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# The Sex Worker Rights Movement in Canada: Challenging the 'Prostitution Laws'

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THE SEX WORKER RIGHTS MOVEMENT IN CANADA:  
CHALLENGING THE 'PROSTITUTION LAWS'

by  
Sarah Beer

A Dissertation  
Submitted to the Faculty of Graduate Studies  
through Sociology  
in Partial Fulfillment of the Requirements for  
the Degree of Doctor of Philosophy at the  
University of Windsor

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2010  
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Approval page

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## Abstract

The contemporary movement for sex workers' rights organizes around a range of international, national, and localized grievances. They are unified in their efforts to promote and protect sex workers' human and labour rights through the decriminalization and destigmatization of sex industry work. Within the context of social movement theory, literature on the sex worker rights movement has mainly focused on its failure to mobilize due to inadequate resources, small membership base, lack of sex worker leadership and absence of influential allies. In 2007, sex workers in Toronto, Ontario and in Vancouver, British Columbia, launched constitutional challenges to their respective Provincial Superior Courts to strike down *Criminal Code of Canada* provisions related to adult prostitution. The two court challenges are contrary to what would be predicted based on the extant literature on the sex worker rights movement. That literature supports a conclusion that due to marginalization, ambivalence toward their work, and feelings of inadequacy as political actors, sex workers lack the material and organizational strength to impact state regulation and alter social perceptions of sex work.

This dissertation was based on a multi-site ethnographic study examining the processes by which constitutional challenges were initiated, the role of sex workers, and how the cases were perceived by the larger movement of sex worker rights activists in Canada. Drawing on primary and secondary data sources, including interviews with 26 movement activists, I examined constitutional litigation from the perspective of social movement theory, specifically considering the political opportunities, alliances, and resources necessary for these challenges to take place. This research demonstrates some tangible successes for the sex worker rights movement in Canada, despite ongoing social movement obstacles. The history of sex worker rights activism in Canada has produced sex worker-run organizations and political coalitions. These have garnered support from other organizations, researchers, cause lawyers and their teams, making it possible for sex workers, as individuals and via organizations, to mobilize legally against federal prostitution laws.

Dedicated to the movement.

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## CHAPTER 1: INTRODUCTION

Since the rise of the contemporary sex worker rights movement in the mid-1970s, people working in the sex industry (PWSI) in numerous countries have demonstrated particular concern with the legal prohibition and stigmatization of their work (Jenness 1993; Weitzer 1991; van der Poel 1995; Mathieu 2003; Outshoorn 2004; West 2000; Gall 2007; Brock 2009). In the past 10 years laws and policies on sex work have been variously reformed in Australia, New Zealand, Germany, Sweden, and The Netherlands. The degree to which the sex worker rights movement impacted any of these changes is debatable. Analyses of these events have emphasized the role and influence of women's movements often omitting sex worker rights perspectives (Gould 2001; Outshoorn 2001; Vawesenbeeck 2001; Ekberg 2004). Literature specific to the sex worker rights movement has stressed several obstacles to collective mobilization, often describing it as a failed movement, having made little impact on public perceptions or legislative reform (Weitzer 1991; Mathieu 2003).

Building a sex worker rights movement is said to be impeded by the stigma and criminalization of various aspects of sex industry work. These result in a penchant for anonymity, feelings of ambivalence toward the work, and a struggle to foster internal momentum and external support. As a result, researchers note the difficulties faced by sex workers in collectively establishing themselves as political actors endowed with rights and the capacity to realize them (Weitzer 1991; van der Poel 1995; Outshoorn 2001; Vanwesenbeeck 2001; Mathieu 2003; Wagenaar 2006; Gooptu & Bandyopadhyay 2007).

In Canada, legal reform has been addressed by several government funded commissions and committees (Special Committee on Pornography and Prostitution, the Federal-Provincial-Territorial Working Group on Prostitution, and the Subcommittee on Solicitation Laws of the Standing Committee on Justice and Human Rights). Despite their recommendations for legislative change, the laws have remained essentially the same. On March 21, 2007 three current and former sex industry workers launched a constitutional challenge in the Ontario Superior Court to strike down three provisions of the *Criminal Code of Canada* (CCC) related to adult prostitution. On August 3, 2007 the *Downtown Eastside Sex Workers United Against Violence Society* (SWUAV), a collective of current street-based workers, and later an individual plaintiff and former sex worker, filed a similar application in the British Columbia Superior Court, challenging the constitutionality of four CCC provisions related to adult prostitution. These actions counter the conclusions that sex workers are unable to mobilize politically. This dissertation research was devised to understand and document this transformative action from within the context of social movement theory.

Tackling the laws that arguably expose sex workers to violence, harassment, health risks, and other human rights violations, litigation confronts one aspect of the regulatory measures that attempt to govern PWSI. Though legislative reform can disrupt dominant discourses on sex work and influence cultural processes, a judicial decision alone cannot adequately address the social inequalities that are at the root of many sex workers' efforts to effect change. Socio-legal theorists debate whether litigation is a preferable option for collective action and social change. Legal scholars remind us that the Courts adjudicate discrete wrongs and are not in a position to restructure society. The

Courts engage in the difficult task of revising laws that disadvantage particular groups, but are not positioned, structurally or politically, to address the social and economic conditions that tend to underlie a group's unequal position in the community (Moon 1987; 2002). As a result, "the constitutional articulation of rights is more limited than most people realize" (Sheldrick 2004: 57). Moreover, social movement theorists warn that legal mobilization can divert resources and energy away from grassroots activism that instigates broader political, social, and cultural change (McCann 2004; Scheingold 2004; Smith 2005). I present these arguments to understand why constitutional challenges are both appealing and problematic for sex workers. However, this dissertation explores a particular case currently before the courts, not whether this is the best strategy. Even if successful, judicial outcome can only be interpreted as one aspect of movement success.

This research explores the process by which Constitutional challenges were initiated, the role of sex workers and sex worker organizations in these challenges, and how the challenges are perceived by the larger movement of sex worker activists in Canada. I situate litigation within the broader social and economic context, and consider the political opportunities and resources necessary for these challenges to take place. I examine how these challenges fit within the development of the sex worker rights movement, asking specifically: Why this approach? Why now? What are the potential impacts?

In Chapter 2, I provide a history of the regulation of prostitution in Canada. This demonstrates cycles of regulatory influence based on medical, criminal, and feminist discourses. These constructions have become deeply embedded cultural and institutionalized understandings of sex workers and contribute to their current political

opportunities. PWSI have continually adapted to new forms of regulation. Over time, they have also struggled to establish a voice within medical, feminist, and now criminal frameworks, in order to reconfigure the debates on commercial sex and develop alliances with prominent and influential actors and organizations. In the second part of the chapter, I introduce social movement theories and how they pertain to sex workers' political mobilization.

In Chapter 3, I explain my methodological approach. I chose to situate constitutional litigation within the history of the sex worker movement in Canada. This included interviews with those directly involved in the litigation process as well as members of movement organizations, political advocacy groups, and independent sex worker activists to understand their perceptions, interpretations, hopes and concerns related to constitutional litigation. It also included a careful reading of documentation related to the two court challenges.

The analysis of interviews and documents is divided into two parts. In Chapter 4, I examine the Canadian movement for sex workers' rights from the perspective of social movement theory, engaging and expanding on previous literature in order to contextualize litigation. An understanding of the barriers sex worker activists confront in their efforts to mobilize collectively highlights the relevance and importance of constitutional litigation. Chapter 5 expands on this to understand the judicial process, sex workers' roles within it, and how the arguments presented in the litigation resonate and reflect broader movement concerns.

I conclude with Chapter 6, offering a final overview of the research process and findings. This research documents an important point in the history of Canada and

contributes to an understanding of the obstacles faced by extremely marginalized groups in their efforts to mobilize politically.

## CHAPTER 2: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The regulation of prostitution has been formulated and justified as a social nuisance, moral offence, and public health concern. Sometimes one issue becomes more prominent but their associations are always recognized. Throughout cycles of moral fervor, women prostitutes, as opposed to their clients, have been the targets of law enforcement, feminist campaigns, and mandatory medical testing. In Canada, ‘male prostitutes’ did not enter the legal lexicon until 1972. As Diduck and Wilson (1997: 505) argue, there has been an historical understanding of sexuality in law whereby “women but not men can be constituted as particular types of sexual commodities and men but not women are constituted as consumers of those commodities.” As such, tracing a history of male sex work is challenging. It is perhaps more likely that commercial sex among men was acted upon within regulatory regimes related to homosexuality (the notion of female clients remains virtually non-intelligible). Transsexual and transgender (TS/TG) sex workers have also been ignored historically. Indeed, Namaste (2000) argues that TS/TG people continue to be erased in academic theory, popular culture, and institutions. The sex worker rights movement works to be inclusive of all genders and forms of work, and as such employs the term ‘sex worker’, coined in the late 1970s by renowned activist and self-described ‘unrepentant whore’, Carol Leigh. Unlike the system language of ‘prostitute’—a narrowly defined status position, ‘sex worker’ is preferred for its inclusivity and for emphasizing a founding principle of the rights movement—recognition as *workers*. Throughout this paper, ‘prostitute’ is only used in its historical context.

In the first part of this chapter, I consider the concept of moral regulation and its place within the historical production of sex workers as economic, social, medical, and legal subjects. I will demonstrate how prostitution regulation is a shifting terrain of overlapping and competing discourses. In the second part of this chapter I turn to the contemporary sex worker rights movement in Canada and position Canadian legal regulation within the context of other regulatory frameworks. Finally, social movement theory, as it applies to sex worker movements, will be described.

### The Prostitution Problem

From the 15<sup>th</sup> through 19<sup>th</sup> centuries Western societies transformed from agrarian to urban industrial systems. The dramatic alteration of landscapes and livelihoods had profound effects on family, gender, and sexuality (Adam 1995). By the 19<sup>th</sup> century, the status of the family was changed; childhood received new standing as a distinct life stage and the importance of child nurturing and responsible citizenship became prominent; motherhood was elevated to the status of a profession and was linked with moral purity (Backhouse 1987; Adam 1995; Hunt 2002). During the 19<sup>th</sup> century sexuality emerged as a new category of scientific knowledge and was subjected to new forms of control and regulation. Women's sexuality was pathologized and then medicalized in the name of children, the family, and the safeguarding of society (Diduck & Wilson 1997: 514).

Through the process of industrialization prostitution came to be conceptualized as a significant social problem—one that threatened the sanctity of the family and the moral respectability of the nation. It became something in need of regulation—be it through moralized campaigns targeting working class women, medical discourses that framed prostitutes as sources of contagious disease, or legal frameworks that created gendered

criminal identities. All of these are interconnected and the moralizing histories of each situate the contemporary call for sex workers' rights.

Prostitution-related activities have been prohibited in Canadian laws for well over 200 years. Frances Shaver, a sociologist whose research focuses on sex work in Canada, has found vagrancy provisions recorded as far back as 1759 (Shaver 1994). The first Canadian provisions to mention 'prostitution' were passed in 1839, allowing police to apprehend a 'common prostitute' or nightwalker when, found in a public place, she was unable to give a satisfactory account of herself. In 1892, when the *Criminal Code* was first passed, it dealt with prostitution through vagrancy and bawdy house laws inherited from England. These treated bawdy houses as a public nuisance and streetwalking as a form of vagrancy (Russell 1982; McLaren 1986; Valverde 1991). According to Canadian legal historian, Constance Backhouse, compared to England, Canadian laws were significantly harsher in the treatment of prostitutes and clients. Moreover, in England specific behaviours were a prerequisite for detention, whereas in Canada, "it was the 'status' of being a prostitute that was unlawful" (Backhouse 1985: 389). Backhouse (1985: 397) observes that there is little indication that laws were actually enforced against men, but prostitution offenses constituted an overwhelming proportion of women's crimes. John Lowman, who has done extensive research on sex work in Canada, notes that, aside from the vagrancy provisions, the laws in place by 1915 remain in effect today (Lowman 2009).

Throughout the 19<sup>th</sup> century prostitution in Canada was organized around brothels and was generally tolerated in 'restricted areas' or redlight districts (Gray 1971; Nilsen 1980). This was often because police took bribes to ignore it (Lowman 2009) or only



intermittently made arrests in order to keep up appearances (Francis 2006). Law enforcement against prostitutes has been described during the 19<sup>th</sup> century as ‘sporadic and capricious’ (McLaren 1986), seemingly tolerated in cities with a surplus of men but repressed when viewed as a threat to the respectable classes (Gray 1971; Shaver 1994).

The historical records support the conclusion that prostitution did not arise out of industrialization and urbanization, and early sex workers were formative to the development of Canadian urban spaces—“invariably established [in places] before the churches and long before the schools. And, if they did not actually lead the railway constructors across the prairies, they were in business long before the first trains were rolling down their tracks” (Gray 1971: x; see also Francis 2006). Early prostitutes held an integral place in local communities; they were important to the fiscal needs of cities, the needs of their customers, and received some protections within the laws. According to contemporary sex workers, “Money would have been steady, and life would have been good” (Davis 2007: 1).

Toward the end of the 1800s, attitudes that had once been more open about prostitution were shifting. This was due in large part to the emergence of moral reform movements, gentrification, and changes in police enforcement practices. As local bylaws displaced them from restricted areas, prostitutes were forced to exist, and seek security, outside the law (Francis 2006). Although the organizational resistance of sex industry workers is touted as a very recent phenomenon, Francis notes that the historical records allude to collective and legal actions at the turn of the century, where brothel workers and operators hired lawyers, used legislation, and “fought back” (Francis 2006: 22) in response to zoning bylaws and criminal charges. Some were successful but moral

reformers and the medical community established compelling associations between prostitution and drunkenness, between working class girls and promiscuous sexuality, between immorality and contagious disease, and between interracial sex and exploitation.

### *Victorian Regulation*

The temperance, social purity, and first wave feminist movements were linked in theme and movement actors. They emerged in response to rapid social and economic change. These movements were rooted in Victorian attitudes that accepted active (hetero)sexuality as part of men's intrinsic makeup, and chastity as part of women's (Walkowitz 1980; Backhouse 1985). According to feminist historian Judith Walkowitz (1980), in Victorian England there was an unthinking acceptance of male sexual license yet attempts were made to demarcate pure women from the impure. Likewise, Backhouse (1985: 391) describes how Victorian attitudes envisioned men with strong sexual desire and women as passionless, creating "a sexually-divisive culture which required a whole class of morally unconventional women to satisfy male need." Unlike their English counterparts who challenged this double standard of sexuality, early feminists and moral reformers in Canada disputed the presumption that prostitution was a *necessary* social evil and should thus be regulated; they challenged lax authority, and when prostitutes were confined to redlight districts, they became even angrier (Gray 1971: 13). Rendering individuals moral subjects formed a large part of their efforts in shaping the character of the nation.

Mariana Valverde and Lorna Weir (2006) have developed the concept of moral regulation as a nation-forming project, drawing a connection between social subjectivities and state formation as simultaneous processes during the 19<sup>th</sup> century. This is exemplified

in the prominence of these movements at a time when the newly developing Canadian state needed citizens, “the nation needed moral subjects, subjects with ‘character’” (Valverde & Weir 2006: 77). The nation-building element was blatant in prostitution controversies during this time as reformers argued “securing male sexual purity would not only end the scourge of venereal disease, but would also restore national strength and honour” (Hunt 1999: 11).

Moral regulation is about moralization not morality. Socio-legal scholar Alan Hunt (1999: 7) argues that since there are no inherently moral issues, moral politics are “the result of the linkage posited between subject, object, knowledge, discourse, practices and their projected consequences.” The moral element in moral regulation involves “normative judgment that some conduct is intrinsically bad, wrong, or immoral” (Hunt 1999: 410). This links a moralized subject with behaviour, casts both subject and behaviour as socially harmful, and thus justifies regulatory intervention (Hunt 1997: 280). For example, the grounds for ‘suppressing prostitution’ are “constituted and legitimated by the ‘immorality’ of prostitution” (Hunt 1999: 410). According to Hunt (1999), this negates the separation between politics and morals, and as a result, the classical liberal distinction between ‘vice’ and ‘crime’.

Hunt (1999) explains how moralizing discourses of this period were undergoing a distinctive secularization and medicalization alongside traditional evangelical ‘puritanism.’ Moral politics helped amplify feminist voices and women’s role in the public domain. Articulating an active maternal feminism, womanhood was posited as “the strong maternal moral guardian of the home” (Hunt 1999: 188). Efforts to advance the interests of women were stipulated on their maternal and domestic roles. This brought

the domestic field into the domain of female authority and secured women a role in the public sphere with regards to feminized issues (philanthropy, family policy, and later social work). They worked to bring male sexuality in line with the domestication of male social life, to seek pleasure in the home which was increasingly under women's control; "Maternal feminism was a major vehicle in the 'myth of the family' as a yearning for a place of harmony and sociability" (Hunt 1999: 188).

The temperance, moral purity, and first wave feminist movements drew on religious frameworks related to redemption, conversion, abstinence, and the value of hard work. They were primarily concerned with the behaviours and morality of the working class, and gained support from the new middle class professionals (Smith 2005: 57-60). The moral purity campaign in particular, attempted to regulate sexual morality "in order to preserve and enhance a certain type of human life" (Valverde 1991: 24). The great paradox of these early movements was that they carved a public and political space for women but relied on a relationship whereby "certain middle-class women made careers out of studying 'the problem' of the immigrant woman or the urban girl" (Valverde 1991: 30).

Prostitution was central to moral reform for several reasons. First, it challenged the division between private and public. As Valverde (1991: 77) writes, "Since sexuality has been constructed as belonging exclusively within the familial sphere, both the state and private citizens feel entitled to comment on, judge, and police the participants in prostitution (as well as extra-familial sexual activities)." Secondly, this particular vice was constitutive of femininity and "the theme of the vicious woman as symbolizing or representing the fallen city has been a powerful one" (Valverde 1991: 78). Prostitution

highlights women's role in sexuality and commerce, and as an unquestionable 'social evil', prostitution has played an important role in organizing urban space according to class, race, gender, and moral status (Valverde 1991).

Maternal feminists were preoccupied with class, race, and sexuality. According to public policy and social movement scholar Miriam Smith (2005: 58), "Class politics was linked with racism and racial definitions of citizenship." Towards the end of the 19<sup>th</sup> century, anti-immigration sentiments contributed to a new understanding of women as potentially exploited victims, reflecting an internationally emerging concern over the 'white slave trade' (Doezema 2005). At this point an important shift occurred whereby prostitutes were not only a potential danger to men, but in danger themselves—"She was victim as well as victimizer" (Francis 2006: 32). This related to concerns over foreign pimps and white skinned women, and became the basic trope by which prostitution was understood.

As a result of these movements, alcohol prohibition was achieved in some jurisdictions, and constituents successfully lobbied for increased criminal sanctions intended to protect exploited women. This included prohibiting procuring, living on the avails, and expansion of bawdy house laws (Brock 1998: 122-124; Canada 2006: 37-8). These are the laws that sex workers are currently contesting. The laws usually only displaced prostitutes (Nilsen 1980) and enforcement continued to be primarily against women (Backhouse 1985; McLaren 1986). Legal repression made brothel work more difficult and thus street prostitution became more common (Shaver 1994). From the above it is clear that, in this instance, legal regulation is not strictly a state enterprise or

unitary field, but was part of a broader moral campaign of which prostitutes were a central target.

By the turn of the twentieth century, “The tolerant, live-and-let-live attitude of an earlier time was replaced by periodic outbreaks of moral fervour” (Francis 2006: 20). Antagonisms toward prostitution mixed with racism. For example, anti-Asian sentiment in Vancouver was compounded as the redlight district was displaced to the centre of Chinatown—a place already associated with filth and immorality (Francis 2006: 25). The circumstances in Vancouver offer a good example of what Valverde has described as the racial and class regulation embedded in the regulation of prostitution. In order to protect white women from corruption, a city bylaw made it illegal for Chinese-owned businesses to employ white women. The passing of the *Women and Girls Protection Act* in 1923 criminalized the employment of white women by anyone police deemed inappropriate; “This legislation avoided singling out the Chinese, but they were its main targets” (Francis 2006: 62). This particular piece of legislation also gave rise to another example of organized resistance. Though the ban was upheld, more than two dozen women paraded into city hall to protest the loss of their employment (Francis 2006).

### *Health Regulation*

Another terrain that legitimized strict regulation and detainment of prostitutes was based on health platforms that grew out of the war times. During World War I (WWI) there was a resurgence of public concern over the spread of venereal disease (VD), and in particular, that prostitutes would spread disease to soldiers. Associations between prostitution and venereal disease were strongly influenced by media reports, lobby groups, and scientific literature.

The development of the federal Department of Health played a prominent role in expanding the scope of the VD control efforts, which linked immorality with contagion, and emphasized prostitutes and new immigrants as sources of disease. People charged with vagrancy offenses could be tested. This led to a high degree of collaboration between police and public health officials who were authorized to detain and test women accused or merely suspected of spreading VD. In practice, medical-legal regulation was applied mainly to prostitutes and lower-class women, and little attention was paid to men's role in VD transmission (Backhouse 1985).

The 1930s brought the beginnings of the Great Depression and public attention shifted to other important issues. Funding for VD control and lobby groups disappeared and public concern waned (Backhouse 1985). This left the control of VD and prostitution in the hands of the criminal justice system. The law's oppression expanded as the scope of regulation shifted from moral reformers to professional experts.

#### *A New Cycle*

The economic stability of sex workers is closely tied to broader economic shifts. Research suggests prostitution increased during WWI, likely due to fewer employment options for women, and decreased during World War II (WWII) when economic opportunities increased in war-related industries (Shaver 1994). Post-WWII prostitution became increasingly decentralized and deinstitutionalized as women began working out of hotels, clubs, and apartments (Lowman 2009). The sex industry is said to have burgeoned during this period of overall rising consumption. Deborah Brock (2008: 28), well-known for her research on sex work, describes the 1950s through 60s as a period that gave rise to "the intensive commodification of female sexuality." Sexuality in

advertising became more explicit, the ‘playboy bunny’ took on a level of respectability, and major cities were host to nude theatre and allowed full nudity in strip clubs (Brock 2008; Ross 2009).

Post-WWII Canada entered a different social and political climate and the regulation of prostitution entered a new cycle. The ferment in moral and social issues in the Western world led to civil rights campaigns and legal reform in the 1950s and 60s, which contributed to the development of the gay and lesbian and second wave feminist movements. These liberation movements produced activists and theorists who questioned state control over sex-related matters such as homosexuality, pornography, abortion, and birth control, and challenged the social and institutional privileging of heterosexual and patriarchal relations. This period is one in which, “the realm of the ‘sexual’ was in a process of renegotiation” (Brock 1998: 5). *Criminal Code* amendments passed in 1969 decriminalized homosexuality and legalized contraception and therapeutic abortions. These changes were famously defended by then-Justice Minister Pierre Trudeau: “there’s no place for the state in the bedrooms of the nation’ and, ‘what’s done in private between adults doesn’t concern the *Criminal Code*” (CBC 1967).

The momentum of these movements in the Western world produced what Sari van der Poel (1995: 41) refers to as a “tidal wave of deviance liberation.” Other ‘deviant’ and stigmatized groups such as prisoners, mental patients, marijuana supporters, and sex workers fought for their rights of citizenship, attempting to reform, normalize, and legitimize their status through public discourse and legislative reform (Kitsuse 1980). Prostitutes were able to ‘ride on the coattails’ of these movements, and gained a political voice to contest the regulation of their work. The lesbian and gay movement in particular



helped create a climate more hospitable toward prostitutes, though both groups confronted conservative backlash in a time marked by sexual freedom and extreme hostility toward the expansion of civil liberties for sexual minorities and women (Jenness 1993: 16).

### *The Early Prostitutes' Rights Movement*

The Prostitutes' Rights Movement is said to have officially launched in 1975 in Lyon, France, when approximately 100 sex workers took over a church demanding the repeal of repressive policies that regulated their work. French prostitutes were forcibly removed eight days later without having any of their demands met but received international attention and gained local support from a range of political and union organizations (Mathieu 2001). Their sentiments and actions resonated with sex workers world wide. During the 1970s in San Francisco, COYOTE (Call Off Your Old Tired Ethics) emerged as part of a movement to legitimize prostitution, promoting occupational choice and self-determination. This was grounded in legal campaigns to decriminalize sexual activity between consenting adults, and in particular, between sex workers and their clients (Weitzer 1991; Jenness 1993).

By the late 1970s, COYOTE had garnered national sympathy for their cause by emphasizing gender and racial discrimination in enforcement practices and positioning the taxpayer as the real victim of prostitution regulation (Jenness 1993: 41-55). COYOTE led to the development of numerous affiliate organizations. The first in Canada, BEAVER (Better End All Vicious Erotic Repression), formed in November 1977 in response to a period of intense police repression and hostile media attention. Based in

Toronto, their mandate was clear: ‘Legitimize the female sex. Decriminalize prostitution’ (Brock 1998: 41).

Throughout the 1970s and 80s, rights organizations emerged in other Canadian and US cities, as well as Brazil, Australia, England, France, West Germany, Switzerland, Austria, Belgium, The Netherlands, and Italy. The international movement for the rights of prostitutes launched soon thereafter as activists and advocates combined forces at the World Whores’ Congress held in Amsterdam in 1985. Attendants constructed the *World Charter for Prostitutes’ Rights* to affirm their goal that prostitution be rendered a normalized occupation and practitioners afforded the same rights as other citizens (Pheterson 1989; van der Poel 1995). It is out of this context that the current challenges to Canada’s CCC provisions related to prostitution grew. But before turning to that, there were some major changes in legal and social responses to the sex trade throughout the 1970s and 1980s.

#### *The Charter of Rights and Freedoms*

A central feature of this period was the entrenchment of the *Charter*. Under Trudeau’s leadership, the *Canadian Charter of Rights and Freedoms* came into force in 1982. This meant that any law that was inconsistent with the *Charter* would be of no force and effect. The *Charter* speaks to fundamental freedoms; democratic, legal, mobility, and language rights; and in 1985, equality rights were added. This is the highest law, allowing judges on the Supreme Court of Canada to rule whether provincial and federal provisions are compatible with *Charter* rights. Its intended purpose is to protect citizens from the state, and as such, it has had a tremendous impact on social and political life in Canada. Since its entrenchment, the judicial system has become an increasingly

prominent avenue of political dispute (Smith 1999). The *Charter* has, for example, been used successfully to decriminalize abortion and advance equal marriage rights.

The women's movement was actively engaged in debates over the proposed *Charter* in 1980-81, and its entrenchment had profound effects on rights-seeking movements. In the arena of lesbian and gay politics, Smith (1999) explains how there was a shift from 'gay liberation' to 'rights talk'. As the *Charter* came to be widely viewed as a key instrument in gaining formal recognition and rights there grew a substantial increase in litigation. By the mid-80s there were federal-level organizations such as EGALE and LEAF dedicated to lobbying and litigation for LGBT and women's rights respectively (Smith 1999).

#### *Feminist Discourses*

The feminist movement is composed of many groups and individuals working toward diverse goals, with gender as an organizing principle. Different theoretical and political positions emerged in the 20<sup>th</sup> and 21<sup>st</sup> century feminist movement. These differences are reflected in feminist perspectives on sex work or prostitution. Across all forms of feminism, violence against women was a central concern during the 1970s and 1980s, and the issue of pornography and prostitution became a particularly divisive one. Explicit 'hardcore' pornography had moved into the mainstream in the late 1970s. The development of technologies such as videotapes and home video systems facilitated the industry's massive growth (Young 2008). Feminist activists were reacting to multiple social concerns including wife abuse, rape, and sexual harassment, all the result of women's relative powerlessness in the home and in the workplace (Adam 1995; Cossman 1997; Staggenborg 2008). In this context, among those known as cultural or radical

feminists, pornography was treated as symbolic of everything wrong with the relations between women and men—interpreted as depicting women as sexual objects and men as predators and thus reinforcing a culture of male violence. According to Hunt (1999), at the beginning of the 1980s, this branch of the women’s movement reflected the ‘new respectability’, manifest in a preoccupation with sexual imagery and representation, and by extension sex itself was viewed as degrading.

The war against pornography shifted the parameters of feminist discourse (Adam 1995). In a decade feminist ideology had seemingly come full circle, the new cultural feminism “rang with echoes of nineteenth century argumentation that women are essentially more pure, more temperate, and more moral than men, and that women’s mission is to battle male lustfulness and corruption” (Adam 1995: 148). This branch of feminism is based on a notion of difference—that women’s culture is fundamentally different from men’s as a result of structural inequalities, gendered socialization, or innate characteristics. Many feminists who hold to this perspective looked in the direction of law to secure women’s rights against violence.

