according to which “a common prostitute or nightwalker found in a public place and who does not, when required, give a good account of herself” could be found guilty of vagrancy (Hannem & Bruckert, 2014). Hannem and Bruckert have argued that the conception of sex workers and sex work itself within these early forms of legislation and the Criminal Code were gender-specific status offences that targeted and vilified certain female-identifying individuals as “immoral” and “deviant” (Hannem & Bruckert, 2014). This in turn contributed to a pervasive and negative stigma surrounding the sex work industry and those within it.

Additional laws and regulations were incorporated or revised throughout the 1990s, and Canada began moving towards the adoption of a more clear abolitionist approach that criminalized several important areas of sex work- procuring or living on the avails of sex work, communicating for the purposes of sex work, and bawdy house provision (Shaver, 2016). The “vagrancy” law that specifically targeted female sex workers was not officially repealed until 1972, after which legislation was introduced that criminalized public solicitation for the purposes of prostitution (Justice Canada, 2021). In 1985, this was further amended to reflect the most recent reform regarding communicating for the purposes of sex work. Although the evolution of legislation over this time period represented an attempt to adopt a more gender-neutral approach to sex work that didn’t directly persecute female sex workers, Boyle and Noonan argue against this and suggest that these actions only served to disguise ongoing discriminatory practices that are embedded in law enforcement and judicial decision-making (Justice Canada, 2021).

These laws that criminalized sex work acts remained largely unchallenged with the exception of a Supreme Court of Canada ruling in 1990 in the case of *R. v. Skinner*, where the court determined that the ban on communicating for the purpose of sex did violate a Charter right to freedom of expression (Matas, 2015). This case was fueled by criticism from sex workers, civil rights groups, lawyers, and feminists who challenged the constitutionality of this provision in the Criminal Code (Shaver, 2016). However, it was subsequently found that such an infringement of individual rights was rational on the basis that “abolishing sex work” was a worthy social objective (Matas, 2015).

Many scholars have pointed out how this punitive history of sex work policy in Canada often aligned with growing public concern towards the visibility of street sex work and its associated “nuisances”, as well as with increased attention towards cases of abuse and exploitation within the sex work industry (Justice Canada, 2021). For example, Hannem and Bruckert highlight how some of these earlier reforms to sex work legislation coincided with the gentrification of urban centers in regions such as Vancouver, Edmonton, and Ottawa, where sex work is highly prevalent (Hannem & Bruckert, 2014). In these areas, the incoming middle-class populations mobilized to displace those they saw as “threatening” and claimed they were being victimized by street-based sex workers (Hannem & Bruckert, 2014). In response to these groups’ demands for greater enforcement and harsher regulations as a means to rid their neighbourhoods of this “social nuisance”, legislators and the state cracked down on sex work in an attempt to displace sex workers and “clean up the streets” (Hannem & Bruckert, 2014; Justice Canada, 2021).

These types of policies and reforms also tend to fit within the broader framework of “Not In My Backyard” (NIMBY), which is a term coined by urban planners to describe a strong

opposition by residents of a particular community to developments or reforms in their area (Canadian Observatory on Homelessness, 2021). For instance, citizens may dislike the proposal of a new shelter or affordable housing in their neighbourhood and consequently rely on regulatory rationales and legal tools to support their opposition (Canadian Observatory on Homelessness, 2021). Historically, the laws and regulations that rely on these justifications have generated significant and cross-sectoral harms for sex workers and other marginalized groups.

Most notably, NIMBY policies and similar regulations have often been directed towards social issues or “crimes” associated with immigration, low wage and informal work, and errant sexuality (Shih, 2016). The use of criminalization as a means of social control and ridding neighbourhoods of “undesirable elements” has clearly been seen through the history of sex work laws in Canada, where sex workers - and particularly those that are racialized, Indigenous, and/or transgender - continue to be persecuted and pushed into the margins (Hannem & Bruckert, 2014). Similar frameworks of social control and criminalization have been seen in Canada through things like the ongoing colonial system of criminalizing and imprisoning Indigenous Peoples at disproportionate rates, the denial of safe and secure housing to marginalized groups, and the refusal to forego incarceration in exchange for a more equitable health approach to substance use. These all reflect similar perspectives held by state officials and policy-makers that criminalization and increased policing and rates of incarceration are the best ways to resolve social and economic issues. Despite insufficient evidence to corroborate this and the rampant systemic inequality that still exists in Canada, these adverse policies remain fairly intact and unchallenged.

Legal Challenges to Sex Work Legislation

After experiencing first-hand the consequences that this system of prohibition and history of misdirected policy has had for the sex work community in Canada, a group of three sex workers- Terri-Jean Bedford, Amy Lebovitch, and Valerie Scott- launched a Charter challenge in 2009 with the goal of striking down criminal sanctions restricting sex work and creating a more open and permissible environment for sex workers to conduct their work (Matas, 2015). The Ontario Superior Court initially ruled in their favour, and Judge Susan Himel struck down the three key provisions related to procuring or living on the avails of sex work, communicating for the purposes of sex work, and bawdy house provision on the grounds that these laws were unconstitutional and contributed to the risks and dangers faced by sex workers (The Canadian Press, 2013). In particular, it was found that these provisions violated the charter rights of security of the person and freedom of expression (CBC News, 2010). Following an appeal by the Ontario attorney general's office, the Appeal Court of Ontario held a three-day hearing and concurred with the ruling that section 210 of the Criminal Code related to bawdy-house provisions was unconstitutional, but argued that section 212.1(j) - related to living off the avails of sex work - could remain in the Criminal Code by reading in the words "in circumstances of exploitation" (Hannem & Bruckert, 2014). A majority of judges ruled in favour of this decision and argued that the laws' infringement on the rights and liberties of sex workers was sufficiently justified by the overarching legislative objective of "preventing nuisance" (Hannem & Bruckert, 2014). In line with this decision, the Ontario attorney general's office reiterated that these criminal provisions were constitutional and valid on the basis that they "prevent individuals, and particularly young people, from being drawn into prostitution", and "protect our communities from the negative impacts of street prostitution" (CBC News, 2010).

Despite these challenges, this decision was further appealed to the Supreme Court of Canada in 2013, and the endeavours of Bedford, Lebovitch, and Scott finally proved to be successful when all three Criminal Code provisions concerning sex work were struck down on the grounds that they were “grossly disproportionate” and infringed on sex workers’ Charter right to life, liberty, and security (Matas, 2015). Following a unanimous decision, Chief Justice Beverley McLachlin wrote that, “Parliament has the power to regulate against nuisances, but not at the cost of the health, safety, and lives of prostitutes” (CBC News, 2013). McLachlin indicated that the framework for considering the constitutionality of sex work laws had evolved over the years, and contemporary legislation needed to better align with the changing cultural and societal attitudes towards sex work and the growing awareness of the harm that sex workers experience under a system of criminalization (Matas, 2015). Following their ruling, the Supreme Court gave Parliament one year to draft new sex work laws and instigate a framework that respected the mandated aims in the *Bedford* decision.

Although this decision represented a significant advancement in the fight to protect and uphold the civil and occupational rights of sex workers, it nonetheless generated a great deal of backlash from both government officials and the public. In a statement following the Supreme Court decision, former Justice Minister Peter MacKay explained that his office would “explore all possible options to ensure the criminal law continues to address the significant harms that flow from prostitution to communities, those engaged in prostitution and vulnerable persons” (CBC News, 2013). Don Hutchinson, the vice-president and general legal counsel for the Evangelical Fellowship of Canada, raised additional concerns about this decision leading to an “open season” in regard to the presence of sex work (CBC News, 2013).

These views were also seen during the legal challenges presented in the *Bedford* case, where a number of groups who align themselves with “feminist” values were permitted to intervene on the opposing side - including the Canadian Association of Sexual Assault Centres, the Native Women’s Association of Canada, and the Canadian Association of Elizabeth Fry Societies (Hannem & Bruckert, 2014). These groups maintained a conviction that eradicating sex work through ending demand was necessary to protect women and girls, and they argued this alongside other groups such as the Christian Legal Fellowship and the Catholic Civil Rights Leagues who have often reframed their longstanding moral objections to sex work within the newer lens of “protection” and related goal of reducing sex trafficking (Hannem & Bruckert, 2014; Shih, 2016).

