

Sarah Beer

The Sex Worker Rights Movement in Canada: Challenging Legislation

ABSTRACT

Sex worker activists in Canada identify the criminalisation of various aspects of prostitution as a major source of oppression. In an effort to improve rights and safety, two groups of sex workers brought constitutional litigation to their respective provincial courts to strike prostitution-related laws from the *Criminal Code of Canada*. These actions counter what might be expected based on the extant literature on the sex worker rights movement, and despite successful litigation, conditions have become more punitive. The court process brought to light many achievements and ongoing obstacles facing sex workers in Canada. Drawing on original research with activists in multiple Canadian cities, this paper examines litigation from a social movement perspective.

Keywords: *social movements; legal mobilisation; sex work; regulation; Canada*

Introduction

Social movement theories posit that in order to emerge and thrive, movements must seize political opportunities, amass resources, and frame grievances in alignment with broader social issues and other movements to garner support.¹ The limited social movement literature focused on sex workers' political and labour organising paints a bleak picture. In

- 1 Doug McAdam: *Political Process and the Development of Black Insurgency, 1930–1970*, 2nd ed., Chicago 1999; Doug McAdam/John McCarthy/Mayer Zald (eds.): *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, Cambridge 1996; John McCarthy/Mayer Zald: *Resources Mobilization and Social Movements: A Partial Theory*, in: *American Journal of Sociology* 82:6 (1977), pp. 1212–1241; David Snow/Robert Bendford: *Ideology, Frame Resonance, and Participant Mobilization*, in: *International Social Movement Research* 1 (1988), pp. 197–217; Suzanne Staggenborg: *Social Movements*, Don Mills 2008; Sydney Tarrow: *Power in Movement: Social Movements and Contentious Politics*, 2nd ed., Cambridge 1998; Charles Tilly: *From Mobilization to Revolution*, Reading 1978; Alain Touraine: *An Introduction to the Study of Social Movements*, in: *Social Research* 52:4 (1985), pp. 749–787.

analyses from the 1990s, social movement scholars argue that, at least in Western countries, aside from creating a more positive self-image, sex worker rights movements have failed to acquire a critical mass of constituents, influential allies, or financial support, and as such, these movements have not achieved radical law reform, transformed public perceptions, gained social legitimacy, or made material improvements in working conditions.²

A very different picture emerges in South Asia in the early 2000s. Researchers document massive sex worker collectives in Bangladesh and India, which materialised despite an inhospitable social and political climate, and with few material resources.³ Spurred by brothel evictions and supported by HIV prevention funding, activists created a platform from which to demand human rights, and the decriminalisation and de-stigmatisation of sex work. Through collective solidarity, peer support, and micro-financing cooperatives, they improved living and working conditions for their communities.

The context in Canada is much different, where, unlike the close proximity of brothel districts, sex work takes place across a large geographic landscape. The experiences of sex workers in Canada vary regionally and by industry sector. Various aspects of sex work are criminalised in federal law, yet subjected to differential regulation through provincial, and especially, municipal laws and bylaws. Increasingly, sex workers and allies are documenting regional movements and the ongoing strategies employed to resist the criminalisation and stigmatisation of sex work within local contexts.⁴ In this paper, I examine how these dispersed voices have merged into a cohesive national movement for sex workers' rights.

- 2 Valerie Jenness: *Making It Work: The Prostitutes' Rights Movement in Perspective*, Hawthorne 1993; Lilian Mathieu: *An Unlikely Mobilization: The Occupation of Saint-Nizier Church by the Prostitutes of Lyon*, in: *Revue Française de Sociologie, Supplement: An Annual English Selection* 42 (2001), pp. 107–131; Joyce Outshoorn: *Pragmatism in the Polder: Changing Prostitution Policy in The Netherlands*, in: *Journal of Contemporary European Studies* 12:2 (2004), pp. 165–176; Sari van der Poel: *Solidarity as Boomerang: The Fiasco of the Prostitutes' Rights Movement in the Netherlands*, in: *Crime, Law & Social Change* 23:1 (1995), pp. 41–65; Ronald Weitzer: *Prostitutes' Rights in the United States: The Failure of a Movement*, in: *The Sociological Quarterly* 32:1 (1991), pp. 23–41; Hendrik Wagenaar: *Democracy and Prostitution: Deliberating the Legalization of Brothels in the Netherlands*, in: *Administration & Society* 38:2 (2006), pp. 198–235; Jackie West: *Prostitution: Collectives and the Politics of Regulation*, in: *Gender, Work and Organization* 7:2 (2000), pp. 106–118.
- 3 Reshmi Chowdhury: *"Outsiders" and Identity Reconstruction in the Sex Workers' Movement in Bangladesh*, in: *Sociological Spectrum* 26 (2006), pp. 335–375; T. Ghose et al.: *Mobilizing Collective Identity to Reduce HIV Risk Among Sex Workers in Sonagachi, India: The Boundaries, Consciousness, Negotiation Framework*, in: *Social Science and Medicine* 67:2 (2008), pp. 311–320; Nandini Gooptu/Nandinee Bandyopadhyay: *Rights to Stop the Wrong: Cultural Change and Collective Mobilization—The Case of Kolkata Sex Workers*, in: *Oxford Development Studies* 35:3 (2007), pp. 251–272.
- 4 Joyce Arthur/Susan Davis/Esther Shannon: *Overcoming Challenges: Vancouver's Sex Worker Movement*, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.), *Selling Sex:*

Canada is often touted as a progressive and tolerant society, with liberal social attitudes, a sense of collective responsibility, and a political-legal system that upholds individual liberties enshrined in the *Canadian Charter of Rights and Freedoms*. The treatment of sex workers in this country challenges these ideals. Forty years after its emergence, the Canadian movement for sex workers' rights has been a remarkable success, and yet the future remains uncertain. As in other countries, involvement in HIV movements and harm reduction strategies have garnered funding that has stabilised and formalised movement organisations. Through direct actions, service provision, research, and working with influential allies, activists have legitimised a sex worker rights framework, and most recently, achieved radical law reform. Yet, many obstacles remain. This article provides an overview of the Canadian movement for sex workers' rights, focused on a recent tactic—legal mobilisation.

Methodology

The following analysis is based on doctoral research that took place in the lead up to constitutional court challenges, initiated in 2007 in the British Columbia (BC) and Ontario provincial courts, in order to explore the process of litigation from a social movement perspective. Between 2008–2010, I conducted participant observation at social movement events and attended court proceedings in Ontario. During that period, formal interviews were conducted with 26 movement activists, using purposive and snowball sampling. Participants included sex workers and allies, as well as plaintiffs and lawyers involved in litigation. Among them, eleven were from Vancouver, seven from the

Experience, Advocacy, and Research on Sex Work in Canada, Vancouver 2013, pp. 130–146. Sarah Beer/Francine Tremblay: Sex Workers' Rights Organizations and Government Funding in Canada, in: Carisa Showden/Samantha Majic (eds.), *Negotiating Sex Work: Unintended Consequences of Policy and Activism*, Minnesota 2014, pp. 287–310. Jenn Clamen/Kara Gillies/Trish Salah: Working for Change: Sex Workers in the Union Struggle, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.), *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver 2013, pp. 113–129. Anna-Louise Crago/Jenn Clamen: Né dans le Redlight: The Sex Workers' Movement in Montreal, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.): *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver 2013, pp. 147–164; Gayle MacDonald et al.: Stepping All Over Stones: Negotiating Feminism and Harm Reduction in Halifax, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.): *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver 2013, pp. 165–180. Maria Nengeh Mensah/Claire Thiboutot/Louise Toupin: *Luttes XXX: Inspirations du mouvement des travailleuses du sexe*, Montreal 2011.

greater Toronto area, five from Montreal, two from Ottawa, and one from Halifax. The majority were women, and most were sex workers, either current or former, whose work experiences varied.