Anti-pornography feminist campaigns gained substantial influence during the 1980s and 1990s, though they were not left unchallenged, as other feminists raised concerns over state censorship and its effects on civil liberties and sexual minorities. As a result of the growing prominence of anti-pornography feminist campaigns, several Canadian scholars contributed to the edited volume, *Women Against Censorship* (Burstyn 1985). Here, feminists argue that censorship and prosecutions give more power to the state and fail to address sexual problems in society. Campaigns against pornography draw attention away from economic and social institutions that contribute to the growth of the

sex industry (Burstyn 1985: 27). Moreover, as Varda Burstyn warns, “The convergence between conservatism and important sectors of feminism [on the topic of pornography] has offered politicians and bureaucrats a wonderful opportunity to undermine feminism while appearing its champions” (Burstyn 1985: 25). Anti-censorship feminists also identified as civil libertarians, and considered this a more useful feminist strategy. As June Callwood (1985: 129) writes, “Feminism and civil liberties are inextricable. The goal of both is a society in which individuals are treated justly. Civil libertarians who oppose censorship are fighting on behalf of feminists, not against them.”

This debate continued throughout the 1990s, broadened to consider prostitution as well as pornography, and is still ongoing. In 1997, Wendy Chapkis published the seminal book, *Live Sex Acts*, incorporating the writings of current and former sex workers, in an attempt to ‘heal the schism’ within feminism on the topic of commercial sex and to disrupt dichotomies between ‘good girls’ and ‘bad girls’. That same year, Jill Nagle published *Whores and Other Feminists* (1997) also based on the writings of sex workers, situating their voices within feminist debates. For many years feminists had argued over the meanings and effects of commercial sex, whereas these books offered sex workers and sex worker feminists a space to speak for themselves. Based on these writings, it became clear that sex workers understood themselves as legitimate workers and demanded to be treated as such.

### *Changes in Legal Regulation*

From early on, the second wave feminist movement was concerned with the relationship between state power and patriarchal values, and activists pressured the federal government to repeal sexist policy and criminal law. As a result, the Royal

Commission on the Status of Women in Canada (RCSW) was appointed in 1967 to investigate the impact of federal legislation on the lives of women (Brock 1998: 26). The commission recommended the vagrancy law (Vag-C) be repealed as it only applied to women, and moreover, was directed at women's status rather than behaviour. In 1972, Vag-C was replaced with gender-neutral s. 195.1: "Every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence" (Canada 2006: 38). The following year the first male worker (dressed as a woman) was convicted (*R. v. Obey*)<sup>1</sup>. Once again, this shift seems to have increased the scope of legislative power.

The new law afforded women a level of formal equality but did not significantly alter the application of the law—women continued to be overwhelmingly among those charged and prosecuted, and some judges refused to recognize that solicitation might apply to male customers (Brock 2008: 30). In May 1975, Debra Hutt was arrested and convicted, and fought the verdict all the way to the Supreme Court. The ruling came three years later clarifying that 'soliciting' had to be pressing, persistent, and directed toward one person, and moreover, a motor vehicle was not a 'public place' (*Hutt v. R.*). With this definition, police found it difficult to use the solicitation law in their efforts to combat street prostitution (Canada 1998, 2006).

Police and politicians soon blamed the growing problem of street solicitation on this legal decision, and the central issue became "the *visibility* of prostitution and the *control of the streets*" (Brock 2008: 47 [italics in the original]). Brock (2008) and Lowman (2009) are critical of this outcry, as they conclude that the expansion of street

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<sup>1</sup> This may very well have been a TS/TG person. Nonetheless the Court interpreted this as a man 'dressed up', resulting in the precedent setting decision that a man could be a prostitute.

prostitution came prior to the *Hutt* decision. They suggest the economic downturn in the 1970s combined with a cross-Canada crackdown on indoor sex work contributed to many women moving to the streets. There was a clash between street prostitutes and residents' groups as the strolls started moving outside areas where street work had long been tolerated while major cities were undergoing urban reconstruction and gentrification. Importantly however, the issue came to be regarded as a major social problem "when it infringed on areas whose class character afforded residents the privilege of public protest, media attention, and government response" (Brock 2008: 60). Though arrests were difficult to obtain, throughout the 1970s and 1980s, street-based workers were continually displaced while police and residents' organizations became increasingly organized and vocal about the inadequacy of the solicitation law.

In response, the government convened the Special Committee on Pornography and Prostitution (Fraser Committee) in an effort to balance competing interests and, according to Brock (1998: 59), "reconstruct a fragile hegemony affirming the state's ability to regulate public morality." Based on hearings across the country, the Fraser Committee documented a divide amongst the Canadian public. On the one side, police and residents' groups advocated strengthening *Criminal Code* sanctions to control street prostitution. On the other, civil libertarians, women's groups, and social service agencies leaned toward decriminalization to decrease the oppressive effects of the laws on prostitutes (Canada 2006: 40). The participation of prostitutes' rights organizations, while relatively marginal, allowed prostitutes to speak for themselves. They demanded dignity and more liberty in their work (Brock 2008).

The Fraser Committee highlighted that if prostitution was legal in Canada, the law needed to address how it could legally take place. As it was, the laws could be enforced in both public and private domains. The committee was also cognizant of how bawdy house laws had been used to criminalize activities of gay men in bars and bath houses. They deemed it was preferable that prostitution take place inside, and so recommended legislation that would facilitate that transition. This included allowing up to two people to work out of their home as well as prostitution establishments licensed by the city. The emphasis on the public/private domains, however, also led to the recommendation that ‘public place’ be expanded to include any place the public had access by right or invitation—including a motor vehicle, and that offenses be penalized more harshly (Canada 1998; Brock 2008; Young 2008). The report did not go as far as women’s groups and sex workers would have liked, with full decriminalization, but it received global attention and was the start of a blueprint that sex workers in Canada and other regions of the world would use in formulating their legal strategies.

It is important to point out Brock’s (2008: 78) critique that feminist support for decriminalization “made them an interest group among many in the prostitution debate.” While feminist groups were consulted, the report failed to address or even mention ‘patriarchy’ and ‘female subordination’, instead reducing feminist concerns to ‘female disadvantage’ with problems stemming from ‘society’. Brock draws on Zillah Eisenstein (1981) to argue, “This is the language through which the state takes up, diverts, contains, and neutralizes grassroots feminist activism.” It will be interesting to see how the state interprets anti-prostitution and pro-prostitution versions of feminism, and the issues surrounding them, in the current challenge to the Prostitution Laws.



The Fraser Committee's recommendations were not, however, implemented. Brian Mulroney's Progressive Conservative government had replaced the Liberals and instead introduced bill C-49, or the communicating law, to replace the soliciting law. Attempting to specifically address the nuisances and public activity attributed to street prostitution, this bill criminalized public communication for the purposes of prostitution; it included both women and men attempting to either purchase or sell sexual services. An amendment incorporated one recommendation from the Fraser Committee—'public space' was expanded to include the motor vehicle (Canada 1998, 2006: 40-2).

The problem of prostitution had been firmly established as one of public nuisance whereby the safety and morality of 'good' citizens was threatened by pimps and prostitutes. Political scientist Leslie Ann Jeffrey (2004: 91) describes the socio-political climate of this period: "Many saw the massive Conservative victory as a reaction against the liberalism of the Trudeau era, and 'family values' became a new watch-word in Canadian society." At the parliamentary hearing prior to passage of the bill, residents' groups and members of government demonstrated their moralistic stance describing prostitutes as a 'plague' and a 'blight' on neighbourhoods throughout the country (Jeffrey 2004: 91). Consistent with the historical constructions of sex workers, prostitutes were described as threatening to respectable communities and traditional family values. These moralized discourses would effectively win. As Lowman (2004: 147) writes, "in 1985 the street prostitution law was rewritten to make convictions easier to obtain."

This approach implicitly accepts the argument that jurisprudence was the issue with the expansion of street prostitution, and thus making the laws easier to enforce would be the solution (Lowman 2009). As Brock (2008) demonstrates in her analysis of

this period, any deterrent effects of the law were relatively short in duration. Because it is a form of work, throughout history, prostitutes have adjusted to more punitive conditions. According to Lowman (1997) and Brock (1998) women did, however, experience far greater violence under the new communication laws than they had earlier. Prosecutors began routinely asking that area restrictions be made part of probation orders for prostitutes (but not their clients), and though the law was variously interpreted by judges and jurisdictions, police continued to lay far fewer charges against customers (Lowman 1989; Larsen 1996). With the laws against them easier to enforce, women began working individually, fearing the traditional buddy system would attract police attention. For the same reason, transactions had to be made quickly and in more isolated areas, rendering the street trade a buyer's market (Lowman & Fraser 1996; Brock 2008).

#### *Determining the Constitutionality of the Prostitution Laws*

In Toronto, the Canadian Organization for the Rights of Prostitutes (CORP) encouraged workers to plead not guilty to communication charges, resulting in court congestion and the opportunity for defense lawyers to challenge the constitutional validity of the law under the *Charter*. The constitutionality of the new provision was under attack and appeared to be on shaky ground. There were numerous successful challenges at the provincial court level, though only in Nova Scotia was a challenge upheld upon appeal (Brock 2008: 106).

In instances of confusion such as this, the federal government can refer a question of law to the Supreme Court of Canada for its opinion. This is termed a reference case. In a similar manner, provincial governments can refer a question of law to their provincial Court of Appeal. These latter decisions may be appealed to the Supreme Court. A

Prostitution Reference began in this manner in Manitoba in 1987 when legal aid lawyer, Jeffrey Gindin, successfully argued that the communicating law breached the *Charter*. On appeal, the lower court decision was reversed and the case proceeded to the Manitoba Court of Appeal. All parties expected the issue would proceed to the Supreme Court of Canada. However, since legal aid funding could not sustain a Supreme Court challenge, the case was transformed into a Reference case to ensure the issue was addressed fairly and fully (Communication with Richard Moon, LL.B. 2009).

The Prostitution Reference considered both communication and bawdy house offences. In 1990, the Court determined that the bawdy house law was not unconstitutionally vague (thus did not violate s.7 of the *Charter*, the right to life, liberty and security). The communication law, however, was found to violate s. 2(b) of the *Charter*, the right to freedom of expression, but it was held to be a reasonable limit under s.1 of the *Charter*, whereby rights are protected “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (Canada 1982). The judgment clarified the objective of the law—to eradicate public nuisance associated with prostitution, not social or moral concerns related to it. On this basis, the public nuisance attributed to street prostitution was deemed a reasonable justification for limiting the right to free speech (Lowman 1997; Young 2008). The dissenting opinion of the Supreme Court found that because both communication and prostitution are legal, the legislative response was too severe (Canada 1998).

This decision occurred in the midst of a mandatory review of the impact of bill C-49 commissioned by the Department of Justice. This involved a series of site studies in five Canadian cities alongside ‘less exhaustive research’ in several other locations

(Canada 2003). The final report, *Street Prostitution: Assessing the Impact of the Law*, was published in July 1989. It provided a synthesis of the results and concluded that street prostitution was as prevalent as it was before the enactment of the solicitation law. Within the framework of this research, in April 1989, the House of Commons Standing Committee on Justice and the Solicitor General was directed to conduct a comprehensive review of bill C-49. The Committee voted to defer submitting their report to the House of Commons pending the Supreme Court Reference decision.

In its *Fourth Report of the Standing Committee on Justice and the Solicitor General on Section 213 of the Criminal Code (Prostitution-Soliciting)*, released in October 1990, the Committee concluded the law was not meeting the objective of reducing public nuisance and had only served to displace workers and nuisance problems from one urban area to another (Canada 2003, 2006). It was suggested that had these results been available at the time of the Supreme Court's decision, "the question of whether s. 213 [communicating] is a justifiable infringement on freedom of expression might have been considered differently" (Canada 1998: 7).

#### *Pornography, Feminism and Legal Regulation*

The sex worker rights movement does not distinguish pornography from prostitution, considering it one of many areas of industry work. They have been treated quite separately however by the courts and feminists, and through their treatment emerged a very different relationship between feminist discourse and legal regulation. While feminist groups in the 1980s tended to support the decriminalization of prostitution, their efforts were disproportionately exerted in the area of pornography

regulation. One of the most controversial issues for feminists during the early 80s was whether state censorship was a useful strategy to advance women's equality.

While feminist positions had not been easily absorbed in the Fraser Committee's analysis (Larsen 1996; Brock 2008) nor the communicating legislation proposed by the Conservative government, anti-pornography radical feminism made significant headway in the *Butler* decision on obscenity. Cossman and Bell (1997) argue that the growing public and legal influence of anti-pornography feminism has intensified state censorship since the 1980s. This current of feminist jurisprudence has been successful in courts, legislatures, and the realm of public opinion. Previous debates around public sexuality were polarized between civil-libertarians advocating freedom of expression and moral conservatives. The radical feminist influence has introduced the notion that pornography reflects sexual domination and victimizes women.

The national feminist legal organization, LEAF, played a significant role as intervenor in the *Butler* case. Feminist scholar, Lise Gotell has critiqued the organizational stance as feminist fundamentalism, which asserted a single 'Truth' on the issue of pornography and erased the diversity of feminist and women's voices. She goes on to identify similarities between LEAF and other anti-pornography positions with those of government actors and conservative organizations,

All rely upon moral claims; all share a conception of sexuality as being dangerous and out of control; all emphasize women's passivity and powerlessness in the face of sexual danger; all view sexual expression as devoid of positive meaning; all embrace an understanding of law as capable of objective determination; and all unequivocally support the necessity of continued criminal regulation of sexual imagery (Gotell 1997: 51).

During the 1990s, radical feminists also revitalized a concern over human trafficking and particularly that of women and girls for sexual purposes, a strikingly similar discourse to

that of the ‘white slave trade’. This discourse conflates sex work with sexual slavery because, from this perspective, prostitution itself is violence against women. Feminists of this orientation are frequently referred to as abolitionists. Some activists within the sex worker movement are critical of this terminology and its association with the abolition of slavery. Instead, many refer to the feminists taking this stance as prohibitionists, drawing parallels to alcohol prohibition and its associated harms. We will see how central this current of feminism is to the Crown’s argument in the current constitutional challenges.

As Lowman (2009: 3) succinctly describes the situation:

The fundamental controversy over prostitution law reform that has led to this deadly inertia exemplifies the clash between abolitionist and pro-choice feminists that has been replayed around the world in numerous settings over the past twenty-five years, except that in this instance Canadian courts will have to evaluate the evidence being presented by the two camps.

### *Changes in Health Regulation*

Before turning to the literature on the sex worker rights movement, there is one other relationship that underwent significant transformation during the 1980s and 1990s—the alliance between health discourse and sex workers’ rights activists. The organizational focus and capacities of the international movement for sex workers rights was dramatically altered by the AIDS epidemic. By the mid-1980s, AIDS had reaffirmed the notion of sex workers as “both morally and hygienically dirty” (Brock 1998: 85). In both Canada and the United States the movement had to turn away from its original liberation goals and join public health initiatives to combat HIV/AIDS transmission and dispute the image of sex workers as sites of contagion (Jenness 1993: 103; Elizabeth, PWSI). As will be demonstrated in the analysis, the relationship between the ensuing

movement for the prevention and treatment of AIDS would become an important one to the Canadian sex worker movement.

Orsini (2008: 332) describes the AIDS movement as an embodied movement that blurs the line between expert and experiential or lay knowledge. This movement has carved out a central space of expertise for patients and groups representing them rather than those in strictly scientific, medical, and research fields. This relationship will be further considered in the analysis, as the AIDS movement has provided the resources to sustain sex worker rights organizations and has helped legitimize sex workers as experts, researchers, and necessary players in policy reform.

#### Social Movement Theory and the Sex Worker Rights Movement

Sociologists have traditionally identified system strain and structural breakdown as causes of collective action, with the latter seen as largely spontaneous and unstructured social disruption. In the 1970s, key organizational theorists such as John McCarthy and Mayer Zald (1973; 1977) emphasized the rationality and intentionality of collective actors and identified how ‘social movement organizations’ were formally structured to implement the goals of their respective movements. Collective mobilization came to be viewed as “enduring, patterned, and even institutionalized features of the social landscape” (Buechler 2008: 1035). In line with this new approach to collective action, theorists also accentuated the political dimension of movement challenges. They emphasized that it was not the strength of grievances among the disempowered that explained movement emergence but the availability of resources that enable the aggrieved to act on their discontent. From a resource mobilization perspective, in order to build, sustain and develop collective action, movements require some form of

organization including leadership, administrative structures, and a means for acquiring resources and support (McCarthy & Zald 1977). In this approach, social movement activity is understood as a craft requiring specialized knowledge in order to adapt, survive, and grow in response to environmental changes (Gamson 1987: 4).

A complementary and overlapping political process approach was developed by Charles Tilly (1978), Doug McAdam (1982), and Sidney Tarrow (1998). The political process model considers social, political, economic, and subjective conditions that enable or constrain the emergence and growth of social movements. From this perspective, movements respond to changes, or perceived changes, in the political system (Snyder & Tilly 1972; Jenkins & Perrow 1977; McAdam 1982). Compared with resource mobilization, political opportunity theorists emphasize the mobilization of resources external to the group, understanding movement emergence as a result of expanded conditions in the polity (Tarrow 1998: 77). Mediating between opportunities, organizational strength, and collective action are shared understandings of grievances and identities. Integrated into this approach are concepts of collective identity and framing processes.

William Gamson (1988), David Snow and Robert Benford (1988; 1992) use framing processes to understand how movement actors cast problems and solutions in order to mobilize action. According to McAdam (1982), in order to mobilize, people need to feel aggrieved about something and optimistic that movement participation can redress the problem. Framing processes can attend to this by making compelling arguments about injustices and how they can be remedied through movement actions. Movement frames can be employed strategically to resonate with audiences in order to build allies and



develop constituencies. In so doing, they also clarify collective identities by drawing distinctions between movement insiders and outsiders, adversaries and allies (Polletta & Jasper 2001).

New social movement theorists argue that contemporary social movements, such as the environmental, gay liberation, and women's movements, are dramatically different from traditional labour movements in "issues, tactics, and constituencies" (Calhoun 1995: 174). These post-industrial movements are said to be directed internally and organized around a common identity without clear class location. They are aimed at self-transformation, promoting new lifestyles and challenging cultural codes (Melucci 1985; Touraine 1985; Epstein 1990). As a result, these theorists focus on how cultural discontent propels movement formation.

Critics point out that 'old' movements of the nineteenth century share many characteristics that are said to be unique to 'new' social movements (for instance, collective identity as labourers), and likewise, 'new social movements' share many concerns with labour movements, including structural problems (Adam 1993; Calhoun 1995). Treating movement contention as either cultural or structural reinforces false dichotomies. For instance, the gay and lesbian movement is often described as a quintessential 'identity movement', developing internal communities based on a common marginalized identity. In asserting this identity, movement constituents challenge dominant constructions of relationships, marriage, gender, sexuality, and heteronormativity. In addition to challenging prevailing cultural norms, they also challenge the political structure of society, including laws and policies, to gain new rights, benefits, and protections. For analysis of this movement, political process models

have offered a more encompassing approach to understand macro-level shifts while attending to changing cultural opportunities, pre-existing organizational strength, identity formation, within the context of social conflict and political economy (Adam 1995; Engel 2001). The political process approach, in particular, has recognized how activists seek institutional and policy reforms in an effort to bring about cultural change (McAdam 1994; Armstrong & Bernstein 2008).

In an effort to bridge the understanding between structural and cultural approaches to social movements, theorist Francesca Polletta (2008) situates culture within structures of power and resources. She treats culture as an institutional schema, “constitutive of interests and identities but also as circulating through networks, backed up by resources, and employed in the service of organizational agendas” (85). This takes into consideration how some cultural schemas come to dominate social institutions. The history of prostitution regulation is a useful example of how multiple and competing discourses merged to construct ‘the prostitute’ and associated concerns. The need for state regulation of commercial sex, as well as what it means to be a sex worker, “becomes the stuff of common sense” (85) and makes alternatives appear inappropriate or unthinkable. Not only is culture a feature of movement activity and target of protest, but it is also an underlying dimension of all structures. It is “patterned and patterning; it is enabling as well as constraining” (Polletta 2008: 100).

The legal system generally appears to be a very structural institution given its stability, social legitimacy, and relative autonomy; it is less malleable than other cultural codes and practices. It is also structured in such a way that shapes access and argument. Rules of judicial process determine who can litigate, on what grounds, the type of claims,

and where it may occur. Legislation is nonetheless open to ongoing judicial review and laws are always interpreted by human beings, some of whom might be more progressive than many currently elected politicians. The cultural dimensions and symbolic power of law are further exemplified in advancing the resonance of the concept of human rights, for instance, which in turn shapes the mobilizing frames available to activists (Snow & Benford 1992; Tarrow 1998).

In this dissertation I emphasize particular events in the history of the Canadian sex worker rights movement—concurrent constitutional challenges, brought by sex workers, in the hopes of repealing criminal laws related to prostitution. Regardless of the outcome, I consider this an instance of movement success. It counters previous research on sex worker movements which suggests they lack the organizational strength and capacity to effectively challenge legal frameworks that sex workers have long identified as impediments to their social equality, autonomy, health and safety. While I emphasize state-directed action and do not offer a cultural examination of sex worker collectives, I underscore the fact that in bringing litigation, sex workers are deliberately challenging dominant cultural perceptions of their work and personhood. This action reflects longstanding grievances among sex worker activists but constitutes only one step toward sex worker emancipation.

Of the few accounts of sex worker activism within social movement literature, Lilian Mathieu (2001; 2003) and Ronald Weitzer (1991) have used resource mobilization models to analyze events in France and the United States during the 1970s. Both conclude that the prostitutes' rights movement, having made little impact on public opinion or law reform, has been a failure. According to resource mobilization theory,

moral factors are secondary to material and organizational strength in shaping movement outcomes. Sex workers are said to experience precarious living conditions, lack preexisting networks or subcultural foundation, material assets, and the political competence necessary for bolstering constituency (Weitzer 1991; Mathieu 2003).

Ine Vanwesenbeeck (2001: 277) writes that the social stigma of prostitution “fundamentally hampers self-organization.” Reluctance to publicly identify as sex workers, fear of police surveillance, and a lack of preexisting networks, has produced sex worker organizations that have tended to be entrepreneurial rather than mass-based. Collectives struggle to gain membership, maintain solidarity amongst conflicting groups of sex workers, and develop effective alliances with third parties (Weitzer 1991: 34; van der Poel 1995; Outshoorn 2001; Vanwesenbeeck 2001: 277-8; Mathieu, 2003; Wagenaar 2006; Gooptu & Yopadhyay 2007). As a result, prostitutes’ rights organizations have arguably been unsuccessful in challenging anti-prostitution discourses and laws.

A very different picture emerges in South Asia. Reshmi Chowdhury (2006) and Nandini Gooptu and Nandinee Bandyopadhyay (2007) apply new social movement concepts to the recent mobilization efforts of sex workers in Bangladesh and India. In both regions collective action, spurred by brothel evictions and supported by recent involvement with STD-HIV prevention organizations, led to sex workers gaining a sense of legitimacy and capacity as political actors. Out of these affiliations, they formed autonomous groups and began questioning state oppression and long-held social views that supported it. These relationships have lent legitimacy to the voices of sex workers, enabling what McAdam (1982) terms cognitive liberation—a feeling of injustice combined with a sense of efficacy to alter their circumstances. Feelings of solidarity were

achieved by framing their cause as an issue of social equality and labour rights. Chowdhury (2006) and Gooptu and Bandyopadhyay (2007) argue that despite an inhospitable social and political environment, and with few material resources, local sex workers transformed their world view and self-perceptions, deconstructed their social identity as ‘fallen women’ and reinvented themselves, individually and collectively, as ‘sex workers’ and ‘movement activists’. In so doing, they developed a vibrant culture of political activism that has gained global attention and been a source of inspiration for the international sex worker movement.

This research focuses on an historical action in the Canadian sex worker rights movement. I consider the political opportunities and constraints that led to sex workers bringing constitutional litigation. I also build and elaborate on previous research, drawing on central movement themes related to organizational form and resources, relationships with elite allies (i.e. pro bono constitutional lawyers), collective identity and framing strategies. This offers context to the movement in Canada and the rationale for constitutional litigation at this time. In the next section, I situate litigation within the political-economic framework in which sex workers currently operate.

#### *Legal Mobilization: Framing Rights*

The concept of legal mobilization is an extension of social movement claims specifically directed at legal institutions with the aim of influencing or altering law and policy and hopefully, by extension, public opinion. Litigation has played a pivotal role in several liberation movements. Frequently cited examples are *Brown v. Board of Education* (1954), a key victory for the US civil rights movement when the Court declared the discriminatory nature of racial segregation, and *Roe v. Wade* (1973), a

landmark case for the US women's movement in which the Court deemed abortion a fundamental right. During the debates leading up to the implementation of Canada's *Charter of Rights and Freedoms*, these cases were used as examples of the Court's potential to intervene on behalf of weaker parties in a system of unequal power relations (Mandel 1991).

To set the backdrop of sex workers' legal mobilization, social movement researchers and legal scholars identify two relevant dynamics. The first is the transition from Keynesian welfare state to market-based neoliberalism during the last three decades of the 20<sup>th</sup> century. The second is an international discourse of human rights consciousness that emerged post-WWII, and was further popularized in Canada by the entrenchment of the *Charter*. Within the context of these changes, social movements have increasingly moved toward the institutional opening created by the *Charter* to advance rights-based claims.

The dismantling of the welfare state and the growing hegemony of neoliberalism, characteristic of the post-Keynesian state, is marked by privatization, deregulation of finance and labour markets, and cuts to social programmes. Socio-legal scholars describe how this transition has widened the gap between the advantaged and disadvantaged, while simultaneously delegitimizing collective action (Brodie 2002; Fudge & Cossman 2002; Chunn, Boyd & Lessard 2007). The neoliberal citizen is imagined as a rational individual, ostensibly detached from gendered power relations, unmarked by race, and whose social class is a matter of personal responsibility. Within this framework has come a gradual dismantling of federal funding for equality seeking organizations, which are increasingly recast as 'special interest' groups. The displacement of social services to

private sectors has shifted political participation to volunteer outreach (Hindness 2000; Fudge & Cossman 2002; Sheldrick 2003; Smith 2005; Chunn et al. 2007).

The beginning of this economic transition overlapped with the wave of political organizing that took place post-WWII. The ‘rights revolution’ developed incrementally during the second half of the 20<sup>th</sup> century through a sustained stream of rights-based litigation brought by a diversity of organizations (Epp 1998). By the late 1960s and early 1970s, Trudeau promised a ‘just society’, initiated by multiculturalism policy and a proposed Charter of Rights. These initiatives were intended to promote national unity and Canada’s dedication to human rights on the world stage (Smith 2005; James 2006; Clément 2008).

The entrenchment of the *Charter of Rights and Freedoms* in the Constitution in 1982, in addition to the equal rights provision (s.15) in 1985, expanded the role of the courts in the Canadian political system and also contributed to citizens’ legal consciousness. More people gained access to the courts as rules on legal standing and third-party intervention were gradually relaxed. Smith (2005: 157-9) describes how this strengthened the impact of the legal arena and rendered it more attractive for collective mobilization. Social movement theorists Benford and Snow (2000: 619) identify rights discourse as a master frame—one of a handful of collective action frames that resonates across movements. Law and legal symbols, such as the Constitution, the *Charter*, the courts, and the concept of justice itself, are central to the rights frame. Not only do these help structure relationships between individuals and institutions in the polity, but they hold tremendous legitimacy and normative power (Scheingold 2004: 14-16; Pedriana 2006).

The rights frame is tied to the values of both English-speaking Canada and Quebec, and dominates political discourse (Smith 2005). The *Charter* was intended to be a source of national values, and judicial interpretations have been used as markers of Canadian tolerance, acceptance, and recognition of difference (Smith 2007). For example, restrictions on abortion have been struck down (*R. v. Morgentaler*, 1988), capital punishment has effectively been ruled unconstitutional (*United States of America v. Burns*, 2001<sup>2</sup>), and the traditional definition of marriage was deemed a violation of rights guaranteed by the *Charter* (*Halpern v. Canada*, 2003; *Reference re Same-Sex Marriage*, 2003). According to several social analysts, the *Charter* is overwhelmingly popular and considered a symbol of national pride among Canadians, who themselves identify as flexible and socially liberal (Nevitte 1996; Fletcher & Howe 2000; Adams 2003).

The growing status and power of the Supreme Court as a political institution has, however come under scrutiny by socio-legal scholars. Politically right leaning critics such as Rainer Knopff and Ted Morton (1992) and Christopher Manfredi (2001) argue that the expanded political reach of the courts undermines democratic will by transferring political power to an unelected and unaccountable judiciary. This privileges minority concerns at the expense of majority interests. Moreover, rights-seeking groups are able to avoid political channels, such as lobbying and electoral competition, leading to the erosion of the Parliamentary system. From this perspective, judges are often described as ‘radical’ and ‘activist’, facilitating ‘special interests’. This view distinguishes law from politics and is thus critical of the legalization of political disputes and the politicization of

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<sup>2</sup> This decision by the Supreme Court of Canada determined that extraditing individuals to countries where they may face the death penalty is unconstitutional as per s. 7 (right to life, liberty and security) of the *Canadian Charter of Rights and Freedoms*.



law. As political scientist Byron Sheldrick (2004: 14) points out, this approach tends to presume that parliaments and legislatures are inherently democratic and participatory while the courts are inherently undemocratic.