In 2014, the Conservative government under former Prime Minister Stephen Harper responded to the Supreme Court decision with the introduction of Bill C-36, or the *Protection of Communities and Exploited Persons Act* (PCEPA), which had the stated objectives of protecting those who sell their own sexual services, protecting communities from the harms caused by sex work, and reducing the demand for sex work (Justice Canada, 2014). In effect, the PCEPA treats sex work as an illegitimate field of work that produces social harm and that exploits and victimizes women and girls. In line with this perspective, the PCEPA moved to prohibit the purchase and advertisement of sexual services for the first time in Canadian history under section 286.1 and 286.4, while maintaining the laws against communicating for the purposes of sex work and facilitating or receiving material benefits related to sex work (Justice Canada, 2014). Although the PCEPA had the goal of protecting sex workers from exploitation and shielding society from the negative impacts of sex work through reducing the demand for it, many have

argued that this framework of partial criminalization has reproduced all the same harms as previous laws.

The policy environment during this time and the reforms that led to the introduction of the PCEPA represented a shift in the legal framing of sex work from a perspective that emphasized the inherent immorality and deviancy of sex work, to one that focuses instead on the harm that sex work can have for local communities and citizens (Hannem & Bruckert, 2014). Through framing the victims as the sex workers (e.g. women and girls) and society more broadly, the understanding of sex work regulations and their perceived goals began to align more with a “legal paternalism” lens rather than a legal moralism one (Hannem & Bruckert, 2014). In contrast to the concept of legal moralism which sees criminal law being leveraged as a tool to regulate “immoral” behaviour, Dworkin defines legal paternalism as the interference with one’s liberty of action on the grounds that it will contribute to their overall welfare and happiness - which is seen through the pervasive misconception that sex workers are in need of “saving” by obstructive and problematic state policies (Hannem & Bruckert, 2014). In this regard, Hannem and Bruckert highlight the role that conservative politicians and groups have played in establishing themselves as advocates of “feminist” virtues and of the safety of women and girls (Hannem & Bruckert, 2014). However, as increasing research and first-hand accounts show, these positions and subsequent policies often serve to undermine women’s rights and social measures more generally rather than achieving the stated goal of “protecting” sex workers (Hannem & Bruckert, 2014).

Following the conclusion of the *Bedford* trial and the implementation of the PCEPA, the topic of sex work and related policy reform has remained largely absent from mainstream political and policy discourse. The few exceptions are former Justice Minister Jody Wilson

Raybould's unfulfilled promise in 2015 of reviewing sex work laws and consulting sex workers, and the several MPs who have spoken up about the need to address sex work laws in Canada—such as NDP MP Randall Garrison and Liberal MP Anju Dhillon (Chen, 2022). An additional exception is the constitutional challenge launched in 2021 by advocates for sex work law reform who are asking the court to strike down the PCEPA on the grounds that it violates individual Charter rights. While this has the potential to bring the issue to the public eye again and advance critical legal discourse pertaining to the rights of sex workers, the process is often long-winded and costly— for instance, the *Bedford* case took five years and overcame many obstacles to finally reach the Supreme Court of Canada.

It's clear that the history of policy reform in Canada and its ongoing potential has been driven by the work of sex workers and activists who have fought over the years for positive change in the way that society and the legal field view the rights of sex workers, and who have notably opposed the model of criminalization since its conception. However, it's also apparent through the deep-rooted history of criminalization and paternalistic policies in Canada that it will be a challenging process to reform the current framework surrounding sex work.

Current State of the Literature

The PCEPA and the coinciding regulations surrounding sex work are characterized as the “Nordic” model, which refers to a legislative approach to sex work that emerged in Sweden in 1999 and has since been implemented in other countries, such as Norway, Iceland, and Canada (White, 2020). The main goal of the Nordic model is to decrease the demand for sex work by issuing criminal sanctions for those who seek it, and consequently diminishing the rate and overall dangers of sex work itself (White, 2020). In line with this, a great deal of research concerning the sex work industry in recent years has touched on the problems that sex workers

face in relation to sex trafficking, and tends to frame sex work as inherently exploitative and violent. This highlights a main impetus behind the “demand reduction” strategies, which aim to repress the operations of the sex work industry as a means of reducing harm (Vanswesenbeeck, 2017).

Despite its mandate of protecting sex workers through eliminating the industry itself, the Nordic model has failed to put an end to the practice of sex work and has contrarily given rise to a myriad of new harms. While there remains a significant gap in broader policy and academic discussion on sex work, there has been some important work done by various scholars, activists, and organizations on the implications of current policies for sex workers in Canada. In particular, a growing body of literature has highlighted the ways in which the criminalization of sex work results in adverse outcomes related to occupational health and safety measures, abuse and exploitation, access to critical legal and health services, and economic wellbeing. For example, authors such as Vanswesenbeeck, Landsberg, Anderson, and Johnson have detailed how the criminalization of sex work results in the over-policing and detrimental regulation of sex work communities and forces them into increasingly dangerous environments to conduct their work (CASWLR, 2015). Combined with the pervasive stigma surrounding sex work, criminalization can significantly impede the ability of sex workers to access important healthcare services, legal aid, and other resources crucial for their health and well-being (Anderson, 2016).

Several studies and reports have also highlighted the voices of sex workers and activists who advocate for policy reform in Canada and who clarify the distinctions between decriminalization and legalization. Scholars like Durham and sex workers within the broader community tend to argue that decriminalization provides a better model for protecting sex workers’ health and wellbeing and for limiting the ability of law enforcement to intervene in

potentially harmful ways, while legalization imposes bureaucratic constraints that exclude marginalized groups and criminalize sex workers who cannot or will not fulfill various responsibilities (Durham, 2015; Tani, 2015). The experiences of decriminalization in New Zealand and legalization in the Netherlands provide a basis for these claims.

Expanding the level of research and attention directed towards the topic of sex work is critical to begin addressing the myriad of harms that sex workers in Canada experience as a result of misdirected policy decisions. The stigma surrounding sex work has resulted in a general sense of apathy and neglect towards sex workers in mainstream and public policy discourse in Canada, and little action has been undertaken to achieve any tangible change in the conditions that sex workers face. For instance, there is not an extensive amount of literature or research available on the specific experiences of (im)migrant or transgender sex workers in Canada, which limits the ability to develop an understanding of sex work and the implications of criminalization that fully takes into account the variations across social, cultural, and economic contexts.

Moreover, the current body of literature pertaining to sex work largely focuses on an understanding of sex work that paints it as inherently violent and exploitative. It is indisputable that sex work can often cause harm to those who engage in it, with the most significant of these consequences being incurred by street sex workers and those who are transgender and racialized. However, the legal system is a powerful tool that can legitimize certain discourses and shape the way that individuals think, and consistently portraying all sex work as criminal and immoral only reinforces the stigma surrounding sex work that frames it as an illegitimate form of labour. Furthermore, it creates a substantial barrier to affecting any productive policy reform.

In this regard, not enough work has been done to analyze the impact of public policy on the livelihood and wellbeing of sex workers, and there is a clear gap in mainstream discussions concerning the need for policy reform and how it should transpire. In response, this proposed research paper hopes to shed light on the realities of sex work through providing a clear overview of the problems associated with the criminalization of sex work in Canada and through conducting an analysis of the potential reforms that can empower and protect the sex work community. To achieve this, the following sections will expand on existing literature to paint a clear picture of the environment that sex workers are currently working in. Additionally, direct comparisons will be drawn between the experiences of sex workers in the differing legislation present in the Netherlands, where sex work was legalized in 2000, and New Zealand, where sex work was decriminalized in 2003.

Methodology

Sex work in Canada has been impacted through several pivotal events, and this paper draws most significantly on the case of *Canada v. Bedford* in 2013 and the subsequent criminalization of sex work acts in 2014 to highlight the implications of criminalization on sex workers. In doing so, this paper will leverage sources from the broader academic literature concerning sex work and sexuality, as well as autobiographical accounts from sex workers and nonacademic sources, to clarify the role that legislation plays in the lives and wellbeing of sex workers.

This paper also relies on an analysis of the literature and first-hand accounts pertaining to the alternative models of legislation and regulation in New Zealand and the Netherlands. In the case of New Zealand, sex work was decriminalized in 2003 with the *New Zealand Prostitution Reform Act*, while in the Netherlands sex work was legalized in 2000 after a ban on

brothel-keeping was lifted (Abdul, 2019). The cases of the Netherlands and New Zealand are appropriate examples to highlight because they occur in countries that have similar styles of government to that seen in Canada, and public opinion in these regions tends to follow similar patterns. Thus, these comparisons are important to look at because they represent alternatives to the PCEPA that are achievable within the Canadian context and that will likely foster similar implications for sex workers in Canada and for greater society.