Interviews, lasting one to three hours, were recorded and transcribed. Participants selected the interview sites, which included movement organisations, personal residences, coffee shops, bars, and over the phone. Transcripts were given to interviewees to revise and edit before being used for analysis and further dissemination. This was to maximise participants' control over their information and to ensure consent in sections where anonymity could not be maintained (for example, where a participant speaks about their role as plaintiff, additional consent was requested for these passages).⁵

I approached this project with a 'sex-as-work' perspective, recognising that sex workers are experts on the sex industry and best suited to direct related policy and legislative reform. The assurance that this work would be used to advance the rights of sex workers was crucial to activists' participation. Aware that the research was not funded, participants very generously gave of their time without compensation. Lack of honoraria, however, resulted in the exclusion of some of the most marginalised sex workers. Current street-based workers are underrepresented in this sample, as are the perspectives of Indigenous and transgender women, who are overrepresented in street-based sex work.⁶ In upholding ethical research practices, the collective of litigants in Vancouver, BC, was not approached for interviews.⁷ Instead, affidavit testimonies and court documents were used to ascertain these perspectives.

5 Excerpts provided herein can be found at: Sarah Beer: *The Sex Worker Rights Movement in Canada: Challenging the 'Prostitution Laws'*: University of Windsor 2010 [dissertation].

6 Dara Culhane: *Their Spirits Live Within Us: Aboriginal Women in Downtown Eastside Vancouver Emerging into Visibility*, in: *American Indian Quarterly* 27:3/4 (2003), pp. 593–606; Jacqueline Lewis et al.: *Managing Risk and Safety on the Job: The Experiences of Canadian Sex Workers*, in: *Journal of Psychology and Human Sexuality* 17:1/2 (2005), pp. 146–167; Kate Shannon et al.: *Social and Structural Violence and Power Relations in Mitigating HIV Risk of Drug-Using Women in Survival Sex Work*, in: *Social Science and Medicine* 66:4 (2007), pp. 922–927.

7 Sex workers are an over-researched population, especially those who are impoverished, criminalised, or otherwise marginalised. Despite approval from institutional research ethics boards, much of this work has involved research practices that sex workers view as unethical. As such, activists and organisations have produced ethical guidelines for research with this community. Key factors relate to consent, confidentiality, risks to the individual, and compensation. See: Raven Bowen, in collaboration with Sue Davis, Sheri Kiselbach, Shawna Broden: *Research Ethics: A Guide for Community Organizations*, produced for PACE Society, 2006, at: http://www.pace-society.org/wp-content/uploads/2014/04/Community_Research_Guidelines.pdf (accessed on 14 February 2018). Raven Bowen/Tamara O'Doherty: *Participant-Driven Action Research with Sex Workers in Vancouver*, in: Carisa Showden/Samantha Majic (eds.): *Negotiating Sex Work: Unintended Consequences of Policy and*

Doctoral research concluded in 2010, at the time of the provincial court rulings. Since then, both cases have appeared before the Supreme Court of Canada, and sex workers have witnessed the enactment of new, more repressive federal legislation. The analysis of the aftermath of legal mobilisation is based on ongoing engagement with activists, attendance at court hearings and movement events, and secondary sources.

A History of Regulation

Prior to colonisation, Indigenous peoples, who long inhabited present-day Canada, held divergent constructions of sexuality and modes of self-governance. Historians write that in many Indigenous societies, non-monogamy and the exchange of sex for social and economic benefit were not viewed as adultery or prostitution. As large numbers of French and British settlers arrived throughout the 17th and 18th centuries, they were quick to take advantage of what appeared to be liberal sexual attitudes. Historians point out that the term ‘prostitution’, with its attendant sexist and moralistic connotations, does not accurately describe these encounters. What appeared to be prostitution to colonial settlers was a legitimate social practice in many Indigenous communities.⁸ It was not a social problem. Yet, by the turn of the 20th century, prostitution would take shape as a major social issue, and its regulation would have a significant impact on women, especially those who were marginalised, racialised, or poor.

Before Confederation in 1867, provinces and municipalities regulated prostitution through a series of vagrancy provisions imported from England. Socio-legal historian Constance Backhouse writes that the first Canadian provisions to mention ‘prostitution’ were passed in 1839, allowing police to apprehend a “common prostitute or night walker” when, found in a public place, she was unable to give a satisfactory account of herself. It was a status offence, meaning no specific behaviour was required for arrest, and it

Activism, Minnesota 2014, pp. 53–74; Fran Shaver: Sex Work Research: Methodological and Ethical Challenges, in: *Journal of Interpersonal Violence* 20:3 (2005), pp. 296–319.

- 8 Jean Barman: Taming Aboriginal Sexuality: Gender, Power, and Race in British Columbia, 1850–1900, in: *BC Studies* 115/116 (1997–1998), pp. 237–266; Sarah Carter: Capturing Women: The Manipulation of Cultural Imagery in Canada’s Prairie West, Montreal and Kingston 1997; John Lutz: Gender and Work in Lekwammen Families, 1843–1970, in: Kathryn McPherson/Cecilia Morgan/Nancy Forestell (eds.): *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, Toronto 1999, pp. 80–105; Caroline Ralston: Changes in the Lives of Ordinary Women in Early Post-Contact Hawaii, in: Margaret Jolly/Martha MacIntyre (eds.): *Family and Gender in the Pacific: Domestic Contradictions and the Colonial Impact*, Cambridge 1989; Sylvia Van Kirk: *Many Tender Ties: Women in Fur Trade Society, 1670–1870*, Norman 1980.

applied only to women. Frequenting “houses of ill-fame” was also illegal. Nonetheless, prostitution was tolerated, as it was seen to service male need, and largely contained to brothels within informal red-light districts.⁹

As cities developed, prostitution became a deeply moralised concern, rooted in Victorian ideology. After Confederation, the government consolidated and expanded existing laws into national legislation. Backhouse documents an “explosion of legislation” related to prostitution between 1867 and 1915, which criminalised procuring, living on the avails of prostitution, and bawdy houses.¹⁰ Her analysis of archival records shows that these laws were purported to protect women and girls from pimps and brothel keepers, but ultimately penalised them. Laws expanded alongside measures to rescue and rehabilitate “fallen women”. When it became clear that sex workers would not be deterred by law enforcement, and did not want to be “saved”, they were further demonised. Separate legislation was enacted criminalising the activities of Indigenous women, who were cast as especially lascivious.¹¹

The institution of the *Indian Act* in 1876 was part of an aggressive colonising project, and would have a longstanding impact on Indigenous sex workers. Replacing Indigenous self-governance, the *Indian Act* homogenised distinct and separate groups across the country, defined who held legal status as “Indian”, and treated those with status as wards of the state. The government established a reserve system, regulating physical movement, as well as access to education and health care. The *Indian Act* disenfranchised people with status and restricted political organising and access to the courts; it imposed gender discrimination, banned religious ceremonies, and forbade speaking traditional languages. Its enactment destroyed family bonds and subjected children to widespread abuse and illness through the church-run residential school system, the last of which only closed in 1996. Despite hard fought amendments over the course of the past century, the *Indian Act* remains a foundational legal mechanism that governs all aspects of Indigenous peoples’ lives and cultures.

Beginning in 1885, and in place for over 60 years, a pass system was used to keep Indigenous people separated from white settlers. It was used to bar Indigenous women from urban centres for what were seen as ‘immoral purposes’. Women in the towns

9 Constance Backhouse: Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society, in: *Social History* 18:36 (1985), pp. 387–423.