From the political left, legal scholars such as Michael Mandel (1994) perceive the *Charter* as a conservative force that demobilizes movements seeking social transformation. Indeed, as Harry Glasbeek (1989: 393) observes, “The ultimate purpose of law is to prevent radical change and, most importantly, the judiciary has a leading part to play in the maintenance of the general *status quo*.” Moreover, because of their education, socialization, and processes of appointment, judges tend to stay within the bounds of conservative discourse related to work, family, sexuality, and race when deciding on *Charter* cases (Mandel 1994; Bakan 1997). While symptoms of social inequality generally lie beyond the judicial scope, increasingly, social problems are translated into legal rules, controlled by legal professionals, and “conflict becomes the property of the legal profession” (Milner 1986: 108; see also Bakan 1997).

Although the *Charter* can enhance democratic representation by opening a powerful and legitimate political opportunity, analyses of landmark judicial decisions show how they reinforce neoliberalism and maintain social inequalities. Not only is the legal arena difficult to access with limited resources, it has also proven hostile to claims to redistribution. Litigation and adjudication treat complex social issues as discrete problems. As such, the Court does not have the capacity to resolve or improve social institutions and practices (Bakan 1997).

Rights-seeking litigation generally raises difficult moral, economic, and political questions which the Courts are unable, and often unwilling, to address. The legal arena

privileges groups that present their claims in the template of rights, and whose claims do not undermine existing structures of economic power (Glasbeek 1989; Hein 2000; Hirschl 2004; Smith 2005). For this reason, legal scholars like Scheingold (2004) warn against an overemphasis on the power of law, or the ‘myth of rights’—referring to the belief that the judiciary is capable of producing social change.

Importantly, the *Charter* limits state power through the entrenchment of fundamental civil liberties and political rights but lacks extensive recognition of economic, social, and cultural rights. According to sociologist Dominique Clément (2008: 25) this reflects “the minimalist approach to human rights evident in much of the political discourse on human rights in Canadian history.” Margot Young (2007) argues that the commitment to substantive equality has weakened as the attraction of formal equality has intensified. But as the state increasingly retreats from redistributive social justice responsibilities, the courts have not been able to extend special constitutional protection to poor and disadvantaged groups.

For example, while the Morgentaler decision decriminalizing abortion was touted as a great victory for the women’s movement, Parliament was not required to ensure women had equal and adequate access to abortion procedures. So, “In Canada a woman can obtain whatever abortion she can afford. The result is that women benefit precisely according to their class” (Mandel 1991: 146). For Mandel, this exemplifies how *Charter* decisions reaffirm, or even enhance, class power. Similarly, through litigation, the gay and lesbian movement has substantially altered anti-discrimination and relationship recognition policies. However, the outcome of gay and lesbian equality seeking under the *Charter* has been critiqued for much of the same reasons.

Critical scholars argue same-sex relationship recognition was achieved insofar as it aligned with the heterosexual family—responsible, middle-class, usually white, and wishing to assimilate (Gotell 2002), and thus did not challenge the assumption that economic responsibility resides in the private sphere rather than a shared collective responsibility. As feminist socio-legal theorists, Claire Young and Susan Boyd (2006: 234) write, within this narrow legal paradigm of formal equality, “Virtually no critiques of marriage or familial ideology, nor links to its relationship to unequal power, domestic abuse, economic dependency and poverty were raised, nor could they be ‘heard’.” In this sense, the effect of *Charter*-based rights claiming reinforces neoliberal values of privatization, individualism, and consumerism (Smith 2005: 167).

Given that *Charter* litigation is said to mirror and accommodate economic liberalization (Mandel 1991: 147), it would appear sex work would fit quite easily within this framework, it even seems contradictory that sex workers are not praised for their entrepreneurialism. In Canada, neoconservatism forms a key part of this context, and has constituted an ongoing source of resistance to multiple liberation movements (Chunn et al. 2007; Boyd & Young 2007). Within a neoconservative framework, there are undercurrents of resurgent religiosity, and though God may not be invoked by name, there are presumed positions on marriage, abortion, sexuality, and the family. Neoconservative discourses often run parallel to neoliberal doctrines of state minimalism, and are even at times used interchangeably (Menziés 2007). However, as Smith (2005: 15) explains, whereas neoliberalism would favour the right to marry for same-sex couples who act as responsibilized, consumer-oriented, private individuals, social conservatives would oppose state recognition of same-sex relationships as a violation of fundamental

moral values regardless of economic advantage. This politico-legal context shapes movement and countermovement claims, and structures contemporary debates on sex industry regulation.

### Legal and Regulatory Approaches

Several legal and regulatory approaches to prostitution are used world wide. Decriminalization is the approach favoured by sex worker rights activists. This master frame of the international movement suggests an alternative to a variety of legal regimes that exist to regulate the sex industry. Prohibitionist or criminalized regimes seek to eliminate prostitution by criminalizing all aspects of the trade. The United States offers an example of this (with some regional exceptions). Abolitionism falls within a prohibitive agenda, but is grounded in the understanding of prostitution as a form of sexual exploitation (of women in particular). Consequently, abolitionists endorse the criminalization of the institution of prostitution but call for the decriminalization of sex workers. An example of this is in Sweden where sex workers are not criminally charged but clients and procurers can be. An alternate regime is regulation which treats sex work as a legal occupation and emphasizes the need to increase occupational health and safety. Sex workers in The Netherlands and regions of Australia work within a legalized industry that is variously controlled and regulated through work permits, licensing, and/or zoning restrictions. Decriminalization also seeks to protect health and safety of sex workers by repealing all criminal law related to adult prostitution. This protects sex industry workers from both criminalization and stringent government control. This has recently been achieved (with some restrictions) in New Zealand.

Canada is typically cited as an example of tolerance, as the exchange of sexual service for money is not prohibited. The federal laws associated with adult prostitution do however create the conditions whereby most sex workers in Canada could be understood to be working within a criminalized system. It is illegal to keep or be found in a bawdy house (s.210); provide transportation or direction to a bawdy house (s.211); procure or live off the avails of prostitution (s.212); and communicate in public for the purpose of prostitution (s.213) (see Appendix A for *Criminal Code* provisions related to prostitution). The plaintiffs in Ontario and BC challenge that the individual and/or combined effects of these laws expose sex workers to the risk of imprisonment and prohibit them from creating the conditions necessary to conduct their work in a safe and secure environment.

### CHAPTER 3: METHODOLOGY

The purpose of this dissertation is to follow two constitutional challenges brought by sex workers in 2007 to repeal Canada's *Criminal Code* provisions related to adult prostitution. These events are situated within a national and international movement for sex workers' rights which promotes the decriminalization of sex industry work in order to uphold the human rights of PWSI and improve occupational health and safety. Legal mobilization is contextualized within an analysis of the sex worker rights movement in Canada and interpreted within a social movement framework.

Bringing these fields together, activism and litigation, is an effort to rightly situate these challenges within the context of a movement that has made them possible. As Nick Crossley (2002: 170) writes, social movements 'wage their wars' through the media, courts, Parliament and other social places, "each of which affords a different array of possibilities, opportunities and constraints. Social movement analysis must be sensitive to this fact if it is adequately to address its subject matter." Moreover, Byron Sheldrick (2004: 14) warns that research emphasizing litigation "fail[s] to capture the dynamic nature of social movement practice, and consequently employ[s] an understanding of law and activism that is far too static and limited." I strive to avoid such a static and limited understanding of the challenges by employing a theoretical framework that situates them historically and a methodology that is multidimensional. As such, I describe my research as a 'multi-site ethnography' (Hannerz 2003). It includes participant and non-participant observation, document analysis, informal conversation and semi-structured interviews with movement activists and advocates, constitutional litigants, and witnesses and

lawyers, to understand the evolution of these challenges, their impact on the movement, and how they are interpreted by movement constituents.

Combining observations, document analysis, and interviews, this project addresses several questions: What are the benefits and disadvantages for this movement to pursue constitutional litigation? What perceived political openings or resources were necessary for these actions to occur? How does litigation impact this movement and how is it perceived by constituents?

### Multi-Site Ethnography

Ethnographic research commonly takes place in a specific location where the researcher acts as a participant-observer and engages in a cultural setting for extended period(s) of time. This project is a variant of traditional ethnographies, given that ethnography is the least confining research method. But this project is not limited to one location. Litigants are based in Vancouver and Toronto, and movement participants were drawn from five Canadian cities with strong activist sex worker communities. As a multi-site ethnography, this is not necessarily a comparative analysis but an effort to incorporate a range of movement perspectives and to account for regional variation.

Gaining entry to the field was perhaps less difficult than it can be in other types of sex industry research (Shaver 2005). Activists were responsive to this project; they wanted their human rights grievances and other movement messages heard. Involvement as a participant in the movement was, however, more challenging. My interest in activism developed throughout the fieldwork process and I continue to maintain relationships and participate in local events, actions, and online forums. As I will discuss further in the proceeding chapters, in this movement there is a distinct difference between experiential

workers and their allies. For those without direct experience in sex industry work it takes time and consistent commitment to gain trust and become an insider to the movement.

### *Observations*

Although observations were not a central element of data collection, they helped develop my understanding of the social movement and judicial processes. Participation in movement events and activities provided opportunities to become acquainted with movement constituents outside the specific context of this research. This developed a level of familiarity and comfort, and demonstrated my sincere interest in the movement and in the rights of sex workers, beyond the purposes of this dissertation.

Fieldwork took place while living in Montreal, over the course of several trips to Toronto, and during two weeks spent in Vancouver. For observations, I had the opportunity to attend cross-examinations, organization meetings, fundraising events, demonstrations and marches, Cinema Politica's *Sex, Labour, Smut Film & Video Festival*, and a sex work conference where three participants presented. Throughout the analysis, I drew on informal conversations with participants, one's partner and another's client, other sex workers, students working on the Ontario legal application, and members of National and West Coast LEAF (Women's Legal Education and Action Fund). Both of these are prominent feminist legal organizations and the latter is an intervener in the BC legal application.

### *Document Analysis*

Analysis of the Constitutional challenges and the sex worker rights movement was also informed by pertinent legal documents and information produced by sex worker organizations. Relevant documents pertaining to the cases include the sworn affidavits of



plaintiffs and their expert and experiential witnesses, as well as expert witnesses for the Crown. Other supporting documents publicly accessible from the litigation proceedings include the interveners' application materials, notices of appeal and factums.

### *Interviews*

Qualitative interviews provide access to the observations and knowledge of others, allowing for the integration of many perceptions, descriptions, and reactions of those in the field (Buttney 2004). I developed three semi-standardized interview guides; one for movement activists unaffiliated with the cases, one for plaintiffs, and another for lawyers (see Appendix B). All of these were informed by the literature on sex work and social movements, and covered three broad areas of interest. The first set of questions pertained to the interview participant's organizational affiliation. These questions developed a sense of the networks and relationships between organizations and political advocacy groups, their resources and role in the community. The second part was directed at participant's perceptions of one or both constitutional challenges. This was useful in considering shared and/or conflicting movement frames, interpretations of the laws, and whether litigation was considered representative of various populations of sex workers. The final section of the interview guides related to the individual participant's history of activism and their perceptions of the cultural and political landscape. Additional questions were asked of plaintiffs and lawyers to understand their relationships with each other, their role in the challenges, and specific questions clarifying the legal arguments, how the challenges were initiated and how they have proceeded.

Privacy and confidentiality are paramount in research, especially that involving members of hidden populations who are stigmatized or engage in illegal activity (Shaver 2005). The research procedures and methods for insuring confidentiality and obtaining consent were reviewed and approved by the Research Ethics Board at the University of Windsor (see Appendix C for ethics clearance). All participants provided verbal consent and their confidentiality was assured. The community of sex worker activists is small and some participants are very public figures. As a result, this research incorporates information (media reports, publications, and court documents) that unavoidably identifies some activists. Five participants are identified by name because they are public figures in the challenges. Sheryl Kiselbach is a plaintiff in the BC case, represented by Katrina Pacey. Teri-Jean Bedford and Valerie Scott are plaintiffs in Ontario, represented by Alan Young. Information gathered from interviews that necessarily identifies these individuals has been approved by them. In all other instances, participants were given pseudonyms which I selected from a list of fictional and historical sex workers. Participants are further identified as either allies or persons working in the sex industry (PWSI) which includes both current and former sex workers.

### *Participants*

Between September 2008 and 2009, I conducted interviews with 26 movement activists, including those involved in litigation. Initially, participants were purposively selected based on either their involvement in the challenges—as plaintiffs, lawyers, and witnesses, or their involvement in social movement organizations or political advocacy groups. This research also benefited from the help of several professors and friends who put me in contact with important figures in the community of sex worker activists.

Criteria for participation in this project were based on self-identification as an activist or advocate for the sex worker rights movement, as well as willingness to participate without remuneration. Individual plaintiffs and leading lawyers from both challenges were contacted directly. Notably, members of SWUAV, the collective group of plaintiffs in the BC application, were not asked to participate in this research. This was because they live in precarious conditions, making communication difficult, and because I was unable to compensate them for their time.

Offering remuneration to marginalized sex workers acknowledges their expertise and reduces financial sacrifice and thus the likelihood that after meeting they will have to work immediately or take risks to make money. In this way, student researchers with limited resources are in the difficult position of excluding some populations in order to adhere to ethical research principles set out in the Tri-Council Policy Statement for ensuring research participants are not subjected to unnecessary risks of harm (see also Bowen 2006). This research benefits from a report released in 2004 by Pivot Legal Society based on 91 affidavits gathered from sex workers in Vancouver, including members of SWUAV. These affidavits were used as secondary data.

Prominent sex worker organizations were contacted via email introducing myself, the project, and asking if any members were willing to participate. I considered movement organizations as those that were described as such by sex workers, promoted by pro-sex work magazines and websites, or were sex worker-run. In each city from which I drew participants, there were multiple community-based organizations that advocated for populations that may also work in the sex industry (i.e. women, youth, Aboriginal, transgender, and homeless people). The goals and values of these

organizations varied; some of them were strongly affiliated with sex worker rights organizations and others were staunchly opposed to their efforts. For this research, organizations were approached only if they were expressly pro-sex worker or sex worker-run. While I expected that interview participants would have varying views on the court challenges and on movement-related issues, I was only interested in the perspectives of those who identified as activists and advocates for the sex worker rights movement. Notably, many sex worker rights activists who participated in this research were also involved in intersecting community-based organizations, such as those advocating for youth, for homeless, transgender, and Aboriginal people, for migrant workers, and for gay, queer and women's rights.

Initial contacts included Stepping Stone in Halifax, Maggie's and SPOC (Sex Professionals of Canada) in Toronto, Stella in Montreal, POWER (Prostitutes of Ottawa-Gatineau Work Educate & Resist) in Ottawa, PEERS Victoria (Prostitutes Empowerment Education & Recovery Society), and PACE (Prostitution Alternatives Counseling and Education) in Vancouver. I was later referred to independent activists as well as members of the BC Coalition of Experiential Communities, HUSTLE: Men on the Move, the Exotic Dancers' Rights Association of Canada (EDRAC), and Séro Zéro (an outreach program for male workers in Montreal). At least one member of each organization participated in interviews except for PEERS Victoria and Séro Zéro, who expressed interest in the project, but were unavailable within the required timeframe. In addition to directly contacting individuals and organizations, a general call for participation was posted on the FIRST listserv (an online coalition of feminists for decriminalization) and

the social networking site, Facebook (see Appendix D for a table presenting participants by geographic location and organizational affiliations).

When possible, participants selected the interview site. Some interviews took place at organizations, personal residences (participants' and my own), coffee shops, bars, and one in a car on the way to a meeting. Given the geographic distance, nine activists were interviewed over the phone, four of whom provided follow-up interviews in person at a later date. All telephone interviews were conducted over speaker-phone from my home enabling me to record the conversation in private (with consent of the interviewee). One participant did not want the interview recorded, and instead, I took notes while we spoke. While the use of the telephone conceals non-verbal cues and characteristics that can facilitate the interview process, this was found to be a very effective method for gathering data. Not only is it very common within this national movement to communicate via telephone and email for many years without ever meeting in person, but at least two participants were expressly more comfortable maintaining full anonymity.

This research project was purposely developed not only to explore a social movement and legal mobilization, but to engage with sex workers on aspects of their lives other than those directly related to their work. This is rare in social research on sex industries. The interview guide did not include questions about personal involvement in the sex industry so as to avoid asking movement activists to either disclose their sex work or to misrepresent themselves. Many, however, drew on their experiences as sex workers in discussing their activism and non-experiential allies usually identified as such. While I chose not to ask directly, status as a current or former worker is important to movement

constituents and central to leadership. At the time of interview, seven participants self-identified as working in the sex industry, nine self-identified as former workers, eight as non-experiential allies, and two did not address their involvement in the industry. The range of sex industry sectors represented in this research is broad. Participants self-disclosed experience in erotic dancing, street-based sex work, dominatrix work, adult film, independent and agency-based escorting.

Vancouver was very responsive to my calls for participation, with 11 of the participants residing in the city or the lower mainland. The movement in Vancouver is relatively new, with a tight network of activists and tremendous overlap in organizational affiliation. Participants from Vancouver were members of FIRST, the BC Coalition of Experiential Communities, and/or involved in outreach organizations including PACE Society, WISH drop-in centre, PEERS, HUSTLE, Boys 'R' us, and the Mobile Access Project (MAP Van). One plaintiff and a leading lawyer from the Constitutional challenge, also affiliated with movement organizations, participated in interviews.

There were seven participants from the greater Toronto area, all but one were selected due to their involvement in the movement and/or the Constitutional challenge(s). This included two plaintiffs and a leading lawyer, a member of Maggie's, SPOC, and two independent activists. The only participant whom I did not specifically seek out responded to my call for participation on Facebook (the only respondent from this medium). Five activists from Montreal participated. All had some affiliation with Stella, and some were at the beginning stages of re-launching the Coalition for the Rights of Sex Workers. Activists in Ottawa and Halifax are significantly less represented. Both participants in Ottawa were involved in dancers' rights organizations and one belonged to

an emergent coalition group, POWER. I contacted the only sex worker organization servicing the Maritimes, Stepping Stone, and one member spoke with me over the phone. Our discussion was comparatively brief, though indicated that I had reached saturation. Data saturation occurs when no new information or themes are observed (Morse 1995).

Interviews were transcribed and coded according to two broad topics: the sex worker rights movement and legal mobilization. They were then subcategorized according to resources, perceived political opportunities and climate, obstacles to mobilization, and preparations for litigation outcomes. This information was supplemented by legal documents, media reports, online forums, and field observations, and through further consideration of previous literature on social movements, legal mobilization, sex work and sex worker movements.

### *The Researcher*

My dissertation focuses on two constitutional challenges that were initiated at the time I was developing my research project. I chose to engage in an ethnographic study to develop my understanding of the cultural climate in which the movement operates. Throughout the analysis however, I am only minimally attentive to the cultural work that takes place within organizations and social networks. This is certainly a promising area for further research. It strikes me that a deeper grasp of the internal workings of this movement would require longer and more sustained involvement in a particular location. At the time of research, I was new to Montreal and not personally established in any of the communities from which I recruited participants. In this sense, I lacked some site-specific cultural repertoire. Moreover, my lack of experience in sex work made it difficult to gain an additional layer of insider access beyond that of ally/activist.

Cultural work is developed over time and spread through storytelling and other forms of exchange. In this respect, I remained, on some level, an outsider to these communities. Having said that, I attended events, parties, fundraisers, and vigils; I stood alongside sex workers as they shouted in protest, mourned the loss of friends and colleagues, and celebrated a vibrant culture that is not open to everyone. I can speak to the politics of the movement, and activists were responsive to me in this regard, but my perspective is limited. I did however come to appreciate that everyone has something unique to offer within the movement and my commitment continues. I came through this research process having engaged many sex worker activists and other allies, and was reaffirmed in the political stance that the decriminalization of sex work is necessary for equality.

#### Limitations

The strength of data collected through observation and interviews is the in-depth picture it provides of participants' interactions, experiences, and meaning-making processes. A limitation of in-depth interviewing is that samples are far smaller than in survey research and the demands of participation typically limit the sample to small subgroups of the population of interest. This requires the researcher to be clear about the boundaries that must be drawn around the representativeness of the analysis. Although participants had a wide diversity of experience related to sex industry work, litigation, and activism, the limitations of the sample must be noted.

A significant discrepancy, between sex workers generally and activists in this movement, related to education. It is difficult to determine the extent of sex industry work and the demographics of workers. Drawing on three research projects, Shaver and



Weinberg (2002) found 40 to 60 percent of sex workers completed high school (as cited in Shaver 2005). In this sample, at least half of current and former sex workers, and most allies, had some university education, several at the graduate level. Moreover, members of sex worker organizations often had experience in media relations and in community-based research in partnerships with each other, public health organizations, and universities. As a result, all of the participants were knowledgeable on sex work issues, well versed in their political positions, and highly articulate.

Recruitment methods for this research limited participation to those already involved in community organizations and activist networks, omitting sex workers who disagree with the movement's frame, are not affiliated with social movement organizations, or cannot risk being identified with this movement or as a sex worker. Lack of honoraria resulted in the exclusion of some of the most marginalized sex industry workers. In particular, current street-based workers are underrepresented in this sample. The perspectives of Aboriginal and transgender women, who are overrepresented in street-based work (Culhane 2003; Lewis, et al. 2005; Shannon et al. 2007), are also lacking. In this project, four men were interviewed (a current worker, former worker, public health ally, and a lawyer), the rest were women. Study participants pointed out that male, transgender, and current street-based workers are also underrepresented within the sex worker rights movement. Online communication was also very important to this research. Sex workers without internet access and lesser-known organizations without explanatory websites would not have been contacted to participate. Notably lacking are the political perspectives of sex workers located in the prairies, the east coast, and in rural locations. These are important areas for further research.

## CHAPTER 4: RESULTS

### SEX WORKER RIGHTS MOVEMENT IN CANADA

This dissertation is an examination of the success of the Canadian sex worker rights movement in bringing two constitutional challenges to the Canadian *Criminal Code* provisions dealing with prostitution. Prior research suggests sex worker movements have not affected legislative change due to lack of necessary resources, alliances, and membership base, or the moral capital to attain them (Weitzer 1991; van der Poel, 1995; Outshoorn, 2001; Vanwesenbeeck 2001; Mathieu, 2003). The present research considers how the Canadian movement was able to mobilize for legal rights. This is dealt with in two chapters.

In the first, I draw on social movement theory and themes from the literature that address factors said to hinder the capacities of sex worker movements to build influential local and national collectives. I use interviews with movement activists to examine the relevance of these themes and to expand on them as they apply to the movement in Canada. Addressing broader movement concerns helps contextualize the current challenges, highlights significant differences between the two challenges, and speaks to how they have been interpreted by participants. Legal mobilization has been critiqued by social movement and socio-legal scholars for depoliticizing grassroots mobilization efforts, redirecting valuable resources and energy, necessarily involving and relying on legal and other credentialed expertise, and further reinforcing and replicating social and economic inequality (Boyd & Young 2003; Conway 2004; Sheldrick 2004; Smith 2005). The second chapter considers these critiques with respect to the current constitutional challenges and specifically the role of sex workers and their organizations within the

judicial processes, how sex workers and their allies see it affecting the movement, and their perceptions of both challenges.

#### Movement Literature

In their analyses of the sex worker rights movements in the US and The Netherlands, both Weitzer (1991) and van der Poel (1995) draw comparisons to gay liberation movements. Homosexuality and sex work have both been stigmatized, moralized and criminalized. Yet the gay liberation movement has had comparative success in advancing legal rights, gaining institutional access and legitimacy, and altering public perceptions. Through the lens of resource mobilization, Weitzer (1991) attributes the successes of the gay movement to a critical mass of constituents and alliances with organizations that together offered money, facilities, and labour to compensate for their lack of 'moral assets'.

Having third party support, however, is not all that is needed for success. According to van der Poel (1995: 45), Dutch sex workers received a remarkable amount of support from policymakers, politicians, feminists, and the media during the first half of the 1980s. Despite this 'abundance of resources', the movement was a 'fiasco'. The Netherlands is often considered a success story. Dutch Parliament has come to treat sex as work and has made significant advancements to improve working conditions. However, the Parliamentary debates leading up to the legalization of the sex industry in 2000 lacked sex worker involvement, and the legalized regime has led to new forms of oppressive state control, and shifting patterns of sex work continue to expose many workers to abuse (Outshoorn 2004).

At the beginning of the 1980s the 'professional prostitute' was recognized as "the usual, regular [form of] prostitution" (62). This paralleled the strategy of the Dutch gay movement in the 1960s which "ensured that the spotlight fell on the most virtuous of 'homophiles'" (51). Van der Poel (1995) contends that it was essential that professional prostitutes monopolize image-formation, and that the process failed when 'problematic categories' of sex workers (e.g. drug addicted prostitutes, illegal immigrants, 'underage' workers) were incorporated into policy consideration. The consequential selective attention to issues of drug addiction, illness, and sex trafficking gave way to the perception that prostitution was the sum of a number of problems and eventually the professional prostitute was reduced to an insignificant sideshow. As a result, van der Poel (1995: 63) concludes,

The failure of the prostitutes' rights campaign in The Netherlands teaches us that the incorporation of categories of 'sex workers' which most correspond to the traditional stereotypical views concerning prostitution and prostitutes does not lead to the elevation of every category, but, rather, the opposite effect of a general depreciation...As soon as the professionals have freed themselves from their stigma, they will be in a better position to agitate for the elevation of those who are left behind.

Vanwesenbeeck (2001) posits that previous research has not adequately taken into account how social stigma and criminalization fundamentally hamper self-organization. She explains, "Illegality and social stigma has brought sex workers to often accept whatever they were provided with. Emancipation and self-organization from such a situation are difficult and long-term processes, even if the legal situation principally offers possibilities" (278). Similarly, Mathieu (2003) argues that stigmatization lends itself to feelings of ambivalence towards sex work and inadequacy as political actors. That is, sex workers are impeded from mobilization due to their "low level of political

competence” (34) and because “they are not entirely convinced that prostitution is really a profession that deserves recognition” (47).

Research on successful movements in India and Bangladesh affirm this, highlighting how changes in identity and attitude were key factors that propelled political engagement and cultural change. In their research on sex worker collectives in Kolkata, India, Gooptu and Bandyopadhyay (2007: 252) write, “Put simply, they have to come to believe that they have both the power and the right to reverse exploitation and alienation.” Central to these changes were alliances with human rights, feminist, and development workers and NGOs. By situating HIV/AIDS prevention within sociocultural, political and economic contexts, they aligned themselves with the sex worker rights movement. They promoted experiential knowledge and peer education while offering mainstream credibility and organizing experience. These initiatives have given rise to some of the largest associations of sex workers in the world (Misra, Mahal & Shah 2000; Chowdhury 2006; Gooptu & Bandyopadhyay 2007).

How do these lessons from the United States, Netherlands, India and Bangladesh relate to the experiences in the Canadian sex worker movement? In the following section I will consider issues related to establishing a constituency base, cultivating leadership and alliances.

### The Contemporary Sex Worker Rights Movement in Canada

According to the extant literature, the 1980s was a particularly oppressive time for sex workers. It was the beginning of the ‘sex wars’, a divisive debate amongst feminists over women’s sexual expression and representation, especially pertaining to lesbianism, transsexuality, sadomasochism, prostitution, and pornography. The radical feminist camp

produced a powerful and influential discourse that emphasized the victimization of women, especially as sex workers, and saw a growing legal tolerance of the sex industry as contributing to the further victimization of women. The recognition, in the mid-1980s, that HIV could be transmitted in hetero-sex contributed to identification of sex workers as vectors of disease and led to further discrimination. The movement was forced to reorient itself from a focus on civil rights to public education and health promotion (Weitzer 1991; Jenness 1993; West 2000). It was during the 1980s that the communicating law first came into effect in Canada, and street workers were targeted, criminalized, and jailed. A longtime activist from Toronto explained that during this period politicized sex workers came to recognize a serious lack of relevant and appropriate services for active sex workers.

