

Double Punishment: Immigration Penalty in the Daily Lives of Migrant Trans Women

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ABSTRACT

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Over the past 20 years, researchers and activists alike have highlighted the role of state violence, administrative erasure and criminalization in driving the precarity and social exclusion of many trans women. The experiences of migrant trans women who sell sex, however, have been largely obfuscated or ignored. This thesis aims to understand migrant trans women's everyday lives in relation to criminal and immigration law enforcement. The research draws on seven qualitative interviews, extensive archival research and critical feminist methodologies to centre the everyday experiences of migrant trans women to illuminate ideological and social processes that construct and coordinate immigration penalty.

For Renata and Aiyana

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Immigration Penalty in the Daily Lives of Migrant Trans Women
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List of acronyms

ASTT(e)Q	Action Santé Travesties et Transsexuel(le)s du Québec
ATIP	Access to Information and Privacy
CBSA	Canadian Border Services Agency
CC	Criminal Code of Canada
CIC	Citizenship and Immigration Canada
CPIC	Canadian Police Information Centre
HIV	Human immunodeficiency virus
IE	Institutional Ethnography
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
MAS	Moralité, alcool et stupéfiants (section of the SPVM)
MSP	Ministère de la Sécurité publique
PDQ	Poste de quartier (local SPVM station)
SPVM	Service de Police de la Ville de Montréal

Introduction

My Master's thesis aims to address the following questions: How do the politics and practices of immigration penalty shape and regulate the daily lives of migrant trans women? What do these everyday experiences of migrant trans women tell us about the ideological and social processes that construct and coordinate immigration penalty?

In order to address these questions, I draw on critical gender and sexuality studies, socio-legal studies, and Institutional Ethnography to interrogate the complex, and at times contradictory, interactions between Canadian immigration law and criminal law in the daily lives of migrant trans women. The experiences of migrant trans women will provide a critical lens through which to better understand the everyday state practices of criminalization and border control.

A central objective of my research is to valorize the collective knowledge of migrant trans women as constituting an important source of knowledge about the organization and regulation of migration and criminality in Canadian law. By centering migrant trans women in this research, I am able to unearth a body of institutional records that is otherwise untraceable and inaccessible. Access to these records has allowed research participants to be situated in dialogue with the 'official' forms of institutional knowledge that organize their daily lives. In doing so, my master's research elevates subjugated ways of knowing about the organization and regulation of migrant trans women's daily lives through criminal law and immigration security measures, and simultaneously illuminates survival strategies employed by trans women living under these conditions.

My master's research is rooted in a decade of community organizing and support work within communities experiencing high levels of socio-economic precarity, state surveillance and

criminalization. As an outreach worker and harm reduction service provider at ASTT(e)Q (Action Santé Travesties et Transsexuel.le.s du Québec) from 2008-2013, I was gradually welcomed into a loosely knit social network of trans women who had migrated to Canada (primarily as refugees migrating from Latin America), and who were engaged in underground and criminalized labour economies (sex work, drug trade). In the course of this work, I was witness to a range of complex legal circumstances facing migrant trans women who do sex work and who use drugs - circumstances which often set them apart from other trans women, in terms of priorities, needs and means of survival.

Many of the women I worked with were regularly targets of police surveillance, arrest and prosecution – primarily for prostitution related offenses, but also for charges related to drug possession, assault (commonly described as acts of self-defence against violence, frequently at the hands of authority figures), and theft. Likewise, many women had been incarcerated in provincial men’s jails, often on multiple occasions, and otherwise lived in precarious conditions – including unstable housing, limited access to healthcare, and inconsistent sources of income. What set these women’s experiences apart both from other trans women sex workers, as well as from other non-sex working trans migrants, was the ongoing, often prolonged and punitive role that both criminal *and* immigration authorities played in governing their lives. Much like other migrant trans women (and men) in Montreal, most of these women relied on the refugee claims process as a pathway towards obtaining permanent immigration status in Canada. Yet at multiple points following arrival in Canada - before, during and after their refugee claims process - they had been subject to added layers of scrutiny, surveillance and punishment from immigration authorities on the basis of their so-called criminality.

In countless stories that were shared with me, it was quickly apparent that the veil of protection offered by asylum had quickly worn thin for many trans women refugees. Yet as I watched these stories unfold, it was evident that, aside from an inaccessible institutional record, there was no public record of these women's experiences, of their everyday social relations, nor of their daily encounters with criminal law enforcement and migration control. My project grew out of this simple recognition, both as an attempt to document the personal accounts of a handful of these women, and in hopes of making sense of and exposing the interactions between the everyday applications of criminal and immigration law in their lives, and of the overarching ideologies and practices of punishing migrants in Canada.

Overview of Thesis

The first chapter is a brief literature review. Firstly, I situate my work in relation to gender and sexuality studies. In particular, I address the epistemological limits and gaps in current research on trans women who migrate. I then turn to socio-legal studies of migration. This body of work provides a useful analytic framework for understanding the role of criminal law and the production of criminality as a means of governing migration. Lastly, I address Institutional Ethnography (IE), an empirically grounded feminist methodology useful for analyzing everyday social and institutional relations. I suggest that IE provides a useful framework for understanding immigration penalty from the perspective of migrant trans women's daily lives.

The second chapter offers an overview of my research methods. I briefly discuss the pre-interview process, including recruitment, and access to legal and administrative texts concerning the interviewees. I then present my method of conducting the 7 semi-structured qualitative

interviews that are at the heart of the research. I describe the process of thematic analysis, and conclude with a brief discussion of ethical considerations and research limitations.

Chapter three introduces daily life as the central lens through which this research analyses institutional power relations and knowledge production. In particular, this chapter attends to several themes, including migration, making money, intimate relationships, and communal space as central to understanding the everyday lives of migrant trans women. Together, they provide a context within which to better understand the role of criminal and immigration law in shaping migrant trans women's lives.

Chapter four looks at encounters with the criminal justice system. This chapter is organized according to different components of the criminal justice system that were most prominently featured in interviewees' accounts. These include: the police, criminal convictions and conditions, courts, lawyers and jail. Together, interviewees' accounts of these components provides key insights of the role criminal law enforcement plays in giving shape to immigration penalty.

The fifth chapter addresses immigration penalty as it manifests in the daily lives of interviewees. It begins with a brief overview of immigration penalty as it has been discussed and framed in Canadian scholarship. It then turns to the various mechanisms of immigration penalty that emerged in the interviewees. Lastly, this chapter discusses the daily implications of immigration penalty for interviewees. Here, I suggest that rather than simply address detention and deportation, it is important to attend to the subtler ways in which immigration penalty governs the daily lives of migrant trans women.

The conclusion offers a brief reflection on the contributions, and limitations, of this research. It also points to ways this work can help advance future research and action regarding immigration penalty and the lives of migrant trans women in Canada.

1

Literature Review

My understanding of the role of immigration penalty in governing the daily lives of migrant trans women in Canada has been primarily informed through my experiences as an outreach worker and an activist over the past decade. As such, the process of defining a theoretical basis for my research has at times stood in stark contrast to the grounded knowledge that I have acquired through countless relationships and experiences that have occurred (mostly) outside an academic context. Nonetheless, the past two years have afforded me time and support to engage in new complimentary ways of thinking about immigration and criminal law, and the ideological and social practices which coordinate the daily lives of migrant trans women. Three primary theoretical approaches have been of particular importance for this work: critical gender and sexuality studies, socio-legal studies, and Institutional Ethnography (IE). In the following section, I will provide a brief overview of the salient contributions that these fields offer to my own research and thinking. In doing so, I hope to situate my research within a broader interdisciplinary context, and to highlight the role of my research may play in addressing certain key gaps within and across these disciplines.

1.1 Gender and sexuality studies

Gender and sexuality studies offer a critical theoretical basis for analyzing social relations of power as they relate to knowledge production. In particular, gender and sexuality studies provide methodological tools for critically interrogating dominant, institutional modes of knowledge production on the lives of marginalized women – in my case, migrant trans women who do sex work- and for bringing forth subjugated forms of knowledge (Namaste, 2011; Agustín, 2007). Many critical gender and sexuality scholars, commonly grouped within the

multidisciplinary field of trans studies, have linked disproportionately high rates of marginalization and social exclusion amongst trans women to structural violence and administrative erasure (Namaste, 2000; Namaste, 2011; Spade, 2011). Many of these scholars have called into question the epistemological construction of cissexism, or transness, as fundamentally definitive of violence against trans women (Koyama, 2006; Irving, 2007). Instead, they suggest we look towards the dehumanizing nature of administrative and legal institutions that criminalize sex work and drug use, and disproportionately penalize poor and racialized trans women, as central forces in driving the staggering rates of violence against certain trans women (Namaste, 2011; Irving, 2007; Spade, 2011).

Despite these important advances offered by trans studies, critical gender and sexuality scholarship focused on migration and trans women remains limited. Historically, knowledge production on migrant trans women, particularly those who do sex work, has largely been relegated to epidemiological studies on HIV, wherein the impacts of state institutions are commonly addressed as merely circumstantial to health outcomes, and the lives of trans women are reduced to statistical evidence of bodies of risk (Rapues, 2013; Gutierrez et al, 2004; Spizzichino, 2001). Although migration has been thematically explored within trans studies, it has largely served as a theoretical tool for analyzing trans lives or remained at the level of discourse analysis (Cotton, 2011; Aizura, 2012). With few exceptions, trans studies has yet to substantially account for the material realities of trans women who migrate (Duchesne, 2012; Lee, 2015). Duchesne specifically has offered an analysis of how trans studies, as a field, frames its object of knowledge. In this framing, questions of gender identity are central, while questions of migration, housing or welfare, for example, are absent or relegated to the margins. I will not

provide an exhaustive overview of trans studies, as Duchesne's work offers this (Duchesne, 2016).

That being said, since the 1990s, gender and sexuality scholars have progressively developed theoretical frameworks for analyzing and understanding migration in relation to sexual and gender minorities (Luibhéid, 2008, Chávez, 2013). The consolidation of this work has arguably corresponded with Western states' gradual recognition of sexual and gender minorities as a distinct social category of migrants potentially deserving of refugee protection (Lee & Brotman, 2011). Within this growing field, a small number of researchers have addressed the experiences and the governance of trans migrants, wherein the primary focus has been the role of refugee law in shaping and defining trans migrant narratives (Bach, 2012; Jordan, 2009). Largely lacking in this work is a theoretical and empirical analysis of the role of immigration penalty as it organizes and regulates the daily lives of migrant trans women living in Canada and other Western states.

1.2 Socio-legal studies

In light of these limitations, I propose that socio-legal studies of immigration and criminal law can help attend to these knowledge gaps. Socio-legal studies provides a critical theoretical framework for interrogating the role of legal regimes in organizing and regulating daily life. Governmentality scholars, including Foucault and prominent post-Foucauldian scholars (e.g. Rose, Valverde, O'Malley), offer an analytic foundation for conceptualizing the dispersal of governmental powers within, and beyond, the state. Particularly relevant for my own work, they discuss the organization and regulation of citizenship through discourses of freedom

and securitization, processes of normalization and illegalization, and coercive legal mechanisms (Foucault, 2007; Rose, O'Malley & Valverde, 2006).

As my primary interest lies in understanding the relationship between immigration and criminal law from a socio-legal standpoint, I am particularly interested in the branch of socio-legal studies that is preoccupied with immigration penalty, or the crime-migration nexus (also sometimes referred to as 'crimmigration'). This emergent field of study offers a critical understanding of the increasingly intertwined nature of crime control, border controls and the racialized regulation of citizenship (Valverde, 2010; Pratt, 2006; Pratt, 2012; Chan & Chunn, 2014; Dauvergne, 2013). The so-called crime-migration nexus is exemplified through a proliferation of governmental technologies, both overtly disciplinary measures – 'preventive' detention, deportation and border controls – and subtle mechanisms of security - barriers to citizenship for people with a criminal record or the demarcation of non-citizen status on certain government issued identity documents. These technologies have been dispersed throughout the population: the policing of immigration status via various non-state apparatuses of government (eg. shelters, schools, clinics), the production of specialized knowledge concerning immigration criminality (eg. immigration and refugee board commissioners, immigration judges) and the empowerment of citizens to enforce internal border surveillance (eg. "If you see something, say something"). While immigration law is a form of administrative law, it has been increasingly concerned with practices of securitization of the national population, and criminalization of non-citizens (Pratt, 2006). Similarly, expanded discretion of criminal law enforcement authorities, including police and judges, has given greater power to the criminal justice system to enforce internal forms of border controls (Pratt, 2012). Although the intertwined applications of criminal and immigration law is a growing field of socio-legal research investigating and theorizing

immigration penalty, with perhaps one exception (Gehi, 2012), the field has yet to consider the actual lived experiences of migrant trans women in conflict with the law.

1.3 Institutional Ethnography

In order to bring the theoretical contributions and limitations of gender and sexuality studies and socio-legal studies into conversation with the material realities of migrant trans women, I turn to Institutional Ethnography (IE). IE is a materialist feminist methodology developed by Dorothy Smith that offers an empirically grounded approach to examining the social and institutional governance of these women's lives (Smith, 2005; DeVault, 1999). Building from the everyday experiences of people, IE offers an alternative to traditional sociological methodologies that are oriented towards the objectification of people and their knowledge within 'official' ways of knowing. As such, IE offers a means of challenging hegemonic discourses on knowledge and power, and of examining institutional texts as "coordinators of people's activities" (Bisaillon & Rankin, 2012). For example, according to IE, texts such as court records, police reports, or immigration case files, can be analyzed as a technology of governance that connects individual activity to broader institutional processes and power dynamics (Cunliffe & Cameron, 2007). Rather than taking such texts as constituting authoritative, objective forms of knowledge, IE understands them to be a product of people's practices. Thus, such texts become a useful means through which to map the "ruling relations" of a given institution, in particular, through tracing their function and application at various levels within and beyond said institution.

As I will elaborate in my research methods, my research applies IE in order to contest institutional ways of knowing that commonly construct migrant trans women in Canada as

potentially ‘criminally inadmissible’ and undeserving of Canadian citizenship. By situating the experiences and knowledge of research participants in dialogue with forms of institutional knowledge, particularly with institutional texts that coordinate their daily lives, I am able to elevate subjugated ways of knowing about the organization and regulation of migrant trans women’s daily lives through criminal law and immigration security measures.

Conclusion

I began this chapter by identifying my primary orientation to this research as an activist and former outreach worker. The remainder of this thesis draws builds from this orientation, and from my observations within the field of research, while placing interviewees accounts at the forefront of the analysis. The three bodies of literature reviewed above further help to situate my work within a broader interdisciplinary scholarly context.

Critical gender and sexuality scholars have raised important questions about the how and what we know about sexual minorities who migrate. Yet, to date, little work has addressed the experiences of migrant trans women living in Canada beyond their encounters with the refugee claims process.

Socio-legal studies of migration offers an important theoretical framework for understanding the governance of migration through criminal law. In particular, Canadian scholars have raised critical questions about the ways immigration and criminal legal regimes comeingle, and create new means for enforcing border control.

Institutional Ethnography commonly centers the everyday actions of institutional agents as generative of new forms of knowledge and social relations. My research draws on this rich methodological tradition to understand immigration and criminal justice systems as they

organize and regulate the daily lives of migrant trans women. Yet rather than centering the work of institutional actors, I draw from IE to centre migrant trans women - whose lives are acted upon and who are typically relegated outside of the domain of knowledge production. The following chapter builds on this methodological framework, outlining the research methods employed to engage with migrant trans women's knowledge of immigration penalty.

