Creating a Blueprint for Law Reform: A Sex Worker Rights Community Project

Jennifer M. Clamen

A Thesis

in

the

Special Individualized Program

Presented in Partial Fulfillment of the Requirements
for the Degree of Master of Arts at
Concordia University
Montreal, Quebec, Canada

April 2007

Canada

ABSTRACT

A Blueprint for Law Reform: A Sex Worker Rights Community Project

Jennifer M. Clamen

The international sex worker rights community has been struggling towards decriminalization of the sex industry since the 1970s. Alongside activist and political work on behalf of the community itself, there has been a plethora of political and academic research from outside the community in Canada that attempts to define the needs of sex workers and make recommendations for law reform. Most legal reform recommendations, however, have not included sex workers' perspectives. In response to this and to the current political climate of Canadian prostitution law review, this thesis highlights how a small group of sex workers inform a political process by identifying their own recommendations for legal reform using through community-based action research. It also provides a privileged look at how sex workers organize around law reform, providing an opportunity for sex workers to participate in an action research project where they construct an ideal model of law reform. In turn, this project initiates an empowered community response to policy reform through research, as is rarely done by communities themselves.

DEDICATION

For all the brave and beautiful hookers, hos, sluts, prostitutes, whores and goddesses in

my life who have displayed the art of bravery and strength in their work, their lives, and

their ability to stand up and continue in the face of so much adversity. You inspire me and

give me courage to fight.

***

À toutes les belles et braves putains, putes, femmes publiques, prostituées et déesses

qui font partie de ma vie, à celles qui ont déployées courage et force dans leur

chemins et leur travail et qui continuent de se tenir deboutte face à l'adversité. Vous

m'avez inspiré et insuflé le courage de lutter.

FOREWORD

This project began as a culmination of ideas collected over my six years of activism in the sex worker rights movement. Throughout my years of organizing I have met hundreds of sex workers and encountered many obstacles in our plight for human rights.

Some of the main obstacles I have identified throughout my activism are:

1. A lack of societal recognition for sex workers' lives, work and voice;

2. An inability for most people to accept sex workers into society as people who work, have voice, and can speak about their own experiences; and

3. A serious disconnect between sex workers' experience and the interpretation of sex work from the outside.

These are realistic and understandable misconceptions given the way that sex work is portrayed in the media, pop culture, and in our opinions and every day conversations. Sex work is rarely perceived as a form of work but rather as a social problem that requires elimination or some sort of containment (Clamen and Gillies 2004). Sometimes this entails viewing sex work as a morality issue. Other times it involves constructing sex work as a negative manifestation of women's sexual exploitation, poverty, or individual pathology. Abolitionist feminist debates about sex work as a result of economic insecurity and violence do not accurately define who sex workers are or what sex work is about. Instead, a more accurate definition is achieved by understanding sex work in the way that the workers themselves experience it—as a means of generating income to support themselves, their families, their needs, and their aspirations. Simply put, sex work is work.

This project began as a response to the disconnect I observed, and later transformed into an organizing opportunity to include sex workers' perspectives in law reform. The past four years of community organizing in Montreal have significantly changed my perspective around these issues and have informed this research project. I have since come to understand the various players involved in the law reform process, but maintained a true belief that affected communities need to guide these processes. During that time there was a plethora of community organizing events (Coalition for the Rights of Sex Workers' Festivals, C'est Chaud, Stella's 2005 Forum XXX, actions for commemorating violence against sex worker days), consultations around sex work law reform (Pivot 2006, Canadian HIV/AIDS Legal Network 2005), and a parliamentary review of prostitution laws (SSLR 2002-2004). From past experience of prostitution law review, it was evident that sex worker involvement was paramount to the success of these latter non-sex workers-led initiatives. This project was therefore borne out of a political climate around sex work law and the 2003 Federal Government initiative for prostitution law reform.

Parallel to this, our community had not yet articulated our needs for law reform. What exactly did decriminalization mean to us? We developed this Blueprint project to help us define this and other needs for law reform. During this time in Vancouver a project similar in scope, but on a much larger scale and not led by sex workers, was undertaken by Pivot Legal Society: *Beyond Decriminalization*. Our community was even more eager to ensure an original contribution and an organizing effort from the sex worker rights community. By the end of our own project the group had agreed that it was just the beginning, a pan-Canadian consultation with sex workers was what we needed and should be the next step.

One of our concerns for this community-based project was whether or not it would stand up to academic validity. The small number of sex workers involved in the project and the lack of credibility typically afforded to sex workers made it likely that academics would challenge the 'validity' of our research project. In addition, my obvious bias and positioning as a community member guiding this research project may have also put the project's validity into question. However, I do not claim to be separate from this research project. Nor do it's participants. This is research grounded in real-life experience.

Through this research our community attempts to refine our politics around legislative reform. We ask ourselves: what definitions and visions for law reform—more specifically decriminalization—emanate from the sex worker rights community in Montreal? It also emphasizes the importance of community-based and grassroots leadership on such issues.

To begin our process, I invited a few sex workers who are active in the sex worker rights movement to chat with me informally about a project that would define law reform and those I approached seemed interested and curious. One of our main issues was how we were going to represent law reform for *all* sex workers. Representation is an issue across various issues in our movement. We identified ourselves as a "community," which meant our community of activists in the sex worker rights movement, most of whom are sex workers. The Blueprint is therefore a culmination of ideas from a sex worker rights community, and with it we attempt to change a bit of history. More importantly this project allows our community to organize to put sex workers' voices at the forefront of sex work policy and law reform debates.

Community organizer and Professor Eric Shragge (2003) emphasizes the importance of process in organization:

> In the process of participating in local struggle, people gain awareness, form solidarity with others, and create democratic opportunity. Community organizing can contribute to change by mobilizing people to act for their own interest in an organized way. (Shragge 2003; 19)

As such, this thesis project is an example of how sex workers organize around law reform, and how this group works to build community and enact social change.

CHAPTER 1. SETTING THE STAGE FOR LAW REFORM

Prostitution law reform is criticized by the sex worker rights community as rarely including the expert knowledge of sex workers directly affected by those laws (Stella 2005). Sex workers are seldom given the chance to define the context and content of legislation for their industry. When law reform initiatives are set in motion sex workers typically constitute a token participatory element or their perspectives are rarely incorporated. Chapkis (1997), for example, observes the "the absence of a sex workers' perspective in the implementation of regulatory policies" and cites, as an example, how they were absent from the creation of policy for the only legalized brothel system in the United States in the state of Nevada (Chapkis 1997; 162). Other sex workers argue that "sex workers are no longer seen as experts. They have to glean information on the next policy steps and current debates from the daily press" (Czajka 2004; 69). In response to this gap, the contemporary sex worker rights movement attempts to advance sex workers' voices and alter public perception of sex workers' realities. These efforts are coupled with a demand to create social and legislative systems that include, rather than exploit, sex workers. This thesis argues and supports the idea that legal reform initiatives and policy recommendations require leadership from sex workers and the sex worker rights movement.

1.1 Current Context for a Prostitution Law Reform Lobby

Prostitution law reform has been a recurrent theme on the Canadian political agenda for over 30 years. In the last five years alone numerous projects to review prostitution laws and policies have been initiated through public pressure, on policy

makers or by allies sensitive to the exploitative nature of current legislation. The key

initiatives discussed below have been based both in government-funded groups and in

government itself.

<u>1.1.1 Parliamentary Subcommittee on Solicitation Laws (SSLR)</u>

One key initiative began in November 2002 when East Vancouver MP Libby

Davies made a plea to Canadian Justice Minister Irwin Cotler and spoke to the realities of

the most visible sex workers in her riding:

> Current laws on prostitution are making street-level sex workers vulnerable to
>
> selective enforcement laws, as well as exploitation and violence. This motion would
>
> provide the House of Commons with a real opportunity to improve the safety of
>
> sex-trade workers and communities overall. (Press Release from the Office of Libby
>
> Davies; November 18, 2002)

Davies raised a lot of public awareness around violence against sex workers at the

end of what marked a 20-year period of serial murders of over 60 women in Vancouver's

Downtown East Side (DES), most of whom were First Nations and Inuit sex workers. On

November 18, 2002, Davies tabled a private member's bill (M-192) in the house of

parliament calling for

> a special committee of the House to be appointed to review the solicitation laws in
>
> order to improve the safety of sex-trade [sic] workers and communities overall, and
>
> to recommend changes that will reduce the exploitation of and violence against sex-
>
> trade workers" (House of Commons Debates, February 7, 2003).

The motion was passed and amended by Parliament in February 2003, appointing the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness to create the Subcommittee on Solicitation Laws (SSLR). The committee only named 'solicitation' (legally: communication) in its title although their mandate included a review of all *Criminal Code* laws pertaining to prostitution. Picking up on this bias and possible diversion of the committee's mandate, a group of Canadian researchers that make up the STAR project asked, in their recommendations to SSLR, "that the SSLR expand its focus to examine all of the *Criminal Code* statues pertaining to sex work (not just those pertaining to 'communication' as outlined in Section 213" (STAR 2005; 34). They reminded the committee that the original motion M-192 focused on solicitation, but that the Parliamentary debate had, as its mandate, an intention to review Sections 210, 211 and 212, of the *Criminal Code*, in addition to Section 213. This would ensure an inclusion of all sex workers that are affected by the legislation.

Some felt that the original M-192 motion clearly swayed the debate at the onset of the discussion and that the committee "hid behind ideology rather than responding to evidence" in their approach to prostitution (Canadian HIV/AIDS Legal Network, Stella, Maggie's 2007; 6). Testimony to SSLR, and the SSLR report discussed in Chapter 2, was thereafter polarized: those who espouse the view of sex work as a social problem and those who acknowledge sex work as a viable work option:

> Instead of objectively analyzing the evidence and identifying concrete changes to the law, the Subcommittee's report gets caught up in a debate about two "philosophies" of sex work. (Canadian HIV/AIDS Legal Network 2007, Stella, Maggie's; 6)

The committee's task was therefore considerably large. Competing ideologies around prostitution, moral hang-ups, and life experience from sex workers themselves made up the composition of positions the committee had to digest and process. Pressure mounted from different communities to ensure sex workers' perspectives were favoured. Pivot (2004) argued that the sex worker's position should be considered paramount when considering law reform:

> Sex workers are in the best position to describe what it is like to work and live under the current social and legal framework and to recommend the ways in which their circumstances should be improved. (Voices for Dignity 2004; 2)

Pressure also mounted from academics to include sex workers' perspectives. In an email dated February 11, 2005, Professor Frances Shaver, on behalf of a group of colleagues and their community-partnered sex worker groups, wrote to the SSLR committee analyst, Lyne Casavant:

> The voices of sex workers must be heard. Facilitating this process, however, will not be an easy task: some fence-mending and trust-building measures will be required. The current SSLR committee is not perceived as being open to consultations with sex workers, and sex workers who have come forward in the past, either to the media or former committees, have often had their stories misrepresented and/or sensationalized. This adds to their current marginalized status and further alienates them from any democratic process. Given these barriers, it is essential that the committee develop some innovative ways for including sex workers in the consultation process since the traditional approaches are unlikely to work. (Email communication with Frances Shaver, February 11,

8

2005)

As a representative for the Canadian Guild for Erotic Labour and Montreal sex worker organization Stella, my own testimony to the committee included the voices of over 250 sex workers from the Forum XXX, a gathering of 250 sex workers in Montreal, May 2005 that "testify to the harm, crime, and injustice of criminalizing sex workers in a victimless crime" (Clamen 2005b). Discussed at the Forum, and relayed to the SSLR committee, was the sex workers' belief and recommendation that:

> The committee has heard from people [non-sex workers] who support the view
>
> that sex workers are not able to speak on their own behalf, people who view sex
>
> workers as second-class citizens, and those who conflate issues of migration and
>
> coercion with sex work. We [sex workers from the Forum XXX] urge the
>
> committee to take the sex workers' perspectives that they have heard... as expert
>
> testimony from those who have first-hand and legitimate claim to experiences in
>
> the sex trade. Sex workers' voices are often ignored or not taken seriously, in the
>
> blind hopes of unveiling a real portrait of sex workers. (Clamen 2005b; 1)

Committee member Libby Davies did believe sex workers' testimony to the SSLR was not only included but that it was heavily instrumental in influencing other committee members. In a 2005 interview, Davies admits that:

> The single most critical element in changing this debate has been the public
>
> hearing the voices of sex workers[...]Those that want to talk about protectionism
>
> and moralism and see only victims can't sustain their arguments when sex workers

9

are really heard. I credit them[...]with changing the minds of many members of

the committee. (Davies cited in Van der Meulen 2005; 31)

One year later, however, and in the committee's final report released in December

2006, it becomes clear that Davies' belief were unfounded; the report was void of sex

workers' perspectives:

> Over 100 current and former sex workers testified before the Subcommittee, but
>
> their voices and experiences are absent from the report's recommendations.
>
> (Canadian HIV/AIDS Legal Network, Stella, Maggie's 2007; 6)

As demonstrated here, and in more detail in Chapter 2, sex workers' inclusion in

the parliamentary process was limited to participation; their perspectives were not

included in the committee's recommendations.

1.1.2 Pivot Legal Society Law Reform Projects

At the height of the SSLR committee deliberations in 2004, Pivot Society, a legal

network closely allied with some of the Vancouver sex working community, produced

and publicized a report entitled *Voices for Dignity: A Call to End the Harms Caused by*

Canada's Sex Trade Laws (2004). The report was initiated for reasons similar to MP

Davies': the disproportionate amount of violence against sex workers in Vancouver's

DES. The report moves beyond Davies' focus on violence, and embraces all of sex

workers' human rights, including a right to work with no violence. The recognition of the

right to work in the industry acknowledges and incorporates the perspective of the sex

workers rights movements that sex work is work. In their *Voices for Dignity* report, Pivot

argues that the current laws around prostitution violate sex workers' human rights as laid out in the *Charter of Human Rights and Freedoms*.

They interviewed and acquired signed affidavits from 91 sex workers, mainly street-based. Pivot claims that their report:

> Provides an opportunity for some of the most marginalized sex workers to express their opinions on law reform, and to counter the assumption that they are invisible, voiceless or lacking personal agency. (Pivot 2004; 4)

They acknowledge that street sex workers are most likely to "bear the brunt of the current legal framework" (Pivot 2004; 8) and therefore choose to focus primarily on street-based sex workers living in poverty. Their recommendations do not include all groups of sex workers affected by prostitution laws and are therefore limited. However, their recommendation that sex workers' perspectives "must form the cornerstone of any law reform that will disproportionately affect them" (Pivot 2004; 6) is one that is supported by the sex worker rights community. Since the release of *Voices for Dignity*, Pivot has released a 2nd report, *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform* (2006). In this report they expand their discussion to include all sex workers and all prostitution laws. Their project is similar to our "Blueprint" project, though it is not guided or owned by members of the sex worker rights community.

1.1.3 Canadian HIV/AIDS Legal Network: Sex, Work, Rights

In response to M-192, the Canadian HIV/AIDS Legal Network also initiated a two-year project on prostitution law and the health and safety of sex workers in Canada

11

(Canadian HIV/AIDS Legal Network 2005). As part of their project they included a consultation with sex workers and allies. They broadened the debate by addressing all sections of the Criminal Code that pertain to prostitution, hence an attempt to include all sex workers. In their report the Legal Network argues that:

> These [sex workers'] perspectives and experiences have too often been filtered through assumptions adopted in the debate and discussion, or through the methodologies and questions upon which research has been based.
> (Canadian HIV/AIDS Legal Network 2005; ii)

The report encourages prostitution law reform based on testimony from sex workers, as well as consultation with researchers and other allies. Similar to the Pivot report, The Legal Network argues that prostitution laws violate sex workers' human rights as set out in the *Charter of Human Rights and Freedoms*. Though this project and consultation were not guided directly by sex workers or the sex worker rights community, it recognizes sex work as work as a premise, and hence includes a sex worker perspective. Their consultation included sex workers in the content of their report, though not the writing. The Legal Network makes the following recommendations to the SSLR committee in their report *Sex, work, rights: reforming Canadian criminal laws on prostitution* (2005):

> Federal, provincial/territorial and municipal governments must commit to the meaningful participation of sex workers in future decision-making about law and policy. In particular, sex workers must have a say in determining what laws and policies should apply to prostitution and sex workers. Where necessary,

government should make available funding to support such participation.
(Canadian HIV/AIDS Legal Network 2005; 1)

1.1.4 Other Academic Research

Alongside the political work of allies like the Pivot Legal Society and the

Canadian HIV/AIDS Legal Network, there has been a plethora of academic research in

Canada that attempts to define the sex workers' needs and make recommendations for

law reform in Canada (Lowman 1998; Maticka-Tyndale, and Lewis 1999; STAR 2005;).

While recommendations are often similar to the sex worker rights community, research is

rarely participatory and does not follow community-based principles of research;

consultations with sex workers are limited, and research topics rarely guided by the

community. In defining ethical research for partnered and community-based research

with marginalized populations, the Maritime Centre of Excellence for Women's Health

states:

> The various methodologies that community-based researchers may use (i.e.,
>
> participatory action research, feminist research) require specialized
>
> procedures...These methodologies require that the researcher and participants
>
> have input into the ethics review process, provide guidance in the research design
>
> phase, and have mechanisms to revisit ethical concerns after the project has been
>
> approved. (Maritime Centre of Excellence for Women's Health 2000; 2)

Kirby and McKenna (1989) refer to community-based research with marginalized

populations as "research from the margins." They encourage participation of the

community itself in all phases of the research process. Most research methods typically

13

employed when doing research with sex workers do not adhere to these principles of community research. This means that the research itself does not necessarily give back to the community or work towards community empowerment. Current sex work research also typically involves a collaborative or participatory element that gleans sex workers' perspectives on the work itself and law reform. This is rarely a partnership and research designs and results are rarely owned or researched by sex workers themselves.

Community-based research methods respect the need for participation, relevance of research, a non-exploitative and user-friendly process as well as a researcher who facilitates the community to develop capacities and ownership of research that affects them. Ownership, in this sense, and as evidenced in our Blueprint project, means the community has input and agency in the research process and defines research questions, analysis and dissemination of results. The majority of sex work research to date pays lip service and does not adhere to these community-based principles of research; these researchers maintain control of research and the impact of the results. Failing to adhere to community principles of empowerment and mobilization, academics stand in for communities and further skew the power imbalance in traditional research; traditional research methods are a messy fit for marginal populations. Academic research and resulting discourse is not accessible or necessarily useful to sex workers or their community; the language and theoretical discussion are rarely relevant to the daily lives or needs of sex workers—it does not have direct impact on the community's lives and sex workers have little use for the reports or academic journals that come out of typical research.

Jeffrey and MacDonald (2006) agree that traditional research and theory do not correspond with sex workers' needs:

Part of the difficulty with sociological theorizing relative to the sex trade is, generally speaking, part of the problem with sociological theory. Theory usually comes from above rather than below, from the top down rather than from the ground up. (Jeffrey and MacDonald 2006; 314)

Sex workers have expressed their need to be full participants in research conducted on their communities. In an article on sex worker participation in research, Sue Metzenrath, a sex worker and activist with the Australian sex workers' group Scarlet Alliance, argues that most research is conducted without the leadership of sex workers. She believes that "sex workers should be equal partners in research projects, approving questions and research design" (Metzenrath 1998; 12). Brazilian sex worker and international sex work activist and researcher Paolo Longo also supports increased responsibility for sex workers in sex work research. Longo observes that:

Sex workers are used to being subjects of research and generally not participating in the process. Their role is usually restricted to giving information and facilitating access to (other) respondents. They generally do not have easy access to the results and these are not commonly applied for their benefit. (Longo 2004; 9)

Though sex workers are used as subjects in the Parliamentary process, Legal Network and Pivot Society projects, not one actually took the lead from the sex worker rights community and incorporated sex workers at every stage of the process. This project

attempts to highlight the importance of community organizing and its relationship to research. It includes sex workers at every stage of its process, manifesting in an action directly related to the empowerment and organizing of a Montreal sex worker rights community.