According to sex worker activists that I interviewed, organizations by and for sex workers developed in cities across Canada throughout the 1980s and early 1990s in order to meet some of the immediate needs of the community that were produced by these events while the long term battle for decriminalization was temporarily put aside. Many of these organizations were initiated by sex workers and expanded through the support of other industry workers, allies, academic and public health researchers. More recently, strictly political coalitions have emerged to move decriminalization forward. According to Cora (PWSI), a longtime movement activist, these two organizational forms (community-based service organizations and political advocacy organizations) reflect the second and third waves of the sex worker rights movement. She described the movement's development beginning with small and marginal groups in the 1970s (the first wave) that posited "...the very idea that maybe we could speak for ourselves." In the

1980s (the second wave) informal groups transformed to service organizations and gained political consciousness, "...this is where you start to really get the sex work is *work* discourse, and they laid that groundwork." More recently, sex worker advocacy organizations entered the political arena (the third wave), "...we're not spinning our wheels worrying about, 'Is sex work work?'" Those conversations are done. Got it. Do we want decriminalization? Yes, and here's why."

The service-oriented and advocacy groups are not entirely distinct. Service-oriented organizations also advocated for decriminalization but were more restricted in their political voice due to their reliance on external funding. As a result, there is overlap in membership, with several participants describing their advocacy groups as the 'political arm' of service organizations. The participants in this research also described an historical/regional variation in movement organizations. Those in Toronto and Montreal considered their organizations to have reputations for being militant or radical in the positions they took. They described the younger movement emerging in Vancouver as leaning toward harm minimization rather than radical, structural change. Some of these differences will be expanded upon later in this chapter. For the purpose of this analysis the community-based service and political advocacy organizations will be dealt with as distinct organizational forms.

### *Mobilizing Sex Workers: Challenges and Strategies*

The service-oriented community-based organizations are among the longest running and most well known groups dedicated to sex workers' rights. Some are gender-specific, but they are all 'by and for sex workers.' They tend to be embedded in local communities, working in partnership with professional researchers and non-experiential

volunteers. Their activities focus on community outreach, educating the public, negotiating with residents and, on occasion, working in collaboration with police. Most are incorporated as non-profit charitable organizations and typically receive municipal, provincial, and federal funding, along with private donations. They may work with other institutions or organizations such as public health units or anti-poverty or women's groups.

Many of the community organizations interact primarily with street-based women. These sex workers are the most visible and easily accessible, are most vulnerable to arrest and prosecution as well as to violence, and often face other socio-economic barriers and health concerns for which programmatic and intervention funding is available. Due to the various needs of the street-based sex working community, service organizations address social concerns that extend far beyond sex industry work per se. As Clara from Vancouver said, "The underlying issues here are nothing to do with sex or the commercialization of sex, it's issues of poverty and addiction." Fanny (PWSI), an activist from Montreal, reflected on the impact of these issues on movement organizations:

It took me years to understand the extraordinary demand, the unjust demands that are made on organizations like Stella—to do service work and political work; to fight the abolitionists; to fight the police; to fight AIDS; to fight poverty, inequality, injustice, it's impossible. I have come to realize why the team is often absolutely overwhelmed. How many times did outreach workers see their work completely destroyed because of a raid?

In interviews, organization members reflected on the weight of their role as unrecognized social workers and expressed frustration with the structural barriers that undermined their efforts. Some identified this problem quite explicitly in the paradoxical relationship between law enforcement and their organization's outreach activities: "In order to empower people you need to try to destroy the structure that keeps them



vulnerable. How do they expect us to do anything if whatever we do during the day is undone during the night?” (Fanny, PWSI). During the day, outreach workers expend time and energy making contacts, gaining trust, and establishing relationships with street-based workers so they might be encouraged to report violence to police, identify and locate necessary supports, and utilize safer working strategies and needle exchange programs. This type of community outreach work is ‘undone’ during the night as trust and relationships are shattered by arrests and police harassment. This presented significant challenges for organizations in how to negotiate working relationships with police. Even sympathetic police officers are structurally positioned in opposition to the movement’s cause as their mandate and responsibility is to enforce laws, not to make life easier for those breaking laws. Similarly, sex worker organization reliance on state funding situates them in a way that undermines their political potential and efforts to dramatically reform the system. As Fanny explained, “You cannot get money from the federal government and then use that money to battle them.”

### *Constituents and Resources*

Within a resource mobilization framework Ronald Weitzer suggests deviancy liberation movements can overcome their stigmatization if they can mobilize a large constituency base or gain support from affluent and influential third parties. He writes, “The prostitutes’ rights movement has failed in both domains and thus remains in a weak position to overcome its lack of moral capital to attain its goals” (Weitzer 1991: 36; see also Jenness 1993). Early analyses of the sex worker movement underestimated the positive impact the HIV/AIDS movement would have in promoting sex workers’ political and cultural life. International AIDS conferences provided funds and opportunities for

sex workers to get together, as well as a focus around which to organize and opportunities to build alliances. Kamala Kempadoo (1998: 21-22) writes,

Underfunded sex worker organizations in both the First and Third Worlds who would have been hard pressed to persuade their funders of the necessity of sending a representative to a 'whores conference' found it easier to get money when public health was, supposedly, at stake. Thus, the AIDS conferences provided a platform for a revitalization of the international movement, and, for the first time, signaled the presence of Third World sex workers as equal participants on the international scene.

Over the past two decades, sex worker organizations in Canada have gained support and legitimacy in alliance with HIV/AIDS movements and through partnerships with academic and public health researchers, women's and community development organizations. In particular, the HIV/AIDS movement has emphasized, legitimized, and garnered funding for community-based programming through peer education and outreach. These resources and support have been central to the maintenance of sex worker organizations, and the community-centred approach aligns well with the values of the movement. It foregrounds the involvement and input of current and former sex workers, provides opportunities for alternate or additional employment, and develops knowledge, skills, and sense of community. Peer education and outreach, supported through alliances with HIV/AIDS organizations, dramatically improved occupational health and community empowerment in areas of India and Bangladesh (Jana et al. 2004; Chowdhury 2006; Gooptu & Bandyopadhyay 2007). Activists in the Canadian movement however, suggest that alliances are fraught with additional challenges and concerns. Sex worker activists are weary of being co-opted or losing their political voice. Moreover, organizational resources structure the movement in problematic ways.

The financial support that community organizations do receive is largely tied to public health. This has helped sustain sex worker-run organizations. Many health organizations that have partnered with sex workers have also come to recognize current laws, enforcement practices, and social stigma as serious barriers to the health and safety of sex workers, legitimizing the sex worker rights position. However, many other activists that were interviewed were critical that public health funding also reaffirms cultural perceptions of sex workers as sources of contagion, countering sex workers' attempts to position themselves as safer sex practitioners rather than public health threats. As Cora (PSWI) stated, "A lot of the money that sex worker groups now use is AIDS money, and I understand the need for that, but it also perpetuates the idea that we really need to prevent sex workers from spreading AIDS."

Moreover, funding opportunities have narrowed outreach efforts to the most vulnerable populations of the sex industry, namely street-based workers. Fanny (PSWI) said, "We're still getting money for the vulnerable population, so what does that tell us? That sex workers are vulnerable and drug addicts. This is the money we get; we don't get money for escorts." By narrowing the focus to one sector of the sex industry the stereotypes and misconceptions about sex workers are reaffirmed and the movement is framed as one dedicated to street-based women. This counters efforts to have the movement resonate with other sectors of an extremely diverse industry.

In the current cultural climate, the only other external funding opportunity activists identified required them to compromise their political position. For instance, one participant described a funded 'exiting' organization that allows women to run their business and bring clients onto the premises. The goal of exiting programs is to have sex

workers transition out of the industry permanently. This fundamentally counters the politics of the sex worker movement and fails to treat sex work as labour (other types of workers do not ‘exit’ their jobs). Of her own organization she stated, “We can’t bend ourselves to being such a whore. That really is having to say one thing and feel another way. We can’t do it.” This suggests that the mobilization of resources is embedded in political and cultural constraints. In this instance, public health funding narrowed the political scope of sex worker organizations and reinforced misperceptions of sex work. However, health organizations have offered sex workers a platform to speak for themselves in a context in which their political position is legitimated. Because recruitment of interviewees for this research sought out those actively involved in sex worker organizations, rather than organizations that work with or for sex workers, all interviewees spoke from uncompromisingly pro-sex work perspectives.

The emergent political advocacy organizations have responded to these issues by rejecting funding and avoiding outreach and service activities altogether. Their activism consists of campaigning against local bylaws and enforcement practices, and raising public awareness. They view this approach as politically progressive. Many organizations are strictly ‘by and for’ current and former sex workers, and make explicit efforts to include men, trans, and women workers from all areas of the industry. They reject funding to avoid bureaucratization, political suppression or having to put on a ‘public face’—“[To pretend] that it’s a terrible thing and we have to help these poor girls. Whereas no, we don’t need charity, we need our rights” (Elizabeth, PWSI). Elizabeth, a Toronto-based political advocacy member discussed this further,

They practically try and throw it [money] at us, but we don’t want to be funded by the government. We’ve seen time and again this happens to other organizations,

they begin very well, they begin strong, then they get funding, then it gets to be about the board and people fighting to keep their jobs, administration, self-censorship begins pretty quickly in order not to upset the funders.

Yet, by restricting membership to sex workers and activists willing to challenge the politico-legal system, these advocacy organizations face even greater challenges to building a membership base. Some have extensive virtual networks of support but tend to heavily rely on a small core group of unpaid activists to do the political work. The above excerpt indicates there are other issues related to organizational resources, including bureaucratization, infighting, and two-tiered organizations where some participants are paid and others are not. Further micro-level organizational research would be useful in this area. The point here is they cannot effectively organize around the 'actual' movement cause within the parameters of available resources, even though movement organizations have sustained stable funding.

Weitzer (1991) suggests that like the gay liberation movement, sex workers must either develop influential alliances or a critical mass of constituents. Unlike the gay liberation movement however, sex workers are not socially connected to one another in the same way that gay and lesbian communities have been. Indeed, the only thing many sex workers have in common is their low status job in society. Moreover, unlike lesbians and gay men, sex worker organizations tend not to have members with comparable political clout. Whereas the gay and lesbian movement embraces people of diverse races, ages, educations, occupations, social classes, wealth statuses and skill sets, the sex worker movement is more limited in its scope. In particular, there are fewer constituents with higher education, the skilled trades and professions, higher social classes, greater wealth, and diverse skill sets. For example, sex workers tend not to have lawyers,

carpenters, professional fundraisers, bookkeepers, etc. within the ranks of their own membership base. Those who do have greater social legitimacy or qualifications are limited in the extent they can identify as current, and even former, sex workers for fear of criminal conviction, job loss, and social stigma.

*Stigma, Ambivalence, and the Internet*

Prior research on sex worker movements emphasizes how social stigma impedes cognitive liberation of sex workers. Mathieu (2003) suggests that sex worker movements lack a constituency because, due to internalized stigma and a sense of the indignity of their work, sex workers are politically ambivalent. Nell, an ally from Vancouver also made this point,

Ambivalence is one of the things the sex workers I know talk about ... To me it's like this, everybody wants to be a part of the world and sex workers don't get to be a part of the world. They are the most deeply excluded group in our society, in my opinion. And if a person could do sex work without having that exclusion, what would they think?

Other participants in this research suggested, however, that what might be perceived as ambivalence is connected to the consequences of sex workers speaking freely about themselves. While stigma contributes to ambivalence, it also imposes consequences unrelated to cognitive processes. Juliette (PWSI), an activist from Montreal said,

Most sex workers will not be like 'Yah! I'm going to join this movement!' But that doesn't mean that they're not supporting it. That doesn't mean they're not reading about it. That doesn't mean they're not really proud when they hear a sex worker being interviewed on the radio saying 'This is my job and this is what I do.' It doesn't mean they don't have an affiliation to it. It just means that coming out is a really dangerous process.

Participants suggest the effects of outing oneself as a sex worker have not been taken seriously enough in the literature. They stressed that publicly identifying as a sex worker was an often unacknowledged but extremely political act. Accordingly, Cora

(PWSI) noted, "...to come out has far too many ramifications, so of course the political movement is seriously undermined by that." Those who have achieved cognitive liberation and well developed political positions are still prevented from being fully open about their identities as sex workers and must continually negotiate how much of a public role they can have in the movement. For instance, two mothers spoke about this threat in relation to their children. Clara (PWSI) explained, "Even for me, there's a lot of speaking engagements I just don't go; I've got two teenaged children, and as much as they love me and know about my past, it would be different for one of their friends to come out and say 'I heard your mom used to be a junky whore.'" Michelle (PWSI) also discussed how none of her colleagues were willing to attend a City Hall meeting to dispute the increasing cost of escort licenses,

So I was going to do it, and my daughters were like, 'No, do not do it.' Because I just know so many kids their age. I drive those teenagers around all the time, and they don't want me to be public about it. So our licensing fees are high because nobody fought the licensing fees here.

In this sense, sex workers must also negotiate their public identity based on the consequences for those close to them such as children or other family members who are exposed to 'courtesy stigma' (Goffman, 1963) because of their affiliation with a sex worker. It is no surprise that protecting loved ones is a significant silencing force.

Sex workers' standing as parents can also be called into question because of their work. Historical constructions of prostitutes positioned them as a threat to the sanctity of the family. Such discourses continue to pervade and influence discussions around women, motherhood, and sex work. Michelle (PWSI) discussed the threat of this form of stigmatization:

When I was getting a divorce, this is how I started into this business; my ex-husband started telling my neighbours, and they called Children's Aid ... They did investigate and closed the file, but the immediate reaction was just like 'Oh my god! She's an escort *and* she has her children.'

Other participants discussed losing 'straight' jobs when it was found out they also work(ed) in the sex industry. Sex workers can be ostracized from families and communities. They can expose personal partners and roommates to prosecution for living off the avails of prostitution. They can threaten the anonymity of their clients and lose business. Impoverished workers can be cut off social assistance. Transsexual sex workers can be refused both evaluation and health care services from Gender Identity Clinics because prostitution is not considered a valid form of work for the 'real-life test' (Namaste 2000: 305). Even several allies I interviewed had been ousted from feminist circles, lost friends, mentors, funding opportunities, and the like, based on their support of sex workers' rights and decriminalization.

Participation in this movement is inherently political and the ramifications of social stigma make the internet a promising mode of organizing. The emergence of websites and online discussion forums dedicated to the movement and conversations about sex worker rights reveals a large and diverse body of supporters. Online communication has been central to the development of the international movement, and is especially useful in countries such as Canada which require a large geographical reach. The internet can increase movement consciousness and participation among sex workers who wish to remain anonymous, who face scheduling or time constraints, live in remote locations or feel otherwise isolated from a sex worker community. This medium offers new and innovative opportunities for mobilization and also facilitates traditional forms of protest. This is useful for disseminating information that might be suppressed through



more established or mainstream media, and has been conducive to forging alliances with other movements, organizations, and campaigns nationally and internationally. This allows for information sharing and connections to be made between issues and actions related to sex work and those for other social justice movements (such as those promoting the rights of trans people, prisoners, and migrant workers, as well as housing, anti-poverty, and drug reform campaigns). It also serves as a powerful medium to raise awareness about the movement and organize against counter movements.

Some participants were wary of how this structures the movement. They expressed concern that an overreliance on internet and email exchanges as a mode of organizing excludes those who lack access or internet savvy and removes the impact of face-to-face interaction and relationship-building. Nell (ally) summarized some of the challenges around mobilizing through an online coalition:

Here in Vancouver we have 125 members. They're not working day-to-day on this issue; they signed up because they support it. If we want to get them out, we have to phone them or we have to send them a personal email from somebody in our group that they know. You know? The mass email is really problematic. Organizing is about you and me across the table or you and me and three others across the table. It's not about email. This is my opinion.

Though some coalitions had extensive membership lists, online organizing in Canada tended to revolve around the same groups of core activists. The internet presents both challenges and opportunities for political organizing, but the range of online coalitions, networks, and pro-sex work websites suggest that given the right forum (i.e. one that can protect anonymity) sex workers do speak about themselves in political and decisive ways.

Stigma serves two functions within the sex worker rights movement. First, it imposes social and personal consequences for sex workers and those close to them. Second, as researchers (Vanwesenbeeck 2001; Mathieu 2003; Chowdhury 2006; Goptu

& Bandyopadhyay 2007) and participants in this project have noted, there is a level of internalized shame which must be overcome in order to develop a large constituency base of sex workers. Moreover, according to those I interviewed, because of stigmatization it is common for people working in the industry to not see themselves as reflective of, or part of, the larger community of sex workers.

#### *Achieving a Common Identity as Workers*

Considering the relative success of the movements in areas of India and Bangladesh to mobilize mass collectives of sex workers highlights important differences. Importantly, large scale mobilization has taken place in environments where there is a shared experience. Organizing has emerged in large brothels or red light districts where sex workers tend to live and work in close proximity to one another, multiple generations of family members are in the industry, and police raids affect the entire community. All of this decreases isolation and fosters solidarity. Ironically, ghettoizing and police enforcement have, “unwittingly contributed to the strengthening of the prostitutes’ cohesion and solidarity” (Mathieu 2003:36). By comparison, the Canadian movement is geographically dispersed and activists were attentive to building a movement that reflects the diversity of sex industry work.

The contemporary movement is concerned with broadening the scope of sex worker representation beyond stereotypes or mythologies of prostitution, which can be held by sex workers and non-sex workers alike. In the literature review, I described how medical, social, and legal discourses have narrowly framed or defined sex work, often conflating it with women’s status as street prostitutes. In some ways this is reaffirmed through the outreach work of service based organizations, where funding is often directed

toward woman-identified street-based workers<sup>3</sup>. The activists I interviewed considered this an obstacle to gaining a broader constituency base as well as third party support.

Agatha (PWSI) stated,

I think some of the mythologies around sex work come into play. So, many workers who are just going about their business still assume that they are unlike other sex workers; that, if they aren't on the street, if they aren't heavy substance users, if they're not in and out of jail, well then they must be the exception and so why would they get involved? I think a lot of sex workers are really invested in being different than the stigmatized image, and that will be a barrier to getting involved and getting some sort of critical mass.

Activists' sense of identity shapes movement dynamics, activity, and framing processes (Polletta & Jasper 2001). Sharing a common frame allows individuals to develop shared understandings and identities that “justify, dignify, and animate collective action” (Tarrow 1998: 21). The sex worker rights movement is framed as a movement by sex workers and their allies to improve and control labour conditions as well as to improve and legitimize the social status of all industry workers. Collective identity is central to movement affiliation but problematic insofar as it requires a great deal of identity work involving ongoing negotiation, contradiction, and controversy (Einwohner, Reger & Myers 2008). To challenge oppression with a united front, sex workers must overcome internal divisions and stigmatization in order to identify with each other and with the movement.

One attempt to improve representation and foster solidarity across industry sectors is the use of the term ‘sex worker’. This is more inclusive and broad in scope than the term ‘prostitute’, and solidifies the movement’s demand for recognition as workers. Cora (PWSI) reflected on this, “I had a lot of hope for the term ‘sex work’, but I think now it’s just become euphemistic ... I think people still say ‘sex work’ and mean prostitution. I

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<sup>3</sup> This refers to biological and TS/TG women. The key is working as a woman.

think it's become, to some extent, politically correct." Efforts to expand the movement reveal a plethora of differing labour processes which can fracture common identities and goals. As Cora explained,

It's just such a broad spectrum of work. I mean, for the moral majority it's all fine, of course it's all prostitution because you're all 'selling yourselves' or selling sexual services. But to some extent the term sex work even reifies the fact that somehow there's something in common here, and there are things in common, but there are a lot of differences too.

Stigmatization and the potential of arrest are perhaps the only shared features in sex work, and both are experienced differently among sex workers.

Researchers and sex workers alike identify a hierarchy within sex work. Escorts are located at the top—their work considered safer, more lucrative and private; whereas, street-based workers are on the lower echelons of the hierarchy. This is particularly the case for those working in 'low end' strolls, or street areas known for prostitution activity where workers make the least income, they also have the lowest status and face the greatest risks of violence and arrest (Day 1996; O'Connell Davidson 1995; Highcrest 1997; Bernstein 1999; Benoit & Millar 2001; Shaver 2005). The regulatory emphasis on street-based work has contributed to solidifying the boundaries in a two tiered system whereby, "More expensive licensed off-street prostitutes operate with virtual impunity while poorer customers and prostitutes, who are mainly on the streets, are routinely arrested" (Canada 1998: 65).

A critical finding in Murphy and Venkatesh's (2006) research on sex workers in New York City was that as they moved their work indoors they began to frame or conceive of sex work as a profession and a career rather than a short-term means of employment. This is important because sex work is often a seasonal, temporary or

intermittent source of income, and in any labour movement, this hampers involvement. However, while a professional frame may contribute to creating a collectivity, in his analysis of sex worker unionization movements, Gall (2007: 86) notes that, “significant numbers of sex workers, particularly those at the top of the sex work hierarchy, [i.e., those likely to frame their work as a profession or career] subscribe to the view that sex work is already a largely satisfying and rewarding labour so that through this lens grievances are unlikely to develop.” This suggests that the movement cannot rely on the ‘professional prostitute’ for the “elevation of those who are left behind” (van der Poel 1995: 63).

The frame of professionalism can also mitigate the stigma associated with some forms of sex work by distancing professional, career workers from lower status workers. According to Morrison and Whitehead (2005: 177), a key stigma resistance strategy used by a sample of Canadian male escorts was the “denigration of street prostitutes.” Similarly, Maticka-Tyndale et al. (2005: 50) found among a sample of Canadian escorts that, “they distanced themselves from prostitution, especially street-level prostitution and terms commonly associated with it (e.g., whore and prostitute).” Theresa, a dancer who participated in this research, described how the hierarchy causes divisions within the industry and undermines the movement’s attempt to gather all workers under a common frame.

In our society people do the hierarchy, lowest of the low are the hookers, and then maybe the strippers might be a step up. That’s why people say, ‘At least she’s not a hooker’, or you have strippers saying, ‘I’m not a fucking whore’ ... And the reason why they don’t want to be associated with the sex industry is because the shame, the stigma, the whore stigma ... I had that epiphany how many years earlier of how, no, no, I actually feel I identify more with ‘Susie the hooker’ than ‘Susie the homemaker’, even though I’m a homemaker too.

Framing strategies are central to stigma transformation (Snow and Benford 1988; Berbrier 1998). One of the movement's tasks is to persuade industry workers to accept a redefinition of the entire group—to recognize each other as part of the same industry and develop a joint realization of potential gains by mobilizing collectively. However, even within the same type of sex work, hierarchies and different methods of stigma resistance exist. Clara, a peer support worker from Vancouver pointed out:

It's hard to get [street-based] sex workers to mobilize; as an industry, you are pitted against one another. Sex workers have a lot of lateral oppression going on; they get into divisions of high track/low track, whether you're a drug addict or not, how old you are, how good looking you are, how much you charge, what you will and will not do, and they'll oppress each other quite a bit more effectively than the public oppresses them, which is really unfortunate, but it's because they're competing for business.

This competition can be exacerbated by law enforcement practices, “police presence on or near strolls causes a decline in clients, increasing the competition among sex workers for clients” (Canadian HIV/AIDS Legal Network 2005: 42). In addition to the health and safety risks this can impose, according to several participants, disruptions to demand or to stable income (on the street or in off-street establishments) breeds an atmosphere of distrust among workers and this impedes effective cooperation and solidarity.

Extending the work frame to the most marginalized workers, those who have been referred to as ‘survival sex workers,’ is one of more controversial aspect of the movement. Clara (PWSI) defined survival sex work:

Survival sex work is characterized by a consistent inability to refuse to work in dangerous circumstances. And that inability is usually caused by systemic issues—such as poverty, homelessness, drug addiction and other health issues, lack of education and employment opportunities, things like that. And I would say that all of our members are survival sex workers, and probably the vast majority of them have significant addiction issues as well.

According to several activists, the Vancouver movement emerged out of the Downtown Eastside (DTES), an economically deprived neighbourhood, known for its high prevalence of homelessness, poverty, HIV/AIDS, and drug addiction. There are an estimated 5,000 injection drug users residing within the ten city blocks that make up this neighbourhood, and alongside mental illness, disabilities, experiences of colonialism and childhood abuse, drug users also battle high rates of HIV (35%) and Hepatitis C (90%) (Pivot 2010). There is a tenuous relationship in the area between law enforcement and harm reduction approaches in remedying some of these issues. For example, given the gravity of the social context, this neighbourhood is home to the first legal, supervised safe injection site (Insite) in North America. Insite operates on a controversial harm reduction model that is currently being contested in the courts (Vancouver Coastal Health 2010).

There is also a heightened concern in the area resulting from the 2002 arrest of Robert Pickton, who was charged with 26 counts of first degree murder associated with Vancouver's Missing Women<sup>4</sup>. Unfortunately, the Missing Women case is not a culturally, temporally or geographically specific event, and there are strikingly similar cases under ongoing investigation in Alberta and Manitoba. But this one gained international media attention as police declared that over 63 women had been murdered or disappeared from the DTES since the early 1980s. The families of victims, as well as women's and Aboriginal advocacy groups were frustrated and outraged by the historical dismissal of sex workers and Aboriginal people, who were disproportionately represented among the victims. The discourse and framing of sex work that has emerged out of this

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<sup>4</sup> In a controversial decision, the judge opted to divide the 26 charges into two separate trials. In December 2007, Robert Pickton was found guilty of the lesser charge of second-degree murder in the cases of 6 women. He received the maximum 25-year sentence with no chance of parole (the same as that for first-degree murder). At the time of writing, the second trial on 20 counts of first-degree murder is still pending.

climate emphasizes systemic issues described in the excerpt above. This was viewed by the older, more established sex worker organizations in Ontario and Quebec as leaning toward harm reduction rather than political transformation.

Use of the term ‘survival sex’ was resisted by activists interviewed for this research who are from outside of this region because aspects of this frame overlap with prohibitionist feminist discourses that are used to uphold criminal sanctions in order to protect women. Activists outside of Vancouver referred to this work as transactional or subsistence sex. They chose not to use the language of survival because it was seen as loaded and thought to deprive people of agency. In resisting what were viewed as unnecessary distinctions between workers, self-described radical or militant organizations extended the ‘sex as work’ frame to other contested areas of the industry as well as to transactional or subsistence sex. Agatha (PWSI), an activist from Toronto asserted,

Our position around all sex work is that the laws are discriminatory and harmful, and in fact, often they are the most harmful to people who are the most marginalized—and that would include youth, it would include migrant workers, it would include street-based workers.

Ideological cleavages in the work frame are difficult to address internally because they tend to be highly emotive. This is especially the case for discussions around underage workers. Moreover, activists were frustrated that public discussions of sex work tended to focus on these marginalized, minority workers, with issues couched in the language of exploitation (especially child exploitation) and human sex trafficking. They thought these topics were used opportunistically to divert attention from the labour issues faced by consenting workers. The prominence of these discourses makes it difficult for sex workers to acknowledge exploitation that does exist while moving their position forward. As Carol (ally) said, “We know some exploitations happen, we haven’t ever denied that,



and a lot of people think we do deny that.” The difficulty comes in how to address these exploitations outside of polarized discussions and immediate visceral reactions. Among constituents within the movement, online communication, where tone and expression are easily misconstrued, is not the best forum for such complex discussions.

Given the degree of diversity in the movement, in terms of labour processes, issues of concern, income and status discrepancies, and the contentiousness of some aspects of the movement, it is difficult for sex industry workers to align themselves within a common frame. The legal and social consequences of identifying as a sex worker also clearly inhibit movement participation, and lead to difficulties fostering leadership.

### *Leadership*

In addition to the obstacles involved in developing a membership base, Nell (ally) summarized the difficulty of leadership in this movement “you have to be a very exceptional person.” Leadership of a sex worker organization exposes a person to insult and ridicule. As an ally to the movement, Nell helped organize a public education campaign, and in the following excerpt speaks to the prohibitionist feminist opposition they encountered and how this impacts on sex worker leadership and maintaining the movement. She explained,

In my experience, they [prohibitionist feminists] will personalize the debate, they will misrepresent your experience, and they will use emotion in really suspect ways. They’ll just dismiss anything that you’re saying because you don’t know what you’re talking about, or you don’t really understand what’s happened to you, or you’ve been abused so you don’t know. So you’ve got the public, which can be very harmful, ignorant, demeaning, all kinds of things; and then you have an opposition that really, I believe, does not operate in a principled way. So leaders in this movement have to be extremely tough, and very often it’s really hard to replace a leader. Like to be that tough, your community’s looking at you as some kind of god. That’s an exaggeration, but some kind of exemplary person ... So

when you lose a leader in this movement I think you're way more vulnerable to fracturing.

Leaders are also exposed to critique from within their own communities. There are relatively few leaders doing the bulk of the work, and publicly identified sex workers are commonly portrayed in mainstream media as representative of all industry workers. Many leaders that I interviewed conveyed experiences of publicly identifying as a sex worker and suddenly being launched into a spokesperson or leadership role without the necessary skills or support. "It's like being tossed into the deep end of the pool" (Elizabeth, PWSI). As a result they become vulnerable to both public scrutiny and to criticism from other sex workers. The combined effect produces a high level of burnout, and cycles of leadership have proven to be very trying on organizations. As Theresa (PWSI) noted,

Most of the criticism has come from my own community ... That was one of the hardest things, and especially because you're supposed to be speaking for a community or representing a community, but there's no way we all feel the same way about *anything*; you can't keep that community all happy at one time.