10 Ibid.

11 Constance Backhouse documents that in 1880, the federal government enacted the first of a series of laws specifically designed to prevent prostitution among Indigenous women in the *Act to amend and consolidate the laws respecting Indians*. These laws prohibited the keeper of any house from allowing Indigenous women to be there “with the intent of prostituting herself”, amended in 1884 to include keepers of “tents and wigwams” as well as houses. See: Constance Backhouse: Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society, p. 420.

without means of support and a pass from an Indian Agent were arrested and ordered back to their reserves.¹² Separate legislation under the *Indian Act*, and later under the *Criminal Code of Canada*, governing prostitution made it easier to convict Indigenous women than other women.¹³ As white women arrived in large numbers, unions between Indigenous women and white men became increasingly regarded as illegitimate and immoral.¹⁴ Definitions of prostitution, when applied to Indigenous women, varied from the sale of sex in back rooms of saloons to cohabitation with non-Indigenous men. All women were scrutinised for their sexual behaviour, though Indigenous and racialised women were also subjected to racial stereotypes casting them as sexually immoral and debased, and because of this, they were exposed to intense levels of surveillance.

Sex workers resisted prohibition in the sense that they continued working, even though they had to adapt to more repressive conditions by dispersing, seeking security outside the law, and other strategies to evade arrest, such as living under different names and moving across jurisdictions or borders.¹⁵ There were also instances of organised resistance. Sex workers used various techniques to challenge the social perceptions of their work, and indeed, the sexual double standard—from collectively fighting fines and criminal charges, to staging protests and heckling clients in public theatres.¹⁶ In the first known example of a peer-run service organisation, Maimie Pinzer, a Jewish American social worker and former sex worker, opened an emergency shelter in Montreal's redlight district from 1915–1917. She rejected the prohibitionist and moral reform measures of the time. Instead, she treated sex workers as she wished she had been treated herself, and opened a space for women to come together to have tea, rest, read magazines, and socialise.¹⁷ The establishment of this refuge is widely considered the first effort to organise sex workers in Montreal, and possibly all of Canada.¹⁸

- 12 Sarah Carter: Categories and Terrains of Exclusion: Constructing the “Indian Woman” in the Early Settlement Era in Western Canada, in: *Great Plains Quarterly* 13 (1993), pp. 147–161.
- 13 As Sarah Carter notes, the morality of Indigenous women was questioned in a number of sections of the *Indian Act*, for instance, if a woman was not of “good moral character” (and male government officials were the sole and final judges of character), she lost her one-third interest in her husband's estate.
- 14 Sylvia Van Kirk: *Many Tender Ties: Women in Fur Trade Society, 1670–1870*.
- 15 Constance Backhouse: *Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society* pp. 387–423.
- 16 Patrick Dunae: *Geographies of Sexual Commerce and the Production of Prostitutional Space: Victoria, British Columbia, 1860–1914*, in: *Journal of the Canadian Historical Association* 19:1 (2008), pp. 115–142; Daniel Francis: *Red Light Neon: A History of Vancouver's Sex Trade*, Vancouver 1996; James Gray: *Red Lights on the Prairies*, Toronto 1971.
- 17 Maimie Pinzer: *The Maimie Papers: Letters from an Ex-Prostitute*, New York 1997.
- 18 Anna-Louise Crago/Jenn Clamen: *Né dans le Redlight: The Sex Workers' Movement in Montreal*, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.): *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver 2013, pp. 147–164.

Public interest waned after the First World War, though enforcement remained heavily gendered.¹⁹ For the next fifty years, sex workers navigated a socio-legal system that described them as victims and treated them as criminals. At the same time, in major cities, commercial sex and adult entertainment proliferated. By the 1960s, “The Main” in central Montreal had become a legendary redlight district; Toronto’s Yonge Street was the country’s notorious “sin strip”, and Vancouver’s West End, the “prostitution capital of Canada”. Toward the mid-1970s, prostitution once again came under increased scrutiny, and working conditions worsened. Sex workers resisted, and a sustained movement was born.

Redefining the ‘prostitution problem’

By the 1970s, most urban centres had an area for adult entertainment—with a concentration of strip clubs, adult movie houses, pornographic bookstores, body rub and massage parlours, and outdoor strolls. By the middle of the decade, plans were underway to gentrify these neighbourhoods; bylaws were introduced which shut down venues and displaced street workers. When strolls started moving outside areas where street work had long been tolerated, resident groups mounted anti-prostitution campaigns. In many cities, street-based sex workers resorted to working in more isolated locations, and reports of violence started to increase.²⁰

With mounting economic and police pressure, alongside harassment from resident groups and media outlets, sex workers started to speak out. Various organisations emerged in major Canadian cities. They were loosely formed coalitions of sex workers, often focused on local issues. Some attempted to form unions, some organised against city bylaws and police practices, all sought to raise awareness of working conditions. Though many organisations were short-lived, they highlighted occupational concerns and asserted the very notion that sex workers had a voice that needed to be heard.

In 1977, inspired by the American sex worker rights organisation, COYOTE (Call Off Your Old Tired Ethics), Margaret Spore founded the Toronto-based group, *Better End All Vicious Erotic Repression* (chosen for its acronym, BEAVER). In 1979, the group

19 Fran Shaver: Prostitution, *The Canadian Encyclopedia* (1994), at: <http://www.thecanadianencyclopedia.com/en/article/prostitution/> (accessed on 14 February 2018).

20 Deborah Brock: *Making Work, Making Trouble: Prostitution as a Social Problem*, Toronto 1998; John Lowman: *Deadly Inertia: A History of Constitutional Challenges to Canada’s Criminal Code Sections on Prostitution*, in: *Beijing Law Review* 2 (2011), pp. 33–54; Becki Ross: *Sex and (Evacuation from) the City: The Moral and Legal Regulation of Sex Workers in Vancouver’s West End, 1975–1985*, in: *Sexualities* 13:2 (2010), pp. 197–218; Frances Shaver: *The Regulation of Prostitution: Avoiding the Morality Traps*, in: *Canadian Journal of Law and Society* 9:1 (1994), pp. 123–145.

became the *Coalition Against Street Harassment*, or CASH (1979–1980), and worked to bring attention to the violence and harassment sex workers experienced on the streets due to hostile attitudes and law enforcement practices.²¹ That same year, the *Canadian Association of Burlesque Entertainers* (1979–1982) formed a chapter of the Canadian Labour Congress, becoming the first erotic dancer’s union in the country.

In the face of mounting anti-prostitution campaigns, a small group in Vancouver formed the *Alliance for the Safety of Prostitutes* (ASP, 1982–1986).²² They mobilised in order to raise awareness of the whore stigma, to speak out against prohibitionists, and to combat efforts to eradicate them from the neighbourhood in which they had long worked and lived. Through consciousness-raising events, sit-ins, street demonstrations, community meetings, *The Whoreganizer* newsletter, and bad date sheets to warn workers of abusive clients, they took great personal risks to establish their presence in the midst of unrelenting ‘whore-bashing’.²³ Around the same time in Toronto, a small group of sex workers and queer activists founded what would become one of the longest standing sex worker rights groups, the *Canadian Organization for the Rights of Prostitutes* (CORP, renamed *Sex Professionals of Canada* in 2000). They intervened in feminist and academic debates to assert the legitimacy of prostitution, participated in marches and committees to advocate for decriminalisation, and eventually garnered government funding to provide services to sex workers.²⁴

The challenges presented in the mid-1980s catalysed the sex worker rights movement. First, tougher federal law was introduced, prohibiting public communication for the purpose of prostitution²⁵, which increased violence and arrests. Second, the onset of the HIV epidemic, and recognition that the virus could be transmitted through hetero-sex, contributed to the identification of sex workers as vectors of disease, and compounded discrimination against them. The budding movement was forced to stretch already limited

21 Andrew Sorfleet: A Brief History of Sex Worker Activism in Toronto (1995), at: <https://walnet.org/csis/groups/swat/torontohistory.html> (accessed on 14 February 2018).