1.1.5 A Community Project

Sex workers' demand for decriminalization is not unfamiliar to allies, academics, policy makers, or the general public. The international sex worker rights community has been publicly demanding decriminalization of the sex industry since the 1970s (Chapkis 1997; 155). What is novel, however, is the notion of research around this topic being guided and proposed in research by sex workers themselves and guided by community-based principles of research. It is also another way of envisioning a legislative system that does include sex workers' perspectives, a notion that reflects that greater goals of the sex worker rights movement.

This project attempts a direct community response to the need for sex work law reform. With roots and ideology based in an inductive, "bottom-up" approach, this research highlights community empowerment and knowledge as the purpose for community-based research. It also emphasizes the importance of using community-based principles to guide research done with marginal communities. This research acknowledges sex workers as experts for law reform and comes from a direct need for sex workers' voices to take precedence in both research and in policy recommendations for the sex industry.

Our Blueprint project constitutes a first step in creating a tool for lobbying and acknowledges sex workers' perspectives and ownership of research and inquiry. While its

perspectives are not representative of the entire Montreal sex working population, it

provides insight into the perspectives of the movement for sex workers' rights. This thesis

will guide the reader through the process that led to this initiative and provide the results

of the initiative itself.

1.2 Overview of the Thesis

Over time, sex work law reform has been the nucleus of morality debates around

prostitution and has been governed, in part, by public opinion. Sex workers' are rarely

perceived as experts in their own experience of prostitution law but rather as 'victims.'

This, however, is not a view that sex workers share (Stella 2005). Given this discrepancy,

sex workers' perspectives are paramount to law reform debates that typically exclude this

expert testimony. Within their communities, sex workers have organized and created

empowering tools that have been historically valuable to sex workers' daily lives.

Though not yet included on law reform agendas, this organizing has had significant

impact on sex workers' daily lives. Chapter 2 examines how sex work law has evolved

over the centuries, highlighting the exclusion and impact that sex workers have had on

this process within and outside of their communities. This chapter also explains the

different influences on prostitution law and those who impact current policy and

legislation, highlighting where sex worker expertise is missing while emphasizing the

importance of the sex worker rights community contribution to debate and reform. All

histories are contextualized within Montreal, Canada.

Chapter 3 provides the ideological context and method behind the Blueprint and

its process of creation. It addresses the philosophies that drive the project, the rationale

behind the method for this project, and a description of our process as it relates to

community-based principles for research. More specifically, this chapter argues that research with sex workers needs to be both community-based and have an action component if it is to be responsible to sex workers' needs for their community organizing. As such, this chapter also discusses the importance of community-based research in academia and the ethical responsibilities of research to communities.

The last chapter, The Birth of the Blueprint, details our recommendations for law reform and the results of our organizing process. It is not intended as an analysis but rather a presentation of ideas. It is the outcome of discussions about what sex workers want for law reform, often positioned against what is considered a more 'popular' societal voice for prostitution law. Essentially, it positions and defines the need for community organizing through a demonstration of how sex workers attempt to incorporate their needs into mainstream society through consensus. The importance of this chapter is that it constitutes what sex workers have to say about law reform, and how they would go about reforming their laws. The experience and process for the sex worker rights community, in creating this blueprint, is what separates this project from most research. Taking leadership from the sex worker rights community and its members is paramount to its success.

I conclude this thesis with a discussion around organizing and a group evaluation we completed at the end of our organizing process. This conclusion addresses both the benefits and the pitfalls of community organizing, highlighting some of the challenges we encountered during the project. It emphasizes the importance of self-organization and the impact of community involvement in both research and community development. We conclude with recommendations for future organizing and research around sex work law reform.

CHAPTER 2. SHAPING PROSTITUTION LAWS

2.1 The History of Canadian Prostitution Laws

Almost every piece of literature around, on, or about sex work in Canada states

that sex work (the exchange of sex for money) is not actually illegal. It also explains how

the activities surrounding sex work are illegal and make it virtually impossible to work in

safety and security (Shaver 1996a/b; Lowman 1998; Canadian HIV/AIDS Legal Network

2005; Stella 2005; STAR 2005). This understanding of current law acknowledges that

current prostitution law puts sex workers' lives in danger, by virtue of its application and

enforcement. This chapter (and entire thesis) asserts these same things. Sex work law as it

is currently designed, implemented, and ambiguously enforced has created a quasi-

criminal status whereby sex workers are void of legal protection and are in constant

pursuit by legal authorities:

> Because of the illegality of those activities [related to prostitution], sex workers
>
> have little expectation that the police will protect them from violence and every
>
> expectation that the police will arrest them or fine them if given the chance.
>
> (Lowman 2000; 98)

When sex work is not acknowledged by the public and by government as work

and sex workers are stigmatized, sex workers are often victims of violence and

discrimination and criminalized in their lives and their work (Lowman 2004). In response

to these factors, sex workers have been organizing to decriminalize the sex industry, or

simply remove all criminal sanctions against sex work internationally. This legislative

change, it is believed, will help to protect them in their work.

Although prostitution itself (the exchange of sexual services for financial compensation, goods and services) is not illegal, the criminal code prohibits the public solicitation of business ("communicating"), the management and use of regular work sites ("bawdy-houses"), and any other managerial activity ("procuring"). The absurdity of these restrictions becomes clear when one contemplates their hypothetical application to other work sectors.

> Imagine working as a mechanic but being prohibited from working out of a garage or hiring staff. Or envision being a hairstylist who is unable to advertise or open a salon. These are ludicrous scenarios, yet sex workers are currently legally required to work under such circumstances if they wish to avoid arrest and incarceration. Needless to say, most workers are unable to meet these requirements.
> (Clamen and Gillies 2004; 11)

The *work* aspect of sex work grounds part of the foundation for the sex worker rights movement. Others who see sex work as exploitation, however, are concentrated on the eradication of sex work and its potential harmful contribution to society, rather than one's rights while sex working. Which laws should or should not govern sex work, consequently, permeate public debate around prostitution. As a criminalized activity, sex work is not socially legitimized as valid work, and sex workers have not been accepted as legitimate workers. Over ten years ago, Davis and Shaffer (1994) pointed out that "there is no record of any community, to date, that has fully accepted prostitution as a valid and integral part of the community" (2). Prostitution has been regulated, tolerated and *judicialized* on many levels. Most of the laws we have seen thus far have been ones that aim to rehabilitate prostitutes and solve the 'social problem' of prostitution: "For most of

21

recorded history, prostitution has been considered inherently problematic, and prostitutes

have been thought deviant" (Alexander 2004; 261). In addition, Alexander notes "a

second discourse [that] has identified prostitutes as a threat to public health" (Alexander

2004; 262). It is argued that prostitution law has been created to regulate the 'threat'

posed by prostitutes and contain both them and their 'deviancy.' It does not aim to protect

or fulfill the human rights of sex workers. As explained later on in this Chapter, this is a

plight that sex workers would later take on for themselves and their movement.

2.2 The Evolution of Prostitution Law

How, when, where, and whether or not to regulate sexuality has been debated

throughout the centuries. Canadian Professor and lawyer Alan Young points to the

criminalization and judgement of prostitution through punishment as dating back to

biblical times:

> Prostitution flourished in biblical times. When Jesus reprimanded the priestly
>
> caste for wanting to stone a prostitute, it should have signaled the end of the
>
> punitive approach to this social dilemma. Jesus said only those without sin should
>
> cast the first stone; somehow, over the ages, this has been transformed into a
>
> licence for a multitude of petty sinners to cast many stones in the direction of
>
> hookers. Last I looked, we have been casting 6,000 to 10,000 criminal charges a
>
> year. (Young 2007)

Though the law itself has undergone minor alterations, different lobbies to amend,

repeal, or reform them have been vibrant since the 1970s. Laws regulating prostitution

itself date back to 1759, when sex work was under provincial jurisdiction (Shaver 1996b;

Lowman 1998). The history of these provisions seems to indicate that they were created

in an "ad-hoc manner, with a focus on regulation, prohibition, and rehabilitation" (F/T/P

Working Group Report 1988; IV).

The Nova Scotia Act held one of the earliest provisions against prostitution called

the Vagrancy Act (Vag C) where the status of being a prostitute or streetwalker was an

offence (Shaver 1996a). This vagrancy law declared that a woman had to account for her

presence on the street or risk being prosecuted as a 'common' prostitute. Shaver

illustrates how this law reflects the values of a society that condemn or try to control

sexual deviation: "The law also represented a system in which women's virtue was

valued in proprietary terms and protected only where their men's assets in lineage were in

jeopardy" (Shaver 1996b; 206). This was evidenced in 1865 when the Contagious

Diseases Law sought "mandatory testing of sex workers to control the spread of STDs to

military personnel" (Herland 1999; 6). "Buried within this legislation," Herland

continues, "is the assumption that involvement in the sex trade makes women, by

definition, diseased" (6). (Mandatory testing, as part of the contemporary debate on sex

work is avidly opposed by sex workers as infringing upon their human rights, as

evidenced in our Blueprint discussions in Chapter Four). Notions of sex workers as

diseased, immoral, and in need of protection remain pervasive from 1865 on in both

legislation and popular debate.

Prostitution laws made their way into the Federal Government after 1867.

Between 1874 and 1886, the bawdy-house laws were re-enacted in what Shaver (1996a)

identifies as "the Victorian period" where "the evils of the white slave trade prevailed and

focus was turned to those who exploit prostitutes and efforts to save women and

children." She identifies women's rights groups as the main lobbyists of this time. It was

also just after this time in 1892 when laws that prohibited procuring women for prostitution were introduced: "new statutes were adopted proscribing the procurement of women for unlawful carnal connection" (Shaver 1998a; 128).

These laws shaped and influenced the slavery-perspective of prostitution evident in present-day discussion. The goal was to punish the 'exploiters' and 'save' the prostitutes. There was little pressure during this time to repeal laws that criminalized prostitutes, and hence prostitutes were pursued and laws against their supposed exploiters rarely applied. The same is witnessed today with the current communication law. Shaver (1998a) points to statistics gathered by the Department of Justice in 1989 that show "data from nine of the ten Canadian cities studied indicate that more prostitutes than customers are charged and that their sentences are more severe" (133).

Between 1892-1920 prostitution law remained stagnant. Shaver identifies the next period between 1920-1972 as one where the social purity movement waned and there was less pressure to rid society of the social evils of prostitution (Shaver 1996a; Lowman 1998). In 1972, increased visibility of street prostitution renewed public debate (Shaver 1996a) and the vagrancy law was repealed, but replaced with the *solicitation* law. According to the F/P/T Working Group, impetus for change was viewed in light of the political context:

> Changing times and objections from civil libertarians and women's groups necessitat[ing] the shifting focus of prostitution law from a status offence, involving no specific behavior, to one prohibiting soliciting. S. 195.1 [now Criminal Code s213] of the *Criminal Code* was changed to state that every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence. (F/P/T Working Group on Prostitution, 1998; IV)

This was intended to shift the focus and condemnation off prostitutes and onto the act of soliciting. However, the new wording of the law was unclear to many, and was later clarified "in 1978[...]as a 'pressing and persistent' behaviour" (Shaver 1996b).

The next decade marked a period of federal law review, the first taking place in what Herland (1999) refers to as "the height of the anti-pornography movement" (16). The Special Committee on Pornography and Prostitution, otherwise known as the "Fraser Committee," was the first to lead a review in 1982. Its mandate was to research both pornography and prostitution in Canada:

> Faced with considerable public pressure to remedy the 'street prostitution
>
> problem' the Government of Canada established the Special Committee on
>
> Pornography and Prostitution to study prostitution and report solutions to the
>
> Minister of Justice. (F/T/P Working Group Report, 1998; iii)

Similar to the process that would take place years later in 2003 with the SSLR, the Fraser Committee held public and private hearings across the country in attempts to gain insight into Canadian public perceptions about prostitution. Although sex worker inclusion, this was one of the first times that the different perspectives, prejudices, and divisions on prostitution were witnessed so publicly:

> It pitted municipal officials, police forces and citizens' groups, who felt that the
>
> *Criminal Code* should be strengthened to control street prostitution, against civil
>
> libertarians, women's groups and social services agents who favoured some form
>
> of decriminalization. (F/T/P Working Group Report 1998; iii)

The Committee recommended both social and legal reforms for prostitution and changes to different sections of the Criminal Code for different areas of the industry (on and off-street). According to Davis and Shaffer (1994), the Fraser Committee recognized that eliminating prostitution would not solve their perceived 'problem':

Tougher street laws by themselves would have little effect other than to shift prostitution from one area to another...the Fraser Committee did recommend that tough public solicitation be prohibited but then sought to create a neutral sphere for prostitution indoors by allowing an exception to the bawdy house proscription for up to two prostitutes practicing out of a residence. (Davis and Shaffer 1994; 18)

Herland (1999) describes the Fraser report as:

remarkably open-minded in terms of prostitution. The report concluded that negotiations between sex workers and clients represented business dealings between consenting adults, and did not pose a threat to society, particularly if they were handled in private. (Herland 1999; 16)

Shortly after these recommendations were released, Canada's Conservative Party replaced the Liberal Party in Government, thwarting the committee's recommendations; the new government was selective in their interpretation of the Committee's findings:

A new government had come into power since the Commission began its work, which was less interested in the recommendations that had been made; it seized on the word 'private' and chose to redefine activity within a car as public; they also

modified the soliciting charge to include all manner of winks, nods, and hand

signals as 'communicating for the purposes of prostitution.' (Herland 1999; 16)

Davis and Shaffer also point out that amongst the changes were recommendations

to "strengthen the laws including fingerprinting and photographing prostitutes and the

removal of drivers' licenses for those charged with communication for the purposes of

prostitution" (Davis and Shaffer 1994; 4). In addition, the soliciting charge, previously

ambiguous as to whether it targeted sellers or buyers (Shaver 1996b), now criminally

sought out both seller and buyer under the new 'communication' law (Criminal Code

s213). Prostitution laws were strengthened and prohibition, rehabilitation, and reforming

prostitutes were still the agenda.

The next federal law review in 1992 attempted to combat the sexual procurement

of youth and children (Lowman 1998). The Federal/Provincial/Territorial (F/P/T)

Working Group on Prostitution was convened to discuss ways to deal with youth

prostitution (Van der Meulen 2005; STAR 2005). Their recommendations resulted in the

amendment of the procuring and living on the avails law "to discourage the exploitation

of youth and trafficking for the purposes of prostitution" (STAR, 2005; 13); *Criminal*

Code Sections 212(2) and 212(4) were added, making it an offence for people living on

the avails of those under 18 years of age and purchasing sex from people under 18 years

of age, respectively.

Shaver (1996b) identified this 'contemporary' period as one resembling the pre-

Confederation era where "the rationale for the suppression of prostitution recaptured the

social nuisance concerns" (207). Again this period was characterized by the control of

sexuality and women:

27

In opposition to these limited concerns, prostitutes' rights organizations, civil libertarians, and a variety of feminists groups and the Fraser Committee, argued for much broader legal and social reform. (Shaver 1996b; 207)

It was not until 2003 that prostitution law would again undergo review, though not reform. The 'problem of prostitution' had now become a much more public concern for violence against prostitutes. Sex workers, allies, and government went public with their concern for the violence: "By the [Parliamentary Subcommittee on Solicitation Laws] own reckoning, the deaths and disappearances of sex workers were only the most heinous manifestation of the violence and abuse that remain part of sex workers' daily reality" (Canadian HIV/AIDS Legal Network, Stella, Maggie's 2007). In 2002, violence against prostitutes became a heated topic in the West Coast of Canada in particular when the murders of over 60 sex workers were finally brought to public attention. In 2002, it was revealed that over 60 female prostitutes were murdered in Vancouver's Downtown East Side (Canadian HIV/AIDS Legal Network 2005). This sparked controversial debate about policing prostitution, prostitution itself, and the current laws that criminalize prostitutes.

Vancouver East's MP Libby Davies was the first within government to respond to these events. In November 2002, Davies' private members' motion (M-192) was passed in Canadian Parliament leading to the creation of a federal sub-committee (SSLR). M-192 motioned to examine prostitution laws to improve the safety of sex workers and of the community as a whole, with the intention of making recommendations to reduce the exploitation and violence against sex workers (Subcommittee on Solicitation Laws 2006). Members of the committee included members of Parliament from the Bloc Quebecois, Liberal, Conservative, and NDP Parties. Libby Davies was the residing NDP member on

the committee. The SSLR began their investigation by speaking with academic 'experts'

on sex work and did not necessarily include sex workers (Canadian HIV/AIDS Legal

Network, Stella's, Maggie's 2007). Kara Gillies, former Chair of the Board of Directors

at Maggie's, a sex worker organisation in Toronto, says:

> From the onset, sex workers had to fight to get a seat at the table. Initially, the
>
> subcommittee hearings included researchers, service providers, police and other
>
> so-called experts, yet the people with the true expertise, the country's sex workers,
>
> were excluded from the process. (Gillies cited in Sasha 2007).

Typical of historical debates around sex work, sex work was positioned as a social

problem throughout the hearings, and many sex workers expressed that their realities

were not treated as evidence, but rather as opinion, throughout the process (Canadian

HIV/AIDS Legal Network, and Stella, and Maggie's 2007). This was evidenced by sex

workers to a great extent in the committee report, released on December 13, 2006.

Director of Stella, Claire Thiboutot notes:

> After hearing from groups of sex workers from around Canada, the subcommittee
>
> seems to have given more advantage to conservative witnesses and people
>
> preoccupied with moral and public order, rather than our preoccupations. (Stella
>
> 2006b; 1)

While Libby Davies was public in her support for total decriminalization of the

sex industry (Van der Meulen 2005), the committee's recommendations did not reflect

this. In response to the report Keisha Scott, Maggie's Coordinator adds:

The voices of sex workers, our allies and our support organizations were articulate

and detailed in what we need in order to work safely and with dignity. A sex

worker deserves the same rights and security that is offered to a nurse, teacher, or

politician. The committee's exclusion of our recommendations for

decriminalization and labour rights is simply unacceptable. (Maggie's 2006)

In fact, many sex workers felt that the report did not address sex workers'

concerns, nor prioritize their safety (Canadian HIV/AIDS Legal Network 2006; Maggie's

2006; Stella 2006;). Sex worker groups were not alone in their position that the

parliamentary committee failed to incorporate sex workers' needs and by consequence,

failed in their attempts to create safer conditions for sex workers. The Canadian

HIV/AIDS Legal Network was public its their disappointment of the government report:

Parliament gave this committee a unanimous mandate to deal with the life and

death issues of health and safety of sex workers in this country, and this report

completely misses the boat. (CTVNews, December 13, 2006)

As a result, the *Criminal Code* provisions against prostitution still criminalize sex

workers, their clients, and business owners and managers. Though named as a priority in

the SSLR mandate, sex workers' human rights have been overlooked for what the report

claims was a lack of consensus, and the current legislation maintains the dangerous status

quo. The report states that "the status quo with respect to Canada's laws dealing with

prostitution is unacceptable, and the laws are unequally applied" (Subcommittee on

Solicitation Laws 2006; 87). Their recommendations, however, are limited to

recommendations for "recognition" of this dangerous reality.