Several avenues to activism and public disclosure were described by those I interviewed. Some said they were already political people, they expressed having an activist spirit, and many identified as feminists prior to their involvement in this movement and/or sex work. They offered broad feminist, labour and human rights frames to explain their motivations. Politicization was often combined with experience in service organizations and interactions with sex workers from various backgrounds and sectors of the industry. Organizing with other sex workers contributed to a political consciousness among constituents that they were not immune to human rights violations. This was true for sex workers who were more protected from violence and criminal sanction (e.g.

escorts and indoor workers) as well as allies. They came to understand the significant threat of the whore stigma and the systems of exclusion that render some people less than fully human. As Juliette (PWSI) said, “That’s what usually incites involvement, is when people will relate to it.”

Three participants were forced into the public spotlight when they were charged for prostitution-related offences. All three were working indoors and attributed no harm to their actions. Being arrested was surprising, degrading, and at times, an abusive and violent experience. Nancy was resentful of how the Court “put me into the position of being a criminal!” Lola recalled, “The justice system was set up to make me feel really guilty for something that I know didn’t harm anybody.” These women came to recognize their circumstances as unjust and movement organizations offered them the potential to alter them.

For some, such cognitive liberation was a result of involvement with an organization. Fanny, a former worker, explained, “When you have spent twenty years in the industry, you are a product of that industry as much as I am a product of my middle-class upbringing.” After years of hiding her work in the sex industry, organizational affiliation transformed her sense of self-esteem to one that positively affirmed her identity as a worker and an activist, “now I understand what it means to get up and say ‘I am.’ And that, I owe to the movement.”

Gaps in sex worker leadership and movement participation highlight additional barriers to organizing. This is particularly the case for current street-based workers. Cora (PWSI), a political advocacy member discussed this,

We do have some members who are current [street-based workers], who come occasionally, but for some of them participating in a meeting every second week

is not really on. We're [advocacy group] talking about this today—what can we do to make this work for street-based sex workers? Because, you know, we communicate via the internet, so that doesn't work when you don't have a computer. One of the things I'm going to try to suggest is that rather than asking the sex workers to come to us, we will come to them. It's perilously close to warm socks [providing services] so I'm a little, you know [reluctant]. We don't want people to start to think of us as offering services.

While movement organizations primarily work with street-based women, they are lacking in political representation within the movement. The organization of SWUAV members, who brought a constitutional challenge in BC, highlights the need for anonymity, financial resources, and alliances. The lack of representation of street-based workers is not indicative of ambivalence, but reflective of their economic circumstances, precarious living conditions, threat of criminalization and social stigma. What I demonstrate in the next chapter is that while there are major obstacles for extremely marginalized sex workers to participate in political action, and especially as leaders, this group, and their legal representatives in their framing of their *Charter* challenge, were most reflective of 'the cause' for many of the participants interviewed.

The form of sex-worker run organizations and the foregrounding of experiential knowledge do however facilitate greater involvement of current and former sex workers who might otherwise face structural barriers to participation. It also opens opportunities for personal, professional, and activist development. Sabrina, who was charged several times under both bawdy house and communicating provisions, recalled, "I was so afraid. You know, I have a criminal record. I have such gaps in my resume. But PACE's philosophy is, 'Well actually your criminal record can be perceived as an asset.' When I heard that, it was a big load off my shoulders, right?" The emphasis on experience-based knowledge is an important feature of the movement and assures sex workers' voices are

central to organizations, coalitions, as well as discussions on policy and in research. This forges a place within the movement for all industry workers, but due to the multiple barriers to sex workers becoming involved and especially to becoming public leaders, they also rely on alliances to advance the goals of the movement.

### *Alliances*

Collective identity defines the boundaries of who is internal and external to the group, clarifies shared views and beliefs, and establishes the trust necessary for members to commit to the group, especially when doing so might be uncomfortable or dangerous (della Porta and Diani 2006). Of central importance to this movement is that sex workers speak for themselves. Community mobilization is important to ensuring that sex industry workers inform and benefit from the policies and programs that affect their lives. It is an ongoing struggle for sex workers to deconstruct common stereotypes of sex work and to be taken seriously in the political sphere. This makes alliance building with ‘outsiders’, or non-experiential actors and groups difficult, though necessary.

Weitzer (1991) and Mathieu (2003) have described the earlier movement in other countries as one in which leaders tended to speak on behalf of, rather than involve, sex workers. What I have gleaned from multiple interviews is that the importance of sex worker identification within movement organizations is in response to a history where sex workers were talked about, undervalued as citizens, ignored in policy development, and subjected to unethical research practices. This produced skepticism and distrust of non-industry movement members despite recognition that the movement could not be sustained without the support of like-minded, publicly legitimate, and powerful allies.

Movement participants without a history in the industry are generally referred to as allies or sympathizers, and from this position, involvement in movement organizations was sometimes described as a challenge. Carol recalled, “I’m on their committee now, but it was a struggle to get in. Now they trust me only because I showed up at every single march they had and was there at the front with them, but I have no experience as a sex worker and they knew that.” Skepticism about the reason for the interest of non-sex workers in this movement is understandable. Several non-experiential allies interviewed reflected on their own experience of anti-prostitution discourses. Most had been schooled in radical feminism and concern about violence against women was their entry point into activism. Initially they framed sex work as inherently violent and supported a prohibitionist position. Their ideas altered dramatically as they developed relationships with actual sex workers whose voices and politics were not consistent with their original feminist lens. Many described a process of internalizing a sex worker perspective toward decriminalization and sex worker rights:

I contained and held all of the belief systems of 1980s Catherine MacKinnon-Andrea Dworkin feminism. Like I was a living product of that kind of feminist training ... and then eventually after being in working relationships with enough sex workers, it was like, so clear to me there was no other way [than decriminalization] (Violetta, ally).

As was described previously, a particularly important relationship has developed between the sex worker and HIV/AIDS organizations and movements. Polly (PWSI), an activist from Montreal said,

In the women’s movement we’ve [sex workers] got enemies everywhere, but in the HIV movement, they took the time to talk to us, to get us, and now they are our best allies and we have advocates everywhere in Canada. They really linked human rights as the most strategic tool for the fight against AIDS, so we needed them so much. We have HIV money. That is the base of the money and that helps us to do our work. But also, everywhere, in small regions throughout Quebec, it is

the HIV groups who give a hand and present themselves to the sex workers in their area, so we respect that very much.

Not only does the HIV/AIDS movement legitimize experiential knowledge, but it is somewhat unique in its overt support of sex workers' rights through the frame of human and labour rights.

### *Institutional Allies*

Three of the allies who participated in interviews had become involved in the movement through their employment in public health and community development. Nell described a community project that was initiated because of heightened concern over the Missing Women. She said,

I think it's important to say that while this particular project occurred, and while other funding was given to sex worker organizations, almost really for the first time in BC, it always seemed to me to be a band aid and something governments could point to and say 'Look, look, look, we're doing this.' But if you wanted them to do something more serious, there was really no appetite for that.

Gerda spoke of her role in helping build a committee of dancers to defend their labour rights. This posed significant challenges including merging two organizational and cultural forms:

One of the [challenges] that was very difficult was finances. So how were women going to even get to meetings? Because a lot of these women didn't have any money. A lot of them only worked enough to feed themselves. And then they would come and get involved with us, and they loved what they were doing but there was no money in it—and we weren't covering their expenses, which was an issue for me. There was also the ability to understand process, and to understand how to cooperate, and especially with other dancers, because it's an industry where trust is not something you have, and communication is often yelling, screaming, threatening.

As she went on to acknowledge, working within a bureaucratic government framework also left the group vulnerable to changes that were beyond their control. She explained that as the dancer's committee developed and grew, the management structure at the

health unit where she was employed changed. What had once stressed strong community partnerships became more bureaucratically oriented and management became much more concerned about the 'optics' or how the program appeared.

Management started to put more of their expectations on what the [dancer] committee should do and how they should do it. And that was the beginning of the end of [municipal health] involvement because management had different goals for being there and they weren't going to be met.

In this sense, institutionally positioned allies expressed many of the same concerns as sex worker activists within movement organizations. As these individuals became involved in the movement, they also grew concerned that while government programs and funding helped sex worker organizations offer much needed services, they failed to address the structural issues that were seen to fundamentally impede the health and safety of sex workers as well as their political mobilization.

Criminalization and stigma also hinder alternate approaches to advancing labour rights and forging institutional alliances. For instance, it was a significant symbolic gain when CUPE, Canada's largest labour union, passed a resolution in 2001 to take the lead, within the Canadian Labour Congress, for the decriminalization of sex work in Canada (CUPE 2004). Juliette (PWSI) explained the benefits of union representation,

Ideally what would happen is you would have a union who would politically take a message and support sex work as employment, and then, if sex workers wanted the option of actually forming a union for their particular workplace, they would have the option to do so.

However, CUPE is unlikely to get union certification for work that is essentially illegal, and because most sex workers are autonomous or contract workers, Canada's existing labour laws do not provide for their unionization. Juliette, who had been involved in union discussions with CUPE members, explained the outcome of this effort,



I found that working within a labour context was a really useful thing to do for sex workers. However, what CUPE did was they had like a little sex work committee, and once the women's committee started to get involved the discussion kind of fell ... As far as I know, that sex work committee doesn't exist anymore. Because again, the issues that the women's committees would bring into it were about child prostitution and trafficking, and they didn't want to talk about sex *workers* issues—like issues *at work* for sex workers. And that's what we needed to talk about. And so even within a union structure, it happens, right.

As Weitzer (1991: 34) asserts, “various influential third parties have formally supported decriminalization but their contributions to the movement have been limited.” This reflects how the discourses around sex industry work can hinder meaningful alliance building.

### Conclusion

In the literature review I demonstrated how shifting feminist and health discourses were instrumental in legislative reform, enforcement practices, and indeed the construction of ‘the prostitute’ as an identity. Legal institutions and contemporary feminist and health discourses continue to inform social perceptions and cultural understandings of sex workers. These predominant cultural perceptions pose significant challenges for sex workers to develop collective identity, sex worker leadership, and alliances.

The contemporary sex worker movement frames all commercial sex as ‘sex work’ and demands improved health and safety standards for workers. Even though movement constituents tend to emphasize the practical necessity of legislative reform, the controversy around this issue suggests they challenge cultural values, sexual norms, and acceptable forms of labour. For activist/author Carol Queen, the notion of sex workers’ rights inherently embraces sex radical politics and an understanding that sex workers are one group out of many that is culturally labeled and mistreated. She writes,

We in this profession swim against the tide of our culture's inability to come to terms with human sexual variety and desire, its very fear of communicating about sex in an honest and nonjudgmental way...Activist whores teach, among other things, a view of our culture's sexual profile that differs from traditional normative sexuality. Every whore embodies this each time s/he works (Queen 1997: 134).

Powerful oppositional discourses that treat sex workers as victims and/or deviants are major constraining factors that impinge on sex workers' capacity to mobilize and be 'heard'. These perceptions are rooted in legal rules, norms of expression, and institutionalized in social programs, and thus set the terms of strategic action.

In other inhospitable cultural environments, sex worker movements in India and Bangladesh face similar resource opportunities with HIV/AIDS prevention organizations premised on peer education and outreach. In large multi-story brothels and red light districts, sex workers have transformed themselves from 'fallen women' to political activists and *sex workers* (Misra et al. 2000; Jana et al. 2004; Chowdhury 2006; Gooptu & Bandyopadhyay 2007). By comparison, sex worker activists in this research were particularly attentive to the diversity of the sex industry in Canada, spread across a large geographic area, and emphasized the challenges of developing collective identity and amassing a large constituency base. Sex worker activists and advocates expressed that stigmatization not only impedes cognitive liberation, as previous research has emphasized, but that sex workers put themselves at great personal jeopardy in order to be public leaders or even be associated with a sex worker rights movement.

Activists in this movement rejected van der Poel's (1995) strategy of spotlighting the 'professional prostitute'. Indeed, many movement activists considered the most marginalized sex workers as important stakeholders in movement outcomes and wanted to increase their political representation and participation. As I have demonstrated,

economic, legal, and social forces have hierarchized the sex industry. Stereotypes and misconceptions about sex workers, or prostitutes, impact the types of resources and alliances they are able to acquire, and because sex workers also hold these perceptions, they pose challenges to developing collective identity and solidarity. Stigma and criminalization also mean it is unlikely sex workers will develop a critical mass of constituents who can publically rise up in opposition to local and national issues. We have yet to measure the process and impact of online consciousness raising and coalition building, but technology has certainly impacted and perhaps expanded the movement, putting people in contact with one another in ways that were not possible before.

One of the most significant opportunities I have identified that has helped sex workers mobilize around longstanding grievances developed largely due to HIV/health-related funding bodies. In turn, this has promoted sex worker rights as human rights, which provides a resonant cultural frame. Resources linked to HIV and public health have likely been a sustaining force for sex worker social movement organizations. These have provided continuity for the movement despite high turnover in leadership. Organizations were also an important site of consciousness raising and often formative to personal and activist networks among sex workers, and provided an anchor (and often meeting space) for fledgling political coalitions. Their importance to the movement should not be underestimated. Collaborations with health researchers has also developed an empirical body of knowledge that deepens our understanding of the social, legal, and economic contexts in which sex industries operate and their impacts on occupational health and safety. This scientific expertise is valuable within cultural institutions, including the Courts.

What political process highlights is that cultural, political, and economic shifts not only provide opportunities for movements but also impose constraints. Shifts in neoliberal ideology and social programming have certainly impacted grassroots and social service organizations more generally. For sex worker organizations, resources were perceived to be allocated according to broader political/cultural currents, and accepting funding was seen to perpetuate them. Funding available to sex workers structured movement organizations, and was at times rejected in order to broaden the political scope or expressive freedom of the sex worker rights position. This resistance underscores aspects of their counterculture they refuse to compromise. Moreover, deeply embedded ideas about sex workers hindered alternate labour rights approaches such as union formation.

The following chapter is an analysis of sex workers' legal mobilization. As I will show, the judiciary proved itself to be one of the only routes for sex workers to challenge the legislative framework they consider a deterrent to occupational health and safety. Each group of plaintiffs represents a different aspect of the industry. Those in Ontario fit the 'professionalized' image that the movement works to incorporate in order to disrupt and dismantle stereotypes about prostitution. The plaintiffs in BC represent the most marginalized sex workers the movement works to engage politically. Many of the same themes outlined above reemerge in the analysis of legal mobilization, including issues around voice, political representation and the role of alliances.

## CHAPTER 5: THE CHALLENGES

This chapter addresses how the Canadian sex worker movement is involved in and perceives the two court challenges to the Canadian *Criminal Code* provisions related to prostitution. It begins with an overview of the provisions and their affect on the lives of sex workers. This is followed by a review of the recent government and court actions leading up to the challenges, and goes on to introduce the legal representatives and each of the cases. I conclude with sex worker activists' contributions to feminism which are sidelined in the judicial process.

Organization and coalition members identified criminalization and stigmatization as barriers to sex workers' health and safety, these are also the most significant barriers identified in this research to mobilizing a movement for sex workers' rights. The following provides an overview of the 'Prostitution Laws' to consider how this legal structure was understood to infringe on the lives of individual sex workers and how they pose obstacles to building a movement.

### Legal Frame

Members of both community-service and political advocacy organization identified criminalization and stigmatization as barriers to sex workers' health and safety. The international sex worker rights movement promotes the decriminalization of all industry work. Movement activists recognize that decriminalization alone cannot adequately address stigmatization or the social inequalities that are at the root of many social mobilization efforts. The aim, however, is to repeal criminal laws related to prostitution and instead regulate the sex industry using the same labour, zoning, and criminal laws that regulate other workers. This is expected to improve the lives of sex

workers by allowing them to conduct their work without the threat of criminal charges and police harassment. Both of these are considered to jeopardize the safety of sex workers, as well as their access to health and social services, and also to reaffirm and justify stigmatization (BCCEC 2007; Maggie's 2008; Stella 2009; SPOC 2010).

In 2004, Pivot Legal Society, a human rights legal advocacy organization located in the Downtown Eastside, released a report, *Voices for Dignity*, based on the affidavits of 91 sex workers from Vancouver's DTES. Some of the women involved in the project later amalgamated into the *Sex Workers United Against Violence Society*, and with legal representation from Pivot lawyers, are now plaintiffs in the BC Constitutional challenge. The following section draws on the accounts in the report together with interviews with movement activists to provide an overview of specific concerns pertaining to each of the CCC provisions.

There is a wide range of types of sex work including, for example, erotic dance, telephone sex, internet sex, erotic massage, out-call escort work, street prostitution, in-call work, and adult film (pornography). Not all of these violate provisions in the Canadian *Criminal Code*. In fact, it is often noted that the exchange of sex for money is not itself illegal. The enactment of this exchange is most likely to violate CCC provisions related to prostitution when it is in-call (i.e. at a fixed location), some aspect of it is in public, or a third party is involved. The laws were described as confusing with their cumulative effects disempowering. Michelle, an out-call escort explained, "There is a lot of peer education, a lot of it, and we'll all be sitting in a car with four different people with four different ideas of what's legal and what's not legal. It's a constant. There's a lot of debate in the cars." James (PWSI), the proprietor of a private club added, "Even the

legal advice you get, they will not go on record saying ‘We fully give you this legal advice’, they will say, ‘Well, this *could* be interpreted this way, this *could* be interpreted that way.’”

*Criminal Code Provisions*

*s.210: (Bawdy-house)*

According to section 210 of the *CCC*, every one who keeps, owns, or is found in a common bawdy-house is guilty of an indictable offence (Criminal Code 1985). A ‘bawdy house’ is commonly referred to as a brothel or ‘house of ill repute’ where ‘acts of prostitution occur’ (Criminal Code 1985). To qualify as a bawdy house, the space must be frequently used for prostitution and could include hotels, spas, massage parlours, or private residences. Thus, having a fixed location where clients are regularly serviced violates section 210 of the *CCC*.

Participants emphasized that having control over the work environment and having the option to work with others contribute to workers’ safety. Polly (PWSI) explained the ideal scenario: “Working in a group setting, in an environment we control [is safest]. Like, if I go to a gentleman’s apartment, which is legal, being an escort out-call, I never know if there’s gonna be three guys hidden in a wardrobe somewhere, or if I get drugged, or whatever, I control the drinks in an environment I control.” According to John Lowman (2005), the off-street, fixed location trade flourishes despite this law. In order to circumvent the laws, many establishments where prostitution occurs cannot be explicit about this. For example, although workers in exotic massage parlors may offer a variety of sexual services to clients for ‘tips,’ these cannot be ‘advertised,’ they must be privately negotiated, and establishment owners and managers must feign ignorance that

such services are offered. Workers spoke of this as presenting challenges to negotiating personal boundaries relative to the expectations of clients and also as imposing health risks since establishments cannot make provision for the requirements of a ‘risk free’ or ‘low risk’ sexual encounter. Polly (PWSI) relayed, “Some massage parlors don’t give condoms to their girls because if the police come they don’t want to acknowledge that, ‘Yes, there’s prostitution going on here; we give the condoms to the girls as a working tool.’” In contrast, James, a proprietor of a private club that offers private sex booths for patrons, but where there is no direct exchange of money for sex, described a dramatically different environment with heightened and active sexual health promotion, “when we have our sex parties it’s almost overkill, like we have condom and lube cups everywhere all over the club in hands reach, and I make sure. We have to do as much as we can with that.”

This particular establishment benefits from the 2005 Supreme Court decisions (*R. v. Labaye* and *R. v. Kouri*) in which two men were acquitted on bawdy house charges for ‘indecent acts’ in a private club. In the context of these ‘swingers clubs’ the courts determined that group sex in a private setting of like-minded adults does not harm society at large and thus does not amount to criminal indecency—insofar as it does not involve commercial sex. Of course, this begs the question: what is considered commercial sex? A critical analysis of these decisions might question the blurring of this boundary given there are membership and entrance fees required at many of these clubs.

An additional effect of this law was described by SWUAV members in their affidavits. These women, who already experience precarious living conditions, often live in low cost extended stay hotels when they have the cash are often considered ‘suspect



tenants' and can be refused accommodation or subjected to 'guest fees' when anyone visits in their room. As described in the Pivot report, "The effect is that women are forced to work on the street or in cars and are denied the right to receive friends and family in their home [extended stay hotels] if the visitors cannot pay the \$10-20 fee" and further, police will use the guest registry to "keep track of sex workers" (Pivot 2004: 34).

Those who are convicted under bawdy-house laws are subject to forfeiture of proceeds of crime (Part XII.2 of the *CCC*), where personal possessions, money and bank accounts may be seized. In this regard, Nancy recalled her bawdy-house conviction, "if that hadn't have happened [seizure of her personal assets], no, I'd be much further ahead than where I am today. I would have probably owned the house that I was living in by now."

*Procuring (s.212)*

According to section 212 of the *Criminal Code*, it is an indictable offence to procure a person into prostitution or to live, wholly or in part, off the earnings of prostitution. The commonly used word for this is pimping, and the provision is intended to reduce exploitation of sex workers by pimps. This provision serves to isolate sex workers from each other, undermining collectivity, information sharing, and protection. As Sabrina (PWSI) pointed out, sex workers cannot even tell someone the safest way to conduct themselves, "A new girl comes on the block and you're wondering 'Well, I don't know if I can tell her the ropes!' right?" Polly (PWSI) explained, "We need third parties [agents, managers, 'pimps'] in the trade, especially if you're a newcomer in the industry, it would be stupid and dangerous to improvise yourself as an independent sex worker when you don't know how it works."

The most common representation of the pimp is as a man who is exploiting the sex worker by taking her money. According to those interviewed, the more likely scenario is that people living off the avails of prostitution are either central support systems for sex workers or personal and intimate partners. As Michelle (PWSI) said,

Anyone who gets any financial benefit from what I do can be charged for living off the avails of prostitution. That is the law that really has to go because I need a driver, I need an agency to book these calls, I need support staff. And I don't know if I'm doing anything illegal working with them.

According to SWUAV members, this exacerbates their housing problems by exposing roommates and intimate partners to prosecution once a sex worker contributes to rent and household expenses (Pivot 2004).

While the onus is on the Crown to demonstrate the 'parasitic' nature of the relationship between the sex worker and the person charged under the procuring law, the provision itself instills psychological harm and fear among sex workers. Michelle commented:

My one daughter has turned 18 and now she would meet the criteria for living off the avails of prostitution. She goes to university, I pay for that. I mean it's highly unlikely but it's always there in the back of your mind that if you ever get into trouble, would your kids be charged and named publicly?

Although the scenario above is unlikely, there are serious sanctions associated with both bawdy-house and procuring provisions. Both are subject to authorizations for electronic surveillance and forfeiture of proceeds of crime, and the procuring law allows DNA samples to be collected from offenders and their entry into the sex offender registry.

*s. 213 (Communicating)*

The communicating provision, section 213, is a summary offense that makes it illegal to communicate in public for the purposes of prostitution. This includes anywhere

that the public has access by right or by invitation, as well as any motor vehicle or space open to public view. This law most directly affects street-based sex workers who are estimated to make up only 5-20% of sex industry work yet account for more than 90% of incidents reported by police (Canada, 2006: 86). Justice statistics are based on gender rather than distinguishing between service provider and client, but more than half of those charged under s.213 are women, and women are far more likely than men to be imprisoned for communicating convictions (Duchesne 1997: 4).

The harmful effects of this particular law have raised public concern in light of the high profile case of murdered and missing street-based workers from Vancouver's DTES. Participants working in service-based organizations in cities across Canada were familiar with the extent of violence that street workers experience. Polly (PWSI) explained, "The communication law is pushing the girls from the downtown area to residential area, and then from residential to industrial area where the horror can happen easily." As Barbara stated, "Decriminalization is going to help people to be able to work peacefully and safely, and you know, not having to hop in a car before you negotiate the terms. I mean lots of violence happens because of someone not offering what the guy wants." Comparably, a common theme among off-street workers who participated in this research was the benefit of communicating with potential clients before the transaction or actual encounter. James (PWSI) said, "you can learn a lot about how somebody just describes themselves, even the words they use ... I just found the quality of the clients was so much better and the sessions were so much better, everything was better with the internet."

SWUAV members claimed this law was ineffective and dangerous. As was discussed in the literature review, the intended purpose of the communicating provision is to reduce the nuisances associated with street prostitution. However, severe cuts to social services and social assistance have increased the number of workers in the DTES, in turn driving down prices for sexual services and putting more pressure on sex workers “to work more often and to take dates with clients they might otherwise refuse” (Pivot 2004: 61).

*Summative Effects of ‘Prostitution Laws’*

The harmful effects of these laws have been identified by academics and government committees alike. Canadian sex work researcher, John Lowman (2000), for example, documents how the communicating law, alongside the closure of off-street establishments in Vancouver, contributed to an increasing number of murders, disappearances, and other acts of violence against sex workers. This social problem gained widespread attention in 2002 when Robert Pickton was charged with some of the murders associated with Vancouver’s Missing Women case. This called attention to a list of over 63 sex workers reported missing or murdered over the past 20 years from the DTES alone. As a result, in February 2003, Parliament approved a motion brought by the Honorable Libby Davies, MP for Vancouver East, to review prostitution laws and to recommend changes to reduce violence against sex workers.

After extensive study, including the testimonies of over 300 witnesses across Canada, the all-party Subcommittee on the Solicitation Laws of the Standing Committee on Justice and Human Rights delivered its report in 2006. All parties concurred that the status-quo was unacceptable but Subcommittee members were unable to agree on a

strategy for change. Members of the Liberal, New Democratic, and Bloc Québécois Parties concluded that Canada's quasi-legal approach, in which adult prostitution is legal but almost impossible to practice without breaking any laws, is contradictory. They took the position that prostitution is a public health and human rights issue; that an adult has the right to sell sexual services and to do so in a safe environment. They were of the view that laws of general application should be used to combat violence, exploitation, and nuisance (such as public disturbance, indecent exhibition, coercion, trafficking in persons, etc.). Rather than regulating sexual activities between consenting adults, they argued that resources would be better directed through the enforcement of these laws (Canada 2006: 90).

The Conservative Party members viewed this as an issue of violence against women (Canada 2006: 90). They took the position that prostitution is inherently degrading and dehumanizing, and thus criminal sanctions are necessary to reduce prostitution and target abusers (clients and pimps) (Canada 2006: 91). For these members, prostitution has a social cost to communities and to women in particular. Decriminalization would signal that exploitation of a woman's body is acceptable. They were also concerned that decriminalization would increase both adult and child prostitution and give organized crime more control over the industry. The Parties concluded that they required more research and data to resolve these divergent views.

In partnership with Stella and Maggie's, the Canadian HIV/AIDS Legal Network issued a response the following year, *Not Up to the Challenge of Change*. They gave the Subcommittee a 'failing grade' for not making any concrete recommendations and thus "leaving sex workers open to continued human rights abuses—stigma, discrimination,

violence and possible exposure to HIV” (Canadian HIV/AIDS Legal Network, et al. 2007: 7). Discouraged by the outcome, sex workers started to think seriously about alternate possibilities. Agatha (PWSI) said, “We’ve already had a couple of attempts at changing legislation through Parliament, most recently with the Parliamentary Subcommittee—and that went absolutely nowhere, so you know, I guess now it’s time for a *Charter* challenge.”

Sheldrick (2003) contends that transferring responsibility to the courts fits within neoliberal strategies of offloading. Agatha pointed out how this form of political offloading can also insulate politicians and political parties from controversial issues. As she commented:

The vast majority of MPs don’t have constituents pushing for change because of real life experience, either as individuals, as workers, or as community members, and so they can fall back on the moral stance. And really, when you think about it, why would they? Why would they take a stand on something that’s so contentious, that’s going to cause such an uproar, when they don’t have anybody challenging them to take that stand?

As such, a Constitutional challenge was viewed as one of the only available routes to seek recognition for the rights of sex workers. Agatha went on to explain:

Politicians, if they get a little bit of a push from the courts, might be more amenable to looking at other options like labour based relations as opposed to criminal regulation. It’ll be interesting as to how that plays out ... Will it be similar to issues around same sex marriage where really it gives government, more abruptly Parliament, permission to be more, I’ll use the word ‘liberal’, in their approach? We saw that with the same-sex issue, a lot of politicians didn’t want to take a firm stand because of the fear of losing support from their constituents and getting involved in what’s sort of a ‘moral debate’. But if the highest court in the land insists that you need to make a change, you have that as a bit of a cover. Same thing with abortion. Something like that could happen with sex work.

Likewise, Nell (ally) stated:

The extent to which I follow it is, politically, no government is going to take this on. It's the same thing with abortion, it's the same thing with sexual orientation, there's no political will. There's no benefit to any political party taking it on. That's the kind of cynicism there is around the marginalized—there's just no votes. So you get a wing and prayer if you don't get a slap across the face. That's the importance of the *Charter* case; it will make them [legislators] start a new process. If it gets to the Supreme Court, and they rule it unconstitutional, there will be a legislative process, this is the thing that needs to happen.