22 The perspectives of workers and the formation of the ASP are presented in the documentary, *Hookers on Davie*, produced by Janice Cole & Holly Dale 1984.

23 Marie Arrington: Community Organizing, in: Laurie Bell (ed.): *Good Girls/Bad Girls: Sex Trade Workers and Feminists Face to Face*, Toronto 1987, pp. 104–108.

24 For further details on CORP’s involvement in feminist conferences, marches, and committees, see: Deborah Brock: *Making Work, Making Trouble: Prostitution as a Social Problem*, Toronto 1998.

25 Bill C-49, now section 213 of the *Criminal Code*, was enacted in 1985. It replaced “solicitation” with the gender-neutral offence of “communicating for the purpose of prostitution”, with the stated purpose of removing “street prostitutes and their customers from ‘downtown neighbourhoods’”. See: James Robertson: *Prostitution: Current Issue Review: Parliamentary Research Branch* 2003.

resources even further to focus on public education and health promotion, in the context of worsening working conditions.²⁶ Then, they saw the potential of aligning themselves with public health.

Public health departments across the country started to abandon moralised efforts to eradicate prostitution, and instead, adopted a harm reduction approach to reduce HIV transmission. Recognising themselves as experts on the sex industry, members of CORP applied for funding from all levels of government to offer peer education and resources to sex workers.²⁷ In 1986, they founded and incorporated *Maggie's: The Toronto Prostitutes' Community Service Project* (now *Maggie's: Toronto Sex Workers Action Project*), named in honour of Margaret Spore (founder of BEAVER). It was the first charitable organisation of its kind in Canada—staffed and directed by sex workers. Soon after, community organisers in Montreal initiated an HIV intervention program, from which, *Stella, l'amie de Maimie* was born (named after Stella, a sex worker Maimie Pinzer described admirably). Modeled after *Maggie's* and its harm reduction framework, a central tenet of *Stella* was to provide a drop-in space for women working in the sex industry to interact and build community. Like *Maggie's*, they received charitable status and government funding to support this work, and in 1995, opened their doors to local sex workers.

Sex worker organisations in all Canadian cities were confronting a more dangerous climate with the new communicating law, alongside a gamut of interrelated social problems—poverty, physical and mental illness, homelessness, drug dependency, and the enduring effects of colonialism, incarceration, and violence. It was the concentration of these issues within the 12-block radius of Vancouver's Downtown Eastside, and ensuing public attention, that created a unique context for activism in that city.

Legal Mobilisation in Vancouver

By the mid-1990s, *PACE Society* was established in Vancouver's Downtown Eastside neighbourhood to provide services to people involved in what local organisers refer to as "survival sex work."²⁸ An activist affiliated with PACE explained:

26 The sex worker rights movement in the United States faced similar circumstances. See: Valerie Jenness: *Making It Work: The Prostitutes' Rights Movement in Perspective*, Hawthorne 1993; Ronald Weitzer: *Prostitutes' Rights in the United States: The Failure of a Movement*, in: *The Sociological Quarterly* 32:1 (1991), pp. 23–41.

27 Funding was received from Toronto Department of Public Health (municipal), the Ontario Ministry of Health (provincial), and Health Canada (federal), alongside private donations.

28 Joyce Arthur/Susan Davis/Esther Shannon: *Overcoming Challenges: Vancouver's Sex Worker Movement* pp. 130–146.

Survival sex work is characterised 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.²⁹

These issues are prevalent in the Downtown Eastside, often identified as one of the poorest neighbourhoods in the country, with high rates of overdose, HIV, hepatitis C, mental illness, and poverty. Compounded by racism and colonialism, a disproportionate number of Indigenous people live in the area and confront these issues. It is also the location from which over 63 women have disappeared or been murdered since the 1980s.

Since the mid-1990s, friends and family members of victims, alongside advocates for Indigenous peoples and sex workers, have held annual vigils and marches to honour and raise awareness of missing women, whose disappearances were routinely dismissed by police and in media because they were Indigenous, sex workers, and/or drug users. In 1997, Jamie Lee Hamilton, an Indigenous trans sex worker and activist, opened *Grandma's House*, a refuge for local workers to warm up, have coffee, and use the Internet.³⁰ In the context of a suspected serial killer preying on women in the neighbourhood, sex workers were not always turned away when they arrived with a client. In 2000, Hamilton was arrested for running a bawdy house, and *Grandma's House* shut down.

By 2002, the extent of the violence experienced by street-based sex workers became public knowledge when Robert Pickton was charged with 26 murders associated with Vancouver's Missing Women case.³¹ Similar serial murder investigations were on going in other provinces at the time,³² but this particular case gained international media attention as police confirmed over 63 women murdered or disappeared from

29 Interview conducted by phone (Vancouver/Montreal) in the Summer of 2009.

30 Michael Harris: *The Unrepentant Whore*, *The Walrus* 2010, at: <https://thewalrus.ca/the-unrepentant-whore/> (accessed on 14 February 2018).

31 In a controversial decision, the judge opted to divide the 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 six women. He received the maximum 25-year sentence with no chance of parole (the longest sentence available). The remaining charges were stayed by the Crown.

32 Newspapers reported suspected serial murderers in various areas, and years later, police opened official investigations. Instigated in 2003, *Project KARE* is a federal police investigation into the unsolved murders and disappearances of women in the Edmonton, Alberta area dating back to the late-1980s. *Project E-PANA* began in 2005 to investigate a series of unsolved murdered along the infamously dubbed *Highway of Tears* in Northern BC. As of 2009, the *Project Devote* task force is investigating cases of missing and murdered women in Winnipeg, Manitoba. In all of these cases, most of the victims were street-based sex workers, and a grossly disproportionate number of them were Indigenous.

Vancouver's Downtown Eastside neighbourhood. The families of victims, alongside advocacy groups for sex workers, women, and Indigenous peoples, expressed frustration and outrage at the dismissal of sex workers and Indigenous women, who were disproportionately represented among the victims.³³

It was within this context that *Pivot Legal Society*, a legal advocacy organisation in the neighbourhood, initiated community meetings in the early 2000s to understand the legal needs of local women. In an interview, *Pivot* lawyer Katrina Pacey states that the central issue raised at every meeting was the criminalisation of prostitution.³⁴ Criminalisation affected everything from income stability, access to housing and social assistance, to custody of children and experiences of violence. In light of the now public awareness of the horrific violence that sex workers were experiencing, Parliament approved a motion to review the prostitution laws. The women wanted to intervene, and submitted affidavits.³⁵

After extensive study, including the testimonies of over 300 witnesses across Canada, the all-party subcommittee concluded that the *status quo* was unacceptable, but were unable to agree on a strategy for change, and so, the *status quo* remained.³⁶ Meanwhile, the group continued meeting, and eventually formed the *Downtown Eastside Sex Workers United Against Violence Society* (SWUAV), registered as a non-profit, acquired some funding, and mounted a constitutional challenge to strike down the laws prohibiting bawdy houses, living on the avails of prostitution, and public communication for the purpose of prostitution.³⁷ They argued that these laws infringe on rights enshrined in the *Charter*

33 There are hundreds of unsolved cases of disappeared and murdered Indigenous women across Canada, some of whom were sex workers. After years of mounting public pressure, a National Inquiry into Missing and Murdered Indigenous Women and Girls commenced in 2016.

34 Interview conducted at *Pivot Legal* office in Vancouver in the Summer of 2009.

35 The vast majority of affiants were impoverished women sex workers. Among the 91 participants, 38 identified as First Nations or Métis, and a significant number lived with serious illnesses including drug addiction, hepatitis C, and/or HIV/AIDS. See: *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*, Pivot Legal Society Sex Work Subcommittee 2004. See also: *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform*, Pivot Legal Society Sex Work Subcommittee 2006.