2 Research Methods

As previously stated, a primary objective of my research is to centre migrant trans women as an invaluable source of knowledge about the governance of their own lives through immigration and criminal legal regimes. Immigration and criminal justice institutions have been positioned as a primary source of authoritative knowledge production on migrant trans women in Western states, such as Canada, France, and the United States. By beginning from the standpoint of migrant trans women living in Canada, I aim to complicate and contest these dominant forms of knowledge, and to elevate subjugated ways of knowing about the organization and regulation of trans women's daily lives through criminal law and immigration security measures. Institutional texts will further assist me in mapping out the 'ruling relations' of the crime-migration nexus. In the following section, I will briefly highlight the practical steps I have taken towards this overall objective.

2.1 Recruitment

Through my prior work with ASTT(e)Q, I built trusting relationships within an otherwise invisible social network of migrant trans women. Through these relationships, as well as a grounded knowledge of the field of research, I was able to interview 7 trans women living in Montreal to participate in my research. Most participants have protected status (e.g. accepted refugee claim or pre-removal risk assessment) in Canada and have experienced some form of immigration penalty due to having a criminal record, both within and outside of Canada.

I directly contacted all potential research participants with whom I was already connected. One participant was incarcerated in a men's provincial jail at the time of recruitment. I was obliged to receive authorization from the Ministère de la Sécurité publique (MSP) in order to interview her.

Another participant was referred to me through multiple mutual contacts.

All participants received \$75 for their involvement. In my university ethics application, I justified this amount by arguing that the irregular work schedule of independent escorts meant that participation in an interview may translate to missing an unplanned appointment with a client, and therefore an opportunity to earn substantially more money. I went on to suggest that paying such an amount signifies an understanding and appreciation for the precarious labour conditions of migrant trans women involved in the sex trade.

2.2 Legal and Administrative Texts

Participants were invited to take part in a two-stage process for my project. Upon an initial meeting, I presented an overview of my research objectives and I asked participants if they wished to provide authorization to make Privacy Act requests on their behalf to the Immigration and Refugee Board (IRB), Citizenship and Immigration Canada (CIC) and the Canadian Border Service Agency (CBSA). Privacy Act requests can be made by, or on behalf of, an individual wishing to obtain their personal records from a given federal government institution. Privacy Act requests were filed for 5 participants who gave written consent. I also inquired whether or not participants wanted me to access their municipal and provincial criminal court records, and if they had any personal records that they wished to share. As a result, I accessed 13 different files from immigration authorities, as well as court records for 4 participants, totalling over 5,000 pages of information. Copies of all institutional records have been shared with research participants as requested. Several interviewees also shared documents from their personal records.

In addition, a number of key legal and administrative texts (e.g. the *Canadian Criminal Code*, the *Immigration and Refugee Protection Act*, and immigration enforcement guidelines related to criminal inadmissibility) provided further institutional context for my analysis.

2.3 *Interviews*

Semi-structured qualitative interviews were conducted with each participant, in either English or French. Interviews took place in a number of locations. Most took place at the homes of the participants, while one took place in jail, and another in my car with a participant who doesn't have stable housing. Interviews were recorded, and covered a range of themes, including migration trajectories, encounters with criminal law, living circumstances, and the impacts of immigration penalty on everyday life.

2.4 *Thematic analysis*

I relied on thematic analysis in order to organize and make sense of the interviews and legal documents (Liamputtong, 2009). My analysis occurred over four stages. First, I took an inductive approach to indexing my interviews. Key themes emerged from within interviews as I took time to carefully listen to, index and selectively transcribe the interviews (Yow, 2005). Following this initial step, I did a close reading and took notes from each index/transcription to further clarify themes and to begin identifying sub-themes that emerged within and across interviews. At this point, I began to generate my master thematic index. Emergent themes included: migration to Canada; daily life, including making money, social space, and relationships; encounters with the criminal justice system; and immigration penalty and its consequences. The third stage involved reviewing complimentary legal documents obtained from

participants and through ATIP requests. I read the documents with particular attention for texts and passages that related to (sub)themes that I had already identified from the interviews. While this analysis was rather limited, it did occasionally provide useful records of certain issues (e.g. dates, names institutional mechanisms, etc.). Lastly, I organized my master thematic index, with particular attention to the overall thematic logic that emerged within and across (sub)themes.

Although the scope and depth of my research did not allow for a complete and rigorous application of Institutional Ethnography, IE nonetheless loosely informed my research methods. As such, daily life, as articulated by the interviewees, provided a lens through which to construct my analysis of institutional power relations and knowledge production. Although my reliance on institutional documents was limited, and secondary to the central research objectives, I occasionally situated the interviews in dialogue with the institutional texts, in part, as a means of situating my research subjects within a broader social and institutional context.

2.5 *Ethical Considerations*

A number of participants are currently awaiting or actively undergoing legal proceedings, both with regards to immigration and criminal legal institutions. I attempted to make Privacy Act requests only in cases where it was deemed that doing so would not raise undue attention of immigration authorities (e.g. if somebody had a criminal record that had not yet come to the attention of the CBSA, a Privacy Act request may flag their file for review).

In addition, my relationships with all of the research participants include a certain element of what may be called ‘support work.’ Concretely, I have helped some participants file applications with immigration agencies, accompanied several to court dates and immigration hearings, and, I was a legal guarantor in a case wherein the participant has been granted

conditional release from detention. This has implied a necessary degree of self-reflexivity, awareness and transparency about the power dynamics in these relationships.

Lastly, given the relatively small network within which the interviewees live and work, I have limited certain potential identifying factors, such as descriptions of country/region of origin or racial identity. Some nuance is unfortunately lost in doing so, but I felt it was an ethical obligation to eliminate the risk of potential harm that could be caused by sharing those types of identifying details.

2.6 *Limitations*

My research engages with a large amount of data (interview transcripts and thousands of pages of legal documents). As such, I have limited my analysis in order to remain within scope of a Master's thesis. As well, a more thorough engagement with IE would involve speaking with various actors who work within immigration and criminal legal institutions. This could include criminal and immigration lawyers, community workers, police, judges and immigration agents (including IRB commissioners and CBSA agents). This, too, falls outside the scope of my current research.

3 Daily Life

This chapter introduces daily life as a lens through which I introduce the everyday context which defines interviewees' experiences of immigration penalty. I begin by introducing the seven women interviewed, providing a cursory overview of their lives before arriving in Canada, and raising key epistemological questions about how we know what we know about migrant trans women who live and work in Canada. I then present daily life as the point of departure from which I begin to describe and analyze many of the components of everyday life identified by interviewees. The central themes addressed herein are: making money; communal space and support networks; intimate relationships and family; and health and emotional life.

3.1 Migration to Canada

My research is about migrant trans women and their everyday experiences of Canadian criminal and immigration legal regimes. As such, the interviews were largely focused on interviewees' experiences after arriving in Canada. Nonetheless, most participants took time at the beginning of our interviews to address their lives prior to crossing the Canadian border. In this section, I briefly attend to their accounts of coming to Canada, and reflect on how they relate to broader questions about the production and organization of knowledge about migrant trans women.

Two women I spoke with left their homes in the mid-to-late 1970s. One had left home as a teenager, after several years of raising her younger siblings. She was among hundreds of thousands displaced by a violent civil war in her home country. She spent 4 years as a young adult in California, before making her way north to Canada in the mid 1980s, where she was granted asylum alongside upwards of 10,000 others displaced by the war. The other interviewee

left home in the mid 1970s, shortly after she was kicked out of teaching school, having been told by the director that she was too effeminate. She was close to her family, though often a source of embarrassment. She, too, moved to California as a teenager, in hopes of finding greater freedom to be herself. She lived in the USA for three decades, mostly without papers, before eventually moving to Canada.

Two other interviewees left their homes shortly before their birth country broke into civil war. One left home alone, as a young adult. She had spent part of her teenage years abroad for schooling, and eventually chose to leave her family permanently when she was 19. She told me that she was concerned for her family, who had become targets of insult from people who disapproved of her femininity and her refusal to conform. In her refugee claim, she also stated that her hometown had been under heavy bombardment from the ruling regime prior to her departure. She fled to a neighbouring country where she briefly lived without status before making her way to Canada, where she made a refugee claim at the border crossing in Lacolle, Quebec. The other woman left home when she was very young, accompanied by her aunt and uncle to Montreal to be with her father. She had little recollection of her life before living in Canada. Both women were among several thousands of refugee claimants from their home country who had been displaced and migrated to Canada in the 1990s.

The remaining three interviewees each came to Canada in the mid-2000s, leaving their shared country of origin under diverse circumstances. One woman had a fractured relationship with her father, who kicked her out of their home as a teenager. She highlighted employment discrimination as a transsexual as central to her motivations for ultimately leaving home in her early 20s and coming to Canada to make a refugee claim. “J’ai survécu tout mon adolescence dans la rue...quand j’ai commencée à faire ma transformation en fille, pour moi, tous les portes

été fermées pour moi parce que j'ai passée d'un gai à une transsexuelle.” Another interviewee came to Canada in her early 20s as a visitor, intending to work under the table and to send money home to her family. She told me that she only decided to remain in Canada after friends suggested she claim refugee status as a sexual minority, especially as it would give her access to school and health care. Her claim – filed as a gay man - was rejected and she was given a removal order, but she had begun a serious relationship and chose to stay in Canada without papers. The third woman had built a prestigious and successful career running a salon, which allowed her to support herself and her family. Her wealth made her a target for organized crime, and after a near fatal kidnapping, she recounted how she lost everything – both her salon and her sense of security, particularly as the police refused to offer her any protection. She reluctantly came to Canada in her 30s, encouraged by her family to start a new life. Despite much trepidation, and perhaps a hint of foreshadowing – “...I [was scared], I felt like, ah, oh my god, maybe they will put me in the jail for some reason...”- she eventually made a refugee claim.

I share these brief and very cursory accounts both as a means of introducing my interviewees, but also in order to highlight some of the complex factors shaping their movements away from home, and towards Canada. While trans migrants are commonly depicted – in scholarship, activism, and refugee claims – as fleeing from transphobic persecution, the women I spoke with presented a wide range of narratives that do not easily fit into one predetermined refugee or migrant typology. Rather, their experiences of migration often reflect broader patterns of economic, social and political displacement that cause millions of people to migrate internally and internationally.

A central objective of my research is to question how we know what we know about migrant trans women in Canada. I suggest that the institutional production of migrant trans

women's narratives through the refugee claims process plays a central role in shaping common (mis)understandings of migrant trans women's lives. If this is the case, then the ways 'we' know about migrant trans women's lives is framed by a limited, ideologically predetermined processes that reifies specific ways of knowing about migrant trans women, while obscuring everyday life, particularly after arriving in Canada. As such, rather than focusing on the refugee claims process – which undeniably played an important role in the lives of all the women interviewed - my research takes daily life as a point of departure.

3.2 *Daily Life*

For the remainder of this chapter, and subsequent chapters, I turn to *daily life*. *Daily life* refers to the social and economic relations, institutional encounters, and material and immaterial factors shaping the everyday lives and experiences of the seven women at the center of my thesis (Smith, 2005). Given the focus of this thesis, the analysis attends primarily to life after arriving in Canada – with the exception of one interviewee who spent much of her adult life in the USA before arriving in Montreal. I aim to approach *daily life* as a foundational methodological standpoint from which to begin to build an understanding of the ways migrant trans women may be impacted by criminal and immigration law enforcement. Simultaneously, *daily life* can be understood as offering a critical counterpoint to the ways that criminal justice and immigration institutions produce knowledge about migrant trans women. While criminal justice and immigration institutions factor into the daily lives of the interviewees, interviewees' accounts of encounters with these institutional bodies offer a distinctly different orientation to knowledge production.

While the decision to center daily (and nightly) life in the thematic analysis is certainly a methodological one, it emerges from my own experiences as an outreach worker (Liamputtong, 2009). The work of an outreach worker is often situated within the everyday lives of the people we encounter and accompany, on the streets and in bars after midnight, in sterile hospital waiting rooms and stuffy courthouses the following morning, and in the intimacy of bedrooms and boarding houses. It is from this vantage point that I was made aware of the role criminal and immigration laws play in organizing the everyday lives of migrant trans women who sell sex. As such, I chose to return to the perspective of daily life as a point of departure from which to begin my thematic analysis.

A number of broad themes that one may consider to be defining of daily life presented themselves across the interviews. For the purposes of the analysis, they include: making money; communal space and support networks; intimate relationships and family; and health and emotional life. According to my analysis, these themes have been instrumental in shaping the conditions in which immigration penalty has occurred and the impacts it has had in the lives of the interviewees. While criminal law enforcement and immigration penalty are addressed in subsequent chapters, it is important to underline that, particularly given the diverse life trajectories of these seven women, it is practically impossible to mark a clear distinction of life before and after criminalization or immigration penalty. If such a distinction were possible, it would arguably obscure the complex nexus of individual, societal and structural relations that give shape to immigration penalty in everyday life. As a consequence, the themes that are addressed in this chapter are both informed by and informative of the ways that double punishment has played out in these women's lives.

3.3 *Making money*

Making money is unsurprisingly a central theme that emerged from the interviews. All interviewees have sold sex for money during substantial periods of their lives. Similarly, all have received welfare and, in some cases, disability benefits at various points in their lives. A majority of the women attended school (primarily French language school) in return for income, and at least half worked as entertainers, singers and performers. Some interviewees made money from engaging in criminalized forms of labour (other than sex work), including smuggling people across international borders, theft and selling and transporting drugs. While experiences varied across the different ways interviewees have made money, there are a number of commonalities and linkages that emerged in my analysis.

Sex work, or selling sex for money, figured prominently in the interviews. Some women spoke about sex work as one of the only available and reliable means of making a living. In speaking about her experiences before and after arriving in Canada, one interviewee addressed the limits of finding viable employment as a transsexual: “Sur le cote de travail là, c’est la même chose là que dans notre pays. Dans notre pays...ça nous fait la porte là partout. Ici, c’est la même chose. Quand tu vas chercher un travail, personne te donne pas le travail. Alors qu’est-ce que tu fais ? Fait le même chose la...chercher la rue.” She continued by highlighting the definitive role of identity documents in shaping her employment options, and her reliance on *la rue* to make money:

“Moi jusqu’au maintenant, depuis 10 ans que je suis ici, je suis encore dans le même problème, parce que je me cherche un travail, comme tantôt je t’ai dit, puis il n’y a pas de travail pour nous autres, il n’y a pas. Parce que le moment qu’il te demande le papier, ben, quand tu te présentes dans l’entrevue, ben là il voit que t’es une femme, il dit ok bienvenue. Par après il vont voir tes papiers, que t’as un nôm de gars, ton sexe c’est masculin. Dans un certain moment l’employeur, il change complètement dans sa face y te dit...il va t’appeler. Il t’appelle jamais. Alors il faut que je fasse la rue pour aller chercher

un peu des sous, et finalement avec tout ça là, ça m'occasionnait beaucoup des problèmes avec l'immigration, tu t'imagines ?”