The regulation of prostitution and prostitutes is not limited to criminal law.

Municipal bylaws have historically been used against prostitutes throughout the centuries.

Laws governing sex workers and their behaviour, as previously illustrated, date back to

the 1800s where loitering charges and the contagious diseases act were enforced to

control the spread of sexually transmitted infections (STIs): "Women were considered so

vulnerable to nefarious diseases that this protection extended to the application of

loitering legislation against women who were unattended in public" (Herland 1999; 1).

Mandatory testing for STIs, noted earlier, came with a "suggestion that sex workers

infected with STDs [sexually transmitted diseases] should be imprisoned until they were

cured" (Herland 1999; 2). Public policing of prostitution through municipal laws

continued after the inauguration of the vagrancy and contagious diseases acts through

until today with sex workers constantly being harassed with charges for loitering,

jaywalking, and public nuisance arrests (Interview with Anna-Louise Crago, sex worker

activist, December 16, 2006). "In the past 20 years, municipal bylaws have been used

more often against sex workers than the *Criminal Code* charges, namely 213, itself"

(Interview with Anna-Louise Crago, sex worker activist, December 16, 2006).

Professor and activist Viviane Namaste notes that during the 1980s, municipal

bylaws were ambiguously enforced with prostitutes, depending on police proclivity

(Namaste 2005). She points specifically to the resurrection and modification of a 1905

municipal law (number 333) that criminalizes impeding the free flow of pedestrian or

vehicle traffic. Though this law did not refer directly to prostitution, its use was

ambiguously enforced in 1981 against transsexual prostitutes (Namaste 2005; 68). It was

not uncommon at the time that police would enforce municipal laws in a concentrated

effort to rid the street of marginalized communities, like prostitutes.

Currently in 2007, anti-social type orders (nuisance orders) and zoning restrictions are used instead of criminal charges to enforce an eventual cycle of criminality for sex workers (www.chezstella.org). Most recently in Montreal the *quadrillatère* has been used against sex workers, particularly street-based sex workers, charged with prostitution offences, to forbid them from entering into certain areas of the city, usully the areas where they normally work (www.chezstella.org). These *quadrillatères*, or "perimeters," are used against marginalized populations or communities considered to be 'anti-social' to confine them to specific areas of the city, and out of specific neighbourhoods. It is one example of government and police official attempts to maintain order in their cities by eliminating or confining prostitutes. Stella's XXX Guide (2004) also warns sex workers of

> other municipal by-laws and the Highway Code [that] are used to control sex
> work: Section 396, not wearing your seatbelt correctly in a moving vehicle;
> Section 444 and 445, not obeying traffic and pedestrian crossing lights; Section
> 452, walking in the street (Stella 2004; 66).

Criminal charges unrelated to sex work are also used to control sex workers' activities: "Section 173, indecent acts in a public place; Section 89 and 90, carrying a weapon; Section 403, identifying oneself with a name other than one's own" (Stella 2004; 64). Some sex workers feel that criminal and municipal codes position and maintain sex work as a 'social problem' (Stella 2005; Kempadoo and Doezema 1998). Whether it is through the criminal code, or through municipal and provincial policies, sex workers' lives and work are continuously criminalized, and their human rights denied.

According to Shaver (1998a):

Prostitution laws can be captured by three types of sexual moralism: the overt

moral fervour of the Victorian crusaders, the more covert moralism of

contemporary crusaders (residents) and legislators, and the principled moralism of

contemporary radical feminism. Which is why they have contributed heavily to

the failure to adequately evaluate the nature of sex work and our ability to develop

appropriate social and legal policies has been severely restricted.

(Shaver 1998a; 124)

Prostitution laws have been influenced by blanket negativity towards prostitution

and rarely account for the lived experience of all sex workers. Sex workers' resistance to

current legislative systems has made "the SexWorker" more visible, with the intention of

influencing societal attitudes towards prostitution. The next section focuses on the

different strategies that lobby groups employ in their efforts for legislative change and

how they impact and intersect with sex worker organizing.

2.3 The Influence of Lobby Groups and Sex Workers

We have to remember that when the government changes the law it's not because

they are listening to our community, and they think it's important to listen to sex

workers. They are changing the law to protect the 'larger community' or the

general public, which doesn't usually include marginalized groups. They will be

judging it in terms of 'have they stopped the problem? (Project Participant 12,

Meeting 1)

33

Throughout history, different lobby groups have influenced prostitution laws and policies. Dividing the lobby groups are perspectives on prostitution itself. Most approaches to lobbies for changes to prostitution law, as illustrated below, do not reflect sex workers' lived experience. Instead, they perpetuate a criminal system that seeks to rehabilitate, save, and essentially eliminate sex work from society, while neglecting their human rights. This section of Chapter 2 discusses the different possibilities and recommendations for legislative reform and the varying lobbyists that organize around each of them. It also reflects on the past 30-40 years, when sex workers have been organizing around prostitution law reform, both publicly and within their own communities.

2.4 Legislative Systems

The different lobbies for law reform can be defined in four terms (though this is debatable and many of these are simply concepts that identify a particular ideology): decriminalization, legalization, regulation, and abolition, or what is sometimes called, criminalization. These terms are based on the ideological premises of social movements that lobby for prostitution law reform but they are not stagnant definitions. Their definitions have changed over time as the social context and culture of sex work has changed. This is especially true for the definition of 'decriminalization,' which is discussed below.

2.4.1 Decriminalization

Total decriminalization implies an eradication of all *criminal* laws pertaining to sex work. Criminality, it is argued, places sex workers in grave danger and in the difficult

34

position of constantly avoiding the law without access to the law for safety. According to

Jenness (1993), the movement to decriminalize prostitution followed alongside other

movements such as the gay and lesbian movements in the 1960s through until the 1980s

where we witnessed one of the most "notable legal trends...to decriminalize victimless

crimes especially those surrounding sexuality and sexual conduct" (18). She continues by

pointing out that:

> Critics of this movement have historically argued that the decriminalization of
>
> behaviours associated with these crimes only results in the proliferation of
>
> immoral behaviour and the adoption of morally abhorrent lifestyles.
>
> (Jenness 1993; 19)

Older definitions of decriminalization focus on the private nature of sex

and sexuality, with little attention to the public nature, or commercial aspects, of sex

work. In 1985, Shaver defined decriminalization as a system whereby "prostitution is

regarded neither as a crime nor a licensable activity. Prostitution is considered to be a

personal choice and hence a private matter between consenting adults" (Shaver 1985;

494). As this research project illustrates, the sex worker rights movement has since placed

more emphasis on the commercial, hence, public, nature of sex work as one way of

granting rights similar to other workers in the public sector. One of the ways this has been

done is through a focus on work and working conditions. Decriminalization would, in this

sense, "seek to affirm the rightful place of prostitutes in the community by erasing at least

the legal distinction between them and the rest of society" (Davis and Shaffer 1994; 28).

This is evidenced in more detail in Chapter Four where sex workers in the group identify

the problems within current debates around sex work and the illegality of sex work in a public place.

Both the private and public nature of sex work plays heavily into current definitions and lobbies for decriminalization. Newer definitions, as identified by our research group, focus on sex work as part of the public, or commercial, sphere; there is a focus on workers' rights, including tax paying, and occupational health and safety standards that render the industry, and its potential regulation, more public. There is an inherent acknowledgement in new definitions of decriminalization, that sex workers would maintain the same responsibilities as other independent and autonomous workers (though tailored to sex work itself) and would require labour rights for the sex industry. To describe this public regulation, the group used examples of guidelines like New Zealand's *Occupational Guidelines for Health and Safety in the Sex Industry* (2004), and apply it to sex work in Montreal. Through their emphasis on practical working conditions, our research group builds on the older definition of decriminalization that demands a repeal of the laws for private activities between consenting adults and adds to it a new element of practical solutions for public work.

2.4.2 Legalization

Some sex workers live in—and other lobbyists work towards—a legislative context that is referred to as legalization. Sex workers organize for a legalized system depending on geographical location. Western definitions of legalization imply that the legislation controls and deems the where, what, and how of prostitution. "The legalization of prostitution through the licensing of prostitutes and brothels is often put forward (by non-prostitutes) as the solution most likely to serve the interests of both the public and the

36

prostitutes" (Shaver 1985; 497). Legalized systems in countries like the Netherlands and

Germany do not fulfill the responsibility of serving sex workers' interests:

> Legalization, as practiced rarely provides a habitable working environment for
>
> prostitutes. It often involves the intervention of the police in the ratification of the
>
> licenses, a factor which leads prostitutes to think of themselves as criminals.
>
> (Shaver 1985; 497)

Legalized systems do not guarantee an absence of exploitation. While systems of

legalization reduce stigmatization of prostitutes, prostitution does not share the same

status as a regular occupation and are often subject to discriminatory practice. In

Germany's legalized system, for example:

> Income from prostitution is taxed at a slightly higher rate than income from
>
> normal occupations. Prostitutes even have to charge VAT for their services, to be
>
> paid to the tax office. (Interview with member of the International Union of Sex
>
> Workers, June 20, 2006)

Legalization is often confused with decriminalization, since it makes some aspects

of sex work legal. However, legalized systems of prostitution are governed by criminal

and municipal laws, a decriminalized system suggests the absence of this legislation.

Shaver concludes that "neither [legalization nor criminalization] addresses the conditions

which create and maintain the exploitative conditions and both will more than likely serve

only to maintain them" (Shaver 1985; 497).

2.4.3 Regulation

"Regulation" is sometimes used synonymously with legalization, since it includes laws that determine how sex work can be managed. People use regulation to define a system that would regulate prostitutes and prostitution; this may involve regulating health, regulating working sites, and regulating the movement of sex workers themselves. However, the term 'regulation' has been used by sex workers in different ways.

On her website, American sex worker and activist Carol Leigh refers to 'self-regulation':

> The "regulation of prostitution" usually refers to the criminal regulation of prostitution, but prostitutes' rights activists also refer to regulation in terms of both civil regulation and self-regulation. They call for prostitute regulation of prostitute businesses, and civil codes regulating prostitute businesses with regard to the conditions and rights of workers. Those who call for autonomy, support solo and collective work arrangements, and prostitutes' control of their own lives and businesses. (www.bayswan.org)

Leigh also claims that "the discussion of regulation is primitive and it is difficult to invoke concepts of self-regulation in a context that presumes police control over prostitutes" (www.bayswan.org). In the context of police and state control, both regulation and legalization are not recommendations brought forward by sex workers as adequate solutions. In fact, sex workers in most geographical regions organize adamantly against a regulated system if that system is state-controlled and hence, more dangerous.

2.4.4 Abolition and Criminalization

A legislative system that encourages the total eradication of prostitution is referred to as abolition. Its supporters lobby for the enforcement of laws that they believe will abolish the sex industry and consequently improve society (Alexander 1998). The abolitionist debate is positioned in direct conflict with the sex worker rights debate, although the abolitionist debate is one focused on morals, and the sex worker debate on human rights:

> The moral debate on sex work is deeply divisive, often denying both a voice and the ability to make choices to the women at its centre. Radicals and abolitionists believe that prostitution can be eradicated and that removing criminal proscription would institutionalise [sic] violence against women and their objectification in sexual slavery. (Cusick and Goodyear 2007)

For example, abolitionists argue that the criminalization of clients, for example, is one way that legislative systems can tackle the economic 'demand' for the industry and eliminate the need for sex workers' services altogether. The motivation for legislative systems of criminalization is the belief that prostitution is equal to exploitation and legislation should aim to abolish the industry. In this sense, abolitionists encourage the criminalization of clients or bosses, those that they believe are exploiting or coercing people into sex work. Abolitionists today typically reject the criminalization of sex workers based on their beliefs that sex workers are victims of a patriarchal system that enslaves them in prostitution. Davis and Shaffer (1994) rightfully point out that sex worker rights groups are the biggest critics of this approach and that it simply segregates sex workers from the rest of society.

39

Kinnell argues that abolitionists see clients as aggressors and sex workers as victims: "Abolitionist feminism alleges that no woman chooses to sell sex" (Kinnell 2003; 3). They are typically individuals who recommend programs, policies, and laws that target the 'demand' side of the industry in the attempts to eradicate it altogether:

> The argument for criminalizing clients is largely based on assertions that sex work is intrinsically abusive and on the implicit recognition that commercial sex, like other areas of economic activity behaves like a market: if demand for a product is cut off, supply ceases. (Kinnell 2003; 7)

The abolitionist perspective traditionally finds its home and debate within women's movements. In Quebec, it is often referred to as 'neo-abolitionism' (Conseil du statut de la femme 2002). In support of sex worker protections, the Conseil du statut de la femme emphasizes the criminalization of clients and business owners but not sex workers: "n'impose aucune sanction aux prostituées et criminalise les clients et les proxenètes" (Conseil du statut de la femme 2002; 5). However, their approach is similar, if not identical, to the abolitionist approach and often insists that women leave the sex industry. It does not propose a law reform for those who continue working and is rarely supported by sex workers.

The propositions for prostitution law reform, as described above, require careful analysis when promoting a perspective for sex workers' human rights. Sex workers organize for social and legislative systems that protect their human rights and workers' rights, and allow them to continue working in the industry. To date, no legislative system, with the exception of New Zealand (which is not without its faults), has fulfilled these obligations. A closer look at the lobby around these different legislative systems

reveals the motivations and current community organizing around each and highlights the absence of sex worker involvement in systems that do not protect sex workers.

2.5 The Lobby for Legislative Reform

Various movements have been working to reform, repeal, or maintain current prostitution laws.

> Social reformers, residents' organizations, feminists, and media, as well as legislators, courts, and police, have all had a role in the creation of law. These social agents, institutions, and social movements are gendering the prostitute, and hence all women, as they identify, regulate and control behaviour. (Brock 2000; 80)

To date, sex workers' perspectives are rarely given priority in debate and policy reform, and are often met with hostility and strong rebuttal. This next section illustrates how the exclusion of sex workers' perspectives in different lobbies has harmful consequences on sex workers' lives and work. The following section outlines feminists', resident, and sex workers' lobbies around prostitution law reform and their motivations for change. These perspectives are not exhaustive of all public perceptions on prostitution law, but provide an overview of some of the major influences.

2.5.1 Feminists

Historically, debates about prostitution find their home within the women's movements. Over the last 125 years, prostitution has represented a difficult issue for feminists (Jenness 1993; Alexander 1999), and feminists have been debating over

41

whether or not prostitution itself is immoral and exploitative towards women. According to Alexander:

> Some feminists reject what they consider to be the exploitation of women's
>
> sexuality by profiteers; they're uncomfortable with prostitution, which they see as
>
> an objectification of women and their sexuality that is somehow related to the
>
> pervasive violence against women. (Alexander 1999; 184)

This feminist debate around prostitution focuses on violence and sexuality: "Since the 1970s, parallels have been drawn [by feminists] between prostitution, pornography, rape and domestic violence" (Jessen 2004; 202). Feminists, however, are divided on sex work. Sex worker and activist Dr. Ana Lopes discusses how the historical social control of sex influenced some feminists and their position against sex work:

> Nineteenth-century feminist repealers were limited by their own class bias and
>
> their adherence to an ideology that stressed women's purity, moral supremacy and
>
> domestic virtue. Placing the blame for prostitution on male lust made these early
>
> feminists view prostitutes as victims who ought to be rescued and reformed.
>
> (Lopes 2005; 135)

In her book, *Making It Work: The Prostitutes' Rights Movement in Perspective* (1993), Jenness identifies a similar focus of the contemporary women's movement. The feminist anti-pornography movement, for example, has set the tone for the anti-prostitution movement as being one that "(pornography) and (sex for sale) is the distillation of male power over women and as such it is an institutionalized vehicle through which women's subordinate status is perpetuated" (Jenness 1993; 27). This

perspective is mirrored in today's feminist politics around sex work, and the claim that sex workers are victims of male violence. Those who believe that women's sexuality is governed by a patriarchy typically respond with protectionist policy.

The view that prostitutes are victims with little agency is one of the great divides within the feminist movements, and one of the large impetuses for the creation of the sex worker rights movement, which include feminists but is separate from the women's movements. Whereas the majority of the feminist movement (abolitionist, and other women's groups) is seeking to end the exploitation they see as sex work, sex workers and other feminists are seeking to end exploitative conditions in sex work caused by bad working conditions and legislative contexts. The perspective of sex worker as victim results in environments which, at best, exclude sex workers, and at worse result in policies that impact negatively on sex workers' lives and work. Some examples for this can be seen on abolitionist feminist websites like Sisyphe (www.sisyphe.org), where hundreds of abolitionist feminists promote a victim perspective of sex workers as well as promoting policy to abolish the sex industry.

As noted earlier, divisions within the feminist movements on issues of prostitution translate into different solutions for sex workers' safety. Not all feminist debates around prostitution are limited to abolition. Historically, some members of the feminist movements in Quebec have advocated for partial-decriminalization and protection for sex workers (Fédération des femmes du Québec (FFQ), December 25, 2006). This recommendation, however, is typically founded in notions of sex workers as victims, not workers, and is often rejected by sex workers. This perspective also encourages a criminalization of clients, in the hope of eliminating the 'demand' side of the industry; most sex workers, however, see this as a dangerous alternative that puts their lives in

43

danger (Eriksson 2005). In Canada, programs that criminalize clients, otherwise known as "john schools," are equally rejected by sex workers on the grounds that demonizing clients encourages stigma and forces sex work underground, making working conditions more dangerous (Stella 2005).

Current debates about prostitution within Canadian feminist movements are similar to international debates around prostitution. Montreal sex worker group Stella, a feminist member of the FFQ, does not receive unmitigated support. In their 2002 report on prostitution, the FFQ states that they were unable to find consensus on the "question" of prostitution (http://www.ffq.qc.ca/presentation/comite-prostitution.html). Many of the abolitionist feminists in Montreal, in fact, take active stands against sex workers, further isolating sex workers and their perspectives. In 2002, the Conseil du statut de la femme released a paper in direct opposition to the voices of sex workers in Montreal: *La prostitution: Profession ou exploitation? Une réflexion à poursuivre* (Conseil du statut de la femme 2002). This position paper marked the beginning of an onslaught of political and ideological attacks against sex workers in Montreal. Between 2005 and 2006 alone, various attempts were made by Quebec abolitionist feminists to de-legitimize Stella, and to encourage the retraction of government funds for sex worker-led projects (http://sisyphe.org/rubrique.php3?id_rubrique=12). Over time, others have witnessed abolitionist feminist protest and disapproval of sex work community organizing.