As the topic of this research paper largely concerns these case studies and the impacts of their respective legislative frameworks on the health and wellbeing of sex workers, the broad swath of research was collected from sources and reports published after legislation was passed in 2000 in the Netherlands, after 2003 in New Zealand, and after 2014 in Canada. Research for this paper was primarily gathered through a qualitative review of literature collected from scholarly databases, as well as from public statistics and data on government sites from Canada, New Zealand, and the Netherlands concerning issues such as rates of violence against sex workers and mental health in order to analyze discrepancies under the differing policies. Paying attention to the voices of those within the sex work community is crucial to gain a deeper understanding of this issue and construct adequate public policy, so significant attention has also been paid to reports that are sourced from actual interviews and insight collected from sex workers.

This research paper is motivated by the goal of elucidating the harms of the criminalization of sex work in Canada and hopes to gain a deeper understanding of how decriminalization is a more favourable reform option than legalization. This hypothesis is drawn from the views of various scholars in the literature, as well as from the sex work community itself where there is a general consensus for decriminalization.

It's important to note that there may be discrepancies in the way that these policy frameworks have played out in regions outside of Canada, New Zealand, and the Netherlands, and this analysis may not capture all the nuances in the experiences of sex workers within these contexts. The sex work industry is incredibly diverse, and constitutes a range of identities, activities, and challenges. Thus, the insights from some sex workers in these studies may not be reflective of the opinions of the entire community. However, these case studies and the sources drawn on throughout this paper do provide a clear overview of the general implications of these policies and the way that the different frameworks of legalization and decriminalization may play out in Canada.

Support for the Protection of Communities and Exploited Persons Act

In order to better understand the current policies pertaining to sex work in Canada and the potential avenues to reform them, it's important to first clarify the positions of those who endorse the PCEPA and the values they see being upheld through a model of criminalization.

To begin, proponents of the criminalization model seen under the PCEPA firmly believe that they are protecting women and girls by seeking to abolish sex work and imposing strict criminal penalties on the purchase and/or sale of sex. Their support for these models is shaped by the idea that decreasing the rate of sex work will mitigate the harms associated with it and promote the emancipation of the women and girls who are forced into sex work. Typically, supporters of this position conceptualize sex work as being directly related to crimes like trafficking, physical and sexual abuse, and coercion. Under the criminalization model, liberty and equity is said to be promoted through the goal of limiting sex work and pushing society in a direction that respects the dignity of women and girls and works to end the existence of gender-based inequalities. The principle of safety is additionally seen to be upheld through

efforts to eradicate sex work and eliminate associated crimes, like trafficking, that harm women and girls in the sex industry and within greater society.

In justifying the criminalization approach, Patricia Marino, a philosophy scholar, first points to the emergence of mainstream feminist theory in the 20th century (Marino, 2014). This school of thought provided a new lens on topics like sex work and pornography, and particularly how being viewed solely as a sex object within these contexts can have the potential for adverse consequences for women and society (Marino, 2014). In this regard, many feminists and scholars within the field argue that objectification should be understood as the practice of inherently denying the subject of their humanity, and that sex work is always morally problematic through its necessary objectification of the women and girls who engage in it (Marino, 2014). Radical feminists like Andrea Dworkin and Catherine MacKinnon follow a similar argument when discussing the implications of pornography and sex work and argue that these activities dangerously reinforce men's proclivity to reduce women to sexual objects (Marino, 2014). In response to this, they postulate that the only way to overcome the implications of objectivity is to challenge gender inequality through eradicating pornography and sex work entirely (Marino, 2014).

The scholar Kathy Miriam emphasizes a similar approach to Marino which begins by situating sex work within an institution of domination and subordination (Miriam, 2005). Miriam explains that sex work is powered by the male demand for sexual access to women's bodies and women's subsequent submission, which by default means that sex work is inherently exploitative and non-consensual (Miriam, 2005). Miriam posits that sex work is "wrong" not because of certain moral or religious values, but because it necessarily involves the alienation of power and agency that turns sex workers into victims of a larger liberal social order of inequality (Miriam,

2005). Carole Pateman is emphasized heavily within this literature, and particularly her theory of contractarian liberalism that advances the idea of a contract being less of an “exchange” wherein a worker sells their labour in return for some recompense, and more so a practice of alienation (Miriam, 2005). Pateman argues that a worker’s capacities cannot be alienated from their person, and as a result an employment contract necessitates a worker surrendering their autonomy to their employer (Miriam, 2005). In the context of sex work, Pateman further claims that sexual capacities are intrinsically tied to a sex worker’s self or identity, and that participating in sex work directly equates to the loss of “womanhood” and the participation in an institution which grants command over one person’s body to be exercised by another (Miriam, 2005). In this regard, it’s argued that those that enter sex work can never do so of free choice because the idea of autonomy and agency cannot be separated from their gendered aspects and the larger institutions of patriarchy that expect women to subordinate themselves to men (Miriam, 2005). In sum, Miriam argues that coercion, consent, and agency are intrinsically linked to male domination and that it’s impossible to claim that sex workers are completely free agents (Miriam, 2005).

The views espoused in Miriam and Marino’s articles and the claim that sex work legitimizes men’s demand for sexual access to women and girls are directly related to the underlying motivation of the PCEPA. Notably, the PCEPA states that “prostitution reinforces gender inequalities in society at large... allows men paid access to female bodies, thereby demeaning and degrading the human dignity of all women and girls,” and emphasizes all sex workers as victims and all clients and third parties as violent criminals (Justice Canada, 2014). For these reasons previously articulated, proponents of the PCEPA and the criminalization model believe that sex work should not be permitted to operate like any other form of work on the free

market and that, due to its inherent objectivity and exploitation, it is rendered distinct from other forms of work and thus should be regulated differently (Shrage, 2020).

These stigmatic assumptions about sex work and sex workers legitimate the principle of legal moralism, which holds that law may be used as a tool to control and prohibit certain behaviours based on what influential actors deem is “moral” and “immoral.” As Shih argues, deviant sexuality has historically been a site in which moral panics about contagion, disease, and threats to public security and health translate directly to increased policing and state control (Shih, 2016). Moreover, these ideas of victimhood and vulnerability that construe sex workers as victims of exploitation and of their own “misguided decisions” remain intrinsically tied to biased perceptions of ethnicity, race, gender, and class difference (Shih, 2016; Hannem & Bruckert, 2014).

Although these views are fairly pervasive, there are many advocates of the decriminalization of sex work who argue against these positions and see the principles of safety, equity, justice, and liberty as best being upheld by striking down the PCEPA and decriminalizing sex work.

Opposition to the Protection of Communities and Exploited Persons Act

Implications of Criminalization

Those who oppose the PCEPA and endorse a model of decriminalization believe that that the optimal means of protecting sex workers is by lifting criminal regulations surrounding sex work and monitoring it using either traditional labour laws enshrined under the federal government or through more strict regulations that enforce certain codes of conduct that sex workers and clients must follow. Individuals within this group argue that the criminalization of

sex work pushes sex workers into isolated spaces that limit their capacity to establish critical safety mechanisms - such as the screening of clients and negotiation of safe practices -, restrict their income and ability to support themselves, and promote an adversarial relationship with law enforcement - among other issues.

Moreover, the criminalization of sex work and the conflation of sex work and trafficking have acted to perpetuate the stigma surrounding sex work and those who engage in it, while also reproducing the distinction between “good girls” and “bad girls” that places blame on those who elect to stay in sex work (Fullinwider, 2018). The scholars Carroll and Block directly link increased stigma and the deterioration of agency through the paternalism that is inherent to policies of criminalization, and subsequently argue that decriminalization can make significant advancements to eradicating this stigma and promoting the agency and wellbeing of sex workers (Carroll & Block, 2021). Previous research has also shown that prohibitive sex work laws and the stigma that comes with it can prevent access to health and social supports and safe housing due to concerns related to disclosing sex work status, discrimination, and potential for arrest or loss of immigration status (Argento et al., 2019).

In this respect, opponents of criminalization models are quick to make the distinction between consensual sex work and non-consensual trafficking that supporters of the PCEPA do not, and attempt to separate sex work from the violence that is often associated with it. They argue that conflating human trafficking and sex work tends to result in ineffective anti-trafficking efforts since policing efforts are more often directed towards targeting sex workers rather than more elusive traffickers (Benoit et al., 2017). Moreover, Shih argues that reports of trafficking and the attention directed towards it are becoming so prevalent that a veritable moral panic surrounds trafficking and the sex industry, which leads to rising anxieties about sex work and

related issues such as immigration, race, class, and gender inequalities (Shih, 2016). These sentiments often lead to state responses that target women's sexuality as a site of either policing or "rescue" as a strategy to alleviate these anxieties surrounding trafficking (Shih, 2016). In line with these issues, advocates of decriminalization claim that sex workers and society are more protected when there is a clear distinction between consensual sex work and non-consensual sex trafficking, and when law enforcement can direct their resources towards the non-consensual and abusive activities.