As this interviewee demonstrates, and as has been well established elsewhere, state issued identity documents frequently play a central role in governing the daily lives of trans people, including the types of employment that may be available to them. In the case of the women interviewed, sex work was repeatedly discussed as one of the only means of making money that allowed for a great degree of autonomy, and in which identity documents were rarely a barrier to employment. Rather, interviewees identified criminalization of their labour as the primary barrier to doing sex work.

For a number of interviewees, sex work was discussed in relation to living and working as a woman. First experiences of publicly dressing in women's clothing corresponded with beginning to sell sex for a few women interviewed. One woman spoke about starting to wear women's clothes in Canada. Her first time out in public, she was surprised to find people complimenting her, rather than ridiculing her. Boosted by this confidence, and support of friends who sold sex, she decided to take a client. She explained that although she initially felt shy, “Quand j'ai commencée à voir que l'argent ça rentrée facilement pour faire presque rien, moi j'étais comme, ok je vais continuer à faire ça.” While arguably the labour, and the related risk entailed in serving clients is not literally ‘*presque rien*,’ the sentiment perhaps suggests that, for the interviewee, compared to other types of available work, selling sex required less labour input for significantly more income.

Another interviewee further elaborates on the decision to begin doing sex work. In her early 20s, she was earning \$7 an hour at a fast food restaurant, and wasn't getting called back at other jobs she was applying for. Things quickly changed after her friends encouraged her to try

going out in public dressed in women's clothes. She described it as a transformative experience, both in terms of beginning to live publicly as a woman, but also discovering escorting as a means of employment. As she explained, "Working McDonalds, I made a \$0.10 raise. My first night [escorting] I made a lot, a couple of zeros. I was like, you know what, I'm going to make something out of this."

One woman had never sold sex for money before coming to Canada. Shortly after arriving in Montreal, she met with a social worker at a prominent refugee support service to begin filing her refugee claim. She described her encounter to me:

[The agent] was very angry, and said to me "All the people like you are prostitutes!" Wow! It surprised me a lot, because never in my life before coming to Canada, I swear to god, I never do the prostitution, never. I had my beauty salon...It's shocking for me. But this moment...boom! It changed my life, because finally I do the escorting in Canada.

While she had been shocked by this encounter at the hands of a reputable institution in Canada, she also described it as an illuminating moment, ultimately guiding her towards escorting as a means of supporting herself.

Three interviewees – notably the three eldest of the women interviewed - spoke of extensive careers as performers and entertainers spanning the 1970s into the 2000s. One interviewee recounted her career on the stage:

I started when I was [long pause] 14, 15. I used to dress up for my own mother...she was inviting ladies from the neighborhood. [Interviewer: Your first stage was in your living room?] My mom was very proud of me...I started working professionally in XXXX, and then I kept on doing it in XXXX. In XXXX I started earning good money. I started to know...to know that I had a gift from the life itself, the entertaining thing, and the power of bringing people into the clubs. I earned good money out of the show business.

Another interviewee spoke of performing in drag queen competitions, claiming an annual championship with her renditions of Diana Ross and Whitney Houston, and eventually building a

small career for herself in the early 1990s. “J’ai eu beaucoup des contrats pour faire des shows, à Café Cléopâtre, même à Toronto, et j’ai aimée ça.” She emphasized the role of Café Cléopâtre not only as a place for making money, but also for making connections with transsexual women who encouraged her to transition, offering her hormones and advice.

One woman began working in entertainment as a singer, initially called upon to perform at Latino community events. “Moi, avant les problèmes, mon carrière à moi, c’était chanter. J’ai faisait des spectacles...des vrais spectacles.” She also was a regular performer at Café Cléopâtre and XXXX, and often travelled outside of Montréal for work. Like many trans women who performed in transsexual cabarets and drag shows at the time, when entertainment didn’t provide enough income, she turned to selling sex to sustain herself.

Historians have written extensively about the symbiotic relationship between entertainment and selling sex that existed in transsexual and transvestite cabarets in Montreal (Namaste, 2005). In between sets and after the show, entertainers would often meet clients in the same venue, and seamlessly pass from one form of making money to another. Yet as trans cabaret culture has shifted towards drag queen shows at popular venues like Mado in Montreal, the place of trans sex workers has arguably been displaced. One interviewee recounted her last job as an entertainer, running the show for *Noche Latino* at a prominent gay club in Montreal in the mid-2000s. After hosting the popular night for several years, she described how she was abruptly fired:

“In XXXX, I had a good crowd coming in on Saturday night... They said that the reason they kicked me out was because the girls that were working with me were prostitutes [laughs]. Oh my god, oh, prostitutes are not supposed to work as entertainers? The rest of the drag queens, the transvestites that work there, they are very decent, they don’t prostitute themselves? How can they prove it...how can they tell that the girls that worked with me they were prostitutes? ... Oh my god, too much. But a month after they kicked me out, they started kicking out all the rest of the girls in XXXX.”

These types of changes, particularly the displacement of migrant trans women from communal spaces, will be further addressed in a following section.

Beyond selling sex and entertainment, all interviewees accessed government financial assistance at different points in their lives. Several interviewees attended *programmes de francisation* with stipends provided by the *Ministère de l'Immigration, de la Diversité et de l'Inclusion* for refugee claimants who speak little or no French. While strongly encouraged by immigration authorities to take French classes, and driven by the necessity of being able to communicate in French - particularly to find work, many of the women I spoke with were quickly discouraged by the attitudes of administrators and teachers. One interviewee spoke of her problems with an instructor: “J’ai laissée l’école parce que j’ai une discrimination avec une professeure...elle me dit qu’elle ne voulait pas que je m’habille avec de linge comme ça [points to her sleeveless shirt]. Elle m’a parlé vraiment fâchée.” She told me that the school administration was unwilling to change her name and sex mention on the roll call, and as such, when her transsexuality became a point of friction with her teacher, she left school.

Although welfare provided a basic income for all interviewees at various points of their lives in Canada, many mentioned that it was insufficient, often unreliable and invited additional surveillance into their daily lives. As one woman explained: “J’ai vivait la en cet moment juste avec l’aide sociale et, tu sais la, avec l’aide sociale on n’arrive pas très longe avec cela parce que c’est juste un montant de l’argent pour payer l’appartement... alors c’est ça.” After moving in with her husband, who had married her in part to gain immigration status, her welfare cheque was fully cut, and she began working the street nearly every night to support them both. Another interviewee recounted how, after moving in with her boyfriend, her welfare was also cut, leaving her fully financially dependent on him. A third interviewee was charged with fraud for collecting

welfare in Quebec and Ontario simultaneously. Her charges and conviction occurred at a time when refugee claimants from her home country were subject to a highly mediatized and racialized witch hunt for “cheating the welfare system” (Pratt, 2006). While I don’t have extensive details on her specific case, it nonetheless raises questions about the scope (including inter-provincial) of state surveillance that refugees and other migrants may be subject to.

I will explore a number of these themes in greater depth later on, particularly to discuss the impacts of criminal law enforcement. For now, I have attempted to provide a brief synopsis of the primary means interviewees have relied on to make money, and to highlight some of the ways making money has organized their daily lives. I now briefly turn to family and intimate relationships to elucidate another central theme in the daily lives of the interviewees.

3.4 Intimate relationships and family

All the interviewees talked about intimate relationships with men. Three interviewees had been married, and the remainder had been in significant relationships. While many of the conversations gravitated around the harmful impacts husbands and boyfriends had had in their lives, there was nonetheless an emotional complexity that came through, often touching on desires for mutual support and emotional intimacy. Rather than simply suggest that the women interviewed were victims to abusive men, I intend to illuminate the implications these relationships had for encounters with criminal and immigration law enforcement, and how, in some cases, access to intimacy was mediated by state institutions.

Two interviewees spoke specifically about aspects of their relationships in terms of manipulation and coercion. One woman explained, “Il [her husband] voulait me manipuler...il voulait que je travaille pour lui.” After her welfare was cut off (as described in previous section),

she had to work nearly every night. “Il faut la que je me débrouille pour moi-même, c’est comme ça là qu’il est devenue une routine que je vais dans la rue, presque chaque nuit.” For her, this implied increased police surveillance and routine arrests for solicitation and failure to comply with court-ordered conditions. Another woman recounted how she ended up in immigration detention following a fight with her boyfriend. Several years prior, her refugee claim had been rejected. After meeting her boyfriend, she decided to pursue the relationship and remain in Montreal without papers. One night, she had been fighting with her boyfriend when the neighbours called on the police to intervene. When the police ran her name through the system, they discovered a warrant for her arrest had been issued by the Canadian Border Services Agency (CBSA) (as is common when somebody doesn’t appear for their removal order). She was immediately arrested, detained overnight and promptly delivered to the *Centre de surveillance de l’immigration* in Laval, where she was held in immigration detention for a month.

Three other interviewees cited their relationships as playing a pivotal role in the criminal convictions that later would bring them under investigation by immigration authorities. One interviewee told me about her decision to leave the sex work milieu after meeting a boyfriend and moving in with him in the suburbs. When she learned that he was already married, he kicked her out without returning her belongings. When she broke into the apartment, the landlord called the police. Once she explained that she lived there, she described the police as being sympathetic. When her boyfriend returned home, he was furious, and the police offered to detain him and to direct her to a domestic violence resource for women. She denied their offer, and went on to inform them that she was transsexual. At that point, they drastically changed their demeanor, as she recounted:

“Once I said transsexual, oh lord Jesus...All I remember is the two guys took me... and just literally put the handcuffs on me, they put me in the car and they put me in the back with the windows all closed, and I couldn’t breathe.”

She described how the police went on to ridicule her and her boyfriend while she was detained. Panicked and unable to breathe, she told me that she kicked the police car window out with her feet. She was ultimately charged with mischief, and served with a 52-day jail sentence.

Two interviewees were in relationships with men who sold drugs. One woman recounted how her boyfriend had asked her to deliver a package to his friend. When her bag accidentally fell into the hands of her school administration, the police were notified and, after a violent arrest, which I describe later, she was convicted of drug trafficking. She never heard from her boyfriend again after this incident. Another interviewee told me about being arrested with her husband and being charged with drug possession and trafficking. She told me that he struggled with drug use during their decade long relationship, and she was constantly trying to help him. They crossed paths again several years later in jail, and, according to her account, he died shortly thereafter.

For one interviewee, love, intimacy and friendship required a certain vulnerability on her part that she told me she wasn’t able to risk, particularly in her everyday life outside jail. Yet over the course of many years serving time in men’s jails, she spoke of moments of fleeting romance with other inmates. In a piece of writing she shared with me, she asks: “Who knew that prisons, with all their violence and cruelty, might produce a moment of romance, of tenderness?” After several years of feeling lost, alone and at times hopeless – particularly during periods of incarceration, another woman spoke of love as having a transformative impact in her life. “Love is not like the movies, baby. Love is construction, about respect for other humans...love has

rescued me for some reason.” For her, being in a relationship had provided her with an opportunity to change her life in positive and affirming ways.

Beyond intimate relationships with men, interviewees spoke often of complicated relationships with their families. Several women had lost contact with much of their family, some after difficult periods with their parents while in their youth, and others separated from family after deciding to migrate to Canada. For many, their descriptions of familial relationships were marked by feelings of exile from home, and a certain sense of abandonment or loss. One woman had briefly lived with her aunt in Ontario when she was younger, but left as her aunt expressed concern she would be a ‘negative’ influence on her children. Another woman had brought family members to Montreal to live with her, but their refugee claims had been rejected and they were ordered to leave Canada. She experienced their rejection by immigration authorities as a form of punishment for her own troubles with immigration. Yet another interviewee talked about her desire to bring her sister, who is also transsexual, to Montreal. Although she was notably discouraged about the direction her own life had taken – particularly with regards to her conflicts with the law, she hoped to be able to show her sister the “good way towards a good life.” Lastly, one interviewee gained permanent residency after being sponsored by her father when she was a child. She described the sacrifices her father had made for her, which, as she highlighted, included undergoing an expensive, government required DNA test to prove he was her biological father. As a teenager, her relationship with her father became increasingly volatile, and at times violent, so she left home. Upon leaving, she presumed she had Canadian citizenship. In reality, she only had permanent residency, and she was unaware that she would have to renew her status once she turned 18.

While these accounts of intimate and familial relationships are quite brief, and are largely beyond the scope of my research, and thus my interviews, I have attempted to draw out aspects that I believe to provide a broader contextual understanding of daily life that is important for situating immigration penalty in later discussions. In the following section, I will build on the theme of relationships by turning to the role of communal spaces and support networks in the interviewees' daily lives.

3.5 *Communal space and social support networks*

Communal space and social support networks were a recurring theme that ran through the interviews. For some interviewees, friendship with other migrant trans women – particularly from shared linguistic and cultural backgrounds – offered an antidote to exile and isolation. For others, feelings of exile and outsidership were persistent, and at times reinforced by their precarious legal circumstances. These social networks were commonly facilitated, and mediated, by communal space. As with the previous section, I am particularly interested in considering the ways bonds of friendship and comradeship were built, sustained and sometimes broken within communal spaces and social support networks that are subject to heightened surveillance and criminalization.

Communal spaces were mentioned often, particularly for the role they played in the creation and organization of friendships and support networks. These communal spaces included bars and nightclubs, living spaces (apartments, boarding houses), and the street. While these spaces commonly served as workplaces, they also provided the context for the emergence of everyday social relations amongst the women I interviewed. One interviewee talked about how, after spending her first year in Canada living in isolation, she found community at Citibar, a bar

– and arguably the only bar - frequented by a large number of sex working trans women at the time.

“Je connaît personne, je connaît presque pas la langue. Finalement là, j’ai commencée à connaître des gens qui parlée l’espagnol aussi... Une fois j’ai trouvé la Citibar, j’ai trouvé que c’est là que les filles travaillées, dans le coin, dans la rue. Alors moi j’ai commencé à travailler, commencé à faire un peu de l’argent. C’est ça, c’est comme ça j’ai commencé à connaître toutes les filles... Je ne suis pas une fille de chicane... tu me connais, il y a beaucoup de monde qui m’aime, je connaît beaucoup des personnes.”

For all of the interviewees, communal spaces like Citibar, and in earlier days, Café Cléopâtre, had been more than a workplace - a place to meet clients or a stage to perform on. They were also vibrant social and cultural spaces, sites of friendship and support that rarely existed elsewhere. They were spaces that facilitated access to hormones and other everyday needs; spaces where women shared advice on navigating government institutions (e.g. immigration, criminal justice, welfare) and tips for spotting undercover cops; and spaces where women looked out for each other, and, at least some of the time, where they were able to find friendship and solace when little else felt right. As one interviewee explained:

“Au moins, quand tu vois les amies qui sont là... même si elles ne sont pas toujours là, quand il y a une problème tu sais qu’il y a quelqu’une là pour toi au moins pour écouter de tes problèmes.... Pour savoir que t’es pas toute seule avec tes problèmes.”

Other interviewees echoed this sentiment, and drew on their experiences to give further meaning to the social support networks that emerged from within these communal spaces. One woman spoke of leveraging her own social status to support others in the milieu:

“I made it a mission to stand up for the other girls, the ones who didn’t have a voice, the ones people said ‘*they’re not pretty*,’ or the ones who didn’t feel confident, or the ones who, yeah, they became trans but they didn’t have the *look* look. So I stand up for those girls, and be like, ‘hey stay strong’ and stuff like that. I help them out.”