> The feminist support of the decriminalization of prostitution is limited to the support of prostitute women—it does not incorporate a defense of the business of prostitution. The reluctance to defend the business is grounded in the belief that the commercialization of human sexuality is immoral, degrading, and dangerous. (Shaver 1988a; 83)

Sex workers typically abhor feminist debates around prostitution, and more and more sex workers feel alienated from mainstream feminist dialogue. Brock points out that mainstream feminist debates and intervention "do not attempt to shift the identity of the prostitute from her position of social marginality," and adds that sex workers as feminists are left to do this on their own (Brock 2000; 24). This is essentially what has divided feminist groups, and resulted in the strong divisions amongst the feminist movements, with regards to prostitution. Sex workers, as feminists, are often excluded from popular feminist debates, even though their lives, work, and an analysis of their experience constitute the focus of the debates themselves. Hence, the sex worker feminist perspective for decriminalization is one that most feminists do not rally behind. Sex workers are silenced and alienated from discourses that attempt to define prostitution and sex workers' experience. Montreal sex workers at Stella express that they:

> reject the way that the [abolitionist] question [in particular] is framed as presenting the debate about whether or not prostitution is the ultimate form of oppression of women. Those simplistic options only promote a binary system whereby there are 'good' and 'bad' women, the former worthy of support and the latter of contempt. (Stella 2002; 1)

In the above quote and in their daily philosophy, Stella emphasizes empowerment as a guiding principle in sex work and in organizing for social change. They accuse the abolitionist feminist voice as one that does not incorporate sex workers' experience. Authour Nickie Roberts points out the dangers of this particular feminist perspective of prostitution:

45

It is important to recognize that this kind of 'theory' [sex worker as victim of male violence] has helped fuel the anti-sex industry/pro-censorship movement of recent years; and that this in turn has had a negative impact on the way in which women who work in the sex industry are viewed by the rest of society. (Roberts 1992; 342).

As a result, sex workers in Montreal and abroad continue to engage in feminist debate around sex work, but are finding their strength within their own community organizing efforts: "With feminists at best ambivalent towards prostitutes[...]it became clear that to make their demands heard, whores would have to organize themselves independently" (Roberts 1992; 343).

2.5.2 Residents

Residents, particularly in neighbourhoods where street-based sex workers work, have also been very public about their views on prostitution. These groups rarely include sex workers, who may also be residents in these neighbourhoods. In fact, residents and prostitutes who reside and work in the area are typically pitted against each other by virtue of residents' motivation to 'clean up their neighbourhoods' and eliminate prostitution. Groups of this nature are situated across Canada and have various impacts on sex worker safety. Davis and Shaffer point to the increased criminality as a result of resident group actions:

A yuppie invasion of Parkdale in the 80s brought forth the startling fact that

Toronto had a 'problem' enforcing its prostitution laws...and it is residents'

groups such as Parkdale's RASP (Residents Against Street Prostitution) which

have lobbied for tougher sanctions. (Davis and Shaffer 1994; 16)

Encouraging further criminalization is not an atypical resident tactic and was

reproduced with violence in Montreal in 1993:

> Residents of a central neighbourhood in Montreal went out into the streets with
>
> baseball bats. The media tagged the event 'a witch-hunt'. We saw the same thing
>
> in the summer of 2000 when police operations against clients began with intensity:
>
> three times more acts of violence were reported in Stella's *Bad Tricks and*
>
> *Attackers List.* (Stella 2002; 7)

Alexandra Highcrest, a sex worker in Toronto, Ontario, believes that residents

show initiative in cleaning up their neighbourhoods and, as such, they work in tandem

with the police: "tips from residents usually lead to cops shutting down establishments or

hunting certain corners" (Highcrest 1997; 60).

More recently in May 2006 in Halifax, Nova Scotia, the Safe Streets and

Communities Act has been initiated to involve residents in a concentrated effort to

eliminate criminal activity from the neighbourhood. Renee Ross, Executive Director of

Stepping Stone, a Halifax-based sex worker organization, explains how this legislation

allows police and communities to exercise strict controls and to introduce new penalties.

"Under the act," Ross explains, "complaints from community members can result in court

orders to close locations that are home to prostitution or illegal liquor, drugs, or gaming"

(Interview with Renee Ross, Stepping Stone Executive Director, February 15, 2006).

Throughout history, sex workers have not always had to contend with these tensions with their neighbouring residents. In a study conducted on the geographical space of prostitution in Montreal between the years 1810-1842, Myers and Boyer discovered that "Montrealers shared the same streets, public spaces, and houses with sex trade workers" (Myers and Boyer 1998; 102). They also noted a more harmonious, albeit unequal, relationship amongst sex workers and residents:

> Brothel-keepers needed the acceptance of their neighbours to keep their establishments open for business. Without this endorsement, madams risked police raids, and in the instance when police failed to respond to prosecutors' complaints, neighbours rioted in the offending houses of prostitution.
> (Myers and Boyer 1998; 102)

The relationship between residents and sex workers was precarious and sex workers were often dependent on residents to avoid police harassment:

> Thus, the operation and location of Montreal's brothels and street prostitution was not mediated by geographical containment, but by the relations that sex trade workers established with their neighbours and by their ability to maintain good will" (Myers and Boyer 1998; 102).

The possibility for harmony amongst residents and sex workers today is difficult to navigate and sex workers at Stella, for instance, feel that residents are not inclined to improve relations. Residents' continual focus on the elimination of prostitution from neighbourhoods has a negative impact on the way prostitutes are perceived and treated. According to Stella:

48

There is a very slippery slope between 'eliminating prostitution' and 'eliminating prostitutes' and often this public outrage is coincidental with increased violence suffered by street-level sex workers. (Stella 2002; 7)

For this reason, sex workers continue to strategize to harmonize relationships within society, while defending their human rights within these societies. In such attempts, in 2002, six community-based organizations, including Stella, initiated the *Projet Milieu.* The project followed suit from the *Projet Pilot,* which intended to create harmony not only amongst residents and sex workers, but also amongst business owners, police officers, city officials, and anyone in the *Centre-Sud* neighbourhood. Lainie Basman, a former Stella employee, describes the project as:

> An attempt to create dialogue between the communities and find solutions to the issues that they raised. We wanted to find durable and useful and humane solutions to these community tensions. (Interview with Lainie Basman, former Stella employee, January 21, 2006)

"At the time," Basman explains, "sex workers were being thrown into jail and the violence against sex workers was increasing. Amongst residents' concerns were noise, insecurity, and needles and condoms as a result of prostitution." Though the project did not provide any significant concrete changes within and between these communities, according to Basman, it was an example of a community-based effort to achieve harmony. Sex workers at Stella continue, today, to bridge gaps between communities through education and awareness.

49

2.5.3 Sex Worker Lobbying

> Whether we seek to eliminate prostitution or improve its working conditions we
> must first come to terms with the fact that neither can be accomplished unless we
> allow the prostitute to become a visible and integrated part of the community.
> (Davis and Shaffer 1994; 2)

When sex workers' human rights are not considered in feminist and resident
organizing, sex workers are at risk of further criminalization and, consequently, harmful
life and working conditions. However, sex worker self-organizing, with the help of close
allies, has contributed to sex workers' safety and security both practically on the job, and
socially, through community. Though their perspectives have not necessarily been
included in policy and legislation, they have been making considerable changes in the
industry through local and international organizing.

Since the first enacted Contagious Diseases Act of 1864, there has been a
considerable amount of documented protest for sex workers' rights across the world
(Lopes 2005; 133). The movement for sex workers' rights was, at times, supported by
non-sex workers, but had distinct abolitionist undertones. The feminist campaign in the
nineteenth century, founded by Josephine Butler, attempts to repeal the Contagious
Diseases Acts in Britain "via a campaign to protect morals of both men and women" and
by bringing forward the issue of the "white slave trade" (Doezema 1998a; 35).

> Though Butler recognized a commonality of interests with prostitutes, prostitution
> was viewed as the great social evil and prostitutes as victims of male vice, who
> needed to be rescued. Controlling male vice was seen as the key to ending
> prostitution" (Doezema 1998a; 35).

50

Prostitutes began organizing within Wages for Housework Campaigns in England

and the United States around 1975, where they emphasized the extent of poverty for

women doing unpaid work. Examples of this are the London (UK)-based English

Collective of Prostitutes (ECP) together with its sister US-based organization, the

USPROStitutes Collective. Together, they form the International Collective of Prostitutes

(ICP), who call for decriminalization of prostitution, but ultimately see prostitution as a

desperate option for women in poverty, and one that should eventually be abolished

(Lopes 2005).

Though these organizations are led by sex workers, Lopes explains how ICP and

ECP campaigns are regarded today with suspicion by the vast majority of sex worker

organizations around the world:

> Such suspicion lies in the other aims of the ECP to campaign "for economic
>
> alternatives and higher benefits and wages." The ECP claims that if women earned
>
> wages for their work and poverty were to be eradicated, no one would have to
>
> "resort" to prostitution to make a living. Their ultimate goal is to abolish the
>
> "need" for women to sex work. For this reason they are isolated from the
>
> international sex workers' movement that recognizes sex workers still working in
>
> the industry. The ECP's integration into the Wages for Housework Campaign
>
> provokes criticism, as many sex workers do not see the solution for women's
>
> oppression in the guarantee of a wage for housework. (Lopes 2005; 31)

The contemporary sex worker rights movement is similar to the aforementioned

campaigns but focus on fulfilling sex workers' human rights for safety and protection at

work. This movement became visible across North America around 1965. Long-time sex worker activist Claire Thiboutot observes from her early organizing that when sex workers began organizing in the 1960s, it was alongside the gay and lesbian rights movement, whose struggle at the time was for rights as a sexual minority (Thiboutot 1994). The first prostitutes' rights organization was established in San Francisco by Margo St. James in 1973, called COYOTE (Call Off Your Old Tired Ethics) (Brock and Scott, 1999). The organization's demands for decriminalization and an end to stigma resulted in very concrete measures for sex workers and served as the cornerstone for the current sex worker rights movement. COYOTE also provided sex workers with support and referrals, education for clients, and safe sex information for the general public (Shaver 2005a). It was at this point in North American history that sex workers became publicly visible and, as a result, impacted on their working environments.

In Canada, the first documented organization was established in 1977 in Toronto, called BEAVER (Better End All Vicious Erotic Repression); formed by Margaret Dwight-Spore, BEAVER was created "in response to the crackdown on indoor prostitution that was occurring in Canada" (Brock and Scott 1999; 9). In 1982, a series of groups called The Alliance for the Safety of Prostitutes (ASP) took shape all over Canada, after the adoption of a federal law on solicitation of prostitution (Thiboutot 1994). Marie Arrington and Sally De Quadros created The Alliance for the Safety of Prostitutes (ASP) in Vancouver in June 1982 and it was followed by branches in Calgary in 1984 and L'Alliance pour la sécurité des prostituées (ASP) in Montreal at the beginning of the summer of 1985 (L'Alliance pour la sécurité des prostituées 1986). Sex worker organizing did not come without challenges and public dissent. Marie Arrington explained how the creation of ASP in Vancouver and sex-worker led organizing created a

sudden ostracization by feminist communities "because one of the founders [of the ASP] was a whore" (Arrington 1987; 105). The ASP was short-lived in all cities and eight years passed before Montreal sex workers saw their next organization. L'association Québecoise des travailleuses et travailleurs du sexe (AQTS) was created during a meeting amongst activists and sex workers organized by PIAMP (Projet d'intevention auprès de minuer-e-s prostitué-e-s) in April 1992 (Thiboutot 1994). Thiboutot notes that the main objectives and demands for AQTS followed the example of other international organizing efforts and, in the case of AQTS, the sex worker manifesto, the World Charter of Prostitutes Rights (ICPR, 1985).

In addition to their demand for respect, dignity, and human rights for sex workers, AQTS called for the total decriminalization of all activities surrounding sex work. In 1995, one year later, Stella, l'amie de Maimie, was founded. Stella is currently run by and for female, transvestite and male to female transsexual sex workers, in Montreal. Stella, a sex work resource and support organization, is very active in the lives of sex workers across Montreal. In addition to the political presence Stella offers sex workers, they provide more practical things like violence prevention techniques, legal referrals, safe sex tools and information, and general advice about working safely in the industry. As a government funded organization (www.chezstella.org), Stella has received local and international recognition for their work and has consequently legitimized sex work within their community.

In 1996, The Coalition for the Rights of Sex Workers was created at the International Conference on Prostitution and Other Sex Work, *When Sex Works*, held at the Université du Québec à Montréal (UQAM). The Coalition was created in response to the need for a political rights group that was separate from the government funded group,

53

Stella, and that would also include male sex workers. It was also instrumental in bringing

sex workers' issues to the forefront of political debate and inclusion in Montreal

communities (interview with Anna Louise Crago, sex worker activist, December 16,

2006). Les Lilis, a group of Montreal dancers, was formed in 1997 in reaction to police

repression and onslaught of arrests in strip clubs. In an individual interview, Anna-Louise

Crago, sex worker activist explains that:

> Dance clubs and dancers were facing a lot of police repression against dancers
>
> who were allowing contact with their clients. These dancers were being arrested,
>
> and prostitutes scapegoated as a result. Les Lilis got together to speak out against
>
> the busts and to explain how the broader social changes that were occurring were
>
> responsible for the contact dances. Busts would not help to avoid contact dances.
>
> (Interview with Anna-Louise Crago, sex worker activist, December 16, 2006)

Sex workers continued to organize for their rights as workers even after this time.

In 2000, a group of nine sex workers in Montreal, many of whom were members of both

Stella and the Coalition, formed the Parti Populaire des Putes (PPP). As a political party it

"offer[ed] a civilised response to the hatred, demagogy, threats and violence directed at us

and our friends by a number of associations of residents and business interests who

wished to eradicate everyone poor or marginal from urban space" (www.walnet.org/csis).

Their platform, similar to that of Stella and the Coalition for the Rights of Sex Workers,

called for:

> An end to all discrimination and hypocrisy in relation to the sex trade, the
>
> decriminalization of all sex work and respect for the fundamental human rights, in
>
> particular the right to safety and to dignity of all those working in the sex trade,

and the proper enforcement of existing laws concerning sexual violence and

economic exploitation of all people. (www.walnet.org/csis)

Some of these sex worker rights groups had specific focus on labour rights. In

2003, the Canadian Guild for Erotic Labour (CGEL) was founded, with branches in

Toronto and Montreal. The Guild focused specifically on labour rights and potential

unionizing for sex workers.

Though sex workers have been publicly organizing in Montreal for over 12 years,

sex worker principles of organizing, such as empowerment and human rights, had been

identified as early as 50 years prior. Herland points to Maimie, a Jewish prostitute who in

the early 1900s attempted to create community amongst sex workers of the time:

> Concern for sex workers also motivated another woman, namely, Maimie. Her
>
> family disowned her after she was abandoned and become a prostitute. She ended
>
> up in Montreal and during WW1 saw more and more women following a similar
>
> path to her own. Her project was not one of 'rescue' like the people before her.
>
> She invited women to socialize and develop a sense of themselves. (Herland 1999;
>
> 8)

In fact, her memoirs, the *Maimie Papers*, provides a good example of how sex

workers of the time organized through peer education and empowerment:

> Fully fifty years before the development and adoption of what has come to be
>
> known in social work practice today as "peer counselling," Maimie expounded

this concept in her letters and implemented it in her approach to the young women. (Pinzer 1977; pxxxv)

Maimie's project for safety, security, and a dignified community later inspired Stella, l'amie de Maimie. Through peer education and empowerment, sex worker organizations have offered alternatives to the repression, violence, and stigma that arise from many non-sex work communities. These efforts have offered an escape from the devastating effects of resident anger, anti-prostitution policy, and the isolation, violence, and lack of safety that a criminalized regime creates.

Sex worker organizing has not been restricted to prostitution law reform. Their impact and involvement in the fight against HIV has also impacted on the practice of sex work and community life. Many organizations, like Stella, are funded by a mandate for HIV prevention (www.chezstella.org). The International Network of Sex Work Projects (NSWP), an umbrella organization for sex work organizations around the world, was created during the AIDS conference in 1991. Sex workers' contribution to the fight against HIV has been instrumental in influencing healthy working conditions, appropriate research ethics, and HIV/AIDS awareness throughout the world.

Sex workers have been obligated to join the fight against HIV/AIDS and public health debates for various reasons. Historically, prostitution was linked to the contamination of public health; this tendency is witnessed in the early Contagious Disease Act. Current responses to the HIV/AIDS epidemic focus on the role of the prostitute as a supposed 'vector.' Today, sex workers organize to deconstruct this notion and the consequent stigma caused to sex workers, as well as against legislation that promotes the view of sex workers as vectors of HIV and STIs. More specifically, sex workers have

56

been organizing around legislation like mandatory testing and mandatory condom use, that attempts to regulate this fear. According to Chapkis, "such strategies are seized upon by health officials as high-profile intervention involving less political risk than explicit safe sex education and condom distribution" (Chapkis 1997; 167). Sex workers have also been organizing for sex workers' right to equal access to HIV testing and treatment (Stella 2006).

The sex workers' movement is diverse and interconnected. While some focus on HIV/AIDS, others focus on working conditions or legislative change. Sex workers are also fighting for their rightful place in the labour movement, as indicated above with the Canadian Guild for Erotic Labour. Organizing across different social movements has been one strategy that sex workers have used to give voice to their realities and to improve their quality of life and work.

Although the impact of the sex worker rights movement in Canada, and internationally, cannot be measured, there are various indications that sex worker involvement has contributed to the safety of sex workers. In addition to creating a community where sex workers can escape the isolation of criminalization, the presence of both grassroots and funded sex worker organizations has publicized sex workers' challenges. Violence prevention techniques through education, communication, and community solidarity have been recognized as impacting positively on sex workers' lives (http://www.chezstella.org). In Montreal alone, Stella has created a medical clinic, a legal clinic, and various tools for violence prevention and health and safety on the job. All of these efforts respond to the need for sex workers' basic human rights, but more importantly highlight the importance of community involvement in creating social change.

2.6 Sex Worker Inclusion

The sex worker rights movement can be considered a new social movement; "it is oriented towards challenging the values within society, creating a lifestyle and an identity, thus pushing the boundaries of the social system" (Clamen and Lopes 2004; 39). New social movements are defined as "concentrat[ing] on the formation of identities and their trajectories towards collectivity and autonomy" (Frampton, C, Kinsman, G, Thompson A.K., and K. Tilleczek 2006; 1). Sex workers' organizations attempt to redefine their identities and reclaim rights granted to the general population but traditionally denied to sex workers. This recognition necessitates their inclusion in policy and legislation that impacts on them. The next section discusses the importance of such organizing efforts as well as the opposition sex workers face in the organizing process.

Carol Leigh, a.k.a Scarlot Harlot, coined the term 'sex work,' in the 1970s as a political strategy to educate the public about sex work, and to facilitate sex worker organizing. The term lends solidarity to all workers in the sex industry and focuses on the right to work and the right to healthy working conditions. "This usage of the term 'sex work' marks the beginning of a movement" (Leigh 1997; 230). Inherent in this term is the recognition of work, which Stella also emphasizes as important to sex workers' rights:

> The concept of work finds a home amidst groups and movements fighting for the
> rights of people working in the sex industry, rebuking the abundance of other
> derogatory terms [like prostituted women, whores, *femmes publiques*, etc]. The
> work angle allows us, therefore, to address prostitution as a socio-economic
> question, and not as one of criminal justice. The term allows us, above all, to get

away from designations which marginalize us as pariahs, which treat women who practice prostitution as being morally or pathologically defective. (Stella 2002; 5)

Sex workers' leadership has proven instrumental to organizing around sex workers' rights and policy development. Longtime sex worker activist Cheryl Overs supports this:

> The female sex workers' rights movement has been most successful where sex workers set the agenda and then carried it out with the help of other activists and advocates, academics, policy makers, service providers, and lawyers. (Doezema 1998; 205)

Sex workers in New Zealand also stress the importance of sex workers setting their political agenda and working, in part, with allies. According to Catherine Healy, President of the New Zealand Prostitutes Collective (NZPC):

> The NZPC was involved right from the beginning in the decriminalisation [sic] process. A number of us gathered informally beyond the doors of our massage parlours and escort agencies, and connected with street workers at that time. We took the decriminalisation argument into the many contacts we had—including those with different government agencies (scraps we had with the police were played out in the media, which led to a lot of support coming in from different non-government organisations). We were approached by different members of parliament who were interested in helping us attain decriminalisation, which eventually led to the Bill being introduced to Parliament in 2000. (Interview with Catherine Healthy of the NZPC; February 2004)

While sex workers' perspectives are rarely included in policy and law, their token participation in the process is encouraged. Why, then, are sex workers' perspectives so rarely included in actual policy and law?