Theoretical Justifications for Decriminalization

Marino adds to this discourse of decriminalization in stating that from a philosophical perspective, it's difficult to construe sex itself and activities within that scope as immoral simply in virtue of the idea that some forms of sexuality are "perverted" or "wrong" (Marino, 2014). She argues that there is no founded basis for these claims, and that while topics such as sex work and same-sex marriage may still be controversial and engender religious and moral opposition, they are not themselves wrong or controversial in any substantive sense (Marino, 2014). Marino also argues against the prior claim that objectification is a negative and damaging factor that is inherent to sex work (Marino, 2014). She claims that focusing on someone as an object of sexual desire can be a positive experience- such as in romantic relationships- and leverages Martha Nussbaum's models of objectification to highlight the idea that "denial of autonomy" is the central moral problem that needs to be addressed, rather than instrumentalization (Marino, 2014). Under this line of thinking, sex work is permissible when the sex worker is freely choosing to engage in it. When that autonomy is separated from the sex worker and the activity becomes non-consensual, then it moves into the realm of sex trafficking and abuse that needs to be sufficiently combatted through regulations.

In responding to this claim that sex workers can enter the profession of their own volition, many theorists and supporters of the PCEPA may rely on principles such as Marx's idea of false consciousness to explain that women are unaware that they are playing a role in their own objectification due to the normalization of inequality and oppression in society (Marino, 2014). As stated earlier, McKinnon and other radical, anti-porn feminists have decried sex work and pornography as profoundly anti-feminist and have argued that it reinforces men's proclivity to regard women as sexual objects (Srinivasan, 2021). In opposition to this, Willis contends that these feminist discourses can often repudiate forms of female pleasure to such a degree that they begin to subscribe to power hierarchies and assumptions of sexuality that maintain male dominance and the role of women to simply "put up with it" (Srinivasan, 2018).

It's important to note, however, that although the free choice and autonomy of sex workers should be protected, the broader framework of patriarchy and power and the relationship with gender, class, and race that underlines these negotiations cannot be completely dismissed. In this regard, Amia Srinivasan argues that there has been an evolution from earlier feminist accounts of "morality" and the "patriarchy" that eschews pornography and sex work completely, to a perspective that insists that acting on sexual desires is "morally constrained only by the boundaries of consent" (Srinivasan, 2018). Although she argues that moving beyond moralistic arguments that impose personal and harmful views onto others is imperative, focusing solely on the matter of consent can draw attention away from other fundamental issues - such as those related to misogyny and structural violence (Srinivasan, 2018). In relation to sex work, this perspective that prioritizes "consent" can obscure the sometimes harmful conditions that give rise to sex work, and see it as being permissible and even empowering so long as both the buyer and seller "agree" to the transaction (Srinivasan, 2021). This doesn't negate the fact that sex

work is still a legitimate form of labour and that the autonomy of sex workers is a key aspect of it that should be protected, but Srinivasan shows that the notion of consent and free choice - and all work in general - is complicated by these wider political and gendered structures and isn't as simple as a "yes" or "no" (Srinivasan, 2018). This highlights the need for policies to pay particular attention to the agency and wellbeing of sex workers, and to strive to create open and permissible working conditions under which sex workers are given the opportunity to better decide what work they want to do and what they want to reject.

Furthermore, many scholars have argued that sex work is not inherently exploitative, and that choosing to regulate women's bodies and choices further through models of criminalization will not solve the more pervasive issue of sexism and male domination and abuse that is a larger product of societal norms. Numerous activists have also claimed that it's a fallacy to reduce sex workers to passive victims, and that sex work can instead be understood as a place of agency where sex workers use existing patriarchal systems to their economic benefit. In this sense, sex work can be empowering in some cases- although this most often takes place in spaces outside of the precarious mode of street-based sex work.

Lastly, Miriam argues that the pro-sex work position relies on a liberal model of agency in which the autonomy of individuals and their rationality is privileged and protected (Miriam, 2005). This aligns with the free-market argument laid out by Wolff and Carroll & Block under their libertarian philosophy, which states that all acts should be legal and permissible on the market with the exception of those that employ or threaten violence- such as murder, theft, arson, and so on (Carroll & Block, 2021). Wolff extends this and discusses John Stuart Mill's dictum, in that the only justification for interfering with an individual's autonomy is to prevent those actions from causing harm to others and that the degree of government interference that takes place must

be proportionate with the harms that are caused by the action (Wolff, 2020). In this regard, it's argued by opponents of the PCEPA that most problems associated with sex work are also present in many other kinds of work and social practices, such as that of harassment and unsafe working conditions.

Thus, government interventions that aim to abolish sex work and infringe on individual rights are not justified, given the fact that consensual sex work can be argued to have no unique harm that afflicts others, and the state cannot ban an action simply on the grounds that it's disapproved by some - or even a majority - of people on moral grounds. Further, since sex work constitutes a consensual exchange of labour for a monetary benefit and doesn't produce any unique harms relative to other permissible fields of labour, it should be treated like any legitimate form of work with the enforcement of labour and civil rights and the entitlement of sex workers to make choices about their labour without any external interference or restrictions (Shrage, 2020; Miriam, 2005).

In sum, there's a great deal of philosophical arguments and values embedded on each side of the debate regarding criminalization and the PCEPA. While the ideologies and values underpinning the support for and opposition of the PCEPA are important to analyze, it's also crucial to look at the reports and insight from sex workers themselves and the ways in which they perceive the criminalization of sex work.

Realities of Sex Work under the Protection of Communities and Exploited Persons Act

Despite the proposed goal of the PCEPA to protect women and girls and maintain order within society, in reality it has produced a great deal of harm for sex workers in Canada and exacerbated current inequalities - and particularly among marginalized groups who are more prone to precarious, street-based sex work. In this respect, it is crucial to rely on the lived

experiences and voices of sex workers within Canada to elucidate the harms of criminalization and to gain a better understanding of what is required to truly prioritize the safety and wellbeing of sex workers. As Valerie Scott stated in the *Bedford* decision of 2013, “politicians, though they may know us as clients, they do not understand how sex work works. They won’t be able to write a half-decent law ... That’s why you must bring sex workers to the table in a meaningful way” (CBC News, 2013).

In the decision from the Ontario Court of Appeal that struck down key provisions related to sex work, Justice Himel suggested that the regulatory framework under the PCEPA “may actually serve to increase the vulnerability and exploitation of the very group it intends to protect” (Hannem & Bruckert, 2014). Justice Himel’s prediction proved to be accurate, and many scholars and sex workers have highlighted the ways in which the PCEPA tends to reproduce systems of harm and exclusion that were pervasive under previous models of prohibition. In particular, the PCEPA has generated significant repercussions through the indirect criminalization of sex workers, over-surveillance and policing, increased risk of violence and abuse, economic instability, and impaired access to social, legal, and health services.

Criminalization of Sex Workers

One of the core explanations for the gap between the stated goal and the practical application of the PCEPA is that the provisions established to punish third parties and clients of sex workers have actually created indirect and severe implications for sex workers themselves, and greatly impeded their ability to perform their work safely and securely. For instance, section 210.1 of the Criminal Code imposes a ban on anyone “who keeps a common bawdy-house”, which was intended to address alleged exploitation (Hannem & Bruckert, 2014). However, this in practice has translated to criminal sanctions not just for owners and managers but also for

receptionists who book appointments and help out with the phone, bouncers and security, and even sex workers who conduct their work out of their own homes (Hannem & Bruckert, 2014). In practice, many of those individuals who help out with the services and labour pertaining to sex work and who may be criminalized under this provision are current or former sex workers themselves. Second, the broad definition that is encapsulated in section 210(2) and criminalizes “everyone who is an inmate of a common-bawdy house, or is found in a common bawdy-house” can also place limitations on sex workers who prefer to receive clients in their homes or who visit clients in repeated areas that are more safe and familiar (Hannem & Bruckert, 2014). Finally, the section of Bill C-36 that “prohibits comprehensively all conduct related to procuring others for the purpose of prostitution” in practice sanctions all professional relationships that sex workers have with third parties - including with receptionists, agents, and website designers - and some personal ones (Government of Canada, n.d.; Hannem & Bruckert, 2014). Thus, it’s clear that the framework of the PCEPA itself continues to indirectly criminalize sex workers and those who seek to offer services that would benefit the health and safety of sex workers. Despite the claim that the PCEPA serves to protect women and girls and only punish those who seek to “exploit” sex workers, in practice it becomes incredibly difficult to practice sex work legally and without fear of punishment.