A few women spoke in terms of supporting younger generations. While one interviewee explained how she feels too old to achieve her own dreams, she finds comfort helping younger women fulfill their dreams. Another interviewee's comments mirrored this sentiment. As she grappled with existential questions about her own mortality, she explained that sharing knowledge with others provided a certain comfort that, in the face of imminent death, she would not be forgotten.

“Je me mets facilement à la place des autres, pour tenter de les soutenir ou de les aider...de les comprends, parce que moi aussi j'ai porté les mêmes blessures que ces gens-là. Aidez mes paires...c'est réconfortant de savoir que le peu que vous aviez appris dans la vie ne disparaîtra pas avec vous. C'est à dire, même quand vous êtes parties, quand vous serez mortes, on se souviendra de vous, que vous avez semé des petites choses par-ci par-là, dans ces groups, chez ces personnes, ils se rappellera que le savoir que nous avons eu, vous l'avez partagée, vous l'avez partagée, vous l'avez faites grandir avec d'autres.....Et donc c'est agréable de savoir ça, au départ...le peu que vous aviez appris, comme savoir, ne va pas disparaître avec vous, parce que vous l'avez déjà partagée.”

While these types of communal spaces and social support networks played a critical role in facilitating daily social and economic relations for many, they were not without their limits. One interviewee described communal spaces as yet another site where she felt like an outsider. “Je rentrée pas dans, c'était pour moi, encore une fois je me suis trouvée étranger dans tout ça. J'étais toujours étranger dans partout je passais de toute façon [laughing], c'est l'histoire de ma vie.” Another woman emphasized the limits to friendship within the milieu. “The nightlife for everybody is different...it's the family, everybody knows everybody, but it's very individualist.” For her, despite greeting women in communal spaces with the familial ‘hi sister,’ relationships were rarely intimate, and when they were, they had become difficult to sustain. She described how she had recently ended a relationship with a close friend who she described as having lost control of drugs and alcohol. “I protect you many years in the street, from many things. But I

have my own life, too. I need to find myself.” She continued, “Forever she is my sister, forever...I love her, but I lost her.”

Loss was a recurring theme that came up when discussing friendship. One interviewee told me how, when she first arrived in Montreal, without any contacts and very little money, she had the chance of meeting Gina¹, another Latina trans woman who took her in. The interviewee lived with Gina for several months, during which time Gina accompanied her through the early stages of her refugee claim, and connected her with several community resources. Although Gina was a community hub for many newly arrived Latina trans women, she was also deeply depressed and often isolated. The interviewee recounted how Gina had refused to get an HIV test despite showing obvious symptoms of progressive HIV infection. She passed away the following year from untreated opportunistic infections:

“They found her in bed, very skinny and sick. They took her to the hospital and then she passed away. She didn’t wanna go for a checkup. If she would have gone she would have been with us. But she didn’t want to believe that she was ill, she was sick.”

Several interviewees recounted the loss of another woman who was commonly described as a community leader and a source of friendship and support. Maria was a young Mexican trans woman living with HIV who had lived in Montreal for several years. Her refugee claim had been refused, and she was ordered to leave the country by Immigration Canada. Shortly after returning to Mexico, she was shot dead outside her home (Velázquez, 2012). Some women I interviewed cited her murder as a source of great fear when faced with the possibility of eventual deportation from Canada.

¹ All names have been changed to protect the confidentiality of interviewees and their friends.

The loss of communal spaces also figured in some of the interviews. Although this form of loss wasn't punctuated by the profound sense of grief and sadness that accompanied descriptions of losing friends, displacement from communal spaces nevertheless redefined the everyday lives of several women I spoke with. While some of the communal spaces women talked about were never formally closed, most notably Café Cléopâtre, trans women who sold sex were gradually displaced from these spaces through targeted police interventions, neighbourhood redevelopment initiatives (particularly in the overlapping zones defined by the *Quartier des spectacles*, the Centre Sud and the Gay Village), exclusionary managerial practices (as highlighted above), and resident-driven anti-prostitution surveillance initiatives, such as *Opération Cyclope* (SPVM, 2003).

The most recent loss of communal space, as acknowledged in multiple interviews, was Citibar. For many years, Citibar, and the surrounding streets, was the site of extensive police surveillance, undercover operations and law enforcement. In 2013, Citibar was closed for several weeks after its liquor licence was temporarily suspended by the *Régie des alcools, des courses et des jeux*. The *Régie's* written decision draws on several pages of police reports (spanning 2007-2012) to establish Citibar as a place of prostitution, drug use and violence, and thus, in violation of the *Loi sur les permis d'alcool* (Québec, 2013). This temporary closure was symptomatic of an overarching objective of the PDQ 22 to permanently close the bar, which was eventually achieved in 2014 (Michaud, 2015). The consequences of Citibar's closure were beyond the scope of most interviews. However, one woman described how, after the bar closed, she experienced a heightened sense of insecurity working on the street – particularly as she was under strict order from immigration authorities to refrain from sex work. Without Citibar, she felt exposed and vulnerable to police surveillance and arrest.

While the loss of a communal working and social space had a direct consequence on her ability to work safely, similar to other women who were interviewed, her social support networks were mobile, and transcended closures and displacement. Many interviewees had built supportive friendships and working relationships within spaces like Citibar, but continued to build those relationships despite the closures. At the same time, for some women I spoke with, loss of friendship and communal space corresponded to a shift in personal priorities – a desire to leave the street, to change careers, and to focus on other aspects of their lives.

3.6 *Health and emotional life*

In this final section on daily life, I turn briefly to descriptions of physical and emotional health. In particular, this section highlights the impacts of migration, exile and living conditions on mental health, and the role of chronic illness in defining daily life.

A few interviewees spoke about their first months and years in Canada in terms of waiting and exile. One woman lived in a men's shelter for her first two years in Canada, while waiting for her refugee claim to be accepted. Although she was able to seek out community, she shared her observations of the impacts waiting had for other migrant trans women she met:

“Si on parle des peurs de l’immigrant ou l’exilé quand il arrive ici, la peur le plus difficile c’est l’attente...l’attente d’être accepté. La première attente, c’est l’immigration. Surtout quand ça devient négatif, c’est déchant, c’est destructif. Moi j’ai été tout seule, [mais] j’ai pu supporter ça en allant découvrir mon territoire, me perdre dans les boîtes homosexuelles, de m’approcher à une petite communauté. Mais pour certaines [transsexuelles et travesties], ce n’est pas le cas. C’est l’attente à la maison, isolée, c’est très pénible.”

Another woman echoed this description as she told me about her own experience living in a men's shelter after arriving in Canada. Staff were uncertain where to place her, and gave her a private room that was isolated on an otherwise abandoned floor. She described feeling deeply

depressed and abandoned during her two-month long stay. While she eventually found her own apartment, she lived in an ongoing state of distress and despair for several years:

“In my case, it’s my separation from my country, my life in Mexico. My new life in Canada, it’s too much stress, too much information for me to understand what happened with myself. Absolutely I wanted to die, I tried to kill myself two times in Canada.”

Chronic illness emerged as another factor that redefined daily life for several interviewees. One interviewee talked about her experience of living with HIV as having a profound impact on how she chose to live her life. Diagnosed before highly active antiretroviral therapy (HAART) became readily available in Canada, she presumed that she would suffer a drawn-out and painful death. Here she describes her reaction when faced with this eventuality:

“Ca m’a tellement confrontée que euh si j’étais courageux je ne serai pas la aujourd’hui à vous parler. Mais j’étais lâche. J’ai tellement souffert dans ma vie que j’ai dite ‘non.’ Je suis prêt à souffrir, mais encore plus, au lieu de souffrir de la vie, je veux me détruire moi-même, et souffrir par mes propres moyens, et comme ça, ça va peut-être me rapprocher le plus rapidement d’un mort subite ...plutôt que ...[mourir de SIDA]. ”

Heavy drug use became one form of self-destruction for her, and although she overdosed on multiple occasions, she told me, with an air of surprise, “J’ai toujours retournée en vie.” Her HIV diagnosis also informed her decision not to take hormones. “Je me suis dit à quoi bon? À quoi bon de me tenter de prendre des hormones ? Un développent, puisse, pour arriver à quoi, à tomber ?” In particular, she was concerned about the certain discomfort her family would face if they were to handle her dead body after she had begun to transition. While her HIV diagnosis initially drove her towards self-destruction and death, it also ignited her rebellious spirit, both in the face of law enforcement, and as a vocal and dedicated member of multiple social movements.

Two other women also discussed the transformative impact chronic illness had in their lives. One interviewee described being diagnosed with Parkinson’s disease in the midst of a

drawn out and draining immigration process. Her diagnosis initially led to a very deep depression, and left her feeling isolated from others. She explained how she gradually adapted to her changing physical condition, and chose to prioritize her own well-being after several years of being a community leader and support to others. Another interviewee spoke of PTSD as a chronic condition for which she had little support. Using drugs became a way for her to cope, to treat her PTSD, and to occasionally find enjoyment in life.

Conclusion

In this chapter, I have addressed a range of themes that give shape and meaning to the daily lives of the women I interviewed, including: making money; intimate relationships and family; communal space and support networks; and health and emotional life. In particular, these themes are instrumental in shaping the conditions in which immigration penalty has occurred and the impacts it has had in the lives of the interviewees. In the following chapter, I build on this analysis to address everyday encounters with the criminal justice system.

Everyday encounters with the criminal justice system

This chapter takes a focused look at the interviewees' everyday encounters with the criminal justice system. In particular, it looks at policing practices, legal proceedings, incarceration and other conditions of confinement. As before, the scope of analysis is primarily within a Canadian legal context, and more specifically, in Montreal and the surrounding regions. While an entire chapter is dedicated to discussing encounters with the criminal justice system, rather than suggest that these encounters are an aberration, or out of the ordinary, I intend to demonstrate how they in fact play a central role in constituting the daily lives of the women interviewed. Furthermore, this chapter will lay the groundwork for understanding the production and deployment of *criminality* as it relates to governing migration through the crime-migration nexus. Lastly, while the *Criminal Code of Canada* is a key text in framing the various encounters, interpretation and analysis continues to be grounded in the interviews.

4.1 Police

Encounters with police have already figured prominently in this chapter - in descriptions of making money, intimate relationships and communal spaces. This first section elaborates on these discussions, with a focus on experiences of police profiling, harassment, and arrest. I begin by looking at encounters with *la moralité* – formally known as the *Moralité, alcool et stupéfiants* (MAS) section of the *Service de Police de la Ville de Montréal* (SPVM).

For many interviewees, their first encounters with police in Canada were with *la moralité*. The MAS section of the SPVM has historically played a definitive role in the policing of transsexual and transvestite prostitution in Montreal (Namaste, 2005). As an outreach worker,

I heard from countless trans sex workers about their experiences of being arrested by undercover agents posing as clients. While the presence of undercover police agents was common knowledge for many in the milieu, several women interviewed for this project described the shock, confusion and fear they experienced during their first arrests by *la moralité*.

“J’ai eu ma première arrestation par la moralité...J’ai embarquée [avec le client] et j’ai checké - tout suite après là - une voiture nous suivait, y moi j’ai eu peur parce que dans mon pays, quand une voiture te suivre, c’est parce que quelqu’un veut te faire du mal, séquestrer, ou te tuer [quick inhale]. J’ai commencée a paniqué moi et j’ai frappé le gars parce qu’il jamais me dit que c’est une police, si [je savais que] c’est une police là moi je ne lui ai pas touchée. Alors... quand la voiture est arrivée, j’ai dit qu’est-ce qui passé ?”

She went on to describe the cops coming out of the suspicious vehicle, shouting “Moralité!” and placing her under arrest. Another woman shared a similar experience of her first arrest, which occurred after selling sex for two years without any police interactions:

“I got stopped by the *moralité*. They came beside the door [of the undercover agent’s car] and they said to me, ‘can you come out of there’ and so I locked the door. I was like, ‘who are you?’ because I didn’t know who they were. I said ‘I’m not coming out, show me your badges.’ [The police] opened her jacket [to show her badge], and I thought it was immigration.”

These accounts of encounters with *la moralité* are illustrative of the role undercover policing plays in shaping the working conditions of many street and bar based trans sex workers. They may also be revelatory of the particular experiences of migrant sex workers when encountering undercover agents. Both interviewees described experiencing a state of confusion, or panic as they feared they were in the process of either being kidnapped, or detained by immigration authorities. The insecurity that emerged within this context of arrest – prompting fears of detention, deportation and death – was a reoccurring experience for many of the interviewees.

In descriptions of everyday encounters with uniformed police, most interviewees recounted experiences of xenophobia, racism, and threats to their safety and bodily integrity. One woman didn't speak much English or French at the time of her first arrest (for solicitation charges). She recalls the police harassing her, asking "Why do you live here if you don't speak French?!" On multiple occasions, police had called her garbage, told her she had no rights, and threatened her with deportation – waving at her, saying "Bye-bye Canada." In our interview, she expressed frustration that the police had been repeatedly arresting her without any appreciation for her life circumstances:

"I wanted to say to the cops 'Excuse me, can you spend one hour here with fucking high heels on, exploit your fucking body to win some medicine for your fucking health because you're sick, you have problems, and the fucking government doesn't listen to you? The doctors don't give me medication. I have problems with drugs and I need to pay for my medicine. Excuse me I'm working!'"

Her riposte was accentuated with an underlying sense of abandonment by the state, and indignation with the police for interfering with her attempts to take care of herself. While her frustrations were reflected in several other interviews, it is perhaps worth noting that this is the same interviewee who had turned to sex work after a particularly negative, but ultimately illuminating, encounter with a social worker who told her "All the people like you are prostitutes!"

A similar reductive logic ('you people are all the same') was also apparent in interviewees' descriptions of being profiled by the police. One woman described how police were often unable to distinguish between her and other black migrant trans sex workers who worked in the neighbourhood. She recalled being taunted, threatened and aggressively arrested, often only to discover that the police were in fact looking for another black trans sex worker with precarious immigration status. On one memorable occasion, an officer told her, "Until the day

that you die...you will never have a happy day.” These encounters with the police left her feeling under constant surveillance, and that at any given moment she could be arrested. As she recounted, “Ever since I became an adult I feel the police are just taking me everywhere. Wherever I go, I cannot be comfortable. The day I say ‘I’m having a good day,’ I always end up in prison.”

For some interviewees, their transsexuality figured prominently in their encounters with the police. The disclosure or revelation of one’s transsexual status (or presumed homosexuality, in one case) during arrest often marked a turning point in police behaviour. One woman described being arrested at home with her boyfriend. She overheard an arresting officer exclaim “Oh, ils sont des tapettes!” as he noticed a photo of her and her boyfriend embracing. Threats followed: “La police disait qu’il allait me tuer dans le bois.” Another woman shared the story of her arrest for drug trafficking charges while at school (referenced briefly in the previous chapter in the section on intimate relationships):

“[The police] said, ‘XXXX, can you please step out of the classroom, we need to talk to you.’ And then the hell started, when I went to the principal’s office. They asked me ‘Do you have any kids?’ and I said ‘No, but I’d like to talk to you about my private life.’ He said, ‘We’re not going to handcuff you because we don’t want to embarrass you in front of your friends.’ But as soon as I told him that I wasn’t a...biological woman, then they said ‘Put your hands behind your back,’ and they hit me really hard. They even cut my wrists. He said, ‘Come on let’s go.’ They put me in the back of the patrol, and I was [bouncing around] like a cow, a pig.”