36 House of Commons: Report of the Subcommittee on the Solicitation Laws of the Standing Committee on Justice and Human Rights, House of Commons 2006, at: <http://cmte.parl.gc.ca/Content/HOC/committee/391/just/reports/rp2599932/justrp06/sslrp06-e.pdf> (accessed on 14 February 2018).

37 On 3 August 2007, SWUAV filed a claim to the British Columbia Superior Court to strike down *Criminal Code* laws prohibiting bawdy houses (s.210), transportation to a bawdy house (s.211), living on the avails of prostitution (s.212), and communicating for the purpose of prostitution (s.213).

of *Rights and Freedoms* by exposing sex workers to significant harm, including physical and sexual violence, lack of police protection, social stigma, inequality, exploitation and murder.³⁸

Soon after, the Attorney General of Canada made an application to dismiss SWUAV's action on the grounds of legal standing, or the legal right to bring the case before the court. Sheri Kiselbach, a violence prevention coordinator at *PACE Society* and former sex worker with 30 years experience in the industry, joined the challenge as a second plaintiff to move the case forward. Nonetheless, in December 2008, both SWUAV and Kiselbach were denied standing. The Superior Court Justice ruled that neither party had *private* interest standing because SWUAV was a registered society, not an individual person, while Kiselbach was a former sex worker and no longer threatened by the laws.³⁹ They also failed to meet one of the three principles necessary for *public* interest standing, namely that there were deemed to be other reasonable ways to bring the case forward.⁴⁰ The Superior Court Justice 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, and he pointed to litigation in Ontario already underway. In this case, one of the plaintiffs was currently working in the sex industry.

38 It was argued that the impugned provisions violate rights guaranteed by *Charter of Rights and Freedoms*, including the right to life, liberty and security of the person (s.7); freedom of thought, belief, opinion and expression (s.2(b)); freedom of association (s.2(d)); and equality (s.15(1)).

39 As a registered society, SWUAV was 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). And, as a former worker, Kiselbach was no longer threatened by the laws. In his ruling, Justice Ehrcke writes: "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).

40 To be granted *public* interest standing, litigants must meet three principles: 1) a genuine interest in the validity of the legislation; 2) a serious constitutional issue involved; 3) no other reasonable and effective way to bring the issue before the courts (*Canadian Council of Churches v. Canada*; see also *SWUAV*, Reasons for Judgment, para. 23). Kiselbach and SWUAV were deemed to have met the first two principles, but not the third. 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).

Legal Mobilisation in Toronto

The judge was referring to a case recently started in Toronto, whereby three individual plaintiffs—Terri-Jean Bedford, Valerie Scott, and Amy Lebovitch—filed an application with the Ontario Superior Court to strike down the same set of prostitution-related provisions from the *Criminal Code of Canada*.⁴¹ Terri-Jean Bedford is a retired dominatrix, an identity she brought to the fore of mainstream media by showing up to court appearances and press conferences in her signature black leather coat and carrying a riding crop. She had discussed constitutional litigation with the group's legal representative, Alan Young, since the late-90s when he represented her in a case where she was ultimately convicted for running a bawdy house.⁴² Valerie Scott, also a former sex worker, has been a movement activist since the early 1980s, including her current position as Legal Coordinator for the Toronto-based organisation, *Sex Professionals of Canada* (SPOC). Amy Lebovitch, Executive Director of SPOC, was the only plaintiff working in the sex industry at the time of the litigation, and that status ensured the group's standing in court.

At trial, the plaintiffs argued that the laws are contradictory, and “operate to deny sex workers safe legal options for the conducting of legal business.”⁴³ In other words, though prostitution is legal, legislation prohibits sex workers from taking any safety measures, such as working from home or with colleagues, hiring security, or even negotiating services in advance. Representing the state, Crown attorneys attempted to defend the impugned legislation by adopting the prohibitionist discourse that prostitution is inherently harmful, degrading, and exploitive. They argued that ‘prostitutes’ could avoid the dangers of the trade by ceasing to engage in it. Dozens of experts testified on both sides, generating more than twenty-five thousand pages of evidence.

After a year of deliberation, on 28 September 2010, the Ontario Court Justice ruled in favour of the plaintiffs, striking down all of the impugned provisions. It was a momentous day. In cities across the country, sex workers and allies gathered to hear the ruling, prepared with multiple versions of press releases, depending on the outcome. Their surprise and

41 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 deny rights guaranteed by the *Charter of Rights and Freedoms*, including: to life, liberty and security of the person (s.7), and freedom of thought, belief, opinion and expression (s.2(b)).

42 See: Alan Young: The State is still in the Bedrooms of the Nation: The Control and Regulation of Sexuality in Canadian Criminal Law: *The Canadian Journal of Human Sexuality* 17:4, pp. 203–220.

43 *Sex Professionals of Canada*: Print media from 2008, at: <http://www.spoc.ca/pm2008.html> (accessed on 14 February 2018).

elation was expressed as activists joked about having to scramble to revise statements, given none accounted for a complete victory. It was an historic moment for the sex worker movement, and sparked a sense of hope and possibility.

Onward to the Supreme Court of Canada

It was widely expected that either the federal government or plaintiffs would appeal any provincial court decision, and that the case would proceed to the Supreme Court of Canada for a final determination on the laws that would affect all provinces and territories. From the outset, movement activists hoped that the cases in BC and Ontario would advance alongside one another, each reflecting different realities of sex work—the experiences of extremely marginalised street-based sex workers in Vancouver, and those of indoor sex workers in Toronto.

The Vancouver case did end up at the Supreme Court, not to speak to the prostitution laws, but instead, to defend their right to do so. The initial ruling that denied SWUAV and Kiselbach standing was overturned in the BC Court of Appeal. The federal government, determined to block this group from making their claim, appealed. Five years later, the Supreme Court of Canada made the unanimous and precedent setting decision that the plaintiffs did have public interest standing. The Supreme Court instructed that the courts should recognise the “practical realities” of litigants, and take a “flexible and generous” approach to public interest standing. The Justices accepted SWUAV’s argument that it was highly unlikely that any individual charged under these provisions would have the capacity to mount constitutional litigation.⁴⁴ This was another huge gain for marginalised groups who now have greater access to the courts, but clearly an enormous additional undertaking for an already disenfranchised group. As a result of this delay, instead of foregrounding their own litigation, Kiselbach and SWUAV acted as intervenors in support of the Ontario challenge.

Canada’s highest court was buzzing with energy and emotion on 13 June 2013. Sex worker activists and allies from across the country arrived in Ottawa to attend the trial, and demonstrators on both sides rallied at the doorsteps of the courthouse. The case amalgamated the rights-based approaches of several sex work, feminist, and Indigenous groups, HIV organisations, and civil liberties associations. Lawyers and intervenors for the plaintiffs presented moving statements testifying to the harms of prostitution prohibition, highlighting the hypocrisy of the laws, which allow prostitution but prohibit sex workers from taking any measures to ensure their health and safety. On behalf of the

⁴⁴ *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, Supreme Court Judgments, 2012, at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10006/index.do?site_preference=normal (accessed on 14 February 2018).

Crown, federal and provincial lawyers, aided by a coalition of religious, prohibitionist feminist, and Indigenous rights organisations, argued that prostitution is inherently exploitive and harmful, and should be eradicated. Six months later, the Supreme Court of Canada delivered a unanimous landmark decision, finding all of the impugned laws unconstitutional.⁴⁵ It was an incredible achievement for a movement forty years in the making, and marked a huge step forward for sex workers' rights and human rights in Canada. This victory, however, was short-lived.