One possibility results from the societal rejection of sex workers' realities and the consequent intolerance of their perspectives in law reform. As witnessed in the SSLR process, participation is possible, but their perspectives are rarely considered valid. According to Weitzer (1991), sex workers have not been considered as experts on law reform agendas. He further suggests that the continued "criminalization may serve valued practical and symbolic functions that, in the public arena, overshadow the instrumental case for reform" (25). He also points to the fact that "public attitudes on prostitution's social effects seem to shape policy preferences and police departments have rarely altered policies in response to movement pressures" (Weitzer 1991; 30). Weitzer believes that the sex worker rights movement is viewed as "eccentric" and an "immoral crusade or a cause offering no political advantages for elites who might spearhead reform on such a politically risky issue" (Weitzer 1991; 32).

In spite of these attitudes, Davis and Shaffer (1994) argue that sex workers' perspectives are paramount to sex work debates:

Prostitutes and community officials must learn to work together. Prostitutes must have some sort of representation. Prostitutes' rights groups must be encouraged to take a prominent place in the political sphere. To encourage local officials to take prostitutes' groups seriously, however, prostitutes' groups must be given some sort of official acknowledgement of their legitimacy...Government funding of prostitution groups should be expanded to officially include areas of political

60

activism. (Davis and Shaffer 1994; 34)

While sex worker participation is encouraged, their perspectives are rarely incorporated into policy and laws that affect them. Our most recent example of this is noted in the recommendations in the SSLR report (2006). Sex workers are 'heard', but maintained on the margins.

2.7 Conclusion

Throughout history, legal reform and social pressure groups have attempted to control and rehabilitate sex workers, as well as limiting sex workers' roles to participation, rather than inclusion. Where debates and law reform initiatives have been void of sex worker participation, the impact has been devastating for sex workers' lives: resident actions have been dangerous to sex workers' well being, feminist debates have been exclusionary, and sex workers have been obligated to organize and respond. Though sex workers are often excluded from public debate, they have been organizing and enacting change within their communities. In the exceptional situation of New Zealand, sex workers' voices and opinions shaped measures to protect and fulfill sex workers' human rights. Replication of this inclusion and leadership is essential to future Canadian law reform initiatives, and one that this research project attempts to promote. The next chapter illustrates how this project provides a small example of taking leadership from communities on important issue that affect their lives. It illustrates how principles of community-based research, used in community-based research methods like Participatory Action Research (PAR) can be used to achieve these goals.

CHAPTER 3. METHODOLOGY: FINDING A GOOD FIT

3.1 Methodological Challenges and Challenges with Methodology

Most research is designed to respond to issues defined by established bodies of

academic literature within particular disciplines. Research papers then become a

conversation among academics; they are of limited relevance to other groups and

the general public. (Church 1995; 15)

Participation, from the perspective of research for social change, emphasizes the

purpose of participatory research "in which the goal is to take action on the

research findings for positive social change." (Morris 2002; 10)

In response to the need for prostitution law reform and keeping in mind the

importance of community involvement, this research project is grounded in the idea of

"research conducted for the purpose of social change" (Morris 2002; 10), what is

commonly known as Participatory Action Research (PAR). PAR and other community-

based research focuses on the importance of ethics and responsibility to a community.

PAR is one but type of research that upholds community-based research principles of

research. This next chapter emphasizes the importance of community-based principles of

research when conducting research with marginal populations, and highlights the lack of

such research to date.

The importance of ethics and responsibility in research was first brought to the

forefront with the creation of the Nuremberg Code, which states that "experiments should

be such as to yield fruitful results for the good of society" (reprinted at

www.nswp.org/ethics). According to Mappes and Zembaty (1986):

> The Nuremburg Code was developed by the Allies after the Second World War.
>
> During the War Crimes Trials in Germany, this code provided the standards
>
> against which the practices of Nazis involved in human experimentation were
>
> judged. [It] emphasizes the essentiality of voluntary consent...and also sets forth
>
> other criteria that must be met before any experiment using human beings as
>
> subjects can be judged morally acceptable. (Mappes and Zembaty 1986; 180)

The implementation of a code for research ethics eventually gave way to the

creation of different research methodologies that respect research for social change. Over

time, principles for community-based action research have been developed not only as a

response to ethical treatment of research with humans, but to include participants in the

research process with a focus on researcher responsibility. The various philosophies of

community-based research methods and PAR, many of which find their roots in feminist

methodology, have also developed as counter philosophies to traditional positivist views

of research and the creation of knowledge: "viewed as an alternative to positivist,

quantitative research, these type of qualitative methods place the women's perspective,

experiences, ideas and expressions in the foreground, a goal that is espoused in feminist

writing on methodology" (Ironstone-Caterall 1998; 30). Positivism has been described as:

> a way of seeing the world and constructing the world, which insists that
>
> 'physical' and 'social' worlds are in all essentials the same. Positivism claims that
>
> in any occurrence there is one set of true events ('the facts') which is discoverable
>
> by reference to witnesses and material evidence of all other kinds...It describes

social reality as 'objectivity constituted' and so insists that there is one true 'real'

reality. And it suggests that researchers can find out this reality because they

remove themselves from that which they study. (Kirby and McKenna 1989; 34)

Grounding research methods within traditional scientific methodology is thought

by many researchers to lend credibility to their research: "Commitment to rules of method

implies some notion of an actual, real, material world that can be investigated and

represented" (Ramazanoglu and Holland 2002; 42). Participatory action researchers seek

to break down positivist beliefs of an unbiased researcher, the existence of one 'truth,'

and the exclusion of the researched from the research project.

Kirby and McKenna (1989) explain that central to all research is an analysis of the

actual context within which the research is being done. This means researchers must be

responsible to the cultural, political, and economical context in which they conduct and/or

facilitate research, which intrinsically involves an acknowledgement of the political

impact a particular research can and will have on a culture. With this in mind, researcher

responsibility moves far beyond upholding positivist claims of objectivity in research as a

means of producing knowledge. Researchers should, therefore, employ community-based

principles of research when doing research with communities and maintain their

responsibility to social change through research.

Research is rarely objective and neutral, and it is imperative that research speaks

to its cultural and social contexts in order to identify its potential impact. By using PAR

and community-based research methods, researchers acknowledge this bias and follow a

fluid and non-hierarchical approach to research: "PAR consists of an amalgam of

methodological approaches that, together or in different combinations, have produced an

64

orientation to social research rather than a distinct methodology per se" (Jordan 2003; 188). As a fluid methodology, and what Jordan coins as a "methodology of the margins" (Jordan 2003), PAR is a research tradition that includes a range of community-based and partnered research.

Community-based and partnered research maintains a responsibility to the communities using the various principles of community-based research outlined by community-based researcher Ernest Stringer (1999):

1)   Participation; this ensures that the community is an active partner in the research process;

2)   Accessibility; research methodology, process and results must be accessible and useful to a community;

3)   Relevance; a research project must be relevant to a community's needs;

4)   Process; the process of research must include a community at every stage;

5)   Non-exploitative; the research methodology maintains ethical responsibility to a community;

6)   Researcher as facilitator; this highlights the active participation of a community and the secondary role of the researcher;

7)   Ethics; upholding and emphasizing community research ethics;

8)   Partnership; this is key to community-based methods;

9)   Initiative; the research itself is borne out of a community initiative;

10)   Peer review; colleagues within a community should undertake a peer review before research is published;

11)   Capacity building; research commits itself to building capacity within a
        community;

12)   Ownership; research and methods are owned by the community itself;

13)   Interpretation; members of the community are involved in the
        interpretation of the research, and is not the domain of researchers;

14)   Dissemination; the research is disseminated in creative ways and built
        into research plan;

15)   Implementation; the researcher ensures that the promise for
        implementation is carried out; and

16)   Empowerment; the research and process must be an empowering one for
        the community.

Principles for community-based research have rarely been respected in sex work research to date, although sex workers and their communities are popular areas for research and inquiry. Though sex worker communities are currently consulted for sex work research, the research typically lacks a true action or participatory component, or other methods of 'giving back' to the community through research. Members of the community, for example, rarely guide these research processes. Sex work research is typically not conducted with the view of helping the community, per se: "public health and policy research often serves purposes that do not practically assist sex workers and their organizations" (Open Society Institute 2006; 2).

Sue Metzenrath, of the Australian-based organization Scarlet Alliance, argues that methodologies, purpose, and outcomes of most sex work research tend towards a positivist approach with the empty promise of legitimizing both the topic and the voice of sex work communities (Metzenrath 1998; 11). In addition, she argues the research is

rarely representative of the different realities for sex workers. Failing to adhere to

community-based research or 'participant-centred' principles of empowerment and

mobilization, academics stand in for communities and further skew the power imbalance

in traditional research. Traditional research methods are a messy fit for marginalized and

often stereotyped populations that are seeking visibility in legitimized academic forums.

Metzenrath states:

> Far too long researchers have been using sex workers as guinea pigs without any
>
> benefit accruing to sex workers as the result of research. Essentially academic
>
> careers are made on our backs. Further, some research has provided ammunition
>
> to those who want to suppress the sex industry and research findings have been
>
> used to support some of those arguments. In many countries sex workers already
>
> refuse to be involved in research because they can't see anything in it for them.
>
> (Metzenrath 1998; 11)

Following the *philosophy* of PAR and the community-based research principles,

this research responds to a direct need for community involvement in both research and in

policy recommendations for the sex industry. The historical use of *PAR philosophy* and

its roots in feminist ideology acknowledges that any responsible research involves an

action component. PAR and community-based researchers also commit themselves

responsibly to the priorities and needs of communities in research. They attempt to give

rise to community voice and bring marginalized voices to areas otherwise occupied by

traditional hierarchy: "research activities should empower the people who are usually

merely the objects of research " (Kirby and McKenna 1989; 41). Community-based

action research, a philosophy of research that includes PAR, "seeks to engage people

67

directly in formulating solutions to problems they confront in their community and organizational lives" (Stringer 1999; 38). This project engages the sex worker rights community in creating solutions for prostitution law reform and responding to their lack of inclusion in past initiatives. Community-based research methods, in relation to our Blueprint project, are outlined below.

3.2 Project Objectives and Methodology

The objective of this project is twofold. Its research component seeks to define sex work law reform, and more specifically, decriminalization, while its action component creates a document for law reform recommendations from the sex worker rights community. The results of this research constitute a sex worker-led action that this community can use to inform policy makers of their priorities for law reform. In addition to manifesting an action, this research project seeks to facilitate an empowered community response and the development of dialogue around sex work law reform. Through this, a deeper reflection around law reform and consensus building within this community was initiated.

3.2.1 Project Philosophy

In facilitating an empowered community response through research, this project uses the community-based research principles identified earlier in this chapter, and in doing so, maintains its responsibility to this sex worker rights community. Below are the ways in which this research fulfills its obligations to community-based principles:

1)   Participation; the group of sex workers were active participants and

        determined the direction and decisions for every stage of the research

        project;

2)   Accessibility; research methodology for this project was led by the sex

        worker rights community in sex worker rights terminology. An example

        of this is our use a methodology that respects community principles;

3)   Relevance; this research project was especially relevant to sex workers

        considering the law review undertaken by the government;

4)   Process; the group of sex workers were involved at every stage of the

        research process including naming the issues and reviewing the data and

        final results;

5)   Non-exploitative; the research methodology maintains ethical

        responsibility to this sex worker rights community by does not exploit

        their issues;

6)   Researcher as facilitator; this highlights the role that I played as

        facilitator of the project, but not solely determining the direction of the

        project;

7)   An emphasis on ethics was ensured throughout this project to make sure

        that the voices of the sex worker rights community was forefront and

        their confidentiality respected;

8)   Partnership; a true community partnership was engaged for this research

        project and we created this document and the research together;

9)   Initiative; the research project itself was borne out of an expressed need for sex work law reform and the need to further define and strategize how the sex worker rights community would achieve it;

10)   Peer review; summaries of each meeting were presented to the group for peer review before the results were completed;

11)   Capacity Building; this project ensured that group members learned from each other and shared their experiences of prostitution law, and enabled them to strategize together for reform;

12)   Ownership; the Blueprint results are owned and created by the research group meaning that they can make changes to its content and its dissemination plan;

13)   Interpretation; members of group were involved in understanding the recommendations for law reform and interpreting the results and the direction of the results.

14)   Dissemination; as a group, we created a dissemination plan for the Blueprint together and decided who the appropriate audience was. We also decided on different formats for the different audiences.

15)   Implementation; after the thesis process is complete, I have ensured the research group that I will carry out the dissemination plan; and

16)   Empowerment; our Blueprint was a truly empowering experience for the community. Sex workers' recommendations for law reform are typically filtered through the academia, but this project provides a chance for their recommendations to be created, disseminated, and implemented by the community itself. The description of the research process below

70

highlights the use of community-based principles in research and their

importance of their use in research with communities.

3.2.2 Members of the Group

      To ensure participation of the sex worker rights community, I began the project by

contacting 20 sex workers, inviting them to be a part of a sex worker-led project that

would help to define sex workers' need for law reform and participation in research. The

basic project objectives, as explained above, were provided to the group. The group

recognized the initiative as an elaboration on continued work within our community and

were pleased it had been transformed into a research project. Eleven sex workers, 10

women and one man all are actively involved in the sex worker rights movement,

responded to the project with interest[1]. All were above 18 years of age and worked in a

variety of sex work settings: strip-clubs, massage parlours, escort agencies, independent

work, domination, and bars. There were no street-based sex workers in the group. Each

member of the group was also affiliated with the sex worker rights community, either as

an individual and/or through Stella, Montreal's local sex work community group, or the

Coalition for the Rights of Sex Workers, Montreal's grassroots sex worker organization.

      The group agreed to their responsibilities to approve, amend, and add to the

suggested themes of discussion (provided in Chapter 4) as well as provide critical

feedback on each stage of the research process. They also agreed to be involved in the

final development of the Blueprint, our recommendations for law reform, and its

dissemination.

---

[1] Throughout the thesis, all references to group members are referred to in the feminine as "she" to protect the identity of the one male sex worker involved in the project.

The sex workers in this research group were known to me and chosen based on their participation in political lobbying for sex workers in Montreal. Their perspectives on law reform cannot be generalized to the entire sex working community in Montreal, but are representative of the more public political voice around sex worker rights in Montreal, known as the sex worker rights community. In fact, it is commonly agreed in the sex worker rights community that there is no appropriate representation of a sex worker: "each sex worker at the table can only represent him/herself" (Stella 2005; 75). This is explored in further detail in the ethical issues section of this Chapter.

For reasons of confidentiality, numbers, 1 through 12, represent each group member including myself. We held 11 meetings in total, each lasting approximately two hours in duration. I was responsible for tape-recording and transcribing each meeting, accompanying them with notes. We chose to convene for our meetings at Montréal's local sex work project, Stella, since the group considered this a safe environment. Because Stella is typically only open to female, transsexual (MTF), and transvestite workers, a special provision was made to allow the one man in the group access to the Stella location during these meetings

3.2.3 Meeting Structure: Our Process

The first two, of ten, meetings were set aside to organize the procedure for the project. During these meetings the group identified various themes, discussed below, that they felt were pertinent to discussions around law reform. The following eight meetings were used to discuss the themes and create recommendations for law reform—what we call, the Blueprint.

In the first meeting, we decided on the procedure for our project. I presented the context of the research and a synopsis of how the research question was developed from activism in the sex worker rights community. We discussed how this project could present a novel way for us to lobby for law reform, and developed ideas for disseminating our message and research. This also gave us the opportunity to talk about confidentiality within and outside of our research group (see Appendix 2). We left out first meeting with an action plan for our research.

As part of our plan, we decided not to conduct individual interviews with sex workers. We had originally discussed this as possibly adding more legitimacy to the project but decided that individual interviews with a substantial number of sex workers could only be done through questionnaire format which would not render the kind of discussion the group saw as vital to a law reform process; we wanted to engage in discussion and build community with this project, rather than engage in quick and impersonal survey with additional sex workers. As part of my thesis project, not the recommendations, I conducted brief interviews with 6 sex worker activists on the history of prostitution law and sex worker organizing.

Our second meeting defined the content of our project. We identified themes for prostitution law reform that were relevant to practical issues on the job and popular issues in society. Through these issues the group felt they could address their needs for legislative change while also responding to the general public concerns with sex work law reform.

We structured the eight subsequent meetings according to these themes, addressing between one and three per meeting. At the beginning of each meeting, group members were provided with a typed summary of the previous meeting with the option to

veto the summary by parts or its entirety. This was one of the methods we used to ensure that the group owned the project, and that a true participatory element was observed; group members had input at every stage of the process. It was important to us that the group guided the discussion and the subsequent recommendations.

Our last meeting was used for an evaluation of the project and our organizing process. This part of the project was especially important for us to learn from our organizing process and reflect on community building. The evaluation of the project also sought to examine how the group felt we could improve on our organizing process and provided suggestions for future projects. This discussion is elaborated in the Conclusion of the thesis.

3.2.4 Selection of Themes and Documents

As mentioned earlier, chosen themes related both to the practicalities of sex work and societal issues around sex work. The group wanted to devise a reform strategy that could address their needs, as well as respond to public concerns. The group borrowed issues discussed in public debate on prostitution law reform, but rather than discussing them through a protectionist lens—which our group felt attempted to rehabilitate sex workers— they addressed them from a sex worker rights perspective. The group felt that discussing some popular themes for law reform would contribute to an educational strategy as part of the project.

The group named the following themes for their discussions around prostitution law reform: (1) Zoning; (2) Right to Associate; (3) Training for Sex Workers; (4) Workers' Compensation; (5) Occupational Health and Safety; (6) Licensing; (7) Mandatory Testing; (8) Mandatory Condom Use; (9) Age of Consent; (10) Taxation

74

Systems; and (11) Visas/Migrant Work. Each theme was discussed in terms of how it

would help to achieve human rights in a decriminalized context.

3.2.5 Documents Consulted

Documents were used to initiate conversation and critical analysis of current laws

and other types of law reform. We began with two types of documents. One set focussed

on sex workers' perspectives on prostitution law reform. The other set described different

legislative contexts and policies for sex work that have direct impact on sex workers'

lives. Members of the group were invited to introduce new documents to elucidate

opinion or to refine arguments, however, none were introduced. The following is a

descriptive list of the nine documents we used.

1) *World Charter for Prostitutes' Rights* (*reprinted in* Pheterson 1989)

Created at the first World Whores Congress in Amsterdam, 1985, The World

Charter for Prostitutes' Rights (ICPR 1985) represents sex workers from nine different

countries (mainly from Europe and some from other industrialized countries like

Singapore, Vietnam, and Thailand) (Pheterson 1989; 33). This document has inspired the

sex worker rights movement and subsequent manifestos (Thiboutot 1994) and is

fundamental in creating international solidarity for sex workers. It was therefore useful

for our group to include this document in our analysis.