Once she disclosed her trans status, any pretence of respecting her womanhood immediately dissolved, and the promise of sparing her from public embarrassment was undone as the police swiftly cuffed her hands behind her back. At the police station, she was stripped naked in front of several police officers, who proceeded to harass and insult her.

During another police encounter, it was a coalescing of multiple factors alongside the ‘discovery’ of the interviewee’s trans status that led to her being searched, and ultimately arrested. She had been stopped at a routine highway checkpoint while driving, and when prompted, presented her driver’s license, which had recently been changed to reflect her female name and sex. She explained what happened next:

“When they saw [my name], they asked ‘Where are you from?’ and I told them ‘I’m Mexican.’ They said, ‘Do you have any papers, are you legal here?’ I said, ‘Yes I am.’ I was very proud, I handed them the work permit with a different name. The big mistake I did, I changed my [name on my] driver’s license from ZZZZ to XXXX but the work permit was [still] ZZZZ, so I had two names.”

At this point, although she had a work permit, and hadn’t broken the law, the officer told her to pull the car aside to be searched. When they found drugs in her purse, they charged her and held her overnight until she was released on bail. Unlike in the previous encounter, where the disclosure of transness marked a distinct change in police behaviour, this incident suggests a sequential confluence of multiple factors, including racial and social profiling (i.e. predetermined suspicion of illegality and criminality) and internal mechanisms of border control.

In the following discussion of criminal charges and convictions, it is important to consider the role of police and judicial discretion in shaping the outcomes of criminal convictions – in terms of sentencing and conditions, and the implications criminal convictions may have on immigration status.

4.2 *Criminal charges, convictions & conditions*

The ‘seriousness’ of a criminal conviction is important to understand when analyzing its potential repercussions on immigration status. A permanent resident in Canada can lose their status and face deportation if they are deemed to be inadmissible on the grounds of ‘serious

criminality.’ According to Section 36(1) of the *Immigration and Refugee Protection Act (IRPA)*, serious criminality is defined as either:

Having been convicted in Canada of a crime for which you could be given a sentence of 10 years or more, or you were given a sentence of six months or more; Having been convicted of, or having committed a crime, outside Canada that, if it had been committed in Canada, could get you a sentence of 10 years or more. (Canadian Council for Refugees, 2013).

This will be a focal point in a following section on immigration penalty. At the moment, it is simply important to understand the serious implications that criminal charges and convictions may have on people without Canadian citizenship – so-called ‘foreign nationals’ according to the IRPA.

Solicitation and ‘administration of justice’ offences constituted a majority of the criminal convictions several interviewees had accumulated in their criminal records. Yet, as exemplified by the following passage, the range of criminal convictions was quite broad: “Oh my god, I went through the whole book! I got charged with *flânage* [loitering], for spitting on the ground...they charged me with everything, and I went into prison so many times.” While prostitution related charges – particularly solicitation – are generally not considered to constitute ‘serious criminality,’ charges related to assault, drug trafficking, fraud, and mischief are often grounds for a criminal inadmissibility ruling. The following section documents the range of criminal charges and convictions faced by interviewees in order to further elucidate the context within which ‘double punishment’ occurs.

More than half of the interviewees had been charged with assault (*CC 266*) or assault with a weapon (*CC 267*) while living in Canada. These charges carry maximum sentences of 5 and 10 years, respectively. In each instance, the charges were laid within a context wherein interviewees were responding to various acts of verbal and/or physical assault. One interviewee

described how she and her friends had been violently removed from a gay nightclub by private security agents. When one of the agents refused to return a purse, her friend broke a window with her high heel: “On n’avait même pas un couteau, des affaires comme ça. C’était un talon haut, oui, ça c’est une agression armée contre la porte [laughing]!”

Another woman recounted being charged with assault while she was checked into a local hospital. She was sitting outdoors in a designated non-smoking zone when another patient sat next to her and lit up a cigarette. When the interviewee asked the woman to smoke elsewhere, the woman replied: “Migrante de merde, retourner dans ton pays!” She replied by removing the woman’s cigarette from her mouth and extinguishing it. When she returned inside, hospital security informed her that the woman had filed a police report against her, and that she was to be held in isolation until the police could speak with her, and eventually charge her.

A third interviewee described facing charges after fighting with the concierge in her apartment building. After several years of tolerating the concierge’s judgmental attitude and ridicule, including being called a *plotte à gosse* [Québécois slang for transvestite/transsexual] on multiple occasions, she reached a breaking point after discovering that the concierge had told the neighbourhood dépanneur that she was a prostitute. When she went to confront him, a fight erupted. The concierge called the police and she was arrested and charged with assault with a weapon.

Yet another interviewee was charged with assault with a weapon after using a cigarette to defend herself against her abusive boyfriend during a particularly bad fight. She called the cops out of fear for her own safety, but she was arrested, purportedly because the only visible sign of violence between her and her boyfriend was the burn mark left by her cigarette.

As was previously referenced, a number of interviewees were charged with drug possession and trafficking, both in the USA, and in Canada, in violation of both the *Criminal Code* and the *Controlled Drugs and Substances Act*. These charges resulted in a few interviewees being declared criminally inadmissible according to the *IRPA*. Likewise, all interviewees were charged with solicitation, most on multiple occasions. Unlike convictions for drug possession and trafficking, solicitation (*CC 213*, repealed in 2014) carries a relatively mild sentence, and didn't result in rulings of 'serious criminality.' In one instance, however, the consequences of an arrest for prostitution charges were particularly severe. An interviewee was arrested on solicitation charges, and after being fingerprinted, police became aware that there was an outstanding warrant for her arrest and deportation. She was immediately turned over to immigration authorities, and held in detention as deportation proceedings commenced.

Some interviewees were charged with mischief (*CC 430*, for example, see previously cited case, where a woman broke the window of a police car), theft (*CC 322*), and fraud (*CC380*, see previously cited case of case of welfare fraud), all of which carry maximum potential sentences that can be grounds for a criminal inadmissibility ruling. One interviewee was charged with human smuggling in the US. She explained how she had funded her bottom surgery by smuggling people into the US from Mexico. She had been pulled over at a border crossing, and when the customs and immigration agent discovered that her passenger – another Mexican trans woman – didn't have papers, he confiscated the car and had her arrested. She recalled him telling her, "You know what, you think I'm stupid but I'm not. You are just a couple of dudes full of estrogen."

Criminal convictions were accompanied by court mandated conditions, ordering interviewees to comply with a wide range of terms that dictated, for example, where they could

not go, with whom they were not allowed to associate. Such conditions also obliged them to refrain from using drugs and often to follow a drug treatment program, to report to probation officers, to appear in court and to ‘keep the peace.’ Many interviewees explained that compliance with these conditions was near impossible, while some simply didn’t understand them, or actively chose to disregard them. As such, administration-of-justice offences, such as failure to comply with conditions, and breach of a probation order, constituted many of the reoccurring criminal charges.

One of the most common charges for failing to comply with conditions was being found in violation of a *quadrilatère*, a zoning restriction that prohibits people (typically street-based sex workers and drug users) from being within designated areas (e.g. specific streets, bars) and neighbourhoods. For the interviewees, the *quadrilatère* commonly restricted them from areas around Citibar, rue Ontario, and often encompassed their homes and the community organizations, clinics and government institutions (e.g. welfare offices) that they regularly accessed. As one woman explained:

“They [SPVM] gave me a *quadrilatère* which was so huge...the first one was from Berri to Viau, and René-Lévesque to Sherbrooke. They said, ‘You cannot be in the sector,’ but I’m like I live in the sector, and plus the gay village is there, I need the village, like where do you want me to go, I can’t go to the straight...uh like down town. I don’t know anybody there.”

Another woman described her decision not to comply with her *quadrilatère*:

“Je voulais respecter la décision mais qu’est-ce qui se passe, un an que tu peux pas aller à l’unique place que tu connais. Où est-ce que tu peux gagner un peu de l’argent pour pouvoir manger, parce que je n’avais pas l’aide sociale en ce moment. Plus de l’aide sociale, rien de la rien, aucune revenue, alors il faut là que je cherche mon argent. Je ne peux pas rester un an sans rien faire, de quoi je vais manger. Les gens me donnent pas de travail, il faut que je mange...c’est au cause de ça que moi je n’ai pas respectée les conditions.”

As a result, she was arrested multiple times simply on the grounds of violating her conditions. Failure to comply was often intentional, but in some instances, interviewees expressed a lack of understanding of their conditions. One woman explained:

“When they [judges] tell you everything is ok, but it’s not ok...or they tell you you’re free, *liberation*, but then you have a condition. Thing is, I never thought to read the paper [from the court] because it said *liberation*, they were taking my money and saying everything’s fine.”

For some interviewees, their court-ordered conditions produced greater precarity in which they were further subjected to criminalization. One interviewee was not allowed in the proximity of her building concierge’s home and workplace. As such, she was forced to move out of her apartment building (where the concierge himself lived and worked), which she described as having a devastating and destabilizing impact on her daily life, stating: “Et c’est là que c’est brisée. Mon instabilité a commencé là.” Following this rupture, she stopped taking her HIV medication for two years and as a result was in a very vulnerable state, and was hospitalized on multiple occasions. When she was out of the hospital, she was living on the street and in shelters, and was regularly arrested and incarcerated.

4.3 *Courts & Lawyers*

Criminal convictions are intimately bound up in courtroom proceedings. Discussion of actual courtroom experiences was limited. However, several interviewees addressed the role of legal knowledge in informing their relationships with their lawyers, and, more broadly, influencing how they engaged, or disengaged, with courtroom proceedings. Given the substantial impact a criminal conviction can have on immigration status, the limited legal knowledge of criminal defense lawyers surfaced as a particularly important topic.

Unsurprisingly, many interviewees had negative associations with court, and some simply found the proceedings to be unproductive. As a consequence, several interviewees intentionally avoided court. One woman explained how, after serving a 6-month jail sentence, “I never went back to court. I was afraid of jail...because jail is a place where you don’t want to go back.” Another woman chose to disengage, despite having a clear understanding of the potential repercussions for not appearing in court. She explained, “This is a big problem for Canada, when you don’t go to the court. It’s very offensive because you don’t respect the law.” After her first time in court, she also chose to never return. To her, the process only led to her further involvement in criminalized activities: “I try explain: If you don’t permit me to work as a prostitute to earn my living, then I will need to steal.”

This disengagement may in part be explained by interviewees’ encounters with criminal defense lawyers. Several interviewees recounted stories of their lawyers instructing them to plead guilty, regardless of the circumstances of their charges. As one woman recounted, “Je ne connaissais pas la loi d’ici, je connaissais rien. En plus, l’avocat m’a dit de [plaider coupable], que tout sera correct. Mais ce n’était pas le cas après.” Several months later, her guilty plea and conviction resulted in a deportation order from immigration authorities. This interviewee shared a similar experience:

“The lawyer told me to plead guilty. I knew I hadn’t broken the law, but they still told me to plead guilty, because if you don’t you’re going to start with a trial and if they find you were lying they’ll give you more time. The prosecutor will make you nervous and make you tell them whatever they want you to say. So I said, ‘OK, guilty.’”

In another instance, an interviewee and her friends took a guilty plea in order to secure their release from a men’s provincial jail:

“L’avocat est arrivé à la prison et il dit qu’il faut se déclarer coupable. ‘Comme ça, vous sortez tout de suite de la prison, parce que si vous ne se déclare pas coupable, ça va être

plus longue et vous resterais dans la prison [pour hommes].’ Puis qu’est-ce que nous voulons ? C’est sortir de la prison tout de suite. Alors, OK on va nous déclarer coupable, mais nous *on n’était pas coupable* parce que c’est les autres qui nous ont attaqué en premier.”

For many women, the lack of legal knowledge meant that they were not able to anticipate the consequences a guilty plea would have on their immigration status. One woman explained how she operated under the assumption that as long as she pled guilty and paid her fines, she would be OK.

“Moi je connais pas le loi, je ne suis pas avocate, je connais rien de la loi donc j’ai continuée à travailler, à chaque fois que je me faites arête par la moralité, j’ai payé mon amende, \$500, \$800, \$1,000 des fois. Je donne travail à les avocats, je donne travail à les juges, à la police et tout [laughing], alors moi j’étais comme ça.”

It was only after speaking with her immigration lawyer that she began to understand the consequences her criminal record would have on her immigration status.

“Mon avocat [de l’immigration] m’a parlé de ma situation, que ce n’était pas bonne ce que j’avais faite et que j’avais des gros problèmes. Je n’étais pas bien informée que ça là ça peut m’occasionner des problèmes avec mes papiers. À cause de ça, je me suis faite refusée la résidence permanent. Jamais j’ai m’imaginai que ça pouvait occasionner un grand problème là que j’ai présentement [avec immigration]. Comme tu sais, ça fait deux ans j’ai passé à la cour parce que j’ai eu une demande de déportation.”

As I will discuss in the chapter on immigration penalty, interviewees often only became aware of these consequences once they encountered immigration authorities. Arguably, prior knowledge of the linkages between criminal and immigration law may have offered interviewees and their criminal lawyers alternative litigation strategies. However, as interviewees’ accounts of encounters with the criminal justice system have demonstrated, it would be wrong to suggest that access to adequate legal knowledge would eliminate the harms of the criminal justice system.

4.4 Jail

In this final section, I briefly attend to interviewees' experiences with jail. Incarceration and (police) detention was a common experience for all the interviewees. In some cases, this entailed a weekend at an operational centre of the SPVM, while awaiting a hearing in municipal or provincial court. For several, this also included time in men's provincial jails for sentences of less than two years. In Québec, inmates are generally placed in men's or women's facilities according to the appearance of their genitals. Yet most interviewees had physically transitioned, and were living as women when they were incarcerated. For some, physical transition included a range of treatments and bodily modifications, such as taking hormones, breast implants, and silicone injections, all potentially marking them as visibly female within an otherwise all male inmate population.

Women were most frequently sent to *L'Établissement de détention de Montréal*, generally known as Bordeaux prison, and referred to by (former) inmates as Bordeaux Beach, or Bordeaux-Rico. As an outreach worker, it was not uncommon to hear from women that they had just returned from a trip to Bordeaux Beach. Some interviewees in fact spoke of their short stays in jail as providing a break from their daily routines on the outside:

“For me it's sometimes a good experience, the jail, like my vacations. I need to stay at the spa, it changes your ideas for a few days...helping you because you changed...it's helping you a little bit.”

In other moments, jail was invariably a traumatizing experience. As one interviewee described spending a week at *L'Établissement de détention Rivière-des-Prairies* with two other friends:

“Ben, en ce moment, on n'a parlé pas très bien le français. Quand rendu à la prison à Rivière des Prairies, ils ont nous enfermées avec tous les gars. Toi tu t'imagines...c'est

un traumatisme totalement, parce que on était déjà habillée en fille, on a déjà des seins, une expérience de fille complètement. Une chance que c'est rien nous arrivées.”

Another interviewee described how she had been threatened by her cellmate. In her case, however, she was able to seek protection from other inmates. When she brought her concerns to an informal inmates' committee, they in turn addressed a large group of inmates, instructing them to provide her with protection. From that point on, she described a regular presence of several inmates who ensured her security. This was a common experience for a couple other interviewees, as well, particularly those who spoke French and had a certain comfort and confidence in asserting their needs in an otherwise potentially hostile environment.