During the litigation process, the political climate had shifted. The Supreme Court Justices delayed striking down the laws for one year to allow Parliament time to introduce *Charter* compliant legislation. By the time of the ruling, a majority Conservative government was in power, and within months reinforced a criminalised regime, based on a Nordic model. The new *Protection of Communities and Exploited Persons Act* (Bill C-36) criminalises purchasing sexual services, procuring or deriving material benefit from prostitution, and advertising sexual services. It also prohibits communicating to sell sexual services near schools, playgrounds, or daycare centres.

Bill C-36 casts all sex workers as victims of exploitation, though sex workers hardly comprise the communities it is intended to protect. The legal brief from the Department of Justice asserts that the law is intended to balance societal concerns. It reads, "The main objective of the offence, as enacted, remains the same—to protect children from exposure to prostitution, which is viewed as a harm in and of itself." The brief goes on to assert that the law aims to "protect residents of communities in which prostitution takes place from harassment by both those who purchase and those who sell sexual services."⁴⁶ Paradoxically, these conservative values aligned with the goals of some feminist and Indigenous rights organisations.

Divergent perspectives on sex work amongst feminist and Indigenous activists were evident throughout the trials. On behalf of the Crown, several advocacy groups endorsed the criminalisation of the purchase, but not the sale, of sexual services. From this perspective, prostitution is inherently exploitative, and should be eradicated by penalising and deterring clients and pimps. The divisive feminist debate on prostitution is longstanding, centred on a question of agency. Interpretations of this debate shape perceptions of the state and its role in ensuring, versus inhibiting, women's autonomy. The overrepresentation of Indigenous women in street-based sex work, the most marginalised sector of the sex industry, has been an issue that Indigenous rights groups grapple with as well. Indigenous scholar Sarah Hunt writes that given the historical context of systemic sexualised violence against Indigenous women, many Indigenous organisations view sex

45 The ruling in *Canada v. Bedford* was released on 20 December 2013.

46 Department of Justice Canada: Technical Paper: Bill-C36, Protection of Communities and Exploited Persons Act, at: <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html> (accessed on 14 February 2018).

workers as victims of colonial violence and take a prohibitionist stance on sex work. She warns that in doing so “we risk reproducing the discourses of colonialism that constitute Indigenous women as without agency.”⁴⁷ Hunt proposes an intersectional approach to Indigenous sex work, which aligns with a rights-based framework, and one that was endorsed by other Indigenous and feminist groups that intervened on behalf of sex workers in the Ontario challenge.

From the perspective of sex worker activists, bill C-36 does not resolve any of the problems created by the pre-existing laws, which were found unconstitutional. Indeed, Amy Lebovitch writes, “*The Protection of Communities and Exploited Persons Act* was far worse than my colleagues and I could have ever imagined.”⁴⁸ It imposes ongoing danger, police surveillance, and fewer safe options, all of which will have the greatest impact on marginalised sex workers, and run contrary to the requirements of the Supreme Court ruling to address these dangerous and ineffective laws. Much like the laws passed in the early 1900s, this legislation will continue to penalise and harm women, under the paternalistic guise of protecting them. And, as those who came before them, sex workers will resist.

Sex Worker Rights from a Social Movement Perspective

Contrary to the literature on sex worker movements in other countries (mostly published in the 1990s), the contemporary movement in Canada has been successful in building a constituency, developing influential alliances, securing resources, and creating law reform. From a resource mobilisation perspective, in order to build, sustain and develop, movements require leadership, administrative structure, and means of acquiring resources and support.⁴⁹ This was essential to the long-term sustainability of the sex worker rights movement in Canada, and largely achieved by aligning movement goals with harm reduction strategies. Public health funding helped establish, formalise, and sustain sex worker-led organisations, which have in turn developed alliances with other advocacy and service groups.

47 Sarah Hunt: Decolonizing Sex Work: Developing an Intersectional Indigenous Approach, in: Emily van der Meulen/Elya Durisin/Victoria Love (eds.): *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver 2013, pp. 82–100, p. 88.

48 Amy Lebovitch/Shawna Ferris: Out of the Frying Pan, Into the Fire: Sex Work/ers in the Courts and in Research, at: <http://whoreandfeminist.ca/tag/lessons-learned/> (accessed on 14 February 2018).

49 Doug McAdam/John McCarthy/Mayer Zald (eds.): *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*. John McCarthy/Mayer Zald: *Resources Mobilization and Social Movements: A Partial Theory*, pp. 1212–1241.

Allying with the HIV movement in particular has helped secure funding, legitimise a rights-based framework, and provide outreach and advocacy beyond the scope of small sex worker organisations spotted around the country.⁵⁰ An activist from *Stella* described the tenuous relationship with feminist organisations (among the greatest allies and adversaries to the sex worker movement), and by comparison, the importance of HIV movements:

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 [...]. That is the base of the money [*Stella* receives] and that helps us 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.⁵¹

Though activists expressed concern that such close associations can perpetuate misconceptions that sex workers pose a threat to public health, they also recognised HIV movements as playing a crucial role in amplifying and legitimising the voices of sex workers in grassroots and legal contexts.

The political process model posits that movements respond to real or perceived changes in the political system, emerging as a result of expanded political opportunities.⁵² The sex worker movement, and legal mobilisation in particular, was the result of a complete lack of opportunity. Indeed, this movement has been remarkably resilient despite an overwhelmingly inhospitable political climate. Over the past 35 years, three different government review committees have examined the status of sex work in Canada, and each has recommended legislative change to reduce violence.⁵³ Yet, no legislative changes were

50 One such organisation, the *Canadian HIV/AIDS Legal Network*, works with sex workers in conducting research and analysis, and engages in legal advocacy, public education, and community mobilisation. See: Canadian HIV/AIDS Legal Network: Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution, Toronto 2005, at: <http://www.aidslaw.ca/site/wp-content/uploads/2013/04/SWbooklet+-+ENG.pdf> (accessed on 14 February 2018). Canadian HIV/AIDS Legal Network, *Stella*, and Maggie's: Not Up to the Challenge of Change: An Analysis of the report of the Subcommittee on Solicitation Laws, Toronto 2008, at: <http://www.aidslaw.ca/site/not-up-to-the-challenge-of-change-an-analysis-of-the-report-of-the-subcommittee-on-solicitation-laws/?lang=en>.

51 Interview conducted at *Stella* in Montreal in the Summer of 2009.

52 Doug McAdam: *Political Process and the Development of Black Insurgency, 1930–1970*. Sydney Tarrow: *Power in Movement: Social Movements and Contentious Politics*. Charles Tilly: *From Mobilization to Revolution*.

53 Special Committee on Pornography and Prostitution: *Pornography and Prostitution in Canada* [Fraser Committee], Ottawa 1985. Federal/Provincial/Territorial Working Group on Prostitution: *Report and Recommendations in Respect of Legislation, Policy, and Practices*

made. The lack of political motivation to alter these conditions was especially poignant given that the most recent governmental review was in response to an epidemic of violence against sex workers. With no other options available, legal mobilisation became a necessary strategy.

One of the central features of the political process theory, arguably even more important than political opportunities and established organisations, is ‘cognitive liberation’—a collective feeling of injustice combined with a sense of efficacy to alter the circumstances.⁵⁴ This has been achieved from years of grassroots organising and alliance building. Crucial to the court rulings was a body of empirical research demonstrating the harms of criminalised frameworks. This evidence was amassed from decades of collaborative work between sex workers, academics, researchers, and HIV organisations.⁵⁵ Armed with empirical research attesting to the harms of criminalisation, and few alternatives for redress, legal mobilisation became a necessary tactic, and through strategic engagement with legal organisations willing to work *pro bono*, it became a viable one.