Occupational Health and Safety

The criminalization of sex work has also resulted in the unsolicited and invasive surveillance and over-policing of sex work communities, with a disproportionate focus on and persecution of racialized, transgender, and (im)migrant communities (Hansen, 2020). Along with the regulations under the PCEPA that persecute third parties, the ability of sex workers to sufficiently implement occupational health and safety measures has been greatly restrained.

As a result of increased police presence in the areas where street-based sex workers typically perform their work and the culture of fear and distrust that criminalization has cultivated, sex workers have been pushed into more secluded, riskier areas to seek work and forced to work longer hours due to a reduced client base (CASWLR, 2015). Within these contexts clients have an interest in not getting caught by the police, which often means that sex workers need to rush or forgo discussions related to issues like fees, condom use, and the type of service offered (Krüsi et al., 2014). Consequently, sex workers are less able to protect themselves from physical and sexual violence or refuse unwanted clients or services (Krüsi et al., 2014). The ability to properly screen and negotiate with clients before accepting any services has been highlighted as a critical way that sex workers can protect their health and safety when conducting their work, and is a measure that is being directly and severely undermined due to the current framework of law and policing in Canada (Krüsi et al., 2014).

Moreover, street-based and out-call sex work remain the most vulnerable forms of sex work, and the sanctions imposed by the PCEPA on hiring third parties has limited the access to security protocols that would further protect sex workers and minimize risk - such as through safe calls, formal screening, and physical protection (Hannem & Bruckert, 2014). These developments have had severe repercussions in terms of the violence and harm that sex workers face from aggressors and clients, the risks of which are not equally distributed across the sex industry (Hannem & Bruckert, 2014).

Finally, O'Doherty conducted a series of interviews with sex workers who indicated that the criminalization of sex work has alienated them from the protective services of police, limited their access to information and advice about their legal rights, and generated additional legal and social consequences related to their association with criminalized activities (O'Doherty, 2011).

One study on the experiences of transgender and non-binary sex workers also indicated a widespread distrust of law enforcement, and found that 87-96% of those surveyed did not anticipate fair treatment from police and the legal system if they were to be assaulted and almost half stated they had avoided calling 911 over the past five years when police services may have been needed (Arps et al., 2021). Non-discriminatory and quality access to information and legal resources is key to protecting the health and safety of sex workers and allowing them to enforce their labour rights, and under criminalization there is currently a notable gap in the provision of these services.

All together, these factors significantly increase the vulnerability and risks that sex work poses to anyone choosing to engage in it, which is compounded by the limitations and stigma that sex workers face when attempting to access support from legal services or the police. Despite the PCEPA redirecting criminality to clients and third parties, it's clear that many of the harms present under pre-2014 legislation are being reproduced or exacerbated in the current context (Krüsi et al., 2014). This shows that promoting the occupational health and safety of sex workers and protecting them from abuse and exploitation is something that would be better served by the implementation of stronger rights and labour frameworks, rather than the continued over-reliance on criminal justice measures that act to reify inequalities and harm.

Access to Health and Social Services

The criminalization of sex work has played a pivotal role in shaping the overall health and wellbeing of sex workers in Canada. Notably, sex workers are more likely than non-sex workers to be exposed to detrimental health outcomes as a result of unsafe working conditions imposed by criminalization - this includes limited space for negotiations with clients and for the enforcement of safe sex practices, which can contribute to high rates of HIV and other STIs

(Lazarus, 2011). Sex workers are also particularly vulnerable to mental health illnesses and stressors. For instance, a 2001 study found that 59% of the 193 sex workers interviewed reported that they required therapeutic or emotional support from others on the street and another 57% said they needed professional counselling (Sawicki et al., 2019). Additionally, a 2010 study of sex workers observed higher rates of mental illnesses than seen in the general public, such as PTSD, anxiety, and major depression (Sawicki et al., 2019). Further studies by Dalla in 2002 on the struggles that sex workers faced revealed that 95% of research participants reported drug dependency, which is accentuated for Indigenous women and women of colour as a result of the overlap between drug markets and sex markets (Strega et al., n.d.). These factors are exacerbated by the lack of access to unbiased and informed healthcare.

Furthermore, transgender and non-binary sex workers have been identified to be at heightened levels of risk compared to cisgender sex workers and non-sex workers. For example, a 2019 study from TransPulse Canada that surveyed 2,873 transgender and non-binary sex workers found that 72% had fair or poor self-rated mental health and 10% had attempted suicide in the past year (Arps et al., 2021). Additional research has highlighted the ways in which increased levels of violence, limited access to justice, and stigma in healthcare settings act as important social determinants of the health of transgender and non-binary sex workers (Arps et al., 2021).

The refusal at the state and individual-level to accept the fact that sex work is a legitimate form of labour and to recognize the rights of sex workers is incredibly harmful for those who choose to engage in sex work, and has imposed harsh restrictions on sex workers' ability to access health and social services that would mitigate these disparities. This includes difficulties in accessing primary care, HIV treatment and prevention, and sexual health services (Krüsi et al.,

2014). This is partly a result of the high rates of stigmatization and discrimination that sex workers experience due to biased and misdirected criminal legislation, and sex workers have cited situations that occur as a direct consequence of this stigma - such as healthcare providers assuming they were drug addicts or lecturing them about “safe sex”, children being taken from homes because of the work they do, and being denied housing or work outside of the sex industry (Hannem & Bruckert, 2014).

In a study that collected data through questionnaires from 252 female-identifying sex workers in Vancouver, 141 (55.9%) reported occupational sex work stigma while 125 (49.6%) cited additional obstacles to accessing health services (Lazarus, 2011). Additionally, the study from TransPulse Canada found that 26% of transgender and non-binary sex workers reported not having a primary care provider, 63% reported having unmet healthcare needs, and 39% reported that they had been denied healthcare (Arps et al., 2021). These studies emphasized the need for significant policy and societal shifts in views of sex work, and the coinciding need for improved access to non-judgemental and accessible health care delivery models as a means of promoting the health and wellbeing of sex workers (Lazarus, 2011).

Economic Precarity

Finally, Jen Clamen - the national coordinator for the Canadian Alliance for Sex Work Law Reform (CASWLR) - has articulated the various economic consequences that criminalization has in the lives of sex workers. In particular, Clamen explains that sex workers are often reluctant to rely on government systems due to the criminalization of sex work and the stigma surrounding it, and some sex workers have subsequently been too afraid to file their taxes or document themselves in any way through these systems (Hansen, 2020; Wright, 2020). Sex workers also may be hesitant to sign up for any government benefits or systems that require

banking information at the risk of infringing on their clients' confidentiality and putting them in legal trouble (Wright, 2020). As a result, sex worker's ability to qualify for financial assistance measures like CERB or to receive any employment and social security benefits that workers in other labour sectors would receive is severely limited (Hansen, 2020).

In effect, many sex workers have been forced into desperate situations where they're in need of food, rent, stable housing, and basic necessities (Wright, 2020). This is exacerbated for racialized and transgender sex workers who face multiple intersections of discrimination, with one study finding that 58% of transgender sex workers reported living in low-income households and many others reporting experiences of housing (19%) and food (32%) insecurities (Arps et al., 2021). Clamen, as well as various other within the sex work and allied community, have called for a universal benefit that would allow sex workers - including undocumented and migrant workers - to receive financial aid and social benefits that are open to any other field of labour (Wright, 2020).

Discussion

It is clear that the PCEPA has engendered a myriad of harms for sex workers, despite its alleged goal of protecting those within the sex industry. It's also evident that, withstanding a lack of empirical basis to show the alleged benefits of criminalization and the growing number of studies that highlight the serious consequences that the PCEPA continues to have for sex workers, little is being done to ameliorate the situation and develop any promising alternative. In this regard, scholars like Hannem have emphasized the ways in which these criminal regulations represent an intersection of feminist protectionism and legal paternalism, which is worsened by the interests of policy-makers and government officials who see punitive, criminal sanctions as the most appropriate mechanism to to redress social inequality (Hannem & Bruckert, 2014).