In some instances, prison administration placed interviewees in isolation, often in the medical or psychiatric wing, where they had little contact with other inmates. This was commonly under the guise of providing them with protection from other inmates. One interviewee, however, suggested that, in her experience, it was the prison guards who presented the greatest risk to her security. In a preparatory phone conversation, she told me how she had been beaten up by 4 guards and sent to the infirmary. According to her, it was the culmination of weeks of verbal and psychological harassment from one of the guards, against whom she had filed complaints with the administration.

Conclusion

This section has examined interviewees' everyday experiences with the criminal justice system, offering detailed accounts of encounters with police, courts, lawyers and jails. Interviewees' provided nuanced descriptions of the ways that criminal law and law enforcement mediate and govern their daily lives, and ultimately, define, and often limit, their life chances. The

discretionary powers of police, prosecutors and judges has been highlighted by socio-legal scholars as playing a key role in the deployment of immigration penalty (Valverde, 2010; Pratt 2006). Future research would benefit from analyzing the role of discretionary powers in the policing, prosecuting and sentencing of migrant trans women who sell sex.

In addition, this section has highlighted the role of the criminal justice system in producing the context (i.e. the criminal profile) within which *serious criminality* is deployed by immigration authorities as a means of governing migration. In the next chapter, I build on this analysis to address immigration penalty, both its organization and its implication in the daily lives of the interviewees.

Double punishment: immigration penalty in the everyday

The previous two chapters helped situate interviewees' daily lives within a broader socio-legal context necessary for understanding the everyday organization and implications of immigration penalty. In this chapter, I address immigration penalty head on. I begin with a brief overview of immigration penalty, particularly as it relates to migrants who have been designated as 'protected' by Canadian immigration law (e.g. people whose refugee claims and Pre-Removal Risk Assessment claims have been accepted). I will then turn to the interviews – with occasional reference to documents procured through ATIP requests – in order to provide an overview of the various mechanisms and processes through which immigration penalty has emerged and presented itself in the daily lives of the interviewees. A number of common themes that emerged across interviews include: efforts by immigration authorities to remove interviewees from Canada, primarily through investigations and admissibility hearings, surveillance and collaboration with police, and detention; and efforts by interviewees to remain in Canada, including appeals, claims for protected status, rehabilitation measures, and outright refusals to comply. Similarly, I will draw on interviewees' accounts to highlight some of the consequences immigration penalty has had on their daily lives, including: probationary conditions, living with precarious status, economic and social marginalization, and isolation from community.

5.1 Immigration penalty in Canada

There is an important, albeit small body of scholarship that addresses immigration penalty within a Canadian context. Scholars such as Anna Pratt have done substantial work in describing immigration penalty and situating it within a broader historical and socio-legal context.

According to Pratt, “[immigration] penalty controls borders; polices non-citizens; identifies

those who are dangerous, diseased, deceitful or destitute; and refuses them entry or casts them out.” She goes on to suggest that it is an assemblage, “made up of diverse and intersecting state and non-state authorities, technologies, forms of knowledge, and regimes of rule.” (Pratt, 2012, p. 276). In Pratt’s work, as well as that of other Canadian scholars, analysis has largely been dedicated to the political discourses, laws, policies and technologies that give shape to immigration penalty.

This work diverges from the standard methodological approach to studying immigration penalty by prioritizing grounding an analysis of immigration penalty in the everyday experiences of those who it directly impacts. Interviewees’ knowledge of what I am referring to as ‘immigration penalty’ primarily came into being through their own encounters with the “intersecting state and non-state authorities, technologies, forms of knowledge, and regimes of rule” (Pratt, 2012). In certain instances, knowledge was also shared through support networks, contributing to a collective understanding of the unique forms of criminalization encountered by trans women without citizenship. This marks an important departure from most existing scholarship on Canadian immigration penalty, which is predominantly derived from an analysis of law, policy, immigration tribunal rulings, and media.

In addition, most literature and activist work has addressed immigration penalty, or double punishment, as culminating in deportation – the ultimate punishment being removal from the nation-state. Although imminent deportation remains an ongoing concern for several interviewees, my analysis is largely preoccupied with other, perhaps less severe manifestations of immigration penalty in their everyday lives. As this chapter attempts to demonstrate, these routine mechanisms play a central role in the governance of migration through crime for the seven interviewees.

5.2 *First encounters with immigration penalty*

Several, if not all interviewees, described interactions with police that were in part shaped by their (perceived) migration status. Police stops often included an inquiry into immigration status, and racial profiling was commonly inflected with xenophobic insult and threats of deportation. Yet in all but one instance, their early encounters with the Canadian immigration system were not framed in terms of criminality, possibly save for refugee claims in which state violence, organized crime and legal discrimination were often central. In fact, all interviewees were initially unaware of the consequences their criminal records, both in Canada and abroad, could have on their immigration status. As the following section demonstrates, interviewees' knowledge of immigration penalty emerged during specific, and at times, quite dramatic encounters with immigration authorities.

Four interviewees first encountered immigration penalty when they made claims for status (refugee, permanent resident or citizenship) to CIC. Criminal record checks are a standard requirement when applying for various forms of immigration status in Canada, including when making a request to change status (e.g. from refugee to permanent resident, or permanent resident to citizen). As such, immigration agents processing interviewees' applications or claims were automatically prompted to screen for 'criminality.' When interviewees' criminal records were obtained – often through the Canadian Police Information Centre (CPIC), a national database of criminals in Canada – they were flagged for potential 'serious criminality,' and subjected to proceedings to determine their inadmissibility in Canada.

For one interviewee, this occurred when she first landed at the Montréal–Pierre Elliott Trudeau International Airport and made a refugee claim. Because she was arriving from the US, her digital fingerprints were sent to the Federal Bureau of Investigation (FBI) and National

Crime Information Center (NCIC), at which point an immigration agent was able to access her criminal record from the United States. When she returned two days later for an interview to initially assess the grounds of her refugee claim, she was informed that, based on the seriousness of certain charges from the US, she would have to undergo an inadmissibility hearing in 4 months. While she had been previously denied marital sponsorship in the US due to her criminal record, she was not aware that her criminal record – at that point, over 20 years old – may result in her removal from Canada.

Another interviewee explained how she had applied for permanent residency after living in Canada for 5 years. She received a response from CIC stating that, due to her criminal record, her application was refused, and she was “interdit de territoire au Canada.” Because of her refugee status, she would not face immediate deportation, but it was a looming possibility, pending the outcome of a future hearing. Furthermore, she was no longer qualified to sponsor her husband, who was otherwise without papers in Canada. As she recounted, “J’étais pas acceptée parce que j’étais pas une bonne personne pour la Canada, à cause de tous les infractions que j’avais faite.” She described bursting into tears as a profound sense of defeat washed over her, as if her years awaiting permanent residency, and ultimately citizenship, had amounted to nothing. Two other interviewees shared similar experiences, explaining how they had applied for permanent residency, in one case, and citizenship, in the other, only to receive notice that due to their criminal records, they were not eligible for permanent residency/citizenship. The woman who applied for citizenship was stripped of her permanent residency, and both faced proceedings that could lead to their eventual deportation.

For two interviewees, their criminal records had already been brought to the attention of the CBSA through mechanisms unknown to the interviewees. One woman described being

contacted by immigration after she had finished serving a 3-month jail sentence followed by 15 months of probation. “La journée de ma libération, j’ai reçu un appel comme quoi je dois me présenter à l’immigration.” She was under the impression she was going to receive her passport, which the police had previously confiscated. Instead, she was informed that her permanent residence had been withdrawn and she was facing deportation.

Another interviewee described her confusion when a police officer approached her in a restaurant and told her she was under arrest. “He said, ‘You!’ like really loud, ‘you come over here,’ and I said, ‘What is it you want? I don’t have a *quadrilatère* here, I’m fine’.” The police officer went on to tell her, ‘C’est pas nous, c’est l’immigration.’ She continued, “I didn’t even know what immigration was... I said ‘What? I’m an immigrant, why would immigration be looking for me if I’m a citizen?’” She described her arrest, and eventual transfer from the police cruiser to a van. “I could not see outside; it was so dark. When I got to the destination, it was so far away. They said, ‘You are here because you are detained for deportation to XXXX.’ I was like, ‘What??! Why am I being deported? What did I do?’” After being detained overnight, an officer met with her, telling her, “We’re not going to deport you right away. I have to interview you first and verify if it’s serious.”

At the time of writing, one interviewee had not yet been investigated on the grounds of criminal admissibility. However, she is currently awaiting trial for charges of assault with a weapon. If found guilty, she will surely be subjected to similar scrutiny. She remarked that two of her friends had problems getting permanent residency due to their criminal records. In reflecting on advice they had given her, she said, “J’ai un peu peur, parce que je sais que je n’ai pas le droit de faire le trouble, quand t’es résidente, ou t’attend ta résidence, il faut que tu sois le plus correct.”

5.3 *Mechanisms of immigration penalty*

Each case involved a range of mechanisms (investigations, reports, hearings) on the part of immigration agencies (both the IRB and CBSA) to establish the grounds on which the women could be ordered to leave, or be removed, from Canada. For some interviewees, proceedings were punctual, while for others, they were ongoing. The reaction of each interviewee when faced with such proceedings varied according to their particular circumstances. Some chose to comply with orders to appear for hearings, and to abide by the subsequent conditions they were given. Others either partook in proceedings under coercion, or simply chose not to engage, as in one case where an interviewee chose to go underground. The following section presents a range of interviewees' experiences through these proceedings. I occasionally draw on ATIP findings to illuminate the role of immigration agents in activating various mechanisms that give shape to these experiences of immigration penalty.

The woman who made her refugee claim at the airport had received a date for a preliminary inadmissibility hearing several months after her arrival. While she was awaiting her hearing, the immigration agent who had interviewed her issued a report in which she stated that, in her opinion, the interviewee was inadmissible to make a refugee claim on the grounds of serious criminality (section 36(1)(b) of the IRPA). At the hearing itself, the interviewee was informed her case would be decided on at a later date by the IRB commissioner presiding over her refugee claim. Prior to this explanation, however, she was told that a deportation order was to be issued. Although it was explained that the order was conditional, and would only be enforced if her refugee claim was refused, she described her panicked reaction:

“Oh my god, I was crying when I heard that they were planning on sending me back to my country. I was blocked, they were explaining to me, but I just remember they were saying, ‘You’re going back, you’re going back, you’re going back.’ I didn’t hear them

explaining that you're going to have to go to another court for your refugee claim. I was kind of mixed up.”

When asked how she felt to be labelled as a ‘serious criminal’ by immigration authorities, she replied:

“Oh my god I felt awful, that’s me? I couldn’t believe it. The things that I went through and not really realizing exactly. I never thought that I was all that until somebody told me in front of my face... It was like a nightmare that you need to wake up to stop it. But I said, ‘Oh my god, this is not a nightmare, this is reality.’ I was crying like crazy, very scared because I didn’t want to go back to XXXX. XXXX is a beautiful country, but it’s not safe, especially if they know that you are transgender.”

The interviewee waited another 3 years before her refugee claim was heard. Following her initial inadmissibility hearing, the CBSA issued an *Avis d’intervention* to the IRB, on behalf of the Minister of Public Safety. The notice requested that the interviewee’s refugee claim be rejected on the grounds of Article 1F(b) of the Refugee Convention, for having committed a ‘non-serious political crime’ outside of Canada. Ultimately, the IRB chose not to apply Article 1F(b), the interviewee was granted refugee status, and her deportation order from the CBSA was rescinded. Although she had not been found inadmissible on the grounds of serious criminality by the IRB, she would still need to demonstrate that she was ‘rehabilitated’ in order for the CIC to grant her permanent residency. I will address this topic later on.

The woman who received a letter denying her permanent residency was also ordered to attend an admissibility hearing at the IRB. In the lead-up to her hearing, she had nightmares, and eventually stopped sleeping for the 2 weeks preceding. “Oh mon dieu, ça, c’était une cauchemar.” She had been in court on multiple occasions for criminal charges, but for her, the potential outcomes were relatively minor compared to her admissibility hearing:

“La cour municipale, ben, c’est là ils vont te dire ‘Il ne faut pas aller dans les endroits-là [e.g. *quadilatère*]’ et l’immigration, c’est un autre chose. Quand tu passes à la cour de l’immigration, c’est quelque chose de beaucoup de nervosité, parce que c’est là qu’ils vont prendre une décision si tu restes dans le pays ou tu t’en va.”

For her, deportation was a prominent fear, particularly after witnessing Maria’s deportation and murder. “Ben, je peux partir, mais je ne peux pas retourner [au Canada]. Et tu sais, aller à mon pays, c’est sur la morte que je vais aller trouver, parce que là-bas, c’est vraiment dangereux.”

When it came time for her hearing, she described finding strength in the support of friends who attended with her. At the hearing’s conclusion, she was relieved to be instructed that in order to avoid deportation, she would have to abide by certain probationary conditions for the following two years – namely, find (legally sanctioned) employment, return to French school, and stay out of trouble with the law. After two years, she would then return to have another hearing to reassess her admissibility.

The woman who had been arrested in a restaurant expressed shock at her detention, as she understood herself to be a citizen. She explained that when she had left home as a teenager, she presumed that she was a Canadian citizen. In reality, she was no longer under the legal guardianship of her father, who had sponsored her immigration to Canada as a child. As such, she was obligated to reapply for permanent residency, which she hadn’t done. Without citizenship, and without having renewed her permanent resident status, she was, unbeknownst to herself, vulnerable to immigration penalty.

Prior to her detention, the CBSA had sent multiple letters to her previous addresses to inform her that she was under investigation due to her conviction for mischief charges. The interviewee never received these letters, as she had been without stable housing for an extended period, particularly after being kicked out by her former boyfriend. According to a CBSA agent’s

notes obtained through an ATIP request, the agent was having difficulty reaching the interviewee, stating, “Sujet impossible à localiser, change sans cesse d’adresses et donne des fausses adresses à la police.” The agent contacted the *Ministère de l'Emploi et de la Solidarité sociale* and the *Société de l'assurance automobile du Québec* to request up-to-date contact information, of which they had none. The agent’s notes also indicate communications with the SPVM PDQ 21 and 22. She writes: “SPVM affirment que sujet est une male prostitué qui se vêtit en femme. Meilleur temps pour le trouver serait la nuit à partir de minuit aux alentours des rues Ontario, Alexandre Secelle [sic] et Plessis.” Aided by this advice, and a *fiche d'identification* from the SPVM (includes a photo and physical description of the interviewee), CBSA agents searched the area after midnight, but to no success. After nearly 2 years of attempting to find her, an arrest warrant was finally issued by the CBSA on the grounds that the interviewee was not appearing for her inadmissibility hearing. The warrant was addressed to “EVERY AND ANY OFFICER, PEACE OFFICER OR PERSON IN CHARGE OR CONTROL OF AN IMMIGRATION STATION.” When she was eventually arrested by the SPVM at the restaurant a month later, an *Order of the Canada Border Services Agency to Deliver Inmate* was issued, instructing the police to immediately transfer her to the CBSA.

After spending the night in the Laval *Centre de surveillance de l'immigration*, she was interviewed by the investigating CBSA agent. According to the agent’s report (in which she described the interviewee as ‘négroïde’), the interviewee didn’t pose a threat of serious criminality and an admissibility hearing wasn’t required. The interviewee was released from CBSA custody and issued a ‘warning letter’ from the investigator’s supervisor at the CBSA Major Crimes Unit, which stated:

“This report is now a permanent part of your immigration record. The circumstances of your case have been considered carefully and it has been decided that the report will not

be referred to the Immigration Division [of the IRB] for an admissibility hearing at this time.