*Charter* litigation by marginalized groups provides a legitimized venue for those with relatively little influence on the institutions of democratic politics, and in this way, it enhances democracy (see Hein 2000). Miriam Smith (2005: 82) contends that in Canada's parliamentary system, it is highly unlikely that groups are able to “successfully exploit legislative opportunities to shape policy outcomes.” Three separate federally funded initiatives have found the *CCC* provisions dealing with prostitution unacceptable. These include the Special Committee on Pornography and Prostitution (the Fraser Committee) (1985), the Federal-Provincial-Territorial Working Group on Prostitution (1998), and the Subcommittee on Solicitation Laws of the Standing Committee on Justice and Human Rights (2006). Still, the laws remain unchanged. In contrast to Parliamentary processes, the legal arena emphasizes neutrality and detachment (Fudge & Cossman 2002: 31). As law professor Richard Abel (1998: 87) writes, “Courts purport to be less overtly political, to apply law rather than make it in response to electoral or interest group pressures, to listen to argument rather than money.”

By contesting the *CCC* provisions dealing with prostitution, sex workers are challenging deeply embedded notions of the family and sexuality. Whereas in the early 1970s sex workers ‘road the coattails’ of the gay liberation movement, they are now, by comparison, anti-family. Fanny (PWSI) considered how same-sex marriage shook social values, but was able to reaffirm the familial notions of love, which sex workers threaten.

It's too much to ask Canadians to have gay marriage and decriminalize prostitution at the same time ... It took 30 years for people to begin accepting the fact that love and sexuality can happen between people of the same sex. I think that to now ask the general population to accept the exchange of sex without love is too much. This is something very scary for straight [sexually normative] people—the fact that the family is changing too much. People are very attached to the idea that sex has to do with love, and this has to do with marriage and with family. So I think that sex workers are threatening that little tiny thread that still holds between love and sex.

### The Challenges

Twenty-five years after the entrenchment of the *Charter*, what has made it possible for sex workers to challenge the laws on constitutional grounds? Agatha (PWSI) set the Challenge into an historical frame, “Certainly, as you’re aware, *Charter* challenge has been on the radar for many years, after the Supreme Court Reference.” Outlined in Chapter 2, the Prostitution Reference (1990) occurred five years after the communicating law was introduced. In this, the Supreme Court of Canada determined that public communication for the purpose of prostitution (then s.195; now s. 213) infringes on sex workers’ rights to freedom of expression (s.2(b) of the *Charter*). However, s. 213 was retained based on s.1 of the *Charter*—the elimination of public nuisance was considered sufficiently important to limit the right to freedom of expression. The Supreme Court also ruled that the bawdy house law (then s.193; now s.210) did not violate the right to life, liberty, and security (s.7 of the *Charter*). In a second decision that year (*R. v. Skinner* 1990), the Supreme Court held that the communication law did not violate freedom of association (s. 2(d) of the *Charter*).

In contrast to the decision based on the need to eliminate public nuisance, the Department of Justice report on the impact of the communication law that was released the following year concluded that the law had not met its intended purpose of reducing



public nuisance but only displaced problems to new locations (Canada 1998, 2006). Lawyers in Ontario and BC feel that had the results of this report been available at the time of the decision, to demonstrate the ineffectiveness of the law, perhaps it would not have constituted a justifiable limit on the fundamental freedom of expression (s.1 of the *Charter*).

The two Constitutional challenges present different legal arguments, values, and relationships to sex worker collectives. The plaintiffs represent distinct aspects of the sex industry and their grievances coincide with separate causes of the leading lawyers, who fit the description of ‘cause lawyers’.

#### *Cause Lawyers*

‘Activist’ or cause lawyering is a distinctive style of legal practice—contested within legal scholarship and overlooked in social movement literature. Although the legal profession encourages pro bono, legal aid, and service programs, this is usually secondary to fee-for-service lawyering. Cause lawyering is unique in that this work “is frequently directed at altering some aspect of the social, economic, and political status quo” (Sarat & Scheingold 1998: 4). Cause lawyers are said to be a deviant strain within the legal profession; they “reconnect law to morality” and at the same time threaten the notion of lawyering “as properly wedded to moral neutrality and technical competence” (Sarat & Scheingold 1998: 3).

Legal scholarship has focused on the motivations and actions of cause lawyers. Of import here is their role within the sex worker rights movement and how they are perceived by constituents. In particular, the focus is on the leading lawyers in each challenge. Both are supported and dependent on a team of lawyers, interns, and student

volunteers, however movement activists consistently referred to these individuals when speaking about the cases and both leading lawyers participated in interviews for this project.

A common critique of legal mobilization is that it tends to divert resources to lawyers and litigation processes rather than grassroots mobilization and other forms of political organizing (Scheingold 1974; McCann & Silverstein 1998; McCann 2004; Smith 2005). Legal theorists initially posited that cause lawyers overwhelm movements with the ‘myth of rights’, overemphasizing litigation at the expense of radical alternatives (Scheingold 1974). Recent scholarship has been attentive to contextual factors, including the relationships between lawyers and movement constituents, systemic opportunities for litigation, and individual lawyers’ experiential knowledge and insight. Attention to these dynamics suggests that many cause lawyers are politically sophisticated, skeptical of litigation, sensitive to expenditures of time and energy associated with litigation, often working to offset them, and rarely consider legal victories an end in and of themselves (McCann & Silverstein 1998; Sarat & Scheingold 1998; 2005).

Movements with stronger bureaucratic structures and resource bases sometimes hire cause lawyers for specific actions or as regular staff (McCann & Silverstein 1998). High profile cases can also serve the interests of lawyers, increasing publicity and making them more marketable in the future. The controversy that surrounds the Prostitution Laws and the nature of commercial sex has likely, in this instance, acted as a resource for the movement, by securing legislative and public interest. The timing of the constitutional challenges is less a matter of resources than of institutional openings available within specific judicial and parliamentary processes. That is, after the Prostitution Reference,

more research was required to re-challenge the effectiveness and constitutionality of the laws.

*The Actors Mobilizing*

*The Ontario Case*

The Ontario case is headed by Alan Young, a law professor who has brought other constitutional challenges related to gambling, obscenity, bawdy-house, and drug laws, based on a civil libertarian position which upholds individual liberty when people's actions are not seriously harmful to others. He is also the co-founder of Osgoode's Innocence Project in which law students investigate suspected wrongful convictions and imprisonment.

The Toronto plaintiffs consist of three women. The 1<sup>st</sup> plaintiff, Teri-Jean Bedford is a former dominatrix, for whom Alan Young had provided legal defense over ten years ago. She described the circumstances, "When Alan asked me to come onboard the challenge, I had no problem with that, we'd talked about it for many years." The other two plaintiffs, Valerie Scott and Amy Lebovitch, current and former sex workers and members of the political coalition, *Sex Professionals of Canada*, were similarly approached to participate in the challenge. As they explain the relationship between lawyer and plaintiffs: "There's a lot about a constitutional challenge that, unless you're a constitutional lawyer, you're just not going to know about. So he advises us on all of that. We advise him on things like the politics; that witness isn't going to go well because of—this witness will be excellent because of—." And with regards to the selection of sections to be challenged, "It was primarily a sex worker driven decision, it wasn't an Alan Young legal team decision."

The Toronto challenge gained substantial support from Osgoode Hall law students as a result of Young's affiliation with the Innocence Project. Agatha (PWSI) described how he portrayed this alliance by arguing, "Well, if we're going to pay attention to people who are wrongly convicted [as in the Innocence Project], we should actually back up a little bit and say, what about people who shouldn't even have been charged at all because the laws themselves are faulty?' I thought that was astute."

On March 21, 2007, the Toronto team launched their challenge to strike down s.210 (bawdy house), s.212 (living on the avails), and s.213 (communicating) on the grounds that they "operate to deny sex workers safe legal options for the conducting of legal business" (SPOC 2008). It is argued these provisions deny sex workers the right to life, liberty and security of the person (s.7 of the *Charter*) and freedom of thought, belief, opinion and expression (s. 2(b) of the *Charter*).

#### *The British Columbia Case*

In BC, the case is headed by constitutional lawyer, Joseph Arvay, Q.C. and Katrina Pacey, a founding member of Pivot Legal Society, a non-profit legal advocacy organization located in the DTES. Since 2000, affiliates of Pivot have engaged in action-oriented research, public education, and legal advocacy on issues related to addictions and health, housing and homelessness, and police enforcement practices in the area. The Vancouver application grew out of a Pivot project to assess the legal needs of women in the DTES. Katrina Pacey explained that while she was interested in working with sex workers on issues regarding policing and access to services, she was tentative about wading into the 'legalization' debate. With regard to this debate she said, "Prostitution was something I did not want to touch with a million foot pole, and sure enough, there

were two issues: criminalization [of sex work] and child protection or children being apprehended, those were the two issues that women brought to every meeting. So there was our [Pivot's] mandate." When the Parliamentary Subcommittee was struck a month later, Pivot lawyers and volunteers responded to the women's interest in writing submissions. This broadened the scope of the project by engaging local agencies that serve sex workers. Men were also invited to submit affidavits through several information sessions held at the Native Courtworkers and Counselling Association and at Boys 'R' Us in Vancouver's Yaletown district. In total, 91 affidavits were gathered. The vast majority of affiants are impoverished women sex workers, 38 identify as Aboriginal or Metis, and a significant number live with serious illnesses including drug addiction, hepatitis C, and/or HIV/AIDS.

At the close of Pivot's legal outreach project, when affidavits had been submitted, a number of sex workers had formed relationships with each other and with the Pivot lawyers, gained a role in activism, and wanted to continue meeting. They formed the *Sex Workers United Against Violence Society* and registered as a non-profit organization. Katrina Pacey described this as a fluid collective, "the lowest threshold group you could ever imagine" due to the extremely difficult conditions faced by many members. She explained that having already established a relationship with Pivot, "getting involved in this *Charter* case was kind of an obvious step for them as an organization. And they wanted to do that, to come forward as an organization, as opposed to individuals. So that's how they became our client."

On August 3, 2007, SWUAV filed their claim to the B.C. Superior Court. The plaintiffs argue that the laws against bawdy houses (s.210), transportation to a bawdy

house (s.211), living on the avails of prostitution (s.212), and communicating for the purposes of prostitution (s.213) expose sex workers to significant harm, including physical and sexual violence, lack of access to police protection, social stigma, inequality, exploitation and murder. It is argued that these provisions violate rights enshrined in three sections of the *Charter*: s.7 the right to life, liberty and security of the person; s.2(b) freedom of expression; s.2(d) freedom of association; and s.15(1) equality<sup>5</sup>.

Soon after filing their claim, the defendant Attorney General of Canada made an application to dismiss SWUAV's action on the grounds of legal standing, or their legal right to bring the case forward. As a result, in September 2008, Sheryl Kiselbach, a former sex worker with 30 years experience in the sex industry, joined the challenge as a second plaintiff.

Standing refers to the authority of a party to bring an issue before the Court for adjudication. Traditionally, only those directly affected by the law could bring a challenge to that law. Standing doctrine permits those more indirectly affected to bring a challenge while preserving the proper use of the Court and its resources, preventing the 'mere busybody' from bringing frivolous litigation (Morton 2002; Sheldrick 2004). Frederick Morton (2002: 255) writes, "Like other aspects of the judicial process, these restrictions on access to the courts can be traced back to the original purpose of common law courts as adjudicators of real life disputes between individuals." The rules on standing relaxed in the mid-1970s and 1980s through a series of cases that came to be known as the 'standing trilogy'. These allowed individuals who were not specifically or directly affected by various laws to challenge their constitutionality. For example, in this

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<sup>5</sup> Both cases exclude subsections related to procuring a person to enter or leave Canada; causing a person to take drugs or liquor for the purpose of illicit sexual intercourse; and all provisions related to persons under 18 years.

series of cases, *Thorson* was granted standing to challenge the *Official Languages Act* as a taxpayer; *McNeil*, a reporter, was allowed to challenge film censorship that only applied to theatre owners; and Joe *Borowski*, a pro-life crusader, was granted standing to challenge the constitutional validity of the abortion law. These judgments expanded the Court's jurisdiction and increased access for litigants (Morton 2002: 256). According to Sheldrick (2004: 90), standing doctrine in Canada is now among the most liberal in the Western world.

In 1992, the Court placed some restrictions on standing when the Canadian Council of Churches attempted to challenge new amendments to the *Immigration Act*. They were denied standing on the basis that the litigation could have been brought by an individual, in this case, a refugee. While the Court did not grant the Council of Churches standing as an interest group, the judgment indicated that a generous and liberal approach should be taken and set out three principles governing the discretion of the courts to grant public interest standing to individuals. First, the litigant must demonstrate genuine interest in the validity of the legislation, there must be a serious constitutional issue involved, and finally, there must not be any other reasonable and effective way to bring the issue before the court (*Canadian Council of Churches v. Canada*; see also *SWUAV*, Reasons for Judgment, para. 23). For Sheldrick (2004: 91), the requirement that there be no other reasonable and effective way to bring the matter to court demonstrates the Court's preference for individual litigants who have suffered 'cognizable injury'.

Sheryl Kiselbach joined the action as an individual plaintiff to move the case forward. She has many years experience working in the sex industry, including street-based work in the DTES, where, like many members of SWUAV, she experienced many

episodes of violence while working and was convicted for many prostitution-related offences. She currently works as the violence prevention coordinator at PACE society, a community-based sex worker organization in the DTES. Given the impact of the stigma and scrutiny so common to publicly-identified sex workers, I asked whether it was a difficult decision for her to join the challenge. She responded,

It just took a little bit of time, and I did run it by my honey, my husband, and I did run it by my father and talked about it with him, 'How would you feel dad, if my picture was in the paper and it had my name and it said I was doing this and that, how would you feel?' You know, just to check with them. That's all I needed to do, just with my family. But no, I felt very privileged for them to ask me to that. I kind of think to myself, what a legacy, what a great thing it would be if I could help in changing things to make it safer for people.

On December 15, 2008 both parties, SWUAV and Ms. Kiselbach, were denied public and private interest standing. Superior Court Justice Ehrcke ruled that neither party had *private* interest standing. As a registered society, SWUAV is not charged under any of the impugned provisions (though individual members may be), "SWUAV is a separate person, distinct in law from its members" (*SWUAV*, Reasons for Judgment, para. 18). As a former worker, Kiselbach was not currently threatened by any of the *CCC* provisions related to prostitution. Justice Ehrcke states, "All of the constitutional arguments Ms. Kiselbach now seeks to raise could have been advanced by her, as of right, in the context of the criminal trials that resulted in her convictions" (*SWUAV*, Reasons for Judgment, para. 20-21).

In terms of *public* interest standing, the plaintiffs were deemed to have met the first two principles described above—they raise a serious issue as to the validity of the legislation and have a genuine interest in its validity. Public interest standing was, however, denied on the grounds that there are other reasonable and effective means for



the constitutional validity of the provisions to come before the court. Judge Ehrcke rejected the plaintiffs' argument that the highly public nature of the court proceedings prohibits active sex workers from launching a challenge in their own names given the threat of arrest, retaliation, and discrimination. He pointed to the challenge in Ontario (*Bedford, Lebovitch and Scott v. Attorney General of Canada*) in which one of the plaintiffs is currently working in the sex industry. He also noted other *Charter* challenges have been mounted by accused persons, including one currently underway in Port Coquitlam (*R. v. Blais*) in which a client is appealing a communicating charge on constitutional grounds. In his decision, Justice Ehrcke wrote, "I am not persuaded that it is necessary or desirable to grant public interest standing to either SWUAV or Ms. Kiselbach. The constitutional challenges that they seek to raise can be brought in the context of a case where the applicant has private interest standing" (Reasons for Judgment, *SWUAV*, para. 33-34).

What was unique about the application in BC was its rootedness in the experiences of the DTES and of the women who are among the most marginalized sex workers and citizens. Katrina Pacey, SWUAV's lawyer said:

I represent women that are hard to find, don't have phones, don't have stable housing, don't show up for interviews and appointments. So, to represent a group was a really effective way to do that because they meet every two weeks; I can go down, I can always find my clients, I can always get instructions, and they have support with one another, they can explain things to each other, they can miss meetings and get filled in, that was a really effective way to run the litigation. If I had one woman come forward and say, 'Okay I'll risk everything, sign me up for the litigation', I can't guarantee that I would be able to have a longstanding relationship with her because she might not be around, that's how dangerous the conditions are, that's how vulnerable these women are. It's awful to say, but she may not live through the litigation ... The judge knew all of that and heard all of that.

This is an important and powerful aspect of the case, and it strongly resonated with the broader community of sex worker activists who participated in this research. Sally, from Vancouver, described the ruling as “another way to silence us.” Polly (PWSI), from Montreal, stated, “I think it’s so sad that the Vancouver case didn’t go on. I mean this is so ridiculous. Who is sex worker enough to talk for sex workers, having done it 30 years in your life doesn’t make you able to say anything? Do we only allow pregnant women to talk for abortion laws?” Members of FIRST, a Vancouver-based political coalition for sex workers’ rights, issued a press release expressing their disappointment in the decision:

Kiselbach and SWUAV brought forward this challenge in the most ethically sound way—by advancing the interests of a marginalized and vulnerable group, while respecting individual privacy and confidentiality ... The implications of this ruling extend beyond this specific case and raise serious questions about access to justice for all marginalized groups (FIRST 2008).

The reaction of Vancouver’s individual plaintiff, Sheryl Kiselbach, was expressed as follows:

It made me and my coworkers say, ‘Well why don’t I just go out and turn a date? Will that make them happy?’ Well not only would I have to turn a date, I’d have to get caught! [laughs] That was kind of the discussion. And it really felt that it invalidated my whole experience, my whole experience meant nothing. I know what it feels like to be out there workin’, I don’t think things have changed that much... We’re not going to give up, it doesn’t mean we’re going to go back and sit down in our seat and say ‘Oh well.’ No, it gets us ready for a bigger, better, harder fight.

### *Intervenors*

#### *British Columbia*

On January 12, 2009 the plaintiffs in British Columbia filed an appeal to the ruling on standing, and in May, three legal advocacy groups were granted intervenor status on their behalf. Groups or individuals can ask the Court to act as intervenors, to

bring a new perspective to the deliberations, when the outcome of a decision holds implications for its members or how the law will be interpreted in future cases (Sheldrick 2004: 84). As an intervenor, or ‘friend of the court’, they render assistance by way of argument rather than as an added party. Potential intervenors are usually required to meet at least one of three criteria—an identifiable interest in the matter, an important perspective distinct from the immediate parties, or are a well recognized group with special expertise and identifiable membership base (Walker 2005: 431).

The intervenors include West Coast LEAF, a feminist legal organization dedicated to women’s substantive equality under the law (West Coast LEAF Memorandum, *SWUAV*, para. 1-4); the Trial Lawyers Association of BC (TLABC) which actively works to support and secure citizens’ access to justice by representing individuals who appear in BC courts, many of whom are of modest means (TLABC Memorandum, *SWUAV*, para. 6); and the BC Civil Liberties Association (BCCLA), which is the oldest and most active civil liberties group in Canada (BCCLA 2009). Unlike the other two intervenors, BCCLA is also a supporter of decriminalization. In their position paper on sex work they state, “Rather than attempting to legislate moral standards, a regulatory system should aim to reduce harm against all citizens equally” (BCCLA 2005).

All three organizations act as intervenors in the distinct issue of standing on the grounds that Justice Ehreke was too narrow in his approach. Arguably, such a strict reading of the criteria for public interest standing prevents marginalized groups with limited resources from bringing cases of importance before the Courts (BCCLA,

TLABC, and West Coast LEAF Memorandums, *SWUAV*). In West Coast LEAF's application to act as intervenor they submit,

[I]t is unreasonable to expect an individual woman involved in the survival sex trade to bring a constitutional challenge at the time that she is made most vulnerable by the alleged discrimination, especially considering that she is unlikely to have access to legal counsel for her related criminal charges due to cuts in legal aid since 2002 (West Coast LEAF Memorandum, *SWUAV*, para. 27).

The appeal on the issue of public interest standing in *SWUAV and Kiselbach v. AG Canada* was heard in January 2010. At the time of writing the case is still pending.

#### *Ontario*

In Ontario, three organizations also sought intervenor status, though on behalf of the Attorney General. These are the Christian Legal Fellowship (CLF), a longstanding organization that works toward integrating Christian faith and law, and intervenes in issues that threaten “the sanctity of life, religious freedom, the traditional family” (CLF 2009); the Catholic Civil Rights League, which is devoted to bringing the Catholic Church's teachings to bear on issues of public debate (CCRL 2009); and the REAL Women of Canada (an acronym for ‘Realistic, Equal, Active, for Life’), a longstanding, socially conservative, ‘pro-family’ organization that extols the patriarchal family and women's place within it (REAL 2007). Collectively, the intervenors emphasize the shared morality of Canadians, highlighting that the majority are affiliated to Christianity, Judaism, Islam or Hinduism. According to their reading of these major religions, each consider prostitution immoral, and thus affirm the impugned laws are “a reflection of society's views, soundly rooted in interfaith morality, which is that prostitution is an act that offends the conscience of ordinary citizens” (Factum, *Bedford*, para. 2).

July 2, 2009 their application to intervene was dismissed by Justice Matlow. In his decision, Justice Matlow was not convinced any of these organizations had any expertise on this matter (*Bedford* [2009] OSCJ, para. 21). Moreover, he wrote,

In particular, the material filed by them leads me to believe that they fail to understand that the application is a legal proceeding which must be decided according to law and that it does not provide a political platform where interested persons are permitted to speak in order to advance their personal views, beliefs, policies and interests at large (*Bedford*, [2009] OSCJ, para. 18).

The plaintiffs opposed the motion arguing their case was about sex workers' safety and security, not morality.

On September 22, 2009 Justice Matlow's decision was overturned in the Ontario Court of Appeal. Justices Goudge, Cronk, and Epstein allowed the above parties intervenor status given that they met several of the criteria, including an identifiable interest in the matter and an important perspective different from the other parties. Countering Justice Matlow, the appellate judges wrote,

The Attorney General of Canada indicated it would not be relying on Canadian moral values as a cornerstone of its defence of the legislation but made clear that there was considerable affidavit evidence in the record relating to such an argument. Whether the appellants' position ultimately prevails or not, it will provide a counterpoint to the respondents' argument that will not otherwise be made and may be useful to the court (*Bedford*, [2009] ONCA, para. 7).

Attorneys General of Canada and Ontario argue the impugned laws are not unconstitutional from the standpoint of harm to sex workers and society in general; whereas the intervenors bring a distinctly moral argument to uphold current legislation. To that end, the intervenors do not want prostitution legitimized nor rendered socially acceptable. They contend that while the laws must evolve with social views, "there are certain core values—values that are so entrenched in society—that can, should, and must be valid objectives underlying the laws. There is such a thing as 'right' and 'wrong' and

the criminal law properly reflects and enforces those views” (Factum, *Bedford*, para. 4). They further claim “prostitution is immoral. It should be stigmatized. Prostitution victimizes anyone who engages in it ... Many Canadians, including some members of the Intervenor, would want the government to go further and make prostitution illegal entirely” (Factum, *Bedford*, para. 7). Moreover, they argue the dangers of prostitution ‘disproportionately’ affect communities, which experience “constant infringements on their own lifestyle and value system” (Factum, *Bedford*, para. 29).

In relation to the broader political climate outlined above, intervenors for the Crown reflect neoconservative values. Canadian legal theorists, Judy Fudge and Brenda Cossman (2002: 16) write, “The market citizen is also an anxious citizen rocked by the speed of social change.” Accordingly, the decline of the Keynesian welfare state has been accompanied by a series of often unsubstantiated outcries over such things as rising crime rates, out of control immigration, and the demise of the family. The literature review on the regulation of sex work(ers) highlighted the impact of rapid industrialization and urbanization at the turn of the 19<sup>th</sup> century. This produced social anxieties over changing gender roles, race and class relations, religious morality and the nature of the family. In much the same way, Fudge and Cossman (2002) argue that contemporary fears have been incorporated into a moralized discourse that justifies the intensification of the state’s criminal power. Even though the market citizen is responsabilized, the state continues to be called upon to ensure the social order, especially with respect to those who are increasingly marginalized by neoliberal restructuring (Fudge & Cossman 2002; Martin 2002). Feminist scholars have observed “the mutually constituting relationship between the demise of the welfare state and the resurgence of campaigns around ‘family values’

and the traditional family” (Cossman 2002: 173). These discourses were explicitly raised by the intervenors and justified by the appellant judges’ decision to allow them to be heard in this case.

*The Ontario Case in Court*

In October, 2009 the arguments were heard in the Ontario Superior Court. On both sides, expert and experiential witnesses agree that sex industry work can be violent and exploitative. For the Plaintiffs, this underscores the importance of providing safe, non-criminal options for sex workers to conduct business. For the Crown, it is prostitution itself that is harmful and the impugned provisions should be upheld to protect women from exploitation and communities from the harms that arguably flow from prostitution.

The premise of the plaintiffs’ argument is congruent with the legislative problems participants in this research identified and discussed. While the act of prostitution has always been legal in Canada, provisions that criminalize working out of the same location, hiring third-party personnel, and communicating in public put sex workers at risk of violence. The plaintiffs brought evidence before the court that was not available at the time of the Prostitution Reference to argue that the communicating law is not achieving its stated purpose, and as such, limiting fundamental freedoms of sex workers is not justifiable. Moreover, they argue that there already exists *de facto* decriminalization of bawdy house and procuring laws given there is relatively little enforcement of these provisions and various municipalities have taken to licensing escort agencies, ‘body rub’ parlors, individual escorts and erotic dancers. Meanwhile the law prohibiting public communication for the purpose of prostitution has been an enforcement priority even

though most prostitution occurs indoors. Ultimately, the laws are deemed contradictory because they are intended to reduce public nuisance but impose more serious legal sanctions when sex workers move out of public view (Notice of Amended Application, *Bedford*).

Twenty-one witnesses tendered affidavit evidence testifying to the nature and extent of violence experienced by sex workers within the existing legal framework. This included eleven current and former sex workers, a current Member of Parliament, a journalist, and eight academic witnesses. Among academic witnesses, seven have conducted empirical research in Canada on the sex industry (Cecilia Benoit, Augustine Brannigan, Deborah Brock, John Lowman, Gayle MacDonald, Eleanor Maticka-Tyndale, and Frances Shaver), and one is a renowned Canadian scholar widely consulted for his expertise on serial homicide (Elliott Leyton).

Research conducted by expert witnesses for the plaintiffs was attentive to social, economic, and legal conditions, and how these differentially impact sex workers. For these researchers violence is measured not by the act of prostitution per se, but by physical and psychological episodes—assault, robbery, refusal to pay for services, forced intercourse without a condom, harassment, stalking, yelling, threats and intimidation, etc. By this standard, in studies across Canada, researchers have found street-based work much riskier than off-street work on multiple grounds, including criminal arrests, health risks, and violence and harassment perpetrated by clients, police, and the public (Lowman & Fraser 1996; Lowman 2000; Benoit & Millar 2001; Lewis, Maticka-Tyndale, Shaver & Schramm 2005; STAR 2005; Jeffrey & MacDonald 2006). Violence also occurs in indoor venues, often related to the setting and management regulations; but



overall, indoor work tends to be far less risky than street-based work in terms of frequency and severity of violent acts (Brannigan 1996; Lewis & Maticka-Tyndale 2000; Benoit & Millar 2001; Lewis et al. 2005). The licensing of escorts in some jurisdictions contributes to confusion over the laws and vulnerability to police practices of entrapment (Lewis & Maticka-Tyndale 2000).

Much of the discrimination experienced by sex workers is said to be rooted in the stigmatization and illegitimacy of the occupation, and because their work is criminalized, sex workers are generally not afforded occupational health and safety protections similar to that of other labourers (Brock 1998, 2008; Lippel, Valois & Shaver 2002; Bruckert, Parent & Robitaille 2003). Many of the strategies sex workers use to minimize risks to their health and safety run contrary to the Prostitution Laws. The result is that safer ways to conduct sex work are criminalized, while higher risk ways are not (STAR 2005).

The Crown collapses the distinction between off-street and street-based work because of the purported inherent harm to prostitution as well as the fluidity between work venues. However, Canadian researchers have found that movement between jobs and statuses is not equally available to all workers. In particular, there are far fewer indoor options for transsexual and transgendered workers, and as a result, they almost exclusively work on the street (Lewis, et al. 2005). Though the scope of his research is broader than issues related to sex work, Elliott Leyton speaks to some of the most infamous serial murder cases in recent history which have targeted street-based sex workers. He was quoted in the *Globe and Mail* as saying,

This kind of killing is a social disease in that the whole system of society facilitates it ... Prostitutes don't matter at all. Our laws treat them as if they don't matter, and we expose them to it and their loss is no loss as long as we have our hypocritical moral integrity of not permitting prostitution (Oziewicz 2006: A22).