Elizabeth Bernstein similarly devised the concept of “carceral feminism”, which speaks directly to the negative consequences of state control and an approach to sex work that relies on a so-called “anti-trafficking activism” (Shih, 2016). Despite the tangible harm that these policies have caused in the realms of health and safety, stigmatization and discrimination, and economic stability, there remains a tendency of state actors to negate these effects under the guise of moral and humanitarian efforts and to legitimate them under paternalistic discourses (Shih, 2016).

The sex work community has widely argued that the optimal way forward is to abolish the PCEPA and undertake an approach to sex work that can help mitigate stigma and promote the safety, wellbeing, and equitable treatment of sex workers. As many sex workers and scholars argue, decriminalizing sex work is the model that can best meet these objectives. In the following sections, alternative models of legislation will be explored in order to elucidate the practical implications of each approach and to better understand how they would play out in Canada.

Profile of Policy Options

The profile of policy solutions concerning sex work can be mapped onto a continuum, with absolute prohibition and criminalization of sex work on the one end and full-fledged support and legal recognition of sex work on the other. Within this spectrum, the policy options pertaining to sex work legislation in Canada are abolition, partial criminalization, decriminalization, and legalization.

To begin, the abolitionist framework is driven by the perspective that sex work is inherently exploitative and violent and that it perpetuates sexism through the legitimization of male domination over women. This approach believes that it’s impossible to strip sex work of abuse, and that outright prohibition of sex work is the only tenable framework for protecting the

health and wellbeing of sex workers. Under this framework the client, sex workers, and related third parties are all criminalized with the goal of abolishing sex work entirely.

Second, the framework of partial criminalization is seen clearly in the PCEPA, which represents the current status quo in Canada. As outlined previously, this model is motivated by the belief that sex work disrupts the order of a community and exploits vulnerable women and girls. As such, this model imposes criminal sanctions on the purchasing of sexual services, rather than on sex workers themselves, as a means to reduce and eventually eradicate sex work. The key aspect of this policy is its focus on demand, since supporters of this model posit that sex work is driven by male demand and that it's this demand and system of domination that produces harm to sex workers. Proponents of this model also claim that it aims to reintegrate sex workers into society through removing their criminal status and granting them access to regulations and social services (Carroll & Block, 2021).

Next, decriminalization as a policy option entails the removal of criminal and administrative penalties that apply specifically to sex work, and the creation of an enabling environment for sex workers. It must also be accompanied by a recognition of sex work as work, which permits it to be governed by federal labour laws and health and safety regulations that would regulate it like other forms of labour in Canada. While policies that restrict activities related to sex work can still occur, these regulations often move to local and municipal levels where these jurisdictions can tailor policies to their local needs through non-sex work specific laws.

Finally, on the end of the continuum is the legalization model. This involves the removal of criminal sanctions surrounding sex work similar to the decriminalization model, but it is distinct in that it includes additional regulations on how and where sex work can be conducted on

the basis that sex work is still inherently “bad” but inevitable. These regulations could include policies such as zoning requirements, advertising restrictions, mandatory STD testing, and police record checks (Hannem & Bruckert, 2014). Under this model, sex workers in principle gain enhanced access to criminal justice protection, the security of labour laws, and a measure of legitimacy from mandatory licensing requirements (Hannem & Bruckert, 2014). Legalization is driven by the view that sex work is a by-product of societies around the world, and that legalizing sex work and allowing it to occur- but regulating it closely through stringent criminal and safety provisions- is the best way to protect sex workers and to limit accompanying social problems.

In light of the prior analysis elucidating the ways in which the criminalization of sex work creates significant harm, it’s clear that either a model of legalization or decriminalization would best suit the needs and experiences of sex workers in Canada. A closer analysis of the implications of both models will be conducted in the following section in order to determine why decriminalization has been upheld as the optimal option for Canada’s sex work community.

The Implications of Legalization and Decriminalization in other Regions

Two key cases to analyze in order to better understand how alternative models of sex work legislation will play out within the Canadian context are those of Amsterdam, whose government legalized sex work in 2000, and New Zealand, where sex work was decriminalized in 2003.

The Case of Legalization in the Netherlands

The first example of an approach to sex work legislation that embodies a more permissible position on sex work is that of legalization in Amsterdam. In this case, the

government legalized sex work in 2000 through lifting the ban on brothels and instituting mechanisms for the regulation of paid sex transactions that delineate certain standards and codes of conduct that all parties must meet. The main objectives of this process of legalization were to control and regulate sex work, shield minors from sexual abuse, and protect the position of sex workers - but not necessarily improve it (Outshoorn, 2012). By implementing regulations such as licensing requirements for brothels and sex clubs, the state aimed to “clean up” the sex work industry and suppress its criminal elements (Outshoorn, 2012). For instance, the Red Light District in Amsterdam is a region where sex work is permitted - albeit with strict regulations - and where a high concentration of sex workers conduct their business. In this zone, sex workers must work behind the storefront windows and are prohibited from conducting street sex work or from advertising their services on the road or in any public buildings (Desai, 2019). The motivation behind the legalization model is to shift away from an overly paternalistic approach to sex work that aims to “save” sex workers - similar to what is seen under partial and full criminalization - and instead focus on managing the risks that are associated with the inevitable nature of the sex industry and its associated social practices (Hannem & Bruckert, 2014).

While the stated goal of legalization is to protect sex workers through developing systems of rules and safety mechanisms that reduce associated crime, many sex workers have highlighted the ongoing abuse and exploitation that they face under this model. For instance, several studies were issued following the legalization of sex work that shows how it has produced an often unequal, dependent relationship between managers and sex workers (Outshoorn, 2012). In these cases, managers tend to have control over areas such as working hours, dress, and the percentage of earnings that go to sex workers (Outshoorn, 2012). Additionally, factors such as hygiene, physical health, and security at work are strongly dependent on each sex worker’s operator and

their interest in providing for an enabling and safe environment for sex workers (Kovacsics et al., 2023 et al., 2023). Some sex workers have reported satisfaction with their work conditions in this respect, but not all (Kovacsics et al., 2023).

Additionally, a report released in 2008 on the conditions of sex work in the Netherlands found that there are barriers to signalling abuse and accessing support at every stage of the process (Outshoorn, 2012). Key reasons for this included the interests of club owners and managers in maintaining a system of low labour costs and poor working conditions as a way to promote personal profit, migrant sex workers who work without a legal license fearing deportation and electing not to speak out about abuse, and law enforcement and local authorities not always being reliable in ensuring that the rights of sex workers are protected (Outshoorn, 2012). In effect, sex workers are often placed under detrimental control not only by pimps who offer to provide certain necessary services, but also by the owners and system itself that impedes the ability of sex workers to access critical services and to independently work and sustain themselves (Cruz & Iterson, 2023).

Several studies have also highlighted the issues of over-surveillance and over-policing that have been enhanced through this framework and the increased risks this poses to the safety and wellbeing of sex workers (Rzeplinski, 2019). For example, policies that prohibit home-based sex work as a means of addressing trafficking often unfairly target independent sex workers who work from home, rather than capturing the traffickers they were designed for (Kovacsics et al., 2023). This can result in costly fines or even evictions for independent sex workers, which can have dire consequences on their financial stability and wellbeing (Kovacsics et al., 2023).

Additionally, sex workers cite the intense competition that they're now experiencing within the Red Light District and the economic hardships that certain regulations have generated.

For instance, independent sex workers will often rent out a window for a certain part of the day to work, but costs can range upwards of 90 to 150 euros for an eight hour shift (Cruz & Iterson, 2023). With increasingly high overhead costs and taxes, many sex workers need at least four to five clients a day just to cover rent and are logging 16-hour days to sustain themselves (Rzeplinski, 2019). These issues are also present in other regions where legalization has been introduced - such as in Nevada - where sex workers are prohibited from working on the streets and are obliged to perform their labour in brothels, where they often are paying mandatory fees that make up 40-60% of their earnings (Hannem & Bruckert, 2014). Furthermore, there is a lack of protective regulations guaranteeing minimum wage or social security under this framework of legalization, which can make it difficult for sex workers to negotiate for higher pay or benefits that better align with increasing costs and financial restraints (Kovacsics et al., 2023).

Finally, legalization has produced particular experiences of harm for transgender and migrant sex workers. For instance, sex work is the only labour sector in the Netherlands under which the Foreign National Employment Act forbids the issuing of work permits (Kovacsics et al., 2023). As a result, migrant women are denied the right to work in the sex industry on the biased assumption that sex workers from non-EU countries are victims of forced prostitution (Outshoorn, 2012). Contrary to the goal of addressing exploitation and abuse, this policy has left many migrant sex workers with no rights or protection and has made them particularly vulnerable to blackmail and abuse by employers and pimps (Outshoorn, 2012). Moreover, the undocumented and illegal status of migrant sex workers makes it difficult to find work and pushes them further into the margins where they face heightened risks (Outshoorn, 2012).