If you have any further criminal convictions registered against you, or if new information comes to light, this decision will be reviewed. A future decision to pursue enforcement action may result in the referral of a report to the Immigration Division of the Immigration and Refugee Board for an admissibility hearing. The outcome of this hearing could result in a deportation order and your permanent removal from Canada.

We trust that you understand the gravity of this matter and we hope that we will not be required to contact you again regarding this matter.”²

Although she was no longer faced with an admissibility hearing for the time being, the letter clearly outlined the possibility of a future investigation, and eventual deportation, if she was subject to further criminal convictions.

One interviewee recounted how, after serving a sentence for drug trafficking, she was declared inadmissible by the IRB and was slated for deportation. After losing an appeal of the ruling, she recalled her lawyer’s advice, “Présente toi pas à la cour. Sinon, ils vont te retourner.” She heeded the suggestion, and didn’t appear for her deportation date. A year after her deportation date, an arrest warrant was issued by the CIC, and shortly thereafter, the CIC received an anonymous tip that she was living with her sister and nieces. The interviewee recalled how the CBSA went to the sister’s apartment and tried to intimidate her. Included in the interviewee’s ATIP file was a CIC agent’s *fiche de travail*, which included the following note following the visit to the sister’s home: “Linge d’homme dans chambre à coucher mais aucune effets pour homme dans salle de bain (i.e. rasoir, etc.)” The interviewee recalled how, following this incident, she realized the extent to which immigration was actively looking for her. After

² I cite multiple documents obtained from ATIP, including this letter, but have chosen to not name the source in order to protect confidentiality of the interviewee.

this, she went underground for nearly a decade, avoiding the police and any other institution which may report her to immigration authorities.

In 2005, she was arrested for solicitation. It was the first time she had been arrested since her deportation order. She had no identity documents, and had given a fictive name, so the police didn't initially find her arrest warrant. It was only after her second arrest, again for solicitation, that she was fingerprinted, leading police to the arrest warrant and outstanding deportation order. She was detained and transported to the *Centre surveillance de l'immigration* in Laval to be held until her eventual deportation. Immigration authorities worked to obtain identity documents needed to board her on a plane for removal. Despite not having a home to return to once deported, immigration agents claimed to have located a homeless shelter where she could live. In response to these efforts to have her deported, the interviewee retorted, "Moi je me sens chez moi ici, même si je serai dans la rue-là, je me sens como chez moi, comprends-tu?" During her ongoing detention, she worked with her lawyer to file a Pre-Removal Risk Assessment, which, if accepted, would allow her to remain in Canada. Finally, after 8 months of detention, and narrowly avoiding deportation, her PRRA was accepted and she was released from immigration detention.

Another interviewee recounted how she had largely chosen to disengage from her immigration proceedings over the past two decades. After losing her permanent residency as a result of multiple criminal convictions, the CBSA had issued a deportation order, and the IRB had found her to be inadmissible on the grounds of serious criminality. However, a 'Danger to the Public' opinion must be issued by a delegate of the Minister of Immigration and Citizenship before a person with protected status can be deported. At the time of our interview, no such opinion had been issued. Regardless, the interviewee was frequently arrested - by the SPVM for

criminal offences, such as solicitation, theft, and breaking conditions; and by the CBSA for breaking conditions previously set out by immigration authorities. During an immigration hearing in the early 2000s, the presiding IRB commissioner remarked on the futility of repeatedly arresting the interviewee:

“Écoutez, ça c'est un cas typique où c'est évident que la personne peut jouer avec le système du fait qu'elle ne peut pas être expulsée, il n'y a pas de certificat de danger pour le public et là si vous voulez assurer un respect des conditions, il faut se servir de l'article 94 de la loi plutôt que de l'arrêter³. D'ailleurs, je ne comprends pas pourquoi on émet des mandats d'arrestation pour renvoi contre quelqu'un qu'on ne peut pas renvoyer. Ça m'apparaît d'un ridicule, en tout cas, vu de l'extérieur. ”

Here, the commissioner suggested that simply (re)arresting the interviewee, and conducting repeated admissibility hearings was fruitless. Rather, he argued for more punitive measures, such as fines and incarceration, stating that they could be a more effective means for dealing with somebody who, according to him, was ‘playing games’ with the system.

A decade following this particular hearing, the interviewee continued to live in increasing precarity. After losing her housing, she lived in short and medium term shelters. At the time of our interview, which occurred in a men’s provincial jail, she was serving a back-to-back sentence for multiple criminal charges. She commented that her most recent charges might be considered more severe in the eyes of immigration authorities, and she considered it a possibility that a ‘Danger to the Public’ opinion may eventually rule in favour of her deportation from Canada. She was uncertain if she might be transferred to the CBSA upon her release from jail. Yet, given her health status, she appeared confident that it would remain very difficult for immigration authorities to actually deport her:

³ *Article 94* refers to a section of the 1976 *Immigration Act*, which had been replaced by the *IRPA* at this point. It allowed for non-citizens to be fine and imprisoned, and in this case, referred specifically to those who didn’t abide by terms and conditions.

“Ce qui est dans mon dossier qui est un peu délicat, ... c’est le fait que si on me renvoie, j’ai pu des médicaments, donc je meure. C’est à dire, on me renvoie à le mort, directement. C’est juste ce p’tit détail, ben, qui est petit, mais qui, si on médiatise, qui peut avoir une répercussion sur l’immigration qui les arrête. Oui on peut lui renvoyer dans son pays parce que il est tannant, mais il ne pas seulement tannant, mais il est malade.”

Her case, much like the others discussed in this section, reveals the tensions between refugee protection and immigration penalty. While humanitarian claims spared multiple interviewees from deportation, their cases illuminate the distinctly subtle, everyday violence of immigration penalty. Those who are un-detainable (e.g. rather than detained or incarcerated, one interviewee was often hospitalized due to her deteriorating health) and un-deportable are nonetheless subject to regular reminders of their dehumanized status, and their daily lives remain governed by their status of ‘foreign criminal.’

The woman who was interviewed in jail was not particularly worried about the implications of immigration penalty, or double punishment, in her own life:

“Ça m’a jamais dérangée moi l’immigration, la double peine. Je ne suis pas d’accord avec la double peine par principe, mais j’ai toujours dit que je vais partir, ... le rideau est en arrière, c’est toujours proche, je pouvais se refermée et puis partir, alors je me disais qu’un tel me pénalise ou qu’un tel me pénalise, ou qu’un tel me pénalise, tout le monde peut me pénaliser, je m’en fou. Moi, il ne me reste pas grande temps à vivre, et de tout façon, vous pouvez courir après moi, je vais disparaître.”

However, she went on to explain how, over the years, she has witnessed the harmful consequences it has had on other transsexual women:

“Si je me mets dans la place de quelqu’une d’autre, qui a tout la vie devant soi, je suis scandalisée par cette situation, et par tout la peine que cette personne-là doit supporter, et les conséquences aussi, les conséquences sur soi, les conséquences sur ses proches et ses objectives, son avenir, qui est, qui devient, flou, qui devient inaccessible, qui devient troublée. Et tous ces conséquences-là, aucun [pause] système ne réalise et ne trouve que ça pas de sens ou c’est contradictoire ou c’est un peu extrême...”

Alors qu’est-ce qu’une transsexuelle qui est arrivée ici et qui n’a pas pu s’intégrer dans son groupe à elle, ou qui n’a pas osée... à retourner à l’école, s’instruire d’avantage, et de

visée un poste, un travail bien rémunérée, et qui... finalement se rebattu sur le travail du sexe et qui a eu un casier judiciaire avec ça, et que l'immigration le pénalise aussi.

Quel choix a-t-elle de pouvoir s'en sortir à part de continuer à élever son casier judiciaire, et finalement à emmerder en même temps l'immigration ? Quel est l'espoir qui lui y est réservée quand elle n'a pas, pour le plus part que j'ai connue, un secondaire 5, et n'a pas eu la chance ou [pause]...le moyen, si on peut dire, de pouvoir exceller dans quelque chose ? C'est à dire, apprendre au moins un métier, avoir un certificat, ou au moins bien parler la langue du pays, ce qui est pour certaines une lacune, et pouvoir arriver avoir un travail. Qu'est-ce que l'avenir réserve une personne qui est dans ce sort ? Et je vais même aller plus loin, d'après mes observations, qu'est-ce que le milieu et ses paires peuvent lui offrir d'aide pour que cette personne-là puisse briser cette chaîne, et à pouvoir accéder à un autre pallier où elle peut progresser ?”

Her critical reflections and questions go to the heart of this thesis. How are the lives of migrant trans women who sell sex determined and defined by immigration penalty? The interviewee's powerful remarks guide us to the final section of this chapter, in which I discuss the many ongoing consequences of immigration penalty for the women I interviewed.

5.4 Everyday consequences of Immigration Penalty

This final section returns full circle to many of the everyday themes that were discussed in chapter 3. The section begins with a discussion of the probationary measures which many interviewees have been subjected to by immigration authorities. This is followed by a discussion of the broader daily consequences of immigration penalty, speaking to a range of themes including increased economic and social precarity, erosion of community, and institutional avoidance.

Several interviewees spoke of probationary-like conditions that they were ordered to follow by IRB commissioners. Often, this was a primary requirement in order to regain permanent residency. One interviewee, as previously mentioned, was ordered to stop selling sex, to find a legally sanctioned job, return to French school, and avoid further criminal convictions.

Without citizenship, she was unable to change her legal name and sex in Quebec⁴, which contributed to the difficulty in finding a job. At the time of our interview, she had found a small contract cleaning homes, but wasn't making enough to pay her school fees. She was no longer qualified for subsidized French classes, and was charged over \$600 per month, equivalent to her monthly welfare cheque. As she neared the end of her probationary period, she told me she was at her wits end: "Maintenant, je suis désespérée, je ne sais pas quoi faire, c'est la vérité...J'ai le goute de recommencer [la prostitution] parce que il faut que je vis." She continued:

"J'ai peur, j'ai vraiment peur, parce que si je ne respecte pas les conditions, maintenant, oui, ils vont me retourner dans mon pays. Alors, je ne suis pas retournée...C'est sûr j'ai peur, je vis dans une condition, c'est difficile parce que j'ai pas de l'ouvrage. J'ai l'aide sociale mais ça aide juste à payer mon appartement. "

According to her, this fear was shared by many of her friends: "Ce n'est pas juste moi qui vive cette situation. Il y a des autres filles...qui ne sont pas respectée les conditions...j'ai peur présentement." As was previously discussed, the closure of spaces like Citibar had particularly dangerous consequences for migrant trans women who sell sex, and for whom an arrest could result in further repercussions on their immigration status.

Several interviewees were required to report to immigration authorities on a regular basis (ranging from every week to every few months). One woman recounted a particularly negative encounter she had during her bi-monthly visit when an immigration agent asked her "Pourquoi t'es comme ça? Pourquoi t'es habillé comme ça ?" She was subjected to a frisk, and asked for additional proof of residence. She described the toll each visit took on her mental health:

⁴ According to the Civil Code of Quebec, citizenship is required in order to change one's legal name and sex designation.

“À chaque fois qu’il faut [aller] à la immigration là, je me sens comme si mon cœur va arrêter là-bas, comme terrorisée de tout ça... C’est l’endroit où à chaque fois je pense qu’ils vont me prendre.”

One interviewee was ordered to attend a drug rehabilitation program, and to provide a written report from her counsellor testifying to her participation. She was also ordered to stay away from the *milieu de drogue*, and to avoid people with criminal records – arguably impossible for somebody living on the streets and in homeless shelters. All interviewees with probationary conditions were also required to provide notifications of changes of address. At least two interviewees had very precarious living conditions, and no fixed address, making it very difficult to comply with this condition.

Interviewees who will eventually apply for permanent residency – or in some cases, to re-establish permanent residency – will have to go through certain ‘rehabilitation’ measures. For women with criminal records in Canada, they will have to apply for a criminal record suspension (formerly known as a pardon), which will cost a minimum of \$631. One interviewee with a criminal record outside of Canada had to submit an application for rehabilitation, in which she had to demonstrate she didn’t present a risk of recidivism. The application for rehabilitation included a \$1,000 fee, as well as charges for fingerprints. Once approved, she had to apply for permanent residency, which included another \$500 fee. At the time, she was living in social housing, but without permanent residency, she was ineligible for a subsidy. Her welfare covered rent, utilities and transportation, but it was a stretch to cover the immigration fees.

Beyond the probationary-like conditions imposed by immigration authorities, immigration penalty had far reaching consequences for the interviewees. For many interviewees, the overarching theme was increased precarity and marginalization. One woman, despite being granted protected status following a successful PRRA, had lived for a decade

without applying for her Quebec selection certificate, and her Canadian permanent residency.

After a lengthy period in immigration detention, she was released in an unstable state, without adequate support and resource. She described feeling abandoned:

“Ils m’ont laissée abandonnée... personne savent où quoi faire. C’est plus difficile aujourd’hui qu’avant. J’étais mieux quand que j’étais illégale qu’aujourd’hui que je suis légale. J’ai pas l’aide à personne, rien, et par obligation je fais ce que je fais [sex work], parce que, comment allez-vous vivre ?”

She went on to describe the devastating loss she experienced, not only during her detention, but also over the past two decades:

“Mon appartement, j’avais tout perdu. Quand j’ai sorti [from detention], je n’étais plus capable de retourner comme avant. Ça, ça m’a fuckée la tête ... [Je n’étais] pas capable de revenir, de faire les spectacles, me reprendre, pas capable... J’ai perdu une partie de ma vie ou quoi, parce que en réalité, depuis qu’a commencé mes problèmes, j’ai perdu tout ma vie, j’ai gâché tout ma vie... Tous ces années illégales, j’ai perdu tous ces années-là, puis encore là, quasi-illégale. Je ne peux pas étudier, je peux rien faire... tous mes plans, toutes mes rêves, fondée, hein ?”

Without her papers, she had no access to health care or welfare: “Sans papiers, rien, c’est dure.

Pas de l’aide de gouvernement, tu peux pas travailler. C’est difficile, [mais] je ne me cache pas, je me cache pas.”

Another interviewee had lost all her identity documents over the course of several years of unstable housing. Although she eventually was informed that she had permanent residency, she would be required to go through a lengthy application process (including filing years of back taxes, providing proof of sustained residence in Canada and paying the \$500 fee) to simply be reissued her permanent resident card. She described feeling demoralized, as if her life had been turned on its head, and struggled to regain a sense of control over her life.

In addition to living without documents, her experiences of criminal and immigration law enforcement had been traumatizing, and resulted in a generalized fear of being in public spaces:

“Since then, I’ve been hiding... I’m not hiding, but I don’t go to restaurants any more cause I’m so traumatized...because of [what happened] I can’t sit beside the window. If I’m walking on the streets, my hands, I get shaky every time I see something blue.”

She went on to describe how this daily fear had percolated into her dreams:

“I get nightmares sometime because I dream about...walking down the streets and one day I will be deported, whoosh, just like that, for no reason...I feel as though they’ll [immigration authorities] come out of nowhere and be like ‘don’t speak!’ and put a cover over my head like in the movies, I’ll wake up, say ‘what happened?’ and find I’m in a warzone. That’s what my fear is now...that’s really freaky.”