Thirty-four witnesses tendered affidavits for the Attorney General (Canada). These included former sex workers, police officers, community spokespersons, public officials and expert witnesses. Among the expert witnesses were three prominent radical feminist prohibitionists: Melissa Farley, Janice Raymond, and Mary Sullivan. Of the expert witnesses, only three had conducted research on sex work in Canada; two studies on street-based work in Vancouver (Farley et al. 2005; Kennedy et al. 2007), one on men who participated in BC's john school (a diversion program for clients) (Kennedy et al. 2004), and the work of Canadian sociologist, Richard Poulin, who primarily studies international sex trafficking and child sexual exploitation.

The central argument against the plaintiffs is that prostitution is inherently dangerous and harmful to those involved and to society at large, and this is true regardless of venue or ways prostitution is practiced. On this basis, there is no difference whether prostitution occurs 'on-street' or 'off-street'. This is, according to the Crown, an unfounded and irrelevant distinction. Accordingly, the notion that prostitution can be rendered safer is a fallacy. Based on this understanding of prostitution, distinctions between sex work and trafficking are collapsed, and in their published work, researchers called by the Crown rarely distinguish between the two.

The collapsing of sex work and trafficking, or the notion that all 'women' are forced into 'prostitution', is evident in much of the expert witness testimonies for the Crown. In her published work, Janice Raymond writes, "Prostitution is not 'sex work;' it is violence against women" (2005: n.p.). For her,

It is the exchange of money in prostitution that serves to transform what is actually sexual harassment, sexual abuse, and sexual violence into a 'job' known as 'commercial sex work' ... Another term that misrepresents the exploitation of

prostitution, and the harm that it does to women, is the term ‘forced prostitution.’ What does this term mean? It means we are encouraged to distinguish forced prostitution from free prostitution (1998: 2-3).

In this sense, what the sex worker movement identifies as work, is delegitimized by the notion that one cannot consent to this form of labour. According to Melissa Farley (2006: 114), “prostitution, pornography and trafficking meet or exceed legal definitions of torture.” For her, “Prostitution is sexual violence” (Farley 2004: 7). Mary Sullivan (2005) researches the legalization of prostitution in Victoria, Australia. She calls this the “trade in women and children for sex” (23), and legalization, “government-sanctioned abuse of women” (23). For Richard Poulin (2005) decriminalization is “l’équivalent de la loi de la jungle” or the equivalent of the law of the jungle. For these anti-prostitution advocates, legalization and decriminalization are equally unacceptable given that they normalize the demand for prostitution, give men a sense of entitlement to purchase women and children, necessarily expand prostitution markets and facilitate trafficking (Farley & Kelly 2000; Raymond 2003, 2004; Farley 2004, 2007; Sullivan 2005).

The research on which these positions are based has been largely contested by coalitions of academics and in the Scottish and New Zealand Legislatures (Weitzer 2007, 2010b; Commentary 2008). These studies often focus on underage and street-based prostitution and generalize to all ‘prostitution’. This results in strong links being made between prostitutes, pimps, and exploitation. Migration of women for sex work is often presumed to be sex trafficking, and lovers of ‘prostituted women’ (the term used in this work) are assumed to be pimps. Causal links are drawn between prostitution and other harmful activities such as physical violence, drug addiction, drug trafficking, organized crime, and globalization of the sex industry and human (sex) trafficking. Where

legalization or decriminalization are argued to promote prostitution and thus exacerbate these harms based on only correlational evidence.

The Crown also argues that Teri-Jean Bedford and Valerie Scott do not have standing to bring a constitutional challenge. This late addition to the Crown's argument came in light of the standing issues raised in the BC application. As a current worker, Amy Lebovitch's standing is not in dispute. The Superior Court ruling on the impugned provisions and the issue of standing will be decided concurrently.

### Sex Workers and Legal Mobilization

The premise of this research was to understand the dynamics of sex workers' legal mobilization. For over thirty years an active sex worker rights movement has emphasized the need for decriminalization. In 2007, two independent constitutional challenges emerged. They were brought by two groups of sex workers who represent different aspects of the industry. The cases are led by cause lawyers who come from very different value positions and this influenced much of how they constructed the challenges. The cases were perceived differently by sex worker activists interviewed for this dissertation based on how they emerged, who they represent, how they approached the sex working community, and what they argue.

Pivot was perceived by sex worker constituents as well positioned to take on a case such as this, having done prior work on sex workers' rights, particularly in the DTES. In 2004 they released their report, *Voices for Dignity*, based on the affidavits of DTES sex workers, offering a comprehensive look at *Charter* violations and the potential for a constitutional challenge. In 2006 Pivot released *Beyond Decriminalization*, identifying possible areas of civil law that would be relevant to sex industry work in a

decriminalized system. Both are important contributions and Pivot has been attentive to making them available and readable for a wide audience. Several activists interviewed especially valued the process of public education that came alongside litigation in Vancouver. Juliette (PWSI) described Pivot as “collectively organized and done in collaboration with an active political movement.” Lola (PWSI) said, “My commitments lie in a project like that of Pivot, working with a large group of women who are affected by these laws, organizing both on the grassroots and on the legal level, and making sure that any changes that are made are happening with the involvement with the people most affected.”

Sex worker activists interviewed felt an affinity toward the Vancouver challenge, perceiving Pivot as accessible, consultative, and receptive. Agatha (PWSI), a member of Maggie’s, contrasted the approaches taken in each of the cases. She said, “Pivot 100% consulted. They’d already done a lot of work and they talked to me and somebody from Stella on a more detailed level to the point of sending us drafts of their initial submissions to get our feedback and so forth.” Of the Toronto challenge, she said, “Alan Young is very passionate and determined about the issues. [He] totally believes in the harms associated with criminalization. But I think [he is] less sensitive to the needs of the community. He essentially came and announced what he was going to do, and wanted to know who was going to sign on.” Similarly, activists from Montreal explained how, when members of Stella were first approached by Alan Young to participate in the challenge, they declined out of concern the case was not guided by the community, and moreover, the communicating provision (s.213) was not initially included among the sections being challenged.

Another important feature of the two challenges is how they frame the voices of sex workers. Several activists commented on how the Vancouver challenge appeared less expert-driven and more experientially-based. Having emerged out of a large collective of women working in the DTES, the challenge relies heavily on the testimonies of sex workers and their experiences of violence. Indeed for Pivot, “A fundamental principle underlying this project is that sex workers are experts on the effects of the law in this area and should be regarded as such in any law or policy decisions” (Pivot 2004b: 2). If the case proceeds, it will be their testimonies, told to a judge in a closed courtroom, which will hopefully compel change. By contrast, the Ontario case is perceived as heavily reliant on expert witnesses. Cora (PWSI) stated, “I mean as a sex worker movement we’re arguing that sex workers know the truth of their experience and then when you get to court you’re going to say, ‘Oh yeah they know their truth but let’s talk to a bunch of academics who’ve talked to a bunch of sex workers’—or who have not—I have some mixed feelings about who’s considered an expert in the area.” The nature of the court system does however perpetuate a hierarchical distinction between experiential and expert witnesses. This is one of the disadvantages of constitutional litigation for social movements.

This is evidenced in the Courts’ responses to the two challenges. The ‘professional’ group who brought the Ontario challenge is proceeding in court. These are three individual women, two of whom were already very publically visible sex workers. They are represented by a lawyer based on civil libertarian ideology. The BC challenge was rooted in the experiences of street-based sex workers in the DTES of Vancouver. Their legal representatives were embedded in the DTES community as well as the sex

worker rights movement. Because of the litigants' social position they had to bring constitutional litigation anonymously as a group. For this reason their challenge was denied.

Of all the participants interviewed for this research only some spoke to specific details of the legal applications. Aside from the plaintiffs and their legal teams, two other participants had formal legal training and a few others were closely involved in one or both cases as witnesses and/or informants. For these movement constituents the ideal scenario would be both cases going forward simultaneously, each representing different aspects of the industry and projecting this as a national issue. When they ultimately reach the Supreme Court the arguments might be amalgamated with more strength. On their own they were uncertain whether the cases were divisive according to class and gender.

Unique to the case in BC is a challenge to the *CCC* provisions related to prostitution on the grounds of s.15 of the *Charter*. This section guarantees individuals "equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability" (Canada 1982, s.15)<sup>6</sup>. In addition to these enumerated grounds, analogous grounds can be 'read in' to judicial interpretations (*Andrews v. Law Society of BC*). For instance, analogous grounds of discrimination now recognized by the Supreme Court include citizenship (*Andrews v. Law Society of BC*), sexual orientation (*Egan v. Canada*), marital status (*Miron v. Trudel*), and off-reserve band member status (*Corbiere v. Canada*).

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<sup>6</sup> This includes an exception in s.15(2) to preserve the constitutionality of laws and activities whose objectives are to improve conditions for disadvantaged groups (for example, affirmative action programs).

The Supreme Court also recognizes that a discrimination claim can be open to more than one enumerated or analogous grounds (*Law v. Canada* [1999], para. 94). The applicants in BC use this intersectionality approach to argue that members of SWUAV fall under the protection of s.15 because “Sex workers as a group are (and have historically been) particularly vulnerable, disadvantaged, stigmatized and physically threatened” (Statement of Claim, *SWUAV*, para. 32). That is, among street-based workers in Canada, and SWUAV members in particular, there is an overrepresentation of women, transgendered people, gay men, Aboriginal people, people living with disabilities and health challenges such as HIV/AIDS, hepatitis C, addictions to substances, and people living in poverty. It is argued that because the laws are aimed at curbing the most visible aspect of the industry—street-based sex work—they have had a disproportionate negative effect on this group. In a report published by Pivot on law reform it states that with respect to sex, race, and disability in particular, “The intersection of these characteristics is also a strong indication that the characteristic of working in the sex trade could be deemed a ground analogous to others listed in s.15. In this way, simply being a sex worker would attract *Charter* protection for one’s equality rights” (Pivot 2004: 33).

Participants who spoke to this aspect of the case were concerned that making an equality claim treats sex workers as a ‘discrete and insular minority’ (*Corbiere v. Canada*), and does so in a way that reflects only one aspect of the industry. In *Corbiere*, enumerated and analogous grounds of discrimination were interpreted by the Court as “grounds based on characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law. To put it another way, s.15 targets the denial of equal treatment on grounds that are actually



immutable, like race, or constructively immutable, like religion” (*Corbiere v. Canada* [1999], para 13). This accounts for personal characteristics that may not be actually immutable but are treated as such because they are deeply rooted in identity; they inform how an individual understands their position in the world and are deemed improper grounds for allocating benefits or imposing burdens. Choices of religious affiliation or of Aboriginal people to live on or off their reserves are understood as formative to an individual’s identity. These are not decisions parallel to having a job. This is contested among sex workers though potentially a key issue in deciding the Charter challenge—is being a sex worker part of a person’s place in the world (on par with gender, sexual orientation, age, etc.), and therefore protected grounds against discrimination? If it is however a job that, like other jobs, people take up and leave over time, it is questionable whether s.15 of the *Charter* applies.

Participants in this research discussed how an equality claim implies that sex workers are a distinct group of people with shared characteristics. One of the aims of the movement is to legitimize sex industry work as labour and challenge the notion of ‘the prostitute’ as a fixed identity or status position. In so doing, movement activists recognize that being a sex worker is treated as an unchangeable quality or characteristic. In fact it is an identity that often trumps and discredits the legitimacy of sex workers as parents, tenants, political actors, etc. On the one hand, Lola (PWSI) considered how this equality claim is symbolically important to address “the sexist history of these laws and the targeted discrimination of a certain group of women who are perceived as less worthy of social protection and dignity claims than other Canadians.” On the other hand, Lola was tentative about making an equality claim since it “forces us into this particular argument

that being a sex worker is some deep personal part of our identity that can't be changed or it's not in the government's interest to change. I wouldn't want to make that argument.”

Activists were concerned that this equality claim perpetuates stereotypes about sex workers that the movement works to deconstruct, while at the same time acknowledging that sex workers as a group are discriminated against in comparison to any other group of adults that engages in sexual activity but without explicit material compensation. Members of SWUAV, and street-based workers more generally, were perceived by many movement constituents as valuable and necessary leaders in legislative reform. At the same time, constituents aimed to broaden the movement frame in order to represent and foster solidarity among a broad and diverse range of sex industry workers. Agatha (PWSI) stated, “I understand that it's complex—prostitution, prostitutes, aren't really considered or identify as one group. But I do support Pivot's decision to go ahead and include that argument.”

In addressing the history of these laws, it is fitting that those most impacted by them would lead to their dismantling. Katrina Pacey explained the reason for bringing an equality claim,

We just really wanted to bring forward the fact that we recognize that sex work happens within a patriarchal culture, and we recognize that there's elements of race and disability, that it's all kind of woven together ... Because of the mandate of our organization and being down here [DTES], I really wanted to represent the nature of this experience, and it's a very female community down here in terms of the sex work community.

Some participants were concerned that while bringing this perspective was important, it continues to create distinctions between sex workers, and in so doing silences other voices. Cora (PWSI) offered some limitations to this representation,

I think far too long, both as academics and activists, we've acted as if sex work is a women's issue. It's not a women's issue, it's a human rights issue, it's a labour issue, and men are everywhere. Men are partners, men are clients, men are managers, but they're also workers. So I have a bit of an issue with BC, and I talked to Katrina about that ... It kind of again, renders the boys invisible which I think is really unfortunate. [They're] not only invisible but also silent. She saw it as a strategic decision. I was willing to accept that, and I actually discussed it with some male sex workers, and they too were willing to accept that but were not completely comfortable with it.

While strategic representation is limited, it brings an additional layer to the Vancouver case that grounds the claims for sex workers' rights in a formal equality claim which could prove useful if the Courts are less interested in sex workers' civil liberties.

Although some activists were expressly concerned that an equality claim reinforced gender stereotypes, the Ontario application was also explicitly gendered. The plaintiffs and experiential witnesses are all women, and the arguments rooted in gendered discourse. With regards to this case however, sex worker activists were more concerned it reflected class privilege in the industry. In Toronto, the plaintiffs are three individual women, bringing the case in their own names, and as current and former indoor workers, represent an often hidden aspect of the industry. Participants in this research were concerned a professionalized image of sex workers would hide or mask class issues. In particular, some were wary a judicial ruling based on this case would draw a distinction between public and private, reaffirming the relative privilege of independent, indoor workers.

Those interviewed expressed a deep concern for the most vulnerable members of their communities. For example, as one of the Ontario plaintiffs commented, when the legal team in Ontario initially intended to challenge only bawdy-house laws, "a bunch of sex workers from Montreal and Toronto and us too [the Ontario plaintiffs], we thought,

you can't leave the street girls out in the cold." This was part of the reason some sex workers chose not to be involved in the case. Juliette (PWSI) considered the case to be grounded in an argument that sex workers should have the right to work in private or indoor locations. This was problematic for her, "Privacy isn't something that is accorded to our entire population. Populations that don't have access to privacy, as we understand it, are marginalized groups like sex workers on the street, or migrant workers, for example, undocumented workers." This is a concern that legislative outcomes might benefit commercial sex in private settings but continue to penalize or disrupt the street-based industry, and thus perpetuate current class divisions among sex workers.

#### Benefits and Costs of the Challenges

There are a number of benefits of constitutional litigation that can be extrapolated from these cases. These challenges created a focus and energy around activism. Both cases garnered media attention and public interest, and sex worker organizations and coalitions disseminated information legitimizing these rights claims through public forums and press releases. This reinforced the movement's frame, generated discussion, and built alliances. Importantly, movement activists did not naïvely accept a 'myth of rights'; they consistently emphasized that decriminalization was necessary but insufficient to produce social equality for sex workers. As Cora (PWSI) stated, "I don't think societal attitudes always follow the law, but I think sometimes you need to have the law as your point of entry." Likewise, Nell (ally) said, "We always say this, decrim is not a silver bullet, it is just a step. But our notion is that if you can decriminalize women then it reconfigures the debate." They held a long term vision and situated these challenges as an important stage in achieving it.

Every time such an initiative moves forward, whether it's a Parliamentary subcommittee or it's a special commission or it's a working group or a *Charter* challenge, it brings more voices to the table and creates a forum for debate and discussion—and it creates a formal legal record of those debates and positions as well. So over time, I think, there's an amassing of evidence that, 20, 30, 40, 50, 100 years down the road, could be useful to bring about positive change. So we might not see it now, we might see it later (Agatha, PWSI).

For this particular movement, legal activism was viewed as a necessary step given legislative change was not achieved from the 2006 Parliamentary Subcommittee. As a highly contentious movement, the judiciary was preferred over parliamentary politics. Agatha relayed, “I feel that it's a greater risk to have legal reform through the parliamentary process because then I feel it's based less on rights and more upon getting votes, like law-and-order agendas and so forth.” We see then, how social movements rarely make a stark choice between law and politics, and rather than debilitating a movement, legal mobilization can be a more receptive political route and incite further organizing.

The two cases also highlight risks of constitutional litigation. They require a tremendous amount of resources, and legal action can commit movements to long and costly proceedings “that they can afford far less than can their institutional foes” (McCann 2004: 514). For under-resourced movements such as this one, it was necessary that lawyers work pro bono. This impacts the nature of the legal teams and their relationship to the movement. In this case, unique value systems enticed cause lawyers' participation and structured the legal arguments. Unlike Crown council, these cases are supported by community fundraisers, the work of pro bono lawyers, student volunteers, and witnesses willing to contribute without compensation. As the Ontario plaintiffs state on SPOC's website, “If the ruling is against us, we will appeal, assuming we can raise the

funds” (SPOC 2010). Though unlikely given their economic circumstances, unsuccessful litigants can be held liable for the costs of the trial.

Not only is there a discrepancy between the Crown’s position, in terms of funding and human resources, but much like the movement itself, concessions must be made for current street-based workers to mobilize to voice their claims. The precarious conditions of SWUAV members are evident in how they advanced their challenge. The Vancouver affiants received a Status of Women grant to temporarily fund their collective. This enabled approximately 40 stipends of five dollars per meeting, “there would be way more women there if there were more stipends ... Now they get bits of money from wherever they can” (lawyer). Moreover, all plaintiffs in these challenges bear a heavy burden. Not only are they engaged in a long process, but a very public one as well. As was reaffirmed in this case, the courts prefer individual plaintiffs who can bring a challenge in their own name. For active sex workers to come forward, they risk losing business, being cut off social assistance, having to disclose client lists, and exposing intimate and painful details about their lives to legal actors as well as to friends and family members. As in the case of Sheryl Kiselbach, one can risk everything and subsequently be denied standing.

Finally, there is the risk of creating more restrictive legislation and setting a precedent that impedes future litigation. If decriminalized, the regulation of the sex industry would fall to provincial and municipal governments, and would differentially impact sex workers—by job type and region. This is problematic because, as Barbara (PWSI) stated, “Some communities are more understanding towards sex industry workers than others.” Moreover, not all communities have active sex worker collectives to fend off more punitive municipal regulations.

Participants interviewed in this project looked to New Zealand as a favorable regulatory model. With the involvement and input of the New Zealand Prostitutes Collective, the *Prostitution Reform Act* passed in 2003 decriminalizing solicitation, brothels, procuring, and living on the earnings of prostitution. Activists here were concerned that by comparison the Canadian movement was not sufficiently organized. Of New Zealand, Elizabeth (PWSI) said, “Ever since [decriminalization] the government keeps trying to creep in legalization, but the women over there are very well organized and have been able to stave it off quite well. So we will have to be vigilant. But compared to New Zealand, we look like kindergarten.”

As Smith (2005: 146) states, “engagement with law is a problematic and ambiguous project for disadvantaged groups.” Cora (PWSI) affirmed the precariousness of sex workers’ *Charter* litigation:

The reality is that the government is unlikely to absolutely decriminalize. It’s going to bring in regulation, and I’m a bit fearful that regulation is going to be worse than what we have now ... I think for street-based workers the situation is horrific enough that you *have* to take action, the status quo is just not acceptable. I think it’s imperative that something be done, and if that’s a *Charter* challenge, great. I’m not sure what will happen, but I’m a little worried things will get not much better for street-based sex workers and get much worse for everyone else.

The court can also decide to only strike down certain provisions but not all of the laws. Activists were wary that legislative change might parallel the Swedish system, a favoured model among feminist prohibitionists, which decriminalizes the sex seller but penalizes the purchaser. Movement constituents argued that under this model, although sex workers are not criminalized, they are still penalized through market disruptions and continue to risk health and safety in order to offset these. As one of the legal representatives commented:

One way the court could really screw things up for us is to say, ‘You know what, this system is wrong, we shouldn’t criminalize women, they’re all victims, we shouldn’t throw sex workers in jail, let’s *just* arrest men for communicating for the purposes of prostitution, let’s just—’ and they could *refine* the law, and turn us into Sweden. Well that’s not going to work well here because what we have isn’t working here and what we have is exactly the same, except sex workers can be charged for communicating, that’s the *only* difference. And sex workers *aren’t* being charged for communicating, for the most part, here. We have a totally de facto Swedish model here right now. So it’s ridiculous that everyone’s so hysterical about Sweden because it’s exactly the same.

Social ambivalence toward sex work, and specifically prostitution, has ensured some form of regulation is always in place. The prostitution laws in Canada have changed very little since they were first enacted over a century ago. Enforcement patterns and justifications for regulation have, however, shifted according to the economic and social climate. In every period, regulation has elements of control, rescue, and sanction (Backhouse 1984; Walkowitz 1992; Martin 2002). Agatha (PWSI), who was not very optimistic about the judicial outcome stated, “Right now we have a context in which the abolitionist feminists have a very strong voice, and their definition of harm is highly ideological and also very broad. I think we’re going to have a hard time convincing the court that the harms are as limited as we believe them to be.” The expansion of sex industries has given rise to virulent campaigns in response to fears over the growth and normalization of commercial sex in North America, and the punitive mood is strengthened internationally with anti-prostitution and anti-trafficking campaigns (Weitzer 2010a, 2010b).

As Alan Young, the lead lawyer in the Ontario case stated, “Every one of the Crown’s witnesses have the same pitch, so they’re all coming from the same school of thought ... I didn’t care much about them because they only want to talk about trafficking. But I discovered they believe all prostitution is trafficking, so they use the



word very loosely.” Weitzer (2009) holds this ‘oppression paradigm’, and its prohibitionist proponents, responsible for a resurgent mythology of prostitution that posits all workers as victims. Agatha (PWSI) reaffirmed the prevalence of this platform and its implications:

I do think there’s been a huge shift, and this cycles. But we’ve gone from a lot of images, and messages, and constructs of prostitutes as criminals and as deviants to prostitutes as victims. That’s a big shift, and it plays out at all levels—in community meetings, media, television, and also in government ... And it hasn’t been a positive shift because being labeled a victim is really just as disempowering and disabling as being labeled a criminal. And it leads to the same crackdowns, etcetera.

This oppositional neoconservative wave, with radical feminist undercurrents, emerged in response to sweeping legislative changes initiated by Parliament in 1969 which have been characterized as bringing in a sexually liberalized period. There is now greater tolerance and acceptance of sexual imagery, relaxed attitudes toward birth control, decriminalization of abortion, a less pervasive sexual double standard, same-sex marriage, and a proliferation of sexual imagery, materials, and services. Surveys indicate a greater acceptance, or at least tolerance, of a wider diversity of forms of sexual conduct, including non-marital sex, prostitution and pornography (Barrett et al. 2004). If trends in law and policy pertaining to social status and sexual rights continue, we should see “greater guarantees of equal treatment, increased access to a variety of sexual health services, protection of individual rights, and protection against discrimination” (Barrett et al. 2004: 131).

In his academic writing, Alan Young (2008) considers whether the law has led or followed public opinion in terms of legislating sexual morality, and questions why the

law has ‘loosened the reigns’ on obscenity but maintained a tight hold on prostitution. He writes,

Modern criminal law has allowed for the burgeoning growth of a porn industry in which participants are remunerated by a third party for engaging in sex acts while being filmed, yet the law steps in to intervene when the camera is removed and one of the participants wishes to remunerate the other for the provision of a sexual service. This irrational distinction raises the question of why the laws relating to prostitution have not been affected by the liberalization of the law in other areas of sexual conduct (Young 2008: 205).

Young (2008) contends this is a visceral reaction to the commodification of sex and a fear of the abject. European sex work researchers have noted that alongside the discourse of workers’ (namely women’s) agency or ‘free choice’ to sell sex, has come a proliferation of laws and policies surrounding commercial sex (Phoenix & Oerton 2005). British legal scholar, Jane Scoular (2010) argues the intersection between law and neoliberalism is such that regardless of legal regime, there has been an intensification of governance. She identifies a move to responsabilize sex workers, be it through recognition of inherent agency, as in The Netherlands, or inherent victimhood, as in Sweden. Both operate on systems of exclusion by constructing a single type of responsible sex worker—one who must conform to specific market forces and comply with registration, or one who acknowledges her victimization and espouses a desire to ‘exit’ the industry. The overall trend is an ongoing denigration of street workers alongside a selective mainstreaming of profitable industry forms (Scoular 2010; see also Goodyear 2009).

This expands governmental power to protect the sexually exploited at the expense of sexual freedom. In terms of commercial sex, radical feminists and neoconservatives take a similar position for very different political purposes. The current prostitution

debates echo the anti-pornography campaigns that took place in the 1980s. For example, in a leading Supreme Court decision on pornography and state censorship in 1992 (*R. v. Butler*), “the feminist group the Women’s Legal Education and Action Fund [LEAF] and governments sought to uphold the criminalization of pornography—the former because of concerns about substantive equality and the latter in order to preserve a virtuous social order. However, both were inattentive to the impact of pornography regulation on non-normative sexualities” (Chunn et al. 2007: 14). The implications of this extend far beyond sex industry work per se. Brenda Cossman (2007) argues that contemporary citizenship is sexed, privatized, and self-disciplined. Former sexual outlaws are being incorporated into citizenship through specific modes of governance which produce ‘good’ and ‘bad’ sexual citizens based on the degree to which they abide by codes of privatization and self-disciplined sexual behaviour.

This reflects a tension between the apparent liberalization and mainstreaming of sex industries and ongoing efforts to eliminate, destabilize, and control commercial sex through criminal law. In New Zealand and New South Wales, Australia, prostitution regulation has taken very different paths than in other countries. Most commercial sex businesses and street prostitution have been decriminalized, thus providing sex workers more freedom to choose between types of employment. The process of decriminalization in New Zealand was unique in that it was a consultative one, with sex workers’ perspectives incorporated into the development of the *Prostitution Reform Act*, in further policy-making, and in the design of occupational health and safety guidelines.

According to Michael Goodyear (2009: 22), during the debates leading up to legal reform, The New Zealand Prostitutes Collective forged “a reverse discourse whereby the

image of sex worker as vector [of disease] was to be transformed into sex worker as health educator, health worker, and agent for the prevention of sexually transmitted diseases in the general population.” The legislative outcome aligns well with neoliberal values, as legislation related to voluntary adult prostitution was removed from criminal law and replaced with civil law at both national and municipal levels. This opened up new modes of governance through labour tribunals, business owner certification processes, and the enforcement of obligatory safer sex practices. Research indicates that decriminalization has had little impact on the number of people working in the sex industry, though there has been some movement from the managed to the private sector (Abel, Fitzgerald & Brunton 2009). A shift in the proportion of those working through managed venues to working privately, either alone or from shared premises, indicates that decriminalization has perhaps increased the autonomy and self-regulation of some sex workers. However, the number of street-based workers has remained relatively stable, and violence, as well as tenuous relationships with police and other community members, remain significant social problems (Goodyear 2009).

Inconsistencies between local and central government intent, the former being more restrictive, have caused problems for some workers and have thwarted attempts to move street-based sex work to ‘safe houses’ as better practice (Goodyear 2009: 24). Since legislative reform, the privileging of sexual morality has dominated public discourse and mainstream media have amplified tensions within communities, often contributing to the negative framing of the sex industry and the ongoing stigmatization of sex workers (Abel et al. 2009). This suggests that other punitive elements, especially social stigma, continue to operate. Decriminalization has not had the effect of producing

sex work as a favourable work option, nor has it brought street sex work “fully within its gambit” (Scoular & Sanders 2010: 3). In effect, the economic integration of the sex industry, in both legalized and decriminalized contexts, has been “‘shot through’ with a deep ambivalence toward sex workers and customers, and ongoing stigmatization of sex industry workers” (Sullivan 2010: 103).