2) New Zealand Ministry of Justice. *Prostitution Reform Act 2003*

New Zealand's *Prostitution Reform Act (2003)* is a rare example of a

decriminalized industry that has incorporated sex workers' perspectives. The impact of

this law on sex workers' lives is currently under investigation and study (Canadian

HIV/AIDS Legal Network 2003). The discussion elicited from analyzing this document

helped to support concerns that the group had for particular policies.

3) Banach, L. and S. Metzenrath. (2000) *Principles for Model Sex Industry Legislation.*

Sydney, Australia: Report by Scarlet Alliance and Australian Federation of AIDS

Organisations. http://www.afao.org.au/library_docs/policy/sex_law.pdf (Accessed

December 24, 2006)

    This Scarlet Alliance document, *Principles for Model Sex Industry Legislation,* is

an example a sex worker-led consultation on prostitution law reform that inspired our

project. Scarlet Alliance philosophy on sex worker participation is a similar one espoused

by our group:

> We believe that the problems with this draft [Prostitution Bill 2002] could have
>
> been avoided if a community consultation approached had been followed.
>
> Including consultation with sex workers, sex worker organisations [sic] and
>
> Scarlet Alliance. It has been extremely difficult to comment on a bill, which is
>
> complex and written in language not accessible to the majority of people. (Scarlet
>
> Alliance and Banach, L. 2003; 5)

    Our group shared the concern about accessible language expressed by Scarlet

Alliance and the importance of recommendations that are accessible to sex workers.

4) Stella, l'amie de Maimie. (2004) *XXX Guide: A Sex Workers' Handbook.* Montreal,

Canada. http://www.chezstella.org/stella/?q=guideXXX (Accessed December 24, 2006).

Stella's *XXX Guide* provides a rudimentary and accessible explanation of prostitution law as set out in the *Canadian Criminal Code*. We used the XXX Guide for both its simplistic legal language and examples of how prostitution laws are applied, to guide us through the first part of our discussion.

5) Sex Workers Outreach Project (SWOP)-USA. *Angel Initiative: Measure Q.* Berkeley, California, November 2004.

The Angel Initiative provides an example of an organized sex worker community action for decriminalization. On November 2nd 2004, sex workers in Berkeley, California, put forward a ballot item for decriminalization of prostitution, claiming their rights as California citizens to recommend legal changes. While the demands for reform are different, this initiative is a good example of how sex workers articulate their desire for law reform.

6) Monet, V. "Mandatory Testing: The Fear that Feeds the Falsehood" *Research for Sex Work*, Vol. 7, pp29-33. Netherlands: Vrije University Medical Centre. June 2004.

Written by American-based sex worker and activist Veronica Monet, this article is an example of how sex workers respond to mandatory testing, an issue that comes up in discussions around law reform and regulation of both prostitutes and prostitution. Monet illustrates the unethical process of mandatory testing and its ineffectiveness in stopping the spread of diseases. As mandatory testing was one of the issues our group identified, this background policy information was used to supplement our discussion.

7) Canadian HIV/AIDS Legal Network. Information Sheet HIV Testing #12: Mandatory Testing. Canada. 2000.

This one-page fact sheets provides an explanation for why mandatory testing has been suggested as a means of protecting the public against HIV/AIDS. It critiques the "so-called risk groups' that have been targeted for mandatory testing and provided the group with perspectives on why sex workers have been targets for mandatory testing regimes. This fact sheet supplemented the above article, and our discussions on mandatory testing.

8) Loff, B, Overs, C, and P. Longo. "Can health programmes lead to mistreatment of sex workers?" *The Lancet,* Vol 361, June 7, 2003. www.thelancet.com

Similar to Monet's article on mandatory testing, this article was used to supplement our discussion of mandatory condom use programs. It also provided an example of how sex workers are articulating the impact of these policies.

9) Barnett, T. Prostitution Reform Act: What is the Story One Year On? December 2005.

One year after the *Prostitution Reform Act (2003)* decriminalized sex work in New Zealand, its sponsor MP Tim Barnett released a report on its perceived successes and failures. This report evaluates the different elements of the law, for example, age limits, brothel locations, contractual responsibilities, immigration provisions, etc, and measures their perceived effectiveness. We used this document to gain insight into the impact of a decriminalized system.

3.3 Ethical Issues and Limitations

3.3.1 Representation

Representation of sex workers was an issue for our group from the onset of the project. We maintained that our recommendations could not be generalized to the entire sex working community, and that the Blueprint results are in need of elaboration and input from other sex workers. However, the small size of our group, and absence of some sex workers constituted important considerations for future projects.

3.3.1.1 Sex Worker Rights Community and Sex Workers

Our group was aware that as a sex worker rights community, we could not represent the voices of all sex workers. We were also aware that existing organizations that support sex workers, like Stella and the Coalition for the Rights of Sex Workers, could not claim a representative voice either. To ensure further discussion within our communities, and to avoid confusion around ownership of the recommendations, we made a distinction between our sex worker rights community, and the groups in Montreal that represent a larger voice for sex workers' rights. We ensured participation of members from groups like Stella and the Coalition for the Rights of Sex Workers, but avoided claiming a representative voice. We also wanted to ensure that sex workers outside of our group had a chance to respond to the recommendations, and not be forced into a representative voice.

The debate about whether or not a group of sex workers can represent the perspectives of the industry is a common one within the sex worker rights movement. The 250 sex workers at the Forum XXX believed that "representation is an odd goal to aim for

79

when the parameters for its achievement are so varied and abstract" (Stella 2005; 75).
There is, however, pressure from both within and outside of research communities to
define membership and representation when speaking to sex work issues. Sex workers at
the Forum XXX respond to this by saying:

> The concerns of absent or uninterested sex workers still need to be represented at
> the table, but including these perspectives is hard when members of under-
> represented groups are not able to take part in discussions activities, or are not
> interested in doing so. With this in mind, its important to realize that our
> movement is not necessarily representative of all sex workers, and there is danger
> in not acknowledging other voices that may exist. (Stella 2005; 75)

With this project, we do not claim that the sex worker rights movement or the "sex
working community" is representative of sex workers in general. The extent to which a
social movement can represent its members is a challenging dilemma. Where the sex
worker rights movement is concerned, many sex workers are absent. One reason for this
absence is due to the challenge of an identity movement, like the sex worker rights
movement:

> while some people working in the sex industry internalize the identity of 'sex
> worker,' others reject it completely. The form of this rejection can range from
> seeing the work simply as a job, to refusing to be publicly, or even personally
> linked to prostitution. (Stella 2005; 75)

Chapkis points to other reasons why sex workers do not get involved in their
social movement:

Self-advocacy efforts by sex workers have been complicated by challenges

common to all forms of organizing rooted in identity politics. Participation is also

a function of risk; public political work puts a lot of sex workers at risk. Most

significantly, attempts at self-representation have exposed conflicts over who has

the authority to speak for and about the prostitute. (Chapkis 1997; 182)

All of these issues pose difficulty to "true" representation. However, while the sex

worker rights movement cannot represent all sex workers, most of its members ensure

close contact with sex workers from all sectors of the industry through outreach work and

external activities. Our group affiliations with Stella, The Coalition for the Rights of Sex

Workers, and other international groups, ensured a variety of sex workers' perspectives,

both within and outside of the movement, and situated us well in our analysis of

prostitution law reform.

3.3.1.2 Identity and Place within the Industry

Another concern for representation was the absence of street-based sex workers,

transvestite, and transsexual sex workers in this research project, some of whom may be

considered the most marginalized sex workers. Our recommendations for future research

and organizing are based on this limitation.

The same was true of the absence of transsexual and transvestite sex workers in

our group. This was a problem for the group because transsexual and transvestite sex

workers experience different, and sometimes increased, harassment from both clients and

police. This project lacks the perspectives that transsexual and transvestite sex workers

have for law reform and their voices need to be included in any future projects.

81

3.3.1.3 Size of the Group

Validity of research, including a sample size, is often challenged and held up to rigorous standards of research (Kvale 2002). The feminist research methodology, as employed in this research project, however, cannot be upheld to this standard of empirical review; its focus on a qualitative discussion amongst a small group of people makes the application of generalizing methods impractical. This qualitative research project did not have, as part of its criteria, the necessity to represent the sex working community.

A small group of sex workers was chosen for this project for various reasons. Firstly, the size of the sex working population itself is unknown, and a representative sample is difficult to gather. Shaver (2005) points out that research with sex workers can be particularly difficult given that the size and boundaries of the sex working population are unknown and a representative sample is difficult to obtain when dealing with what she refers to as 'hidden communities.' Secondly, the sex worker rights population is equally small and therefore brings forward even fewer members for a project designed within the sex worker rights movement. It was difficult to achieve what may be considered a "representative" sample of sex workers for this project. The group believed that, as 12 members of the sex worker rights community, we could represent neither the movement nor the entire sex working population, but that our perspectives would represent a sample of the work that we do within our communities. Our concerns for addressing greater numbers of sex workers in the sex worker rights community are discussed in the Conclusion, as part of our evaluation and recommendations for further research.

3.3.2 Informed Consent

Consent forms were provided to group members at the first meeting (see Appendix 2) accompanied by a short project description. Consent forms detailed group members' role in the project and their right to discontinue their participation during the organizing process, if they choose. The group was aware of the project details and their responsibility to the project.

The consent form also discussed the confidentiality of each group member. Shaver (2004) points out the importance of privacy and confidentiality when doing research with sex workers because of the stigma sex workers face if their identities are revealed. Participants also consented to an audio recording and transcription of each research meeting.

3.3.3 Responsibility to the Group beyond the purposes of this study

Community-based action research *can* have purely academic outcomes…but…if an action research project does not *make a difference*, in a very specific way…then it has failed to achieve its objectives. (Stringer 1996; 11)

To fulfil the action component of the project, my responsibility to the group extended beyond my role as a researcher. As a researcher, it was my responsibility to communicate the process to the group, and as an activist to ensure the completion and dissemination of the blueprint. Part of the role of the group, beyond the purposes of this study, was to commit to reading, editing, and developing a plan for dissemination of the Blueprint itself. This is to be completed after the thesis process is complete.

3.3.4 Confidentiality

Given the small size of the Montreal sex worker rights community, the importance of maintaining confidentiality of group members was paramount. We reserved a significant part of the first meeting to discuss protocol for maintaining confidentiality. Identity through names, speech patterns, and experiences were concealed. Members of the group were given the option of signing their confidentiality forms with pseudonyms and meetings were transcribed from French to English to obliterate speech patterns.

Discussions were kept confidential and held in the closed meeting room at Stella and conflicts were resolved within the group. Meetings were also held at Stella outside of their office hours to ensure privacy. Neither the meetings nor the identities of group members were shared with other activists and sex workers in the community.

3.3.5 Ownership of Project

We decided to make the completed Blueprint, our recommendations for law reform, accessible to the public, though the group would claim ownership and make plans for its dissemination. Part of this ownership meant sharing the results with the sex working community, and encouraging elaboration on its content. This Blueprint therefore serves as a foundation for future recommendations for law reform. The group agreed that different formats of the Blueprint, like this thesis content, might be used and printed in different formats, at my discretion. This may involve community writing, opinion articles, or academic presentations or papers. The group does not have any ownership or responsibility of the thesis document.

3.3.6 My Roles: Conflicts and Tensions

Within positivist research, there is a necessary split between the researcher (subject) and the researched (object), with the assumption and belief that the researcher is unbiased, or that the validity of research can be justified only if held up to rigorous standards. The positioning of the researcher by gender, class, race, or power structures, lends earnest acknowledgement and insight into an existing bias that positivist researchers tends to ignore (Kirby and McKenna 1989). From the onset of our organizing process, I encouraged, by example, a transparency about our individual positioning within our community and the knowledge that we all brought to the table. With my own knowledge, I tried not to predict or control the content of the discussion. The many roles that I manage as researcher, peer, and member of the sex worker rights community required a great transparency and acknowledgement of this positioning. Park (1993) acknowledges how we create knowledge and mobilization through this type of transparency and multiple positioning:

> Participatory research attempts to break down the distinction between the researchers and the researched, the subjects and the objects of knowledge production, by the participation of the people-for-themselves in the process of gaining and creating knowledge. In the process, research is seen not only as a process of creating knowledge, but simultaneously as education and development of consciousness, and of mobilization for action. (Park 1993; 34)

3.3.6.1 Collaborator and Peer

As a community member, I also collaborated in the project. I therefore informed the research process and content of the discussion. I am also a peer to many sex work

rights activists, and found that my role as an activist was limited by my role as an academic. It was necessary for me to maintain a facilitating role to ensure the content of the discussions was recorded, while participating as a collaborator.

3.3.6.2 Academic: Facilitator, Observer/Evaluator

Although I most valued my role as peer and collaborator, it was necessary to balance this with my role as academic, facilitator, and observer. As mentioned above, I found my role as an activist compromised by my role as an academic. As an activist I typically take on a leadership role. While a leadership role is similar to that of a principle researcher, I was eager to make this a group effort, and have it equally informed by all members of the group. At times it was difficult to maintain this balance, but on the whole there was equal participation amongst group members.

Academic needs and community needs conflicted at times in terms of deadlines. As my timelines for the project were dependent on my schedule with the university, this conflicted at times with the needs for the community in terms of their availability. I was determined to take the lead of the community and therefore took the necessary time for the thesis project. I believe that research with communities needs to adhere to community timelines, and not vice versa.

My role as facilitator of the discussions had the potential to conflict with my role as peer. When the group was in conflict, for example, I was required to facilitate amongst members, whereas conflict is not formally facilitated in activism. I was careful to facilitate and mediate, rather than dictate, resolution to conflicts. Our initial group discussion on conflict resolution balanced us in this process (see Appendix 1).

My role as collaborator sometimes interfered with my role as observer/evaluator. During the meetings, a lot of my time was spent facilitating and note taking, which took time away from my collaboration on the project. However, the audio recordings coupled with note-taking supplemented any observations I was not able to record.

3.4 Significance of Research

Stringer's (1996) perspective on community-based action research illustrates the overarching goal of this project and the perceived outcomes of this undertaking: "Community-based research results not only in a collective vision but also in a sense of community" (Stringer 1996; 10). This significance of this research lies in its methodological strength, as community-driven research, as well as the multiplicity of benefits that arise from community-based research; among these were empowerment, capacity building, and strategy formation. These are discussed in further detail in the thesis Conclusion. Our original contribution to sex work law reform discussion is detailed in the next Chapter and provides an opportunity to include sex workers in both research and policy debate.

CHAPTER 4. THE BLUEPRINT: RECOMMENDATIONS FOR SEX WORK LAW REFORM

In the past when government committees or task forces such as the Fraser report and the Wilson Task Force have been convened, they have delegated research tasks to government bureaucrats or contracted out to academics. (Davis and Shaffer 1994; 34)

An intense debate, here and elsewhere, is carried on in federal governments, international forums and organisations, diverse interest groups, and of course, the women's movement. At the same time, people working in the sex-trade all over the world are positioning themselves as actors, amongst others, in the discursive universe. In our opinion, it is of vital importance that our views be visible, audible, and credible. (Stella 2002; 1)

Detailed below are recommendations for sex work legislation emanating from a community directed affected by prostitution laws. These recommendations are by no means an exhaustive discussion of the issues. As part of its own foundation, these recommendations for law reform are guided by principles for human rights applicable to all sex workers.

Our discussions are divided into two parts: a discussion of criminal law (the four sanctions against prostitution in the *Canadian Criminal Code*), and a discussion of 11 themes that the group identified as important to legislative contexts and to popular debate

88

around prostitution law reform. When discussing the criminal law, the group identified the dangers and exploitation of its nature and its practise. When discussing each of the 11 themes of, (1) Zoning; (2) Right to Associate; (3) Training for Sex Workers; (4) Workers' Compensation; (5) Occupational Health and Safety; (6) Licensing; (7) Mandatory Testing; (8) Mandatory Condom Use; (9) Age of Consent; (10) Taxation Systems; and (11) Visas/Migrant Work, the group identified how legislating sex work issues can contribute to exploitative conditions, and deny sex workers their human rights. Therefore, these recommendations are described using guiding principles of law reform. These guiding principles are based on an understanding of human rights that the group felt was imperative to consider when reforming law. They are described below and lay the foundation for our discussions around law reform.

4.1 Guiding Principles for Sex Work Law Reform

The following principles for law reform guide the discussion and are found throughout the discussion of the 11 themes: (1) Security; (2) Representation and Inclusion; (3) Integration (Citizenship); (4) Autonomy (of Beliefs and In Work); (5) Labour/Workers' Rights; and (6) Equity. These principles identify the elements of human rights that our group considered important when organizing around law reform; these are the principles we needed to keep in mind throughout our organizing process when making our decisions, attempting consensus, and approaching action.

The six guiding principles of law reform that are identified in our recommendations were summarized in a presentation on May 16, 2006 to the

Parliamentary Subcommittee (SSLR), based on a transcription of our 10 group meetings in 2003.

In this presentation we urged parliament to consider human rights as guiding principles for legislative reform:

- It is imperative that legal reform involves a collaboration (leadership) with sex workers;

- No laws should be enacted that further curtail sex workers freedoms and civil liberties (i.e., zoning would ghettoize and contain sex workers, and mandatory testing is a social control mechanism). Included in this would be a very serious look at immigration law and the negative impact that anti-trafficking laws (often confused with prostitution law) have on the lives of sex workers;

- If there is any type of regulation of the industry, it should be structured and driven by sex workers' needs (for example by a sex worker regulatory board);

- Laws or conditions should not be *more* strict or imposing than regulations on other work;

- Reform should be driven by civil rights and liberties, not by moralism; and

- Models of law reform should consider all sectors of the industry. (Clamen 2005a; 1)

Inherent in the above recommendations to the parliamentary subcommittee are the six aforementioned guiding principles that are identified within our discussions for law reform. They emphasize the importance of human rights as a guiding principle for the sex worker rights movement and recommendations for law reform. As this project attempts to

emphasize, the demands that sex workers have of their government need to be considered

in order to protect and fulfill their human rights. According to Clamen and Lopes (2004):

> Like a citizens' rights movement, sex worker organisations are aimed at
>
> reclaiming rights that are granted to the majority of the population but have been
>
> systematically denied to those working in the sex industry. (Clamen and Lopes
>
> 2004; 39)

One of the important messages in the guiding principles and subsequent group

recommendations is the emphasis on human rights. The message of the sex worker rights

movement is often misinterpreted as a 'philosophy,' rather than a human right (Canadian

HIV/AIDS Legal Network, Maggie's, Stella 2007). After considerable discussion around

prostitution law reform, the SSLR parliamentary committee report presented

"philosophies" of sex work, rather than an acknowledgement of human rights abuses

against sex workers (SSLR Report 2006). This "philosophy" for sex workers' human

rights is also compounded by the accused glorification of prostitution. Sheila Jeffreys, an

abolitionist feminist, makes this accusation by mocking sex workers' insistence on their

right to recognition of work:

> [The prostitute rights movement] argue[s] that prostitution is a job like any other
>
> which women 'choose' [sic] and even that it represented sexual liberation for
>
> women and was on the cutting edge of women's oppression. (Jeffreys 1997; 65)

In fact, as the guiding principles for law reform demonstrate, the sex worker rights

movement attempts to claim the same rights granted to the majority population. They do

not claim that their work is like any other, even more so because most other work is not criminalized. One member of our research group stated:

> There is this thing going around questioning whether sex work is like another other work, and abolitionist feminists thinking that that is our claim. But really what we are saying is that we just want rights like other people. (Project Participant 1, Meeting 5)

Canadian academics Leslie Jeffrey and Gayle MacDonald support this: "it is not a 'job like any other,' mainly because of the illegality, stigma and resultant risk of violence attached to the work" (L. Jeffrey and MacDonald2006; 323). For these reasons it was especially important to use the guiding principles for law reform, to highlight the importance of human rights as the basis for law reform, and highlight the message of the sex worker rights movement that sex workers in the research group feel should be incorporated into prostitution law reform.