A critique within the social movement literature is the tendency to direct efforts toward legal mobilisation, i. e. the courts and rights-seeking claims. Social movement and socio-legal scholars argue that this can depoliticise movements by diverting energy and resources to lawyers and conservative legal processes rather than grassroots mobilisation and other forms of political organising.⁵⁶ For Indigenous peoples specifically, scholars warn that the law remains a colonial tool, and one that was never designed to recognise Indigenous rights.⁵⁷ The outcomes of these cases demonstrate both the benefits and drawbacks of legal mobilisation.

Concerning Prostitution-related Activities, Ottawa 1998. Report of the Standing Committee on Justice and Human Rights: Report of the Subcommittee on Solicitation Laws, Ottawa 2006.

- 54 Doug McAdam: Political Process and the Development of Black Insurgency, 1930–1970.
- 55 Sex industry researchers who gave expert testimony pointing to the harms of criminalisation included: Cecilia Benoit, Augustine Brannigan, Deborah Brock, John Lowman, Gayle MacDonald, Eleanor Maticka-Tyndale, and Frances Shaver.
- 56 Susan Boyd/Claire Young: From Same-Sex to No Sex? Trends Towards Recognition of (Same-Sex) Relationships in Canada, in: Seattle Journal for Social Justice 1:3 (2003), pp. 757–793; Janet Conway: Identity, Place, Knowledge: Social Movements Contesting Globalization, Black Point 2004; Michael McCann: Law and Social Movements, in: Austin Sarat (ed.): The Blackwell Companion to Law and Society, Malden 2004, pp. 506–522; Stuart Scheingold: The Politics of Rights: Lawyers, Public Policy, and Political Change, 2nd ed., Ann Arbor 2004; Miriam Smith: Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971–1995, Toronto 1999.
- 57 Sarah Hunt: Decolonizing Sex Work: Developing an Intersectional Indigenous Approach, p. 88. Patricia Monture-Angus: Journeying Forward: Dreaming First Nations’ Independence, Halifax 1999.

For sex worker activists in Canada, legal mobilisation actually inspired collective action and reaffirmed the movement's progress. The court challenges created a focus and energy around activism. Both cases garnered media attention and public interest, and activists seized opportunities to legitimise a sex worker rights perspective in media and other public forums. Despite unexpected setbacks, activists were far from naïve as to the limits of the law. They consistently emphasised that decriminalisation was necessary but insufficient to produce social equality for sex workers. An activist from Ottawa 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."⁵⁸ An activist from Toronto offered a long-term vision for social change and situated these challenges as an important stage in achieving it. She said:

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.⁵⁹

Clearly, social movements rarely make a stark choice between law and politics, and in this case, rather than debilitating a movement, legal mobilisation incited further organising. These cases present a model in which we might imagine lawyers as movement collaborators, and the courts as sites for collective action.

Institutional Barriers & The Limits of Law

Ongoing institutional barriers facing historically oppressed groups were evidenced when SWUAV was initially denied standing to bring their challenge to the courts. This exclusion was compounded by the erasure of marginalised Indigenous women in the Missing Women Commission of Inquiry, ordered in 2010,⁶⁰ and again, with the National

58 Interview conducted in Ottawa in the Spring of 2009.

59 Interview conducted at *Maggie's* in Toronto in the Summer of 2009.

60 BC's Missing Women Commission of Inquiry was called to evaluate police conduct in investigating the murders and disappearances of women in Vancouver between 1997–2002. While the government provided full legal representation for police and other government agencies, various groups representing Indigenous peoples, women, and sex workers were denied funding and thus could not participate. Other organisations pulled out of the process because of this exclusion.

Inquiry into Missing and Murdered Indigenous Women and Girls (many of whom were also sex workers).⁶¹ This reflects the ongoing legacy of colonialism in Canada, as well as the failure of the judiciary to recognise sex workers as experts on the sex industry.

Sex worker participation was again restricted at the Supreme Court level when two important coalitions were denied intervenor status. This omission was notable given the large number of affiliated groups who were permitted to speak to the prostitution laws. This included twenty four governmental, religious, feminist, Indigenous, HIV/AIDS, and civil liberties organisations.⁶² Experiential perspectives were limited; for PACE and SWUAV were granted intervenor status in a joint submission with *Pivot Legal Society*, but two other sex worker coalitions were refused. Longstanding movement organisations, represented through the *POWER-Maggiè's-Stella Coalition*, would have provided valuable insight into a broad range of industry sectors from multiple geographic regions. Additionally, the *International Sex Worker Coalition*, comprised of three national sex worker organisations from Australia, New Zealand, and Sweden,⁶³ would have offered important insight regarding the effects of criminalised and decriminalised legislative frameworks. Though the courts ultimately sided in their favour, the opportunity for sex workers to participate directly, and to have their voices in public record, was lost.

61 After years of grassroots pressure, the Canadian government officially launched an inquiry into more than 1,200 documented cases of murdered and missing Indigenous women. Between December 2015 and February 2016, the government conducted a pre-inquiry, meeting with survivors, family members, leaders of Indigenous organisations and front-line workers from across Canada. The official inquiry began in September 2016, with a final report expected by the end of 2018. As of 2017, families of the victims are so dismayed by its progress that they have called for a boycott or reset of the process.

62 These intervenors included the Attorney General of Quebec; Evangelical Fellowship of Canada; Canadian Association of Sexual Assault Centres; Native Women's Association of Canada; Canadian Association of Elizabeth Fry Societies; Action ontarienne contre la violence faite aux femmes; Concertation des luttes contre l'exploitation sexuelle; Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexual; Vancouver Rape Relief Society; Christian Legal Fellowship; Catholic Civil Rights League; REAL Women of Canada; AWCEP Asian Women for Equality Society, operating as Asian Women Coalition Ending Prostitution; Pivot Legal Society; Downtown Eastside Sex Workers United Against Violence Society; PACE Society; Secretariat of the Joint United Nations Programme on HIV/AIDS; British Columbia Civil Liberties Association; Canadian HIV/AIDS Legal Network; British Columbia Centre for Excellence in HIV/AIDS; HIV & AIDS Legal Clinics Ontario; David Asper Centre for Constitutional Rights; Simone de Beauvoir Institute; Aboriginal Legal Services of Toronto.

63 The national sex worker organisations were Scarlet Alliance (Australia), Rose Alliance (Sweden), and the New Zealand Prostitutes' Collective.

Representation & The Challenges of Leadership

Constitutional challenges catapult litigants into the spotlight, impacting individuals involved as well as the movement's public image. In analysing the Dutch sex worker movement, Sari van der Poel argues that it was essential that the "professional prostitutes" monopolise image-formation, and that the process of law reform failed when "problematic categories" of sex workers (i.e. drug addicted, undocumented), were incorporated into policy consideration. Van der Poel concludes, "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."⁶⁴ By contrast, a central component of the Canadian movement's framework is the recognition that while only a minority of sex workers are street-based, they are the most visible, disenfranchised, and likely to be targeted by the law. An activist from *Maggie's* explained, "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 marginalised."⁶⁵ An activist in Montreal wanted this particular experience foregrounded in public record, to ensure "any changes that are made are happening with the involvement of those most affected."⁶⁶ In every city, activists emphasised the value and significance of SWUAV speaking to these issues.

An inclusive rights-based approach to decriminalisation that would benefit all sex workers was reiterated throughout the legislative process. Both cases involved close consultation with activists across the country. Indeed, the initial approach of the legal team in Ontario was to challenge only the bawdy house provision on the basis that it unnecessarily infringes on individual liberty. In an interview with Valerie Scott, she commented that when the legal team presented this idea, "... a bunch of sex workers from Montreal and Toronto, and us too [the individual plaintiffs], we thought, you can't leave the street girls out in the cold!"⁶⁷ The concern was that legislative outcomes would, at best, benefit commercial sex in private settings but continue to penalise and disrupt the street-based industry. This also reflects differing approaches of 'activist lawyers'.