This environment of legalization has also had detrimental impacts for transgender sex workers in regard to systemic discrimination and widespread employment and income

insecurities (Kovacsics et al., 2023). For example, there are a limited number of operators who will rent out windows and offer work to transgender sex workers, and there are a lack of formal rules under the model of legalization that could guarantee equitable access to these groups (Kovacsics et al., 2023). More often than not, transgender sex workers are forced to resort to illegal work in order to sustain themselves.

This system of legalization and burdensome regulations has fostered a two-tiered system of sex work, in which there is a licensed sector of sex workers and a non-licensed, illegal sector where many instances of abuse and exploitation still occur (Outshoorn, 2012). In most cases, the licensed sector is composed of white, Dutch citizens, and the non-licensed sector is made up of many migrant, racialized, and transgender sex workers who don't want to or are unable to conform to the strict rules pertaining to the practice of sex work (Outshoorn, 2012).

Although legalization presents a seemingly less restrictive model than criminalization, it still operates on stigmatic assumptions of sex workers and their alleged proclivity to increase rates of organized crime and disease (Hannem & Bruckert, 2014). In continuing to emphasize this discourse and the perception of sex workers as exploited young victims, attention is being diverted away from the inadequate working conditions and lack of social rights and protections that causes real harm to sex workers (Outshoorn, 2012). Moreover, legalization produces a hyper-regulatory approach that includes a layering of legislation and related criminal sanctions - seen through increased and complicated public health, federal/state, and municipal regulations - that are unique to any other form of labour and that reifies the distinction between sex work and other legitimate forms of work (Hannem & Bruckert, 2014). For instance, many municipalities who oppose the visibility of sex work in their communities have resorted to measures such as zoning regulations or limiting the number of new licenses in an effort to regain control over the

sex work industry and suppress it (Outshoorn, 2012). To make matters worse, many sex workers have limited awareness of their rights or duties and are particularly vulnerable to the whims of managers and the state (Outshoorn, 2012).

In effect, legalization has engendered many of the same harms and restrictions as the partial criminalization model, and still allows the state to hold a great deal of power in terms of defining who can and cannot be a sex worker and the conditions under which their work can occur (Hannem & Bruckert, 2014). Moreover, it's clear that the system of legalization found in the Netherlands fails to prioritize the true safety, wellbeing, and liberty of sex workers and instead seeks to keep sex work as hidden and regulated as possible. As Kovacsics et al., 2023 argues, these factors all taken together point to a situation of “legal liminality associated with a disguised criminal approach to sex work” (Kovacsics et al., 2023).

The Case of Decriminalization in New Zealand

A second potential avenue for change is the reforms adopted in 2003 in New Zealand, where sex work was decriminalized under the *New Zealand Prostitution Reform Act (PRA)*. Under this model, all criminal regulations surrounding sex work were struck down and a framework was instituted that aimed to improve the working conditions of sex work through improved access to labour and civil rights (Benoit et al., 2017). Notably, the design, implementation, and review of the PRA was performed through a collaborative approach between the Government of New Zealand and the New Zealand Prostitutes Collective (NZPC), which sought to prioritize meaningful consultation and dialogue with the sex work community and ensure that the PRA was in line with the experiences and needs of sex workers (Aroney, 2021).

This decriminalization approach is significantly different from the model of legalization found in the Netherlands, and leverages the minimal amount of regulatory requirements under the presumption that sex work is equivalent to any other form of labour (Hannem & Bruckert, 2014). For instance, New Zealand permits sex workers to operate either as individual service providers or as small worker-run collectives without a license, and allocates the responsibility of regulations related to locations of brothels and advertising to municipal bylaws - which is similar to the practices undertaken with any other local business (Hannem & Bruckert, 2014).

One study conducted in 2008 found that these reforms facilitated greater access to justice and healthcare services for sex workers and significantly improved their working conditions (North, 2019). Sex workers also reported feeling more protected from violence and exploitation through the opportunity to negotiate safer sex practices under a more permissible legal framework and through their improved relationship with law enforcement agencies (North, 2019). For instance, section 17 of the PRA grants sex workers the right to refuse the provision of sexual services at any point, and section 8 mandates that brothel owners will adopt and promote safer sex practices within their establishments (Abel & Healy, 2021). Moreover, in research collected five years following the implementation of the PRA, 57% of sex workers reported that police attitudes had improved following decriminalization and many others reported that they could trust the process of reporting incidents of abuse to the police (Abel & Healy, 2021).

These reforms can be attributed in large part to the role of decriminalization in legitimating sex work as work and consequently mitigating the stigma surrounding it, as well as eschewing the paternalistic “saving” rhetoric found in models of criminalization and legalization (Hannem & Bruckert, 2014). Additionally, these improvements in occupational health and safety

measures are a critical factor in addressing the health and human rights inequities that sex workers have faced under years of criminalization (Abel & Healy, 2021).

Furthermore, decriminalization has been shown to allow for the increased political and social mobilization of sex workers (Aroney, 2021). For instance, there are more opportunities under this framework for sex workers to form organizations, lobby for improved rights and resources, and participate in law reform (Aroney, 2021). Sex workers also have more freedom to provide and access peer support and to engage with others in the sex work community, such as through providing information the rights of sex workers and safe sex practices without fear of incrimination (Abel & Healy, 2021). These are valuable resources to address the complex needs of sex workers and to minimize harm, and are an important outcome of decriminalization.

However, decriminalization is not an infallible model and there have still been accounts of harmful regulations, stigma, and discrimination towards sex workers under the PRA. For example, under decriminalization local jurisdictions have the authority to implement more restrictive policies, and this was the case when bylaws were passed in New Zealand that prohibited sex workers from advertising on the street or from conducting their work in brothels in particular neighbourhoods (Benoit et al., 2017). In effect, this resulted in some small owner-operated brothels becoming heavily regulated and pushed into more risky areas due to local governments opposing the proximity and visibility of sex work (Aroney, 2021).

Moreover, the criminality of sex work still persists - albeit in a limited degree - with the sanctions available for those who violate the “safe sex” provisions (Hannem & Bruckert, 2014). This is one area where sex work is still rendered distinct from other forms of generic industry regulation, in which violations of labour regulations would necessitate civil penalties rather than criminal ones (Hannem & Bruckert, 2014). As Aroney argues, problematic harm reduction

arguments and political and moral concerns about trafficking have still played a role in reshaping sex work legislation in New Zealand to some extent, irregardless of the broader aims of the decriminalization and sex worker rights movement (Aroney, 2021).

Furthermore, the sex work industry in New Zealand is still highly stratified and transgender, migrant, and Māori women who perform sex work continue to face disproportionate levels of risk and harm. For instance, one of the amendments to the PRA explicitly prohibits migrants on temporary visas from engaging in sex work - although they are still permitted to work in any other industry (Abel & Healy, 2021). This shows that despite the commitment under decriminalization to treat sex work like any other form of work, this is not entirely the case and sex workers still face unique barriers and harm to conducting their work. Dwyer also found that LGBTQ+ communities continue to be negatively affected as a result of the stigma and systemic discrimination embedded in public institutions (Gilmour, 2020). In particular, he found that LGBTQ+ communities face both under-policing, in that law enforcement fails to adequately respond to cases of abuse or violence against LGBTQ+ people, and over-policing, in that there are still ongoing incidents of police harassment and discrimination against the LGBTQ+ community (Gilmour, 2020). Gilmour argues that this reflects a normalization of violence against transgender and queer sex workers by police (Gilmour, 2020).

Finally, despite the evidence showing that decriminalization has improved sex workers' access to occupational and civil rights overall in New Zealand, there is still a degree of stigma embedded in perceptions of sex work that have limited some sex workers' ability to benefit from these rights (Aroney, 2021). For instance, many street-based sex workers opted out of applying for the government-issued wage subsidy during the COVID-19 lockdown due to fear of declaring their sex work status in a system linked to childcare and taxation (Aroney, 2021). An

additional study found that some sex workers are still unlikely to report cases of abuse or violence to the police based on their negative past experiences of stigmatization and discrimination (Abel & Healy, 2021). Hubbard details this culture of stigma in his research, and explains that although attitudes towards sex workers may be shifting towards a more liberal and accepting approach overall, sex workers are still “identified as a distinct group whose lifestyle is different from that of the ‘moral majority’” - which is a category that imposes certain restraints on the behaviour and wellbeing of sex workers (Mead, 2001). Moreover, this stigma and the exclusion and marginalization that it produces has particularly adverse implications for racialized, transgender, and (im)migrant sex workers (Gilmour, 2020).