The following principles set the foundation for a larger demand for human rights when considering the aforementioned 11 themes for law reform:

4.1.1 Security

Security was named as a priority when discussing each theme. Violence and unsafe working conditions that surround the sex industry are not inherent to the industry itself, but rather a function of the legal and social environments for sex work. As mentioned earlier with examples of violence prevention, safer sex techniques, and legal help at Stella in Montreal, sex worker organizing has allowed sex workers to create safer conditions for themselves within the current legal context: "The objective of self-

organizing amongst prostitutes is to create conditions of greater safety for themselves as well as their clients" (Chapkis 1997; 168). The group highlights the importance of a legislative system driven by security and felt this should be one of the guiding principles for reform.

4.1.2 Representation and Inclusion

As discussed earlier, sex workers' realities are rarely represented in their societies, their laws, and their daily policies. When envisioning a decriminalized system, the group raised concerns about the exclusion of some groups of sex workers in the industry:

When you start talking about the law, you start talking about outlaws. So it's up to us, and we're going to be saying who will be outlaws, which sex workers will be outlawed. Our eyes need to be on the outlaw and defending the outlaw. (Project Participant 1, Meeting 1)

Another group member expressed concern about finding harmony amongst sex workers' needs:

I have learned that I what I want personally as a sex worker will not necessarily be beneficial for the entire sex work community in general, so I have to learn to balance that." (Project Participant 4, Meeting 1)

Some groups of sex workers are over-represented while others do not receive enough consideration. Street-based sex workers are often over-represented in policy and research while men and transsexual sex workers are typically excluded. The group felt that diversity should be represented in a decriminalized system and in discussions on law

93

reform: "Changing the law requires the input from everybody involved." (Project Participant 3, Meeting 1)

4.1.3 Integration

In a decriminalized system, the group expressed the importance of a slow and fair integration. Because the current criminalized system denies human rights and citizenship rights, sex workers' will need to adapt to a new system if law reform were to occur. In discussions of law reform, integration is often limited to integrating sex workers out of the industry through exiting programs and into a 'normal' life. We use integration to mean the integration of sex workers and their work into society and an already existing system. This includes the eradication of past criminal records:

> I like the idea in New Zealand that if you have a previous drug conviction or a previous conviction in sex work, that can't stop you from continuing or starting in the work now. I like that, I wouldn't want this to hinder people getting work. (Project Participant 5, Meeting 3)

It is worth noting that not all sex workers desire integration into existing social systems. However, this principle for law reform is something that the group felt needs to be considered to create safety and security for some sex workers.

4.1.4 Autonomy of personal beliefs and of work

Some sex workers are independent while others work for agencies. All sex workers in the group felt that a decriminalized system should allow this worker autonomy. Pivot's 2006 report on decriminalization supports this: "because of some of

94

the exploitative and unfair practices in many sex industry businesses, many sex workers

want to work independently" (53). The group felt the right to autonomy was one principle

that should guide the process of law reform.

4.1.5 Labour/Workers' Rights

Claiming workers' rights in the current legislative system is problematic for sex

workers. Though sex work, as labour, is unique unto itself, sex workers want to be able to

access basic labour rights and other rights granted to other workers. The Open Society

Institute, an American organization and ally to the sex worker rights movement, explains

how:

> Defining commercial sex as work and a form of labor [sic] can allow sex workers
>
> to draw on social security systems and other forms of benefits. Redefining
>
> prostitution as work requires linking with other social movements, against
>
> corruption for example, and understanding how struggles for workers' rights
>
> occurs in local context including informal labor [sic] sectors. (Open Society
>
> Institute 2006; 1)

Many of the labour rights that the group identifies are issues that sex workers

share with other workers in non-traditional work sites. Contracts and employer

responsibility, for example, are issues sex workers share with workers in employed

environments, while workers compensation and maternity leave are rights that sex

workers would recommend for themselves and for other autonomous workers. Union

support was an issue that was raised as important not only to sex workers, but for other

autonomous workers. Our group addressed these labour concerns for autonomous

95

workers in general, as well recommending that the union structures themselves be revised and reformed.

4.1.6 Equity amongst workers and amongst citizens

Equity was used as a guiding principle to promote equal legislative rights to all members of society. Earlier in Chapter 2, Viviane Namaste (2005) is highlighted quoting the ambiguous enforcement of prostitution law and the use of non-prostitution law against sex workers. The group elaborates on this notion using the principle of equity to discuss the indiscriminate use of prostitution and municipal laws amongst sex workers, and their disproportionate use against sex workers. Recommendations, to this end, include applying non-prostitution related laws equally to members of society, across lines of gender, sexual identity, race, culture, creed and economic status. The principle of equity also requires the abolishment of laws that specifically criminalize sex workers.

4.2 Our Blueprint

Our recommendations begin with an overview of our discussions of the current *Canadian Criminal Code*. We thereafter discuss the 11 aforementioned themes and how they are guided by the basic principles for law reform.

4.2.1 Defining Decriminalization

Each group member provided a definition of decriminalization during our first meeting. The intention of this exercise was to develop a foundation for our discussions and our ideal model of law reform. The exercise proved difficult for everyone. Some expressed having never considered it before while others provided in-depth legal

definitions. Others described decriminalization in human rights language. Overall, the group agreed to the repeal of all prostitution laws (ss210-213) in the *Canadian Criminal Code*. Some group members focused their definitions on the current criminal code sanctions:

> We need to be able to go to the police for help when necessary, without fear of prosecution or harassment, we need to change the pimping laws so that living off the avails is not a crime, and get rid of current communicating laws. We also need to abolish the bawdy house laws and be able to work from our homes, recognize that brothels can offer protection from abusive clients. (Project Participant 8, Meeting 2)

Some sex workers saw decriminalization as a system that includes sex workers and their realities:

> Where sex work is recognized as work and each artisan in the sex industry is therefore recognized as an active individual of the 'republic'. An artisan is an individual who has the right to be recognized like all other workers and deserves the respect, same rights, and access to the same resources as others. (Project Participant 9, Meeting 2)

> A legal and social environment where sex workers participate in the definition and application of measures and tools to protect their rights to health, security, economic and human rights, and also their organization, this also includes aspects of training, information, invention, and harmonization. (Project Participant 5, Meeting 2)

Others saw decriminalization as involving a type of self-governance:

Abolish old laws and put in place a new legislative reform. These laws will be

governed by a group, which would be comprised of practical people (those who

represent the group, i.e., sex workers). A board of directors would ensure the laws

are applied and they would evaluate the group members' credibility to be on the

council. (Project Participant 7, Meeting 2)

The above definitions specify job training amongst sex workers and a

harmonization or integration of sex work amongst other business trades, in terms of

salaries and working conditions. These definitions are based on the group's belief in the

inclusion of sex workers' realities in legislative reform.

Other definitions of a decriminalized system included the need to eradicate current

discriminatory application of criminal and other laws:

We need to harmonize the age of consent laws with prostitution laws and age of

work laws. Because so many people get mixed up into these categories and

charged unnecessarily. (Project Participant 12, Meeting 2)

"Zero tolerance of police harassment—by force, or by the arbitrary use of laws."

(Project Participant 6, Meeting 2)

Yet other definitions emphasized how within a decriminalized system sex work

would be recognized as work:

"Recognize the right and validity of sex work as an occupation for services rendered." (Project Participant 10, Meeting 2)

"There should be at least a minimum wage, something that will guarantee your money. And health and safety should be guaranteed; a certain level of hygiene should be met." (Project Participant 3, Meeting 2)

These definitions reveal decriminalization as more than the removal of *Criminal Code* sanctions. They involve a critical look at legislation that confines sex work to a judicial system that fulfils neither sex workers' human rights nor workers' rights. For this reason, and as part of our recommendations, the group felt it paramount that sex workers' perspectives on decriminalization be introduced at a policy level and that their definitions inform policy and law reform.

Noted earlier, the group defined decriminalization not only through the eradication of current criminal laws but also by the discriminatory application of laws amongst sex workers and citizens. Sex workers in the group observed that even though all activities surrounding sex work are considered illegal, it is most often street-based sex workers that are criminally charged and to whom prostitution and other laws are applied: "Statistical evidence has demonstrated a pattern of selective enforcement by police of *Criminal Code* sections 210 to 213" (HIV/AIDS Legal Network 2005; 18). This discriminatory enforcement is something that the group addresses in the guiding principles for law reform as well as in the ingredients for law reform at the end of this Chapter.

4.2.2 The *Canadian Criminal Code*

Although the particular dimensions and principles underlying each definition of

decriminalization differed slightly, all members of the group agreed on repealing the four

Criminal Code laws against prostitution: Sections 210 and 211 pertaining to bawdy

houses, Section 212 pertaining to living on the avails of prostitution and third parties and

business managers, and Section 213 pertaining to communication for the purposes of

prostitution. As it becomes clear below, these sections cause harm to sex workers and

prevent them from accessing safe and viable working conditions.

4.2.2.1 Sections 210 and 211

Section 210 of the *Canadian Criminal Code* makes it illegal to operate what is

defined as a "common bawdy house," or more commonly known as a brothel: "Persons

found in a common bawdy-house, whether sex workers, other employees or clients, can

also be charged" (Canadian HIV/AIDS Legal Network 2005; 13)[2]. As well, should an

individual be convicted of using rented accommodations as a bawdy house, this law

requires that the landlord be notified and the sex worker evicted. If the landlord fails to

evict the sex workers s/he can face criminal charges. This guarantees the discriminatory

eviction of sex workers at first notice (Davis and Shaffer 1994). The Canadian HIV/AIDS

Legal Network points to the broad definition of "place" used in this provision: "the

definition of 'place' includes any place, whether or not covered or enclosed, whether used

---

[2] Descriptions of the criminal code laws pertaining to prostitution are taken from the Canadian HIV/AIDS
Legal Network Report (2005) rather than the *Criminal Code of Canada*. The former is more cohesive in
that it has, in addition to its more accessible language, an analysis that involves the application of each law.
For example, Section 212, living on the avails does not specify "client" as one of the parties to which the
law applies. However, with careful analysis, research, and experience from sex workers we know that
clients are at risk under this law. For this reason, it is important to understand not only the law, but its
application and impact on sex workers and their lives and work.

permanently or temporarily, or whether any person has an exclusive right to use it"

(*Canadian Criminal Code*). This makes it illegal to work in hotel rooms, from one's own residence, and most geographical locations. The group pointed to the problems associated with not being able to work indoors: "I need the protection of working indoors, and working with other people. I can't even tell my neighbours what I do, for my own protection, because it's considered illegal" (Project Participant 6, Meeting 2).

Another group member emphasized the importance of working with others: "We need to be able to work together and with help from others" (Project Participant 12, Meeting 2).

Section 211 makes it illegal to knowingly transport anyone to a bawdyhouse. Members of the group point out the danger of this: "I want to be able to go to and from work freely with the help of a driver, it's safer that way" (Project Participant 8, Meeting 2).

4.2.2.2 Section 212

According to the Canadian HIV/AIDS Legal Network, the procuring law, dubbed the "pimping law," is intended to prevent the procurement or enticement of another individual into prostitution and is meant to "prohibit the exploitation [economic and physical, including violence] of those engaged in prostitution" (Canadian HIV/AIDS Legal Network 2005; 15). The section also "places particular attention on preventing persons under 18 years from being procured into, and exploited in, prostitution" (Canadian HIV/AIDS Legal Network 2005; 15). In reality, this law is used as well to charge those who are living on the avails of prostitution, including agency bosses, managers, club owners, etc, many of whom are also sex workers. In an article based on

101

her presentation to the Fraser Committee, Shaver (1988) points to the lack of insight in deeming procuring illegal when in fact criminalizing 'pimps' results in the criminalization of many people within a sex worker's life:

> We may even have to lay aside the stereotypical view of the pimp-prostitute relationship as violent and abusive. It is not necessarily an accurate one. From the prostitutes' point of view there are at least two types of situation: the 'pimp' as 'lover,' and the 'pimp' as 'business manager or owner'. The law makes no distinction between the 'lover' and the 'business owner,' a pimp is defined as a person who 'lives wholly or in part on the earnings of a prostitute. (85)

While in support of Shaver's above claim that legal definitions of pimps do not make a distinction between coercive and loving relationships, the group expressed their need for a law that protected sex workers from coercive and exploitative working conditions. They did not feel that Section 212 offers them this protection: "The pimping law is about third parties, not about coercion. It doesn't protect you against coercion" (Project Participant 12, Meeting 2). They therefore recommend the application of other criminal laws that would protect sex workers against coercion and not criminalize their business relationships.

> The pimping law was created in the 1800s because they assumed any business relationship was forced; there was no chance in anyone's mind that someone would choose to be a sex worker. So now we need to make a clear distinction between coercion and business. That's why this pimping law is not effective, it does not protect us against coercion. (Project Participant 4, Meeting 2)

Others highlighted how this law criminalizes their relationships and prevents them from

sharing vital safety information with other sex workers:

> I want to be able to give other sex workers advice without it looking like I am
>
> pushing them into sex work. (Project Participant 8, Meeting 2)

> I want to be able to work with a partner and be able to hire other workers to work
>
> with me. (Project Participant 9, Meeting 2)

In their Parliamentary recommendations for sex work law reform, the STAR

project points out that "making referrals or bringing along a friend may be seen as

procuring, therefore violating section 212 of the *Criminal Code*" (STAR 2005; 25).

Section 212, "targets the person who has an economic stake in the earnings of a

prostitute, and who lives 'parasitically' off such earnings" (Canadian HIV/AIDS Legal

Network 2005; 16). In this understanding of procuring, the law protects those with little

control or autonomy in their work by criminalizing an economically "parasitic"

relationship. In reality, however, this law prevents sex workers from sharing their

earnings or financially supporting their families. It ensures that sex workers are isolated in

both their work and their lives to protect their loved ones from the risk of arrest. Group

members speak to this: "My children are at risk" (Project Participant 12, Meeting 2); "My

partner is at risk when I work" (Project Participant 6, Meeting 2).

4.2.2.3 Section 213

Section 213, previously the soliciting law (s.195) and amended in 1985 as the

communication law, "was principally intended to address the public 'nuisance' resulting

103

from street-based prostitution, increase the enforceability of the law and extend the law to include clients" (Canadian HIV/AIDS Legal Network 2005; 16). This law makes it illegal for sex workers and clients to communicate in a public place with the intention of engaging in prostitution. Although in practice the law is enforced more often with street workers (Davis and Shaffer 1994), Section 213 is also enforceable for sex work advertisements in public places and on their cellular phones, though this is rarely enforced (Stella 2004; 65).

The group elaborated on how the communication law puts them at risk for "fear of arrest," and that this law "makes it harder to access healthier and safer working conditions" (Project Participant 11, Meeting 2). They added that, "sex workers on the street cannot access police protection because they are in direct opposition to this law" (Project Participant 4, Meeting 2).

As a summary offence which can result in fines or time in prison, the group also pointed to the "psychological and physical impacts when sex workers live in the area that they work they may be prosecuting for communicating when they are just walking home" and the potential for a criminal record that may "impede travel opportunities or jobs for the future" (Project Participant 9, Meeting 2).

In attempts to understand the specification of the public nature of the communication law, the group raised interesting questions around the notion of public versus private spaces and how these laws impact on sex workers' lives and work. The group explored both the public and the private nature of sex work in the section below.

<u>4.2.3 Public/Private Sphere</u>

From the onset, our discussions about sex work entailed questioning over the private and the public nature of sex work. Current legislation criminalizes communication for the purposes of prostitution in public, yet is sex work actually a public act? And are these notions of public overextended into private spaces and oversimplified? Our discussions around this dichotomy focussed on two questions: how current legislation criminalizes sex work as a public act but is also applied in private settings, and how, since sex workers want recognition of their work, can sex work be included as part of the public commercial service industry as a business? This included a questioning of whether or not sex workers actually want to be integrated into a public system.

The group felt that Section 213, and its definition of public was problematic, in that sex work, as a private act, is criminalized as a public activity. They also felt that current definitions of public and private as they relate to criminal law, do not account for the reality of sex work. For example, at what point in the service does sex work become public?

One member of the group speaks to the ambiguity of the language used in 213, with reference to 'public spaces':

> I don't understand when things become public and private. I consider that I am working from the moment I walk into a bar. At what point does the service begin? Or is it when the client puts his hand on my thigh? It shouldn't be criminal as we are abiding by the same rules as everyone else in that bar. The 'act itself' isn't just the sex, it's when I arrive. I want to get rid of this ambiguity. I am working from

the moment I step into the bar and leave the hotel room. Which part is

criminalized? (Project Participant 10, Meeting 2)

The ambiguity between public and private was also discussed with reference to the

autonomy to choose how one works:

Everyone seems to agree that we need to make a difference between public and

private places...public places where people can walk in without appointment, and

private where workers can choose to work how they want. (Project Participant 11,

Meeting 4)

However, the group felt this was contradictory as they were not granted public

protection as workers or citizens. The group also considered whether a decriminalized

system would create a two-tiered system of sex workers who work in public versus those

who work in private. The group considered how this reflected on their own definitions of

decriminalization and how they could offer protection for sex workers who considered

their work both public and private. Under older definitions of decriminalization

"prostitution is regarded neither as a crime nor a licensable activity. Prostitution is

considered to be a personal choice and hence a private matter between consenting adults"

(Shaver 1985; 494). Yet, defining sex work as a private act, rather than a commercial act,

negates the work aspect of sex work and does not allow sex workers access to public

systems of protection.

As explained earlier in this chapter, definitions of decriminalization have changed

over time to include the aspect of work. Similarly, notions of the private and the public

aspects of sex work have also changed to include aspects of work. The group felt that the

commercialization of sex work renders some aspects of sex work public, though they view the service itself as a private transaction. Some members of the group felt that current debates about sex work also get conflated with the private or public nature of sex work. Abolitionist feminists in particular, they argued, have been partially responsible for rendering this debate into a discussion of public rights, when in fact the aspects of sexuality that feminists refer to, were seen as private by the group. That feminism refers to sex as private, but attempts to regulate prostitution publicly has confused debates around the public and private nature of sex work. Their arguments do not focus on the rights granted in the public nature of work, but rather showcase the private nature of sex. One participant made an interesting comment about the contradiction of these notions: "The abolitionist feminist movement always claims that what is private is public; but there are public laws to protect you while you are in private" (Project Participant 9, Meeting 2). Here, a group member makes reference to the how feminist discussion around sex work renders the issue public, when in fact most abolitionist discourse does not make recommendations for the protection of sex workers within their private work.

Overall, the group agreed that current laws specifying the public nature of sex work disproportionately affect street-based sex workers, because they solicit publicly, even though most street-based sex workers make their transaction privately. The group recommends that law reform initiatives need to consider the reality of sex work when defining laws deemed to be either public or private. The group recommended that policy makers consider the commercial—hence public—nature of sex work and that commercial laws apply to both collective and autonomous sex work businesses. However, those public laws should not disproportionately target the sex industry, as opposed to other businesses. The group also identified the need to account for the private nature of the

107

actual business transactions (sexual services for money) while avoiding the creation of laws to regulate this private aspect of the business. Mandatory condom use and mandatory testing are examples of public policies imposed on private acts of sex work and are discussed in the upcoming section on Themes in this Chapter. The current laws allow for an expansive interpretation of what is private and public and need to be revised. They also need to account for the public responsibility of rights that should be shared by sex workers.