The Ontario case presents a top-down approach to legal reform that was strategic and effective. By contrast, the BC case was community driven. Working with a large group of women affected by the laws, and in collaboration with an active national movement, the legal team crafted a case foregrounding the gendered, racialised, and classed dimensions

64 Sari van der Poel: *Solidarity as Boomerang: The Fiasco of the Prostitutes' Rights Movement in the Netherlands*, in: *Crime, Law & Social Change* 23:1 (1995), pp. 41–65, p. 63.

65 Interview conducted at *Maggie's* in Toronto in the Summer of 2009.

66 Interview conducted at my home in Montreal in the Spring of 2009.

67 Interview conducted by phone (Toronto/Montreal) in the Winter of 2009.

of sex work. *Pivot* lawyers organised on both grassroots and legal levels, modeling a collaborative approach to movement engagement with the court, though one that was less amenable to them.

Managing Stigma through Collective Action

Social stigma remains a significant impediment to movement participation generally, and legal mobilisation specifically. Activists who were currently working in the sex industry carefully navigated their public profiles, usually maintaining some level of anonymity despite strong movement involvement. One such activist explained the appearance of a small constituency base:

Most sex workers will not be like, ‘Yeah! 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.⁶⁸

This constituency has stronger online visibility, as sex workers increasingly take to the Internet to fight for rights, alter misconceptions, build community, and collaborate internationally.⁶⁹ This anonymity, however, (alongside the overuse of stock photos in news media) can perpetuate the notion that sex work takes place in the shadows of society. Lacking visible and diverse representation, sex workers (and their clients) are often disconnected from the public imagination, and rendered invisible as members of communities.

Stigma presents particular challenges for leadership. An ally from Vancouver commented, in order to be a leader in this movement, “[y]ou have to be a very exceptional person.”⁷⁰ Movement organisations are clear in their pro-sex work stance, and strive to be directed and run by and for sex workers. Leadership, and even affiliation, with these groups often requires activists willing to be public about their work. Leadership,

68 Interview conducted at my home in Montreal in the Spring of 2009.

69 Sex workers’ online organising is an emergent area of research. See: Valerie Feldman: Sex Work Politics and the Internet: Carving Out Political Space in the Blogosphere, in: Carisa Showden/Samantha Majic (eds.): *Negotiating Sex Work: Unintended Consequences of Policy and Activism*, Minnesota 2014, pp. 243–266. See also: Shawna Ferris: *Street Sex Work and Canadian Cities: Resisting a Dangerous Order*, Edmonton 2015, and: Teela Sanders et al.: *Internet Sex Work: Beyond the Gaze*, Basingstoke 2017.

70 Interview conducted at the participant’s home in Vancouver in the Summer of 2009.

then, requires people who are not only capable of managing pressures and expectations from constituents, but who are also willing to face intense public scrutiny alongside the personal and professional ramifications of being (or having been) a sex worker.

These risks are exacerbated in legal mobilisation, and highlight the need to conceptualise movement collectives as the voices of disenfranchised people in order to offset some of these ramifications. In interviews, Bedford, Scott, and Kiselbach each described enduring stigma as *former* sex workers, and expressed particular concern that litigation would expose loved ones to stigma by association. Amy Lebovitch, the only named plaintiff who was currently working in sex work, writes, “If I had of known what the seven plus years of court battles would do to my life, I would have run screaming in the other direction ...”⁷¹ She goes on to describe the long term impacts of legal mobilisation for sex workers:

There were so many issues unaccounted for. For example, my last name is so distinct and, of course, came to be plastered all over the Internet—this was one of the causes of my family disowning me. Every rental application I filled out became a source of stress and anxiety. And then there was the loneliness and isolation I would experience as the case unfolded ...⁷²

This points to the need for comprehensive and movement-directed litigation, exemplified in the Vancouver challenge.

SWUAV members expressed similar concerns over the repercussions of defending their rights in court. In the application for public interest standing, anonymous statements explain why there were no sex workers in the Downtown Eastside willing to bring a constitutional challenge forward in their own name: they feared the loss of privacy and increased violence by clients; they feared the loss of housing and social assistance; they feared the removal of their children by child protection authorities; they didn’t want friends and family members to know about their work or drug use; they didn’t want to limit future education or employment opportunities.⁷³ Legal representative Katrina Pacey highlights the gravity of these conditions, adding:

71 Amy Lebovitch/Shawna Ferris: Out of the Frying Pan, Into the Fire: Sex Work/ers in the Courts and in Research, at: <http://whoreandfeminist.ca/tag/lessons-learned/> (accessed on 14 February 2018).

72 Ibid.

73 *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, Supreme Court Judgments, 2012, at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10006/index.do?site_preference=normal (accessed on 14 February 2018).

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.⁷⁴

The support of a collective and the assurance of anonymity were necessary for a constitutional challenge, and *Pivot* lawyers devised a legal strategy to move forward. It was a strategy that did not conform to judicial conceptions of plaintiffs, but ultimately increased access to justice for collectives to bring cases before the courts.

Post bill C-36, the sex worker movement enters a new and challenging cycle. At the time of writing, the current Liberal government has yet to follow through on commitments to address the new legislation. Canadian social movement activists and organisations continue their work providing services, strengthening alliances, securing funding, and intervening in policy discussions. Most recently, these groups have combined efforts through the *Canadian Alliance for Sex Work Law Reform*. The *Alliance*, made up of 21 sex worker-led organisations and three allied groups, incorporates the perspectives of sex workers from various regions and industry sectors, as well as knowledge and expertise on specific issues sex workers face according to gender, sexuality, age, ethnicity, and immigration status. In March 2017, they released a report outlining recommendations for comprehensive law reform based on the results of a national consultation with member organisations, select lawyers, and government consultants.⁷⁵ Drawing on this collective understanding, the *Alliance* ensures sex worker input in writing submissions to institutional bodies, such as UN Committees and the Missing and Murdered Indigenous Women Inquiry. These efforts demonstrate an ongoing commitment to collaboration and solidarity, increasingly nuanced and sophisticated legal frameworks and strategies, and a model of movement-driven interjections in policy discussion.

Conclusion

From entirely grassroots beginnings in the 1970s, sex workers have developed and articulated a sex workers’ rights perspective, and established a national movement. Sex workers and their allies have garnered resources and formalised organisations, enabling outreach services and community building. Activists have also focused on socio-legal

74 Interview conducted at *Pivot Legal* office in Vancouver in the Summer of 2009.

75 Safety, dignity, Equality: Recommendations for Sex Work Law Reform in Canada, Alliance for Sex Work Law Reform, at: <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf> (accessed on 14 February 2018).

transformation, selectively collaborating with allies who uphold the perspectives of sex workers. In turn, allied groups have amplified those voices in social, political, and legal contexts. Notably, the most marginalised sex workers have not been left behind in the drive for rights. Indeed, despite judicial barriers, those most affected by the laws were at the forefront of legal mobilisation in BC. As Ontario plaintiffs moved forward with their case, they refused to neglect the most disenfranchised, ensuring that diverse prostitution-related provisions were challenged. The political climate has not been favourable, but the expertise that sex workers have been offering over the past 40 years—as activists, educators, service-providers, community organisers, researchers, and collaborators—has been legitimised. The next chapter of the sex worker rights movement will continue the work of altering social perceptions and criminalisation until all sex workers can live and work free of stigma and violence.

Sarah Beer is a sociology professor at Dawson College in Montréal, Québec, and an ally to the sex worker rights movement. Sarah has a PhD in sociology from the University of Windsor and a MA in Criminology from the University of Ottawa.