Moving forward, it will be important to acknowledge the adverse and unintentional harms that can occur under a framework of decriminalization and to continue to collaborate with the sex work community to address these issues. In particular, the experiences of sex workers in New Zealand has elucidated the ways in which pervasive stigma and the intersectional nature of structural violence and discrimination will continue to create barriers for sex workers in achieving a fully safe, secure, and liberated environment to conduct their work. It will be critical that policy-makers in Canada take these issues into consideration if they adopt a model of decriminalization, and ensure that comprehensive frameworks are constructed that limit the potential for a well-intentioned policy to indirectly prolong inequalities, stigma, and harm for the sex work community. For example, the national sex workers rights organization in Australia, Scarlet Alliance, recently published a briefing paper that calls for revisions to sex work laws that act to address several of these gaps and issues. In particular, they call for the repeal of all sex work-specific criminal and licensing laws and regulations - as well as those that target migration -, the removal of police as regulators, and the adoption of anti-discrimination protections to

ensure that sex workers are not further marginalized in their work due to persisting stigma and moral biases (Scarlet Alliance, 2021).

Policy Recommendation and Discussion

Based on the previous analysis, the policy option that is recommended to best uphold the values of safety, liberty, and equity and to protect sex workers is that of decriminalization, where all criminal sanctions pertaining to sex work in Canada would be struck down and sex workers would be permitted to operate within an accessible and open environment.

As stated by Wolff, it's important to ensure that any proposed policy recommendation can be supported by reasons that are easily articulated (Wolff, 2020). In this regard, it can be said that the current legislative framework under the PCEPA is an undesirable approach to sex work since it has acted to facilitate racialized and gendered patterns of violence against marginalized populations and has made the already risky category of sex work even more dangerous through its implementation (Kunimoto, 2018). As stated previously, the PCEPA has failed to achieve its stated goal of “protecting women and girls” against exploitation, and has in reality produced a great deal of tangible harm in the realms of occupational health and safety, violence and abuse, financial stability, and mental and physical health.

Additionally, Amartya Sen explicates a framework of justice enhancement that calls for attention to empirical evidence in analyzing which policy or approach will make a positive difference (Carroll & Block, 2021). Serene Khader further adds to this through highlighting the importance of protecting the wellbeing of those most impacted from the policy and “accounting for incongruencies in stated policy goals and real outcomes” (Carroll & Block, 2021). This last factor is key because it speaks to the inability of the PCEPA and the criminalization model to

meet its objective of promoting the health and wellbeing of sex workers and working towards the eradication of sex work- which is clear through all the reasons outlined previously.

As stated by the Combahee River Collective - a Black Feminist organization that aimed to empower women of colour and to tackle systemic oppression -, “we do not want to mess over people in the name of politics” (Combahee River Collective, 1978). In explaining this mission they point to the history of “destructive acts [that] have been done in the name of achieving “correct” political goals” - which can directly relate to the oppressive policies that criminalize sex work and produce systemic harm for all sex workers (Combahee River Collective, 1978). In this regard, it’s key that those who are most implicated by these sex work policies be placed at the center of the analysis when determining a framework that best serves their experiences and needs - rather than prioritizing misplaced moral concerns. Alison Jaggar and Wolff further explain that attending to real life cases is invaluable to developing the right tools to understanding and addressing injustice, and Jaggar suggests a comprehensive framework for determining a model of justice in which the essential component is incorporating a bottom-up approach that aims to investigate existing injustices through the lens of those most affected by it (Jaggar, 2019; Wolff, 2020).

In this respect, sex workers and activists within the community have been advocating for decriminalization for over 30 years and have spoken to the adverse harms that are present under more prohibitive models- such as criminalization- and more strictly regulated models- such as legalization. Although legalization is often upheld as a preferable policy alternative to criminalization, legalization and its associated measures carry a myriad of consequences for the wellbeing of sex workers and is not an interchangeable or better option than decriminalization. For instance, enhanced policing under legalization can shape the risk of violence and abuse that

sex workers face through increased surveillance and fear of arrest or deportation- which disproportionately affects racialized, transgender, and (im)migrant communities. It also acts to perpetuate the stigma surrounding sex work through maintaining a lens of sex work as “dirty” and in need of correction, which can significantly impede the ability of sex workers to access important services and protections. Lastly, it continues to maintain a system of control and abuse under which managers and the state regulate the conduct and wellbeing of sex workers, such as through limiting their ability to secure adequate pay or work independently. Despite the optimistic aims of legalization, it’s clear that further state intervention and the extended use of policing in regulating the sex work industry prolongs harm for sex workers, and particularly for racialized, transgender, and (im)migrant sex workers.

On the other hand, experiences of decriminalization in New Zealand have shown that such a framework can contribute to mitigating the stigma surrounding sex work, to improving access to occupational health and safety measures, and to building better relationships with law enforcement (Gilmour, 2020). Moreover, it can provide a greater opportunity for sex workers to form networks of solidarity and to share and access critical information from one another. While there is still significant public support for the PCEPA, it’s important to recognize that developing a policy framework that truly protects sex workers and respects the values of safety, equity, and liberty is impossible without collaborating with sex workers and following their direction- which has been to decriminalize sex work.

As a final note, advocating for decriminalization aligns with Wolff’s idea that often the best we can hope for with policy reform is incremental change and that we must recognize the strong influence that the status quo bias has (Wolff, 2020). In this respect, decriminalization is nothing new - it’s been practiced in several states across the world, and the Supreme Court of

Canada already struck down criminal sanctions pertaining to sex work in 2013 when they recognized that such prohibitions were producing adverse consequences for the safety and wellbeing of sex workers. Legalization can be also argued to require more significant change than decriminalization, since it requires a unique and novel policy framework and set of regulations, while decriminalization simply draws on existing frameworks of labour and civil rights.

In sum, it has become clear that decriminalization is the best way forward in Canada to ensure that sex workers can conduct their work safely, securely, and without stigma that limits their ability to access critical services.

Conclusion

This paper has undertaken an analysis of sex work legislation in Canada that highlights the ways in which the PCEPA creates a myriad of adverse consequences for sex workers and unique and disproportionate levels of harm for racialized, transgender, and (im)migrant sex workers. It's clear that the PCEPA and criminal policies concerning sex work rely heavily on moral stigmas and biased perceptions of victimhood and vulnerability that tend to reduce complex issues of poverty, racialization, social inequality, and gender to criminal justice problematics (Hannem & Bruckert, 2014). In particular, it's been shown how the PCEPA and models of criminalization consistently lead to increased surveillance and harassment from law enforcement, worse outcomes related to occupational health and safety, limited access to critical health and social services, and financial strain for sex workers. Moreover, the pervasive stigma and structural and intersectional forms of violence and discrimination that are rampant under criminalization contribute to further social marginalization and harm.

It is apparent that the way forward must be rooted in the voices and lived experiences of sex workers and be situated around a model of decriminalization that protects the safety and wellbeing of those within the sex industry - whatever their justification for entering and remaining in sex work is. Under this model, the PCEPA and all additional criminal regulations pertaining to sex work in Canada must be struck down and a framework instituted with the aim of improving the working conditions of sex work through enforcing stronger labour and civil rights. As elucidated by the experiences of sex workers in New Zealand, the decriminalization of sex work has the potential to facilitate greater access to justice and healthcare services, to lower the risk of violence and exploitation through the implementation of critical safety mechanisms, and to mitigate the structural discrimination and stigma surrounding sex work.

Despite the challenges that arise with instigating the reform of sex work legislation in Canada, it's evident that decriminalization provides a less radical change that still provides the optimal basis for protecting sex workers and society at large, while also upholding the values of liberty, dignity, and equity. It will be key to pay particular attention to the experiences of racialized, transgender, and (im)migrant sex workers throughout the implementation of any policy reform to ensure their needs are sufficiently addressed, and to uphold the principle of "nothing about us without us" in prioritizing insight and collaboration from sex workers. Moreover, it's important to recognize that decriminalization will require a long-term commitment from the Canadian government to fund harm reduction strategies as well as social programs and services that actively seek to improve the position of sex workers in society - such as measures addressing poverty, addiction, and mental health - to truly encapsulate an approach to sex work that puts their needs first and works to eliminate systemic inequality.

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