Governments have rarely embraced legislative reform, and powerful social movements, from religious to fundamentalist feminist organizations, “put considerable pressure on governments to keep remaining regulations on certain sex businesses” (Brents & Sanders 2010: 47). Legislative reforms, by way of decriminalization or legalization, have generally not been implemented to extend individual and sexual freedoms, but as part of strategies designed to address a range of social problems associated with prostitution, such as police corruption, organized crime, violence against women, and public health. The paradox of the debates on the regulation of prostitution, including those surrounding the Canadian court challenges, is that they position sex workers in opposition to feminist discourse. Notably, sex worker activists in this research overwhelmingly identified as feminists. This is often omitted from mainstream debates, and when a country such as Iceland bans strip clubs it is unproblematically touted in *The Guardian* as “The world’s most feminist country” (Bindel 2010). In this view, sex industry work cannot be a legitimate choice, and is itself anti-feminist.

### Feminisms

What does it mean for feminism, when groups of women, many of whom call themselves feminists, are deemed inherently anti-feminist? Michelle, who went from having an anti-prostitution stance to later becoming a sex worker, stated:

I am a feminist. Almost every single job I've had has been in a feminist non-profit up to the point of working here [escort agency]. So I really had definite views on this, and I learned that I was wrong, like *really* wrong. I would have absolutely agreed with all those people that want to abolish it, that think that everyone's a victim, that's how I thought completely. I just know more now than I did before.

Several allies to the movement became involved in an effort to 'save' women, but as they developed relationships with sex workers they could no longer uphold exclusionary and prohibitionist ideologies and their notion of feminism shifted. Laura (ally) explained, "My opinions changed drastically. I was a radical feminist. I remember having arguments about porn and prostitution being symptoms of patriarchy in society. I didn't know anything about it, I'd never studied it, but I was sure I felt that way." Nell, a longtime feminist activist and movement ally stated,

Not everybody in the sex worker community supports decrim, but from my perspective, as a feminist, any oppressed group has the right to organize within itself to identify the source of their oppression and to identify the solutions to their oppression. This is a very fundamental feminist principle ... For those of us who were involved at the beginning of the second wave, you hardly ever hear this anymore, but we wanted feminism to be a process where it was constantly evolving, it was constantly bringing in and able to absorb new energies, new ideas, new groups. Feminism is meant to be a process because ideologies get frozen. I look at some [prohibitionist] organizations and they have no doubt about their point of view. I think that people who have no doubt are very dangerous.

This has a direct and significant impact on sex workers in every city from which I drew participants. For Sally (PWSI), "The problem with abolitionist feminists is that they exclude us. We've divided the feminist movement here. It really feels like they're saying I'm not a real woman, I'm not worthy of protection or rights or anything." The result is that a lot of feminist energy is directed to battles within the movement. Sex worker rights organizations in every city direct enormous amounts of resources toward anti-prostitution feminist groups countering their campaigns and protests. This is divisive for a feminist movement, politically and personally. Violetta (ally) explained this tension, "I lost a lot

of relationships with women I really respect. It's amazing the hostility around this issue. It's very difficult to lose relationships with people who are otherwise allies in every other way, it's really sad." However, sex workers are coming out and claiming themselves as feminists with voices: "Within the women's movement we are coming out, we are challenging with the same force that lesbians have fought to be counted in the women's movement, the same as Black women have fought ... We are a very, very important fraction of the women's movement, we deserve our place there" (Fanny, PWSI).

Sex worker feminists viewed their work as resisting the confines of marriage and the family—central to the feminist deconstruction of gender and patriarchy. Elizabeth (PWSI) stated,

Well, sex workers were the first feminists, I think. Women aren't supposed to own their own sexuality let alone swashbuckle down the street selling it. It's supposed to be owned, that's what marriage is all about, it's supposed to be owned by one man. Well, sex workers reject that. So that's a pretty radical thing for a woman to do, even in this day and age.

From this perspective, the laws are revealed as a form of sexual punishment for women, "Because women are not to be treated as free agents, having sex with whoever, whenever they choose, and thinking they can do so without repercussions" (Michelle, PWSI). Agatha (PWSI) charged, "The legislation I think is very gendered. It's clearly about control and suppression of sexuality, but whose sexuality? I think both men's and women's sexuality—men's sexuality is viewed as predatory and women's sexuality is viewed as vulnerable and somehow sacred."

Nancy (PWSI) considered this "the last bastion of women that actually need their rights looked after because we have none whatsoever." Even those who at times were critical of prostitution as an institution saw it as a viable option:

My personal opinion is that men shouldn't feel they have the right to pay for sexual services, but we also shouldn't have a world where people are starving to death or we're at war. I think the best way to work towards a real parity between men and women and real sexual equality in the end is to bring it [prostitution] out from the underground, make it a legitimate occupation, make it safe for both the sex seller and the sex consumer ... At this stage in the human history, prostitution is a legitimate and necessary business, and it needs to be treated that way (Clara, PWSI).

Others offered an entirely different perspective in understanding sex work as more than a viable option, but a manifestation of women exercising autonomy and sexual agency—also an important cornerstones of feminism more broadly.

I would like to think that in an ideal world we would see less of a differentiation in gender between providers and consumers. Some people would argue, including the abolitionist feminists, that if we had some sort of magical gender, race, class equality, there would be no more prostitution. I don't actually believe that ... But for me, the gendered nature of sex work, and specifically prostitution, I don't find it problematic in and of itself, I just think it's a reflection of where we're at in terms of gender relations. I don't see it as a manifestation of women's oppression, I don't see it as a *form* of oppression against women, I see it as a way for women to overcome various forms of oppression, including sexual and economic. It is a way for women to exercise autonomy and sexual agency in some situations, but certainly financial independence (Agatha, PWSI).

### Conclusion

Only one feminist perspective was evident throughout the judicial process. The radical feminist understanding of commercial sex as violence against women was used by the Crown in order to argue that the impugned laws should be upheld. Sex workers' feminist perspectives were not however incorporated as evidence to repeal the existing laws. This did not enable sex worker feminism to gain prominence. Prohibitionist feminists were considered experts by the Court, even though sex workers identified these groups as significant oppressive forces that threaten their livelihoods and their communities.



The Parliamentary process proved itself not viable for sex workers to forward their cause and in this way, the Court was viewed as the only available route to bring about change. Even though some activists thought they were unlikely to win and the movement was perceived as insufficiently organized should the laws be repealed, the challenges were seen as essential. Cause lawyers were necessary for sex workers to bring constitutional challenges because both groups are marginalized with limited resources. Sex workers' perspectives and experiences informed the challenges but were also structured according to the views of legal representatives and the format of legal argumentation. This process reveals the need to support the most marginalized sex workers so they might be given a platform to voice their political perspectives. However, the courts proved themselves to be unfavorable to this. For instance, plaintiffs in BC depended on small stipends in order to attend meetings and needed to bring a challenge forward anonymously as a group. The feminist influence in this case was not entirely aligned with that of the sex worker activists I interviewed, but deemed necessary in order to put forward the most representative legal argument available. In Ontario, the civil libertarian perspective was viewed by sex worker activists as privileging indoor workers and was less reflective of the needs of the most marginalized sex working communities. It was this challenge, however, that was permitted to proceed, while an extremely marginalized group of women continues to struggle to gain a voice.

## CHAPTER 6: CONCLUSION

This dissertation used interviews with 26 activists and advocates for sex workers' rights, supported by document analysis and participant observation, in order to understand how and why Canadian sex workers mounted two constitutional challenges in 2007, and how this has impacted on and been perceived by movement constituents. The two Court challenges are contrary to what would be predicted based on the extant literature. That literature supports a conclusion that it is unlikely that PWSI would be able to mobilize politically to express their grievances and instigate structural and cultural change. PWSI are said to be ambivalent, lack pre-existing networks, cognitive liberation, allies and resources (Weitzer 1991; van der Poel, 1995; Vanwesenbeeck 2001; Mathieu 2003). Each of these obstacles was evidenced in this research. However, sex workers in Canada have now established important alliances to sustain movement organizations, support sex workers' rights through empirical research, and now, bring constitutional litigation.

There are several theoretical approaches to social movements. Resource mobilization has been used to examine earlier periods of the sex worker rights movement in France and the United States. These movements' inability to alter legislation or dominant cultural perceptions of sex work was attributed to a lack of organizational structure, sex worker leadership, material resources and influential allies (Weitzer 1991; Mathieu 2001; 2003). The contemporary movement in Canada has developed in each of these areas. Largely through the support of HIV/AIDS organizations, sex worker-run organizations operate in major cities across the country. New social movement analyses highlight how HIV-prevention and peer-based programming have contributed to the

development of large scale political collectives among brothel workers in India and Bangladesh (Chowdhury 2006; Gooptu & Bandyopadhyay 2007). These offer a partial understanding of the context in Canada. By comparison, the Canadian movement faces additional obstacles to collective identity and raises important considerations related to the mobilization of resources within the current political climate.

The sex worker rights movement is said to have been redirected in the mid-1980s by the onset of the HIV/AIDS epidemic (Jenness 1993; Brock 1998). Sex workers were initially positioned as vectors of disease, along with gay men. Perhaps because of this shared stigmatization, HIV/AIDS organizations (developed and maintained largely through the energies of gay men) and their allies have become important for the sex worker movement. In partnership with public health and academic researchers, sex worker organizations have mobilized resources and gained ideological support for sex workers' rights. Financial support has sustained movement organizations, and moreover, these alliances have helped legitimize experiential knowledge and advance the notion that a human rights frame is the best strategy to fight AIDS and improve occupational health and safety overall. Consistent with the literature, however, I also found that alliances are often contentious for sex workers. It is not necessarily the *building* of alliances that was problematic, but the *limited agendas* of the allies.

Sex worker activists have dealt with this by splitting into 2 types of organizations, those that maintained affiliations with the health sector and accessed funds for service provision, and those that followed an advocacy, political change agenda. What became clear in this research was that sex worker activists—i.e. those associated with the latter groups—had strong and well developed political perspectives but lacked resources and

alliances specifically dedicated to political organizing as well as platforms from which they could be heard and taken seriously as political actors. So with respect to alliances, sex workers have had mixed success. They have been successful in gaining the support of HIV/AIDS organizations, but face additional barriers to acquiring resources to promote broader movement goals.

Collective identity and solidarity within the movement was impeded by the diversity of sex industry work and workers. This diversity is a burgeoning area of interest in research on sex industry work generally (Shaver 2005; Benoit & Shaver 2006; Agustín 2005, 2007; Scoular & Sanders 2010) but has been overlooked in research on sex worker movements specifically. Taking this diversity into consideration reveals how stigma operates in several ways in this movement. Not only can stigma lead to feelings of ambivalence which inhibit cognitive liberation, as the literature suggests (Mathieu 2003; Chowdhury 2006; Gooptu & Bandyopadhyay 2007), but it also creates divisions between industry sectors and workers. These divisions are evidenced in the strategies used in the two court challenges. The BC challenge is rooted in and uses strategies consistent with the positioning of street-based workers. The Ontario challenge is rooted in the experiences of comparatively privileged indoor workers. Moreover, criminalization and stigmatization impose social and personal consequences for publically-identified sex workers, as well as their loved ones, limiting the extent to which PWSI are willing to take on public roles within the movement and in litigation.

In the absence of a critical mass of visible, public sex workers or other community members pushing for social and legal change, and given the controversy and moralization around sex work, very few politicians have taken any initiative. There does

however, appear to be a growing division among elites, and thus, changing political opportunities. Three federally funded committees and commissions have recommended legal and policy change to reduce harm to sex workers (the Special Committee on Pornography and Prostitution, 1985; the Federal-Provincial-Territorial Working Group on Prostitution, 1998; and the Subcommittee on Solicitation Laws of the Standing Committee on Justice and Human Rights, 2006). The results of the most recent Parliamentary Subcommittee (2006) provide a clear example of diverging political positions and the need to transform the status quo. The lack of political motivation to change the legislative framework, especially in light of the high profile Missing Women case in Vancouver, was the impetus behind constitutional litigation. Since the Prostitution Reference (1990) there has been a growing body of empirical research that supports public health-based policy approaches to sex work, including decriminalization. While constitutional litigation arose as a result of political inaction, this support gives rise to the possibility of a court victory.

The Courts have expanded judicial access for rights-seeking groups through allowing public interest standing. What this research suggests is that this needs to be broadened even more. It was particularly disappointing for movement constituents that litigants in BC were denied standing. This challenge was rooted in the experiences of some of Canada's most marginalized citizens. Given their degree of marginalization they chose to come forward as an anonymous collective. Because of this, they were refused access to the Court in order to bring a constitutional challenge. Movement constituents perceived this challenge and legal representatives as embedded in the movement and reflective of the needs of the community. They wanted the most socially vulnerable

groups to be represented and to be the first to benefit from any litigation outcomes. The difficulties encountered in the BC challenge, in developing the case and gaining recognition in court, illustrate a significant gap in our thinking and theorizing about social movements as voices for disenfranchised populations. In the realms of human rights, social justice, and social movements for justice and rights, much more research and resources need to be devoted to understanding how these groups can organize politically.

The *Charter* has dramatically altered the political opportunity structure for many social movements, reinforcing a rights frame, and arguably, shifting the energy and resources of grassroots organizations to legal mobilization. But legal rights are often a narrow and limited pursuit that does not equate to economic redistribution or social equality. Social theorists warn that within the context of neoliberalism, *Charter* litigation tends to reinforce individualism, privatization, and consumerism. If this is true, we should see the legislative privileging of indoor workers and profitable industries alongside increased surveillance and regulation of these same industries (Scoular 2010). Sex worker activists were acutely aware of the limitations of legal mobilization. A lack of political opportunity remains an ongoing obstacle, and the challenges were viewed as a necessary, but supplementary political strategy within social movement struggles.

As of June 2010, the Ontario ruling on the constitutionality of the *CCC* provisions related to prostitution is still pending; litigants expect a decision by September 30, 2010 (SPOC 2010). It is unlikely that a provincial court will overturn the Supreme Court's Reference (1990) decision to uphold the 'Prostitution Laws', but whatever the outcome, it is almost inevitable that an appeal will be filed and the case will proceed to Canada's highest court. The applicants in BC also expect a decision on standing during the summer

of 2010. This decision could be appealed and proceed to the Supreme Court as well. Plaintiffs in BC no longer expect to ‘catch up’ to the Ontario case at the Supreme Court level, and will most likely apply to act as intervenors. Members of Stella in Montreal are currently strategizing on future action, including possibly intervening on behalf of the Ontario plaintiffs or mounting their own constitutional challenge in Quebec.

While sex workers struggle to gain organizational strength within the current cultural and political climate, the activists I interviewed held a long term vision for change. As Elizabeth (PWSI) asserted, “Oh yeah, decriminalization is going to happen, it’s just a matter of time. It’s like a tidal wave getting ready.” The movement is now entering a new and interesting cycle. This time, there is a well-established sex worker movement, pursuing various strategies in order to meet the social, cultural, and political needs of their communities. While they continue to struggle to alter social stigma and criminalization, they now do so with the support of social movement organizations, political advocacy groups, and growing alliances with influential third parties. As Nancy (PWSI) said, “I’m going to fight to the death. And even if I die before it’s over, there’ll still be people fighting.”

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## APPENDIX A

## Criminal Code Provisions Relating to Prostitution\*

## Definitions:

197. (1) In this Part,

“common bawdy-house” means a place that is

- (a) kept or occupied, or
- (b) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency;

“prostitute” means a person of either sex who engages in prostitution;

“public place” includes any place to which the public have access as of right or by invitation, express or implied.

## Bawdy-houses

210. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.  
Landlord, inmate, etc.

(2) Every one who

- (a) is an inmate of a common bawdy-house,
- (b) is found, without lawful excuse, in a common bawdy-house, or
- (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

(4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

### Transporting person to bawdy-house

211. Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house is guilty of an offence punishable on summary conviction.

### Procuring

212. (1) Every one who

- (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,
  - (b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,
  - (c) knowingly conceals a person in a common bawdy-house,
  - (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,
  - (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,
  - (f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,
  - (g) procures a person to enter or leave Canada, for the purpose of prostitution,
  - (h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,
  - (i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or
  - (j) lives wholly or in part on the avails of prostitution of another person,
- is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(2) Despite paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of two years.

(2.1) Notwithstanding paragraph (1)(j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who

- (a) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally, and
- (b) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.

#### Offence in Relation to Prostitution

213. (1) Every person who in a public place or in any place open to public view

- (a) stops or attempts to stop any motor vehicle,
- (b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or
- (c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

(2) In this section, “public place” includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

\* Criminal Code (R.S., c. C-46). 1985. *Part VII: Disorderly Houses, Gaming and Betting*. Retrieved June 14 2010 (<http://laws.justice.gc.ca/en/C-46/>)

*Bedford, Lebovitch and Scott v. Attorney General of Canada* (Ontario) challenge sections 210, 212(1)(j), and 213(1)(c).

*SWUAV and Kiselbach v. Attorney General of Canada* (British Columbia) challenge sections 210, 211, 212(1)(a),(b),(c),(d),(e),(f),(h)(j) and (3), and 213.

## APPENDIX B

## Interview Guides

## Interview Guide for Movement Activists and Advocates

## Social Movement Organizations:

1. Can you tell me about your organization?  
Probes: When did it start? How did it start? What areas of sex work or kinds of sex workers do you work with (ie. women, men, trans – survival, off-street, etc.)?
2. What is your role in this organization? How long have you been involved? How did you get involved?
3. Is your organization affiliated with other organizations?
  - a. If so, can you tell me about them?
4. Does your organization receive funding?
  - a. If so, from where? Has your funding ever been affected by changes in political parties? Has your funding ever been affected by specific events?
  - b. Does your organization rely on supporters or members? Can you tell me about how you foster this support?
5. What are some of the major issues or concerns that your organization attempts to address? How are these issues addressed?
6. Do you think the concerns of sex workers are different depending what areas of the industry they are involved in? Can you explain?
7. Since you first got involved in this organization, have your organization's goals or concerns changed? Have you noticed the needs of sex workers change over time?
  - a. If so, can you explain? What brought about these changes? How did your organization adapt to these changes? (ie. upcoming Olympics, effects of the Pickton trial, etc.)
8. Since your involvement in this organization, do you think public perceptions of sex work have changed? If so, how?
9. Since your involvement in this organization, do you think law enforcement practices or police attitudes toward sex work have changed? Has law enforcement been a concern for sex workers in your organization? Do you think different areas of the sex industry are affected differently by law enforcement?

## Knowledge of Charter Challenges:

10. Have you heard about the Supreme Court challenges in BC and Ontario to strike down several prostitution laws?

If yes,

11. Tell me what you know about them.
12. Have you, or your organization, been involved? If yes, how?
13. What do you think about these challenges?
  - a. What do you think are the benefits of pursuing a constitutional claim?
  - b. What do you think are the disadvantages?
14. What do you know about the groups that are leading these challenges?
15. Have you met or spoken with members of these groups?
16. If the laws are changed, do you think the sex workers your organization works with will be affected? How so?
17. Do you think it would change public opinion on prostitution?
18. Are there other issues you think need to be addressed to improve conditions for sex workers?

If no,

Last year, two organizations, one in Vancouver, *Downtown Eastside Sex Workers United Against Violence Society* (SWUAV) and one in Toronto, *Sex Professionals of Canada* (SPOC), launched separate Constitutional Challenges, arguing that prostitution laws infringe upon the rights of sex workers under the *Canadian Charter of Rights and Freedoms*.

11. Have you heard of either of these groups?
  - a. If yes, what do you know about them?
12. Why do you think they would challenge prostitution laws?
  - a. What do you think are the benefits of pursuing a constitutional claim?
  - b. What do you think are the disadvantages?
13. Do you think the sex workers at your organization are affected by current laws?
  - a. Does this come up as a major concern of theirs?
  - b. Are there specific laws that pose a problem?
14. If some of the current laws were struck down, for example, if public communication, bawdy houses, and living on the avails of prostitution were no longer illegal, how do you think sex workers at your organization would be affected?
15. Do you think it would change public opinion on prostitution?
16. Are there other issues you think need to be addressed to improve conditions for sex workers?

Activism:

19. Have you been, or are you currently, involved in other kinds of activism? If yes, can you tell me about that work?
20. Since your involvement in this organization, has your own thinking about sex work changed?

- a. How did you think about this issue 10 years ago? How do you think about it now?
  - b. Has media coverage of Pickton case changed how sex workers see themselves and are seen by others?
21. Has the internet changed how sex workers think about themselves?
- a. Has it affected mobilization? Has internet influenced networking? Decreased isolation? Made it easier to mobilize?
22. What role have AIDS Service Organizations played?
- a. Sex workers are often perceived as vectors of transmission. Have alliances with AIDS organizations impacted these perceptions? Have these alliances promoted the view of sex workers as public health promoters?

### Interview Guide for Plaintiffs

#### Social Movement Organizations:

1. Can you tell me about your organization?  
Probes: When did it start? How did it start? Who do you represent?
2. What is your role in this organization? How long have you been involved? How did you get involved?
3. Is [name of organization] affiliated with other organizations?  
b. If so, can you tell me about them?
4. Does your organization receive funding?  
a. If so, from where? Has your funding ever been affected by changes in political parties? Has your funding ever been affected by specific events?  
b. Does your organization rely on supporters or members?
5. Besides legislative changes, are there any other issues or concerns that your organization attempts to address?  
a. If so, how are these issues addressed?
6. Since you first got involved in this organization, have your organization's goals or concerns changed? Have you noticed the needs of sex workers change over time?  
a. If so, can you explain? What brought about these changes? How did your organization adapt to these changes?
7. Since your involvement in this organization, do you think public perceptions of sex work have changed? If so, how?
8. Since your involvement in this organization, do you think law enforcement practices or police attitudes toward sex work have changed? If so, how?

#### Knowledge of Charter Challenges:

9. Can you tell me about the challenge?  
Probes: How did it come about? Whose idea was it? Who did you talk to about it? Did someone approach you about it? Did you consider other options?
10. Was there a reason for the timing? Were there any particular events that motivated this application?
11. How long have you been preparing for this application?  
Probes: What was necessary to prepare?

12. How did you connect with other people interested in it?  
Probes: Can you tell me about some people or groups that were especially important for you to connect with? How did you connect with your legal team?
13. Why did you choose the specific sections that you did?  
Probes: How did you come to this decision? Who was involved? How much input does your legal team have in these kinds of decisions?
14. What kind of claim are you making? For example, for gay and lesbian rights, it has often been an equality claim; for abortion rights it has generally been the right to control over one's body.
15. What do you think are the benefits of pursuing a constitutional claim?
16. What do you think are the disadvantages?
17. What are your expectations in challenging these laws?
18. Have your expectations changed since you've been involved in this process or with your legal team?
19. What will be achieved if you win?
  - a. Would laws simply be removed? Do you expect other laws or regulations to be passed?
20. What will be your direction if you lose? How do you think a loss would impact this movement?

#### Involvement of Alliances and Beneficiaries:

21. Both SPOC and SWUAV made similar applications within several months of each other, were you involved with [SWUAV or SPOC] leading up to this challenge?
  - a. If so, can you tell me about this affiliation?
22. How are your organizations similar or different from one another?  
Probes: Do you think you have different goals? Do you represent different aspects of the sex industry? Do you appeal to different people? Do you project a different image?
23. Besides [SPOC or SWUAV], have you communicated with members of other sex worker organizations related to this challenge?  
Probes: Can you tell me about how you developed affiliations with other organizations or why you chose not to be involved with other organizations? Have you received input or feedback about this challenge from other sex workers?
24. Besides your legal team, are there any other groups or individuals that are supporting you through this challenge?  
Probes: What kind of support are you receiving (financial, emotional, advice...)? What kind of support do still need? Has finding support been challenging?
25. Have you developed rapport with any media reporters?  
Probes: Do you have a particular image or message that you hope to put across? If so, do you think you have been accurately portrayed in the media so far? Do you think the media are influential in this event?



#### Activism and Movement Leadership:

26. Do you think of yourself as an activist?
  - a. If so, how did you get involved in activist work?
27. Who are you fighting for? What is your vision or goal with your work?
28. Besides this challenge, what other advocacy or activist work do you currently do? Or have you done in the past?
29. If these laws are struck down, will you continue doing activist work? In what capacity? Are there other prostitution related issues you think will need to be addressed?
30. If these laws are not struck down, what will you do?
31. This is such a huge undertaking, what made you think this was possible? Could you have imagined yourself here five or ten years ago? What brought you to this? What has been the greatest challenge in doing this?

#### Interview Guide for Members of Legal Teams and Expert Witnesses

##### Involvement of Alliances:

1. What has your role or involvement been in this application?
2. How did you become involved?
3. What motivated you to become involved?

##### Knowledge of Charter Challenges:

4. How long have you been preparing for this application?
  - a. What was necessary to prepare?
  - b. [for legal team] Why were these specific sections chosen? How did you come to this decision?
5. What kind of claim are you making? For example, for gay and lesbian rights, it has been an equality claim, for abortion rights it has been to have control over one's body...
6. What do you think are the benefits of pursuing a constitutional claim?
7. What do you think are the disadvantages?
8. What will be achieved if you win?
  - a. Would laws simply be removed? Do you expect other laws or regulations to be passed?
9. [for legal team] What is the likelihood of success? Considering the Supreme Court of Canada ruled on this 15 years ago, are provincial courts likely to challenge this ruling?
10. What will be your direction if you lose? How do you think a loss would impact this movement?
11. If the laws are struck down, do you think sex workers will face ongoing challenges? Can you explain?
12. If the laws are not changed, what will the next step be?
13. Were there any specific events that motivated the timing of these applications?
14. Do you think the current political and social climate is conducive to these applications?

Today's Date: August 14, 2008  
Principal Investigator: Ms. Sarah Beer  
Department/School: Sociology & Anthropology  
REB Number: 08-167  
Research Project Title: The Prostitutes' Rights Movement in Canada: Challenging  
Prostitution Laws  
Clearance Date: August 14, 2008  
Project End Date: August 31, 2009  
  
Progress Report Due: August 14, 2009  
Final Report Due: August 31, 2009

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This is to inform you that the University of Windsor Research Ethics Board (REB), which is organized and operated according to the *Tri-Council Policy Statement* and the University of Windsor *Guidelines for Research Involving Human Subjects*, has granted approval to your research project on the date noted above. This approval is valid only until the Project End Date.

A Progress Report or Final Report is due by the date noted above. The REB may ask for monitoring information at some time during the project's approval period.

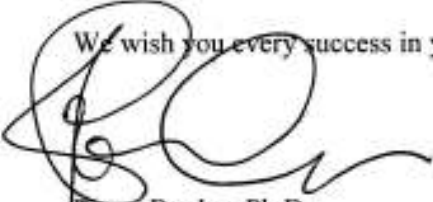
During the course of the research, no deviations from, or changes to, the protocol or consent form may be initiated without prior written approval from the REB. Minor change(s) in ongoing studies will be considered when submitted on the Request to Revise form.

Investigators must also report promptly to the REB:

- a) changes increasing the risk to the participant(s) and/or affecting significantly the conduct of the study;
- b) all adverse and unexpected experiences or events that are both serious and unexpected;
- c) new information that may adversely affect the safety of the subjects or the conduct of the study.

Forms for submissions, notifications, or changes are available on the REB website: [www.uwindsor.ca/reb](http://www.uwindsor.ca/reb). If your data is going to be used for another project, it is necessary to submit another application to the REB.

We wish you every success in your research.



Pierre Boulos, Ph.D.  
Chair, Research Ethics Board

cc: Dr. Eleanor Maticka-Tyndale, Sociology & Anthropology  
Mark Curran, Research Ethics Coordinator

This is an official document. Please retain the original in your files.



## APPENDIX D

## Interview Participants &amp; Organizational Affiliations

|                      |  |   |
|----------------------|--|---|
| British Columbia     | BC Coalition of Experiential Communities<br>Boys 'R' us<br>HUSTLE<br>MAP Van (Mobile Access Project)<br>PACE Society (Prostitution Alternatives Counseling and Education)<br>PEERS Vancouver (Prostitutes Empowerment Education & Recovery Society)<br>WISH: Drop-in and Wellness Centre<br>Vancouver Coastal: Options for Sexual Health | Barbara<br>Clara<br>Ella<br>Laura<br>Nell<br>Sabrina<br>Sally<br>Theo<br>Theresa<br>Tristan<br>Violetta |
| Quebec & Nova Scotia | Coalition for the Rights of Sex Workers<br>Stella<br>Stepping Stone  | Carol<br>Fanny<br>Juliette<br>Lola<br>Polly<br>Veronica   |
| Ontario              | DERA (Dancers Equal Rights Association)<br>Maggie's<br>POWER (Prostitutes of Ottawa-Gatineau Work Educate & Resist)<br>SPOC (Sex Professionals of Canada)<br>Sex Work in Peel: Peel Health   | Agatha<br>Alan<br>Cora<br>Elizabeth<br>James<br>Mata<br>Michelle<br>Nancy<br>Su                         |
| National             | EDRAC (Exotic Dancers' Rights Association of Canada)<br>FIRST Coalition  |   |

## VITA AUCTORIS

NAME: Sarah Beer  
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