Not only did interviewees express fear of being arrested (e.g. for selling sex, being in public spaces), but some interviewees also spoke about the lack of protection provided by the police in situations of domestic violence. One interviewee was particularly concerned that if she ever did call the police to intervene, she would be the one arrested and charged – as had already happened on multiple occasions – and that she would ultimately be denied permanent residency. For many interviewees, ‘staying out of trouble with the law’ - a common refrain of immigration agents – only reinforced the fact that interviewees generally avoided police when they were subjected to interpersonal violence.

Several women spoke about their increased isolation. One interviewee stopped socializing with certain friends after being warned by immigration agents that even the smallest of criminal infractions could lead to her losing her status:

“The officers told me, ‘We just gave you a pardon,’ they said, ‘I suggest you stay out of trouble, don’t get into any problems because the smallest problem you go through, you will lose every chance.’ She was being very specific about not getting into trouble, especially with drugs. That’s why I don’t invite XXXX here or any people I know they are doing drugs. I don’t invite them because I don’t know what they’re going to be carrying on them. Maybe they can either forget or on purpose hide something here and get me in trouble... I’m not willing to lose what I barely got with too much difficulty, for somebody who doesn’t care about his life. If they don’t care about their life, OK fine, but I do care about mine, my welfare.”

Whereas she had once been a community leader who was well known and respected, she now spent most of her days alone:

“Now rarely I go out. [Interviewer: Is that hard for you?] I miss those days; I miss those days. I wish I could do it but life is a matter of cycles, and I’m in a different cycle. I need to adjust to my life in the present, I need to accept what I’m living, if it’s living what I’m doing. [Interviewer: What do you mean?] I don’t know, sometimes I feel like...where am I going to, what am I doing with my life, like I’m not doing anything that can make me feel proud.”

While waiting for her permanent residence, she had been encouraged by a friend to volunteer with elderly people in a hospital. She was hopeful this might offer her an opportunity to connect with and be a support for others. By the time the mandatory criminal record check and she received administrative approval, more than a year had passed. At this point, she had been diagnosed with a chronic health condition that left her feeling discouraged and incapable of taking on a support role.

Despair overshadowed some of these discussions with interviewees. For a few women, Maria’s deportation and murder featured prominently in their fears. Interviewees described losing a supportive friend and neighbour when she was deported. Her murder amplified the loss, while also evoking fear for their own lives:

“Oui, j’ai connu des autres filles qui ont été déportées, mais je ne veux pas parler des choses comme ça parce que...ça, ça me rendre triste... [crying, gets up for a minute, comes back]. C’est une situation difficile, qu’est-ce que tu veux?... C’est un souvenir-là [points to picture of her and Maria on her wall], mon amie là, elle est déjà morte. Elle habitée à côté [de chez moi], c’est une photo je regarde, elle puis moi...C’était terrible, ça me rendre trop triste.”

Another woman condemned Canadian immigration authorities for taking away her best friend, while explaining that she, too, would face a similar fate were she to be deported:

“Elle été vraiment cool avec moi. C’est mon meilleur chum, elle m’a aidée, elle m’a dit viens-t-en a la maison [when she was homeless after being released from immigration

detention] ...Elle était une bonne personne. Ils ont le retourner juste pour le faire tuer là-bas. S'ils l'ont pas retournée, elle sera en vie aujourd'hui, hein ? Elle sera en vie. Des fois il manque de l'humanité. À moi ça va arriver la même chose [s'ils] me retourne là-bas. ”

Conclusion

This chapter has provided a focused account of immigration penalty as it manifests in the daily lives of the women interviewed. Rather than relying on an analysis of law and policy, or dominant discourse, I have maintained the focus on the actual experiences of migrant trans women. I have not intended to present an overview of the many ways in which migrants are governed through criminality. Instead, I have attempted to situate specific manifestations of immigration penalty within the broader socio-legal context of migrant trans women's everyday lives.

Conclusion

This thesis originated from a sense of urgency and importance in creating a public record of the individual and collective knowledge of migrant trans women who sell sex in Montreal. The decision to focus on immigration penalty emerged from my own ongoing relationships with the women I interviewed, and was largely driven by their own desires to speak out and make their lives known beyond the institutional records of Canadian immigration and criminal justice systems.

In order to guide this work, I have drawn on socio-legal scholarship concerned with migration and criminality, so as to situate my work within a broader conversation about the governance of migration through immigration penalty. Furthermore, I have relied on the methodological work of feminist scholars, such as Dorothy Smith, to analyze social relations and institutional knowledge production from the perspectives of the interviewees' everyday lives. Whereas ideological discourses about trans women who migrate –including those advanced by sexuality and gender scholars – rarely feature the actual experiences of migrant trans women themselves, I chose to foreground the knowledge of migrant trans women.

Dominant knowledge, including knowledge constituted by administrative and criminal legal records, situates migrant trans women between states of victimhood, protectability and inclusion, and foreign criminality, disposability and exclusion. The interviewees' everyday accounts stand often in sharp contrast to these institutional ways of knowing, providing rich, complex and nuanced understandings of the ways immigration and criminal law govern the daily lives of migrant trans women. This conclusion provides a brief review of some of central themes that emerge from this work.

Key Findings

The interplay of criminal and immigration law was a central theme throughout the thesis. While several socio-legal studies of migration focus on the explicit criminalization of immigration (often under the auspices of ‘cimmigration law’), interviewees experiences did not suggest a consistent interplay between criminal and immigration law enforcement. Rather, several instances revealed an inconsistent relationship between the two. In some instances, municipal police and immigration authorities explicitly cooperated, sharing information on wanted individuals, carrying out arrest warrants and transferring interviewees from police to immigration custody. This coordination was generally initiated at some point after a ‘serious’ criminal conviction triggered an investigation from immigration authorities. In other instances, policing practices and immigration law enforcement produced and mutually reinforced interviewees’ feelings of insecurity and instability. Examples include threats of deportation uttered by police, and moments of panic described by interviewees when first arrested by undercover members of the morality squad. This interplay is both ideological and experiential, but didn’t require coordination across institutions. At the same time, certain accounts demonstrated a clear division in institutional knowledge and action between criminal and immigration law. For example, several interviewees spoke of criminal defense lawyers who had no understanding of the implications criminal convictions may have on their immigration status. Courtroom strategy centered on minimizing jail sentences, with no regard for, nor understanding of the precarity a serious conviction could create.

Another key consideration coming out of this research is that immigration penalty extends far beyond the realm of detention and deportation. Moffette suggests that migration is governed through probation, creating a prolonged status of liminal legality for many migrants

(Moffette, 2014). This was exemplified in the cases of all interviewees. Status was granted and repealed on a conditional basis. Some interviewees were only granted permanent residence, for example, after demonstrating they met a certain threshold of rehabilitation. Others were denied, or lost permanent residency after certain conditions were broken. Permanent residency could only be regained after a set probationary period, during which time individuals were obliged to abide by a number of conditions. Underlying these probationary states was a constant possibility of detention and deportation. Arguably, this possibility generated a certain level of self-governance amongst many of the interviewees, wherein some interviewees stopped working on the streets, refrained from socializing with others, did not rely on the police for protection and avoided being seen in the public for fear of being arrested, charged, convicted and detained/deported. Given that the probationary status of many interviewees was frequently determined and defined by a sequence of discretionary decisions made by a range of institutional actors – including IRB commissioners, police officers, judges, French instructors, welfare agents and prosecutors – the decision to self-isolate or disengage was common, so as to minimize the risks of further immigration penalty.

Research limitations

One primary limitation to this research is the lack of direct engagement with institutional actors, including immigration agents, criminal and immigration lawyers, and police. ATIP-obtained documents offered substantial insights into the role of institutional texts in governing migrant trans women's daily lives. However, speaking directly with institutional actors would provide for a much richer and in depth analysis of the social relations which govern institutional knowledge production from within.

Directions for future research and action

This thesis has aimed to draw attention to an issue that, although it preoccupies a significant number of migrant trans women living in Montreal, and presumably across Canada, has garnered little attention from activists and researchers alike. Although there is a growing movement to address the particular ways migrant sex workers are criminalized through anti-trafficking laws, it is often at the exclusion of the particular legal and social circumstances impacting trans women. In a similar vein, trans activists in Quebec are currently preoccupied with legal barriers to accessing gender/sex-confirming identity documents for migrant trans people. Yet here, too, the broader legal and social circumstances that impact migrant trans women's daily lives are rarely taken into account. As such, it is crucial that the role of immigration penalty in governing daily lives of migrant trans women be made visible.

Future research could take a more extensive examination of the simultaneous role played by refugee law and criminal law in governing trans women's lives. Such work would particularly benefit from a thorough engagement with critical race feminist theory. There is a substantial body of critical race feminist work analyzing the historical evolution of immigration and refugee policy in Canada, and linking the emergence of immigration penalty to a broader arch of nation-building and racial order. The ongoing criminalization of migrant trans women, coupled with their protected status as refugees, creates a context within which they are commonly rendered disposable yet un-deportable. A closer examination of the inter-institutional workings of the three immigration agencies (IRB, CIC and CBSA) as it relates to migrant trans women would be provide further depth and nuance to my current research.

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I. Master Thematic Index

MIGRATION TO CANADA

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As child

 Sponsorship

 Status as adult

As adult

Refugee claim

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Living without papers (in USA)

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 Barriers to work

 Sex work

 Entertainer/performer

 Welfare

School

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 Beauty school

 Problems with administration

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Housing

Transitioning

 Access to health care

 Legal ID documents

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 Support & leadership

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- Profiling

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- 'Fairness' report

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- Detention hearings

Appeal

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PRRA

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- Non-association with criminals and criminal milieu
- Report to immigration
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Living w/o papers

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Precarity

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Isolation from community

Criminalized community

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SURVIVAL

Resistance & organizing

Leadership & entertainment

Death & survival

Mutual Aid

Sharing knowledge

II. Interview Guide

Double Punishment: Immigration Penalty in the Daily Lives of Migrant Trans Women

Introductory notes

Thank you for taking the time to participate in this research.

Ensure comfort, encourage to stop at any point if necessary.

Brief outline of the interview process (1-2 hours, number and scope of questions, consent process, recording of interview, storage of data).

Review of the research project (focus, expected outcomes).

Presentation, discussion and signing of consent form (including conversation about confidentiality, right to partial/full withdrawal).

Anything else before we get started?

[BEGIN RECORDING]

A. Introductory questions

What is your name (or what is the name you would like to use for the purposes of this research)?

Initiate brief conversation about daily life

Possible questions:

How has your day/week been?

What have you been up to lately?

Are you working these days? *If yes:* How's that going?

Are you seeing anybody right now? *If yes:* How's it going? How long have you been together?

How's your health been lately?

B. Life before coming to Canada

When and where were you born?

Where did you grow up?

Where did you live before coming to Canada/Montreal?

How old were you when you migrated to Canada?

(For people who migrated to Canada at a young age, skip to Section C)

Could you briefly tell me about your life growing up?

Follow up as needed:

How was your family life?

Did you go to school? What level of studies did you do?

Did you work? *If yes:* What did you do?

At what age did you leave home? Why did you leave?

My research is loosely focused on trans women, though I realize that this isn't how you might refer to yourself. How do you prefer to describe yourself in terms of sexual identity (transsexual, *travesti*, straight, gay, woman, etc)?

How did your sexual identity or appearance impact your daily life as a child/adolescent?

C. Migration to Canada

When did you first leave your home country, and where did you go?

If country other than Canada: How did you get there? How long were you there? What was your life like while you lived there? (i.e. What kind of work did you do? Were you living as a woman?)

When did you first come to Canada?

Why did you come to Canada? *(If came to Canada multiple times, ask about each occurrence)*

How did you get here? Did you travel alone or with others?

(If participant spent childhood in Canada, ask following set of questions)

Could you briefly tell me about your life growing up in Canada?

Follow up as needed:

How was your family life?

Did you go to school? What level of studies did you do?

Did you work? *If yes*: What did you do?

At what age did you leave home? Why did you leave?

My research is loosely focused on trans women, though I realize that this isn't how you might refer to yourself. How do you prefer to describe yourself in terms of sexual identity (transsexual, *travesti*, straight, gay, woman, etc)?

How did your sexual identity or appearance impact your daily life as a child/adolescent?

D. Encounters with the Canadian Immigration System

Do you know your current immigration status in Canada? *If yes*: What is your status?

Can you briefly describe your encounters/dealings with the Canadian immigration system?

Did you ever have an immigration lawyer representing you? If so, do you recall who?

Did you apply for refugee status? If so, when and on what grounds? When did you get your decision? Was your application accepted?

If yes: How did you feel upon getting news of your decision?

If no: What happened next? Did you make additional applications? If so, what were the outcomes?

Were you ever living without status (“illegally”) in Canada? If so, for how long? How did (does) this impact your daily life?

Were you ever placed in immigration detention? *If yes*: Tell me more about your experience...

E. Work experiences

How have you earned a living since living in Canada?

What are your primary sources of income currently?

Have you ever exchanged sex for money and/or other material needs (food, housing, etc)?

If yes: Can you tell me a bit about your experiences?

If currently trading/selling sex for money:

Could you describe a typical day at work? What does your schedule look like from day to day?

Who are your clients?

How do you feel about your work?

Do you feel like you have a community around you or do you work alone? Please describe.

Have you ever experienced harassment, aggression or other types of violence on the job?

F. Interactions with police, justice system, prison

If interviewee lived outside of Canada for a significant amount of time during adolescence/adulthood...

Did you ever have problems with the law or the police before coming to Canada? Please describe.

If yes: Do you have a criminal record from your encounters with the law before coming to Canada?

Have you ever interacted with the police?

If yes: Could you tell me a bit more about your experiences with the police? Were they municipal police (e.g. SPVM)?

Have you been arrested?

If yes: How many times? What for? Were you detained? How were you treated? Would you like to tell me more about your experiences?

Have you ever been to court?

If yes: Tell me more... What was your experience like? How was your lawyer? How were you treated by the judge, the prosecutor and any other members of the court? Do you think that you were treated fairly? With respect? Why or why not?

Have you ever been to prison?

If yes: How many times? For how long? Would you like to tell me more about your experiences?

G. Immigration Penalty

How has your criminal record impacted your immigration status?

If yes: Tell me more... what kind of impact?

Have you ever been told you could be deported if you are convicted of engaging in any illegal or criminalized activities?

Have you ever been called in front of an immigration commissioner because you might be considered inadmissible to stay in Canada?

E.g. Have you ever been called or received a letter from the CBSA/CIC informing you that you may be investigated due to your criminal record

If yes: Why? Can you tell me more about this (these) experience(s)?

If interviewee has (applied for) permanent residency and/or citizenship...

Have you faced any barriers to applying for either permanent residency and/or citizenship? For example, has the fact that you have a criminal record either in Canada or elsewhere caused you problems?

If yes: How has this impacted your daily life?

H. Impacts on daily life

How has your immigration status and criminal record impacted any of the following: Access to health care, housing, work, education, safety?

I. Community & Survival

What resources have you relied on to navigate conflict with the law (criminal and immigration)?

What made you seek support?

What helped you choose to remain in Canada, and to fight a potential deportation?

J. Closing remarks

Anything else you'd like to mention or discuss?