4.2.4 Indecency Laws

Because current sex work laws criminalize communication in public spaces, the group also discussed indecency laws (section 173 of the CC), which are often applied to sex work as an alternative to, or in conjunction with, other provisions. In a decriminalized system, the group felt that indecency laws should not be disproportionately applied to sex workers. Sex workers who service their clients in public, for example, should be at no more risk than other members of society who have sex in public. Discriminatory application of this law should be avoided:

> Right now everyone who is having sex in a car is taking a risk. If 213 is removed and you succeed in communicating with a client on the street, after that point you are still taking a risk, as with other people who have public sex, about where you have sex with him. (Project Participant 2, Meeting 4)

Illegal indecency and obscenity are currently defined based on a 'community standard of tolerance' test across Canada. Harm is the underlying principal and includes attitudinal harm. The group expressed concern over the moral weight given to public

108

opinion and believed these laws encourage discriminatory enforcement against sex workers:

> I think that applying the indecency law to everyone equally is good. Even though I don't think that being a sex worker or giving a blowjob in public is particularly indecent. There are lots of people who cringe at just the sight of a woman on a street corner. We want to make sure that sex workers aren't particularly labelled for indecency because they are sex workers. But offering a zone would be strictly an incentive for sex workers who feel they would get something out of being there, but that those that work outside the zone would not be criminalized more than the others. (Project Participant 1, Meeting 4)

The group agreed that when not applied discriminatorily, the indecency laws were valid: "I don't want people having the right to just get naked and masturbate on the metro. There are reasons that these laws exist" (Project Participant 2, Meeting 4).

The STAR group also recommends a revision of "modifications to section 173 (engaging in indecent acts) and 174 (public nudity) to exclude areas that are well out of the public 'eye' and that would normally be considered private" (35). This means, explains STAR, that private spaces are now considered public, and that sex work has entered into the public arena, void of a private space and protection in those private spaces. As mentioned earlier in the discussion of public spaces, STAR, as well as our research group, felt that the indecency law allowed an "expansive interpretation of public spaces" (STAR 2005; 35) and does not, as a result, reflect the reality of sex work nor protect the safety of spaces that would traditionally be considered private. Group

consensus to repeal the four criminal sanctions laid the foundation for our continuing discussions.

4.3 Themes for law reform

The group identified the following themes and the ways they are enforced as either contributing to, or hindering, their human rights and safety in a decriminalized system: (1) Zoning; (2) Right to Associate; (3) Training for Sex Workers; (4) Workers' Compensation and Maternity Leave; (5) Occupational Health and Safety; (6) Licensing; (7) Mandatory Testing; (8) Mandatory Condom Use; (9) Age of Consent; (10) Taxation Systems; and (11) Visas/Migrant Work:

Some of the original themes were either merged (security at work, for example, was a guiding principle rather than an individual topic), or discussed in less detail due to a lack of time or knowledge (e.g., migrant work and visas). Most of these themes are common to law reform debates and are closely linked to legislative regimes that attempt to further control prostitutes. Even in a decriminalized system, the group questioned whether their human rights would be respected. One of the group members identified a lack of support for sex workers' human rights in New Zealand's decriminalized system:

> I found the New Zealand government perspective really fascinating in terms of
> how they judge the success of the law. It's all the concerns of mainstream society
> and in terms of the concerns that we hear all the time. We aren't hearing: "How
> many women were empowered by the repeal of the solicitation law?" "How many
> women joined up with other sex workers and found support, etc, because of the
> new situation?" We hear "How can we control the stage of people, how can we

110

survey it better? How can we keep it to particular zones? (Project Participant 1, Meeting 3)

Throughout the discussion of the themes, the guiding principles highlight the demand for sex workers' human rights: "We agree with the rules that already exist [for businesses], but not for rules that are specific to sex work" (Project Participant 4, Meeting 4). Members of the group were specifically demanding that laws and policies in a decriminalized system be no *more* strict or imposing than regulations on other work.

4.3.1 Zoning

"Zoning is one of the more controversial issues in the national discussion concerning the repeal of the criminal laws relating to prostitution" (Pivot 2006; 65). Zoning laws determine how, where, and when sex workers can work with regards to both indoor and outdoor sex work. These laws impact on sex workers, communities, and policing practices. Sex workers' perspectives on zoning have changed over the years. According to Chapkis (1997):

> Prostitutes' rights advocates...appear to be softening in their once absolute
>
> opposition to the practice [of zoning]. While in 1985, the World Charter for
>
> Prostitutes' Rights rejected zoning as unacceptable, a decade later, proposals are
>
> being circulated to revise the charter in order to allow for the practice *if* zoning
>
> policies are developed in collaboration with prostitutes and reflect their interests.
>
> (Chapkis 1997; 162)

Our group agreed that collaboration with sex workers is vital to any discussions on zoning policy. *Canadian Criminal Code* Sections 212 and 213 were highlighted in our discussions on zoning.

Most of our discussions around zoning were limited to street-based work. The group felt that even though autonomous workers and businesses must comply with zoning and licensing laws, street-based sex workers were at a greater risk of zoning restrictions. In cities, like Toronto and Vancouver, where municipalities license body-rub parlours, discussions for zoning businesses become more pertinent. Zones are frequently suggested to relegate street-based sex work to a designated area. From the perspective of law enforcement, zones restrict sex workers to a particular area and limit their interaction with residential areas, as well as limiting resident exposure to prostitution. In fact, Pivot argues that "in a decriminalized environment, the municipal power to zone prostitution will be one of the principle mechanisms that local governments use to control prostitution" (Pivot 2006; 65).

Sex workers rarely recommend zones because they are "often embraced by authorities as a tool to ensure police surveillance of the sex trade and thereby to facilitate the control of 'public nuisance' problems associated with unregulated prostitution" (Chapkis 1997; 160).

Our discussion around zoning was varied. At first divided, the group was concerned about their personal safety within and outside of a zone. Would they, as well, be able to maintain they autonomous working conditions without being criminalized? Does restricting sex work to particular areas of the city encourage perspectives of sex work as indecent and in need of concealment? Below is our discussion on sex working zones and recommendations guided by our principles for human rights.

112

4.3.1.1 Zoning and Security

Zoning was discussed in terms of security for sex workers: "The principles at the base of this have to be security" (Project Participant 6, Meeting 3). Some viewed zoning as an attempt to ghettoize and make sex workers less visible. In the past, sex workers have rejected zones based on their location in industrialized areas: "These are unsafe and poorly lit areas which provide no protection, and even more segregation" (Project Participant 5, Meeting 3). The group did not want zones to contribute to the invisibility of sex workers: "I don't like the idea of having it limited to an industrial area, it's too far, and too dangerous" (Project Participant 3, Meeting 4). Another member pointed out that in addition to placement of a zone, "a zone sends a message that sex workers belong outside of civilized society. It's a convention that starts with thinking that sex workers don't belong" (Project Participant 1, Meeting 4).

Chapkis (1997) supports this idea: "zoning policies are intended to address neighborhood [sic] concerns rather than to enhance the safety or well-being of those working the streets" (160). One group recommendation was the integration of zones throughout the city, to protect sex workers' safety and avoid isolation:

> In a city, every 60km in the downtown area, for example, could be a working zone. This way we are not naming a particular place, but rather that there are places all over the city that one could work. (Project Participant 4, Meeting 4)

Safety was also one of the main concerns raised by sex workers in Vancouver: "Protecting the safety or sex workers must be given priority in any decision about where to locate prostitution" (Pivot 2006; 75).

The group was concerned that zoning would create a two-tiered system of sex workers—those working within zones would benefit from legal protection while those working outside of these designated areas would be further marginalized. While the group felt a zone would be an incentive to some sex workers they did not want it deemed mandatory; reasons for this are included in the discussion around zoning and autonomy. This suggests that sex workers be permitted to solicit and communicate where they choose but that *all* sex workers would benefit from the security offered by police protection, not those who strictly use the zone.

The group was also concerned with the lack of anonymity and subsequent security in a zone. Sex workers would not be free of the discrimination with their identities revealed in a zone.

When discussing the benefits of a zone, the group mused over its potential marketing benefits for sex workers: "Clients would know to go there" (Project Participant 3, Meeting 4).

Some sex workers were concerned with the eventual placement of zones: "I really think you should not be within 100 metres of a school. If I can't have my porn shop within that area, then street workers shouldn't be working within 100 metres of the school either" (Project Participant 5, Meeting 3). This was another example of the equity identified in the group.

They group felt that the benefits of zoning would not outweigh the costs of losing their protection through anonymity.

4.3.1.2 Zones: Representation and Inclusion

The group did not feel that a single zone would account for the different kinds of sex workers. Street-based sex work in Montreal is currently divided, informally, into different 'red light districts.' If zones are deemed necessary they need to account for the diversity of sex workers through multiple zones. The group added that strip clubs, brothels, street-based work, and other working venues, should not be limited to one area of the city to allow for inclusion and respect for community harmony:

> Personally I don't like the idea of living in one place and having a dance bar move
>
> in right next door. So, in a sense there is a difference between public
>
> establishments and private working places. (Project Participant 9, Meeting 4)

For independent workers, the group felt that "individual sex workers should be able to work from home without being restricted to a zone" (Project Participant 6, Meeting 4).

4.3.1.3 Zones and Autonomy

The group felt that a decriminalized system should allow for autonomous working conditions. Therefore, zones should not be mandatory. Zones should maintain the protection that autonomy grants some sex workers in terms of where and when they work. The group discussed location of work and what kinds of businesses should accommodate zoning laws. It was here that the group raised the issue of public versus private work. For example, if sex workers see their clients in their homes, their working space, similar to other autonomous workers who work from home, should not be regulated to a zone. However, when discussing group working spaces, like massage parlours or brothels, the

group felt that these could accommodate zoning regulations. They make the distinction between private and public work here and include autonomous and independent workers as conducting a private business.

The sex workers interviewed for the Pivot (2006) report on decriminalization echoed a similar sentiment: "The need to value autonomy and privacy was the most prevalent theme of all opinions on zoning" (Pivot 2006; 73).

Overall, the group did not recommend zoning but argued that if it was mandated, a zone should respect the aforementioned guiding principles. One sex worker elaborated on this point:

> The idea is to give sex workers the chance to decide their preferred working area. It's not up to us to decide how, where, and when sex workers will work. But we can create a space for sex workers who are working in different ways. (Project Participant 1, Meeting 4)

Another group member made the following concession:

> In an ideal world, I am comfortable with the structure of the zones that we set out, but if they look like our ideal. I think in general a place for people to solicit would be good, but only if there were different zones for different workers. (Project Participant 4, Meeting 4)

4.3.2. Right to Associate

Section 212 of the *Criminal Code* impacts on working together and information sharing amongst sex workers: "Right now, its hard to associate because we are not allowed to work with third parties" (Project Participant 4, Meeting 4). This 'pimping' law

criminalizes working together in brothels, in managerial relationships, and those who support their partners. Advancing sex workers' rights through professional associations is also deemed criminal: "if you don't have the right to associate, how can you even think about rights of working?" (Project Participant 2, Meeting 4).

4.3.2.1 Right to Associate and Security

Decriminalization would contribute to the possibilities for professional associations and to safety for sex workers. A professional association would benefit partnered working and increase safety on the job: "It will allow us collective action, for health insurance, and better working conditions" (Project Participant 5, Meeting 4). Another member added that "an association would help us to denounce bad clients" (Project Participant 2, Meeting 4). According to STAR (2005):

> Professional associations...could assist in maximizing worker control and security, as could the development of codes of conduct and grievance procedures. However, the criminalization of both sex work establishments and third-party involvement in sex work present barriers to such initiatives. (STAR 2005; 26)

4.3.2.2 Right to Associate and Integration

A professional association would integrate sex work into society by legitimizing the industry with the potential for working standards. Collective insurance, as one of these standards, was named as a priority: "The moment that what we do is recognized as work, we can associate" (Project Participant 4, Meeting 4).

4.3.2.3 Right to Associate and Autonomy

Professional associations would also maintain sex workers' independent or autonomous working conditions. Using associations of psychiatrists, nurses, and musicians as examples, the group felt an association would legitimize a collective of workers, while maintaining their independent work options. Sex workers in the group were adamant about maintaining their right to work for themselves.

4.3.2.4 Right to Associate and Labour/Workers Rights

The group felt that professional associations would legitimize sex work as labour. According to Pivot (2006), unionizing becomes a viable option when the right to associate, as a labour right, is respected:

> Current labour laws in Canada...do not provide for the unionization of
>
> autonomous or contract workers where there is no clearly defined
>
> employer/employee relationship, and this could be an obstacle to many sex
>
> workers who may want to unionize. (Pivot 2006; 132)

4.3.2.5 Right to Associate and Equity

The group felt that professional sex worker associations would facilitate access to benefits of the *Labour Code* currently denied to some autonomous workers. In 2003, as part of their organizing for the Canadian Guild for Erotic Labour (CGEL), sex workers attempted to obtain collective insurance, which is offered at a lower cost than individual insurance. As a collective they were considered, but were eventually rejected based on their criminalized status as a group, and their lack of recognition as workers (field notes

118

from CGEL organizing 2003). This rejection is not uncommon for autonomous workers in other non-traditional work settings. Whether or not unions and labour codes can account for workers in illegal sectors of the industry or illegal migrant workers is still up for debate (Clamen and Lopes 2004; 47). This insurance, currently offered to other collectives of workers, would be equally available to a collective of sex workers in a decriminalized industry.

4.3.3. Training for Sex Workers

Similarly to conflicts with law professional associations and the law, professional training amongst sex workers conflicts with Section 212 of the *Criminal Code*. Exchanging work information, or working with a partner, involves working with a third party and can be considered illegal. Whereas other professions benefit from training on health and safe working environments, sex workers do not; sex workers are often in more precarious working situations because of their criminalized status. The group recommended that a decriminalized system allow for professional training on sexual health, violence prevention, working styles, and general tips and tools of the trade.

4.3.3.1 Training and Security

The group deemed professional training as necessary to equip sex workers with safety tools. Current tools for sex workers in Montreal include *Stella's Bulletin: List of Bad Tricks and Aggressors*. This list identifies dangerous clients and aggressors and is distributed to sex workers throughout Montreal, and serves as an important tool for sex workers' security. Other training tools, and more informal one-to-one exchanges within

communities, are not legitimized under the law and can, in fact, be considered criminal if they include information that may lead one to sex work, rather than just 'safety tips.'

One group member stated the importance of training as inherent to safety at work: "As a worker I should have the right to show another sex worker how to put a condom on properly" (Project Participant 2, Meeting 4).

4.3.3.2 Training and Representation

While the group felt that training was important, they rejected that it be mandatory. They were, more specifically, concerned with *who* would provide training for sex workers and who could appropriately represent a working style that would suit the diversity of standards within the sex industry. Sex workers in the group did not want the implementation of policy that legitimizes only one type of training: "We want to be able to train each other, but also to avoid non-sex workers giving training options for sex workers" (Project Participant 3, Meeting 4).

4.3.3.3 Training and Integration

In addition to training amongst sex workers, sex workers in the group felt that sex work training would benefit communities at large. For people entering into sex work, the group felt that training would equip sex workers with the health and safety tools they need to work. A small community-based example of this would be Stella's *Guide XXX* (2004), which explains current legislation and safety tools around sex work for sex workers. The group also recommends and highlights the importance of legitimized education about sex work for the public. Most recently in 2006, Stella's received funding to create and administer training about sex work called "Everything You Wanted to

Know About Sex Work But Were Too Afraid To Ask," (www.chezstella.org). It is

intended to educate the public about the realities of sex work in the hopes of reducing

stigmatization and improving sex workers' access to services.

4.3.3.4 Training and Autonomy

The group felt that a decriminalized system should allow for professional sex

work training but maintain autonomous working options. Available training should not

professionalize sex work to the extent that it would create legal divisions between those

who are trained and those who are not: "It would be very important that it not be

mandatory or imposed, but a possibility" (Project Participant 1, Meeting 4). Chapkis

(1997) supports this:

> Requiring formal training at the college level would exclude [some prostitutes]
>
> and thereby create a two-tier system of prostitution dividing those who are
>
> licensed (and thus legal) and those who are not" (159).

4.3.3.5 Training and Labour/Workers' Rights

Capacity and skills building is a right granted to workers in most industries.

Members of the group identified professional training as a worker's right:

> Some need tools about how to work better; that needs to be there. But it is also
>
> necessary for people entering sex work to know how to work, how to negotiate.
>
> Criminal Code laws against prostitution, like procuring or communicating, prevent
>
> workers from training each other. (Project Participant 5, Meeting 4)

4.3.4 Workers' Compensation and Maternity Leave

Because sex work has not been identified as legitimate employment, either within

the labour code or within the law, negotiating workers' rights is often difficult for sex

workers. According to Chapkis (1997):

> Sex workers are not guaranteed workers' rights. This has led some advocates...to
>
> conclude that decriminalization is only the first step. Decriminalization, they
>
> argue, must be followed by policies formally placing prostitution under standard
>
> employment laws and regulations. (Chapkis 1997; 155)

In Montreal, "those who work on the streets or dance in bars—without

employment contracts—are excluded from all labour legislation protection (occupational

health and safety, LSST Quebec) and workers' compensation (LATMP, Quebec)" (Lippel

and Shaver 2002; 6). Any benefits sex workers receive are typically met through illegal

networks. To our knowledge, there had never been any documented case of a sex worker

receiving financial support for maternity leave. One sex worker in the group shares a

coping strategy: "I make my own plan for my safety by putting aside money in case

something happens" (Project Participant 9, Meeting 5). Section 212 of the *Criminal Code*

prevents any communication and negotiation about working conditions amongst sex

workers as well as the implementation of any legal recourse for sex workers injured on or

off the job: "There are two kinds of injuries, things related to sex work, and those that

prevent you from actually going to work" (Project Participant 3, Meeting 5).

Sex work as a legitimate profession requires negotiations with employers to

establish codes of conduct, workers rights, and contract negotiations (if applicable). The

group felt that decriminalization of the industry would allow for this.

122

4.3.4.1 Workers' Compensation, Maternity Leave and Security

Group members named both job security, and security on the job, as important for workers' compensation and maternity leave. With neither workers' compensation nor maternity leave available to them, sex workers in the group felt that they had little security in preserving their jobs, and little security while they are at work. Hiring practices are typically discriminatory and there is little security of employment as a sex worker.

In Pivot's (2006) report, they found that:

Employers who described their own hiring practices, some of which appear to constitute clear breaches of human rights and employment standards, provided...evidence of the challenges faced by sex workers and their employers.... [one] escort business owner described her hiring process and the fact that being physically "appealing" is an occupational requirement. (Pivot 2006; 85)

Sex workers in the group also felt that they had little recourse if they are indiscriminately fired. They felt that in a decriminalized system, employers would be subject to labour law and these exploitative practices would diminish.

The group also expressed the importance of security on the job: "I don't have a formal process of complaint with my employer, or if I experience violence on the job" (Project Participant 9, Meeting 5).

Group members also felt that they had little legal recourse if they experience violence at work. They also expressed concern that their employers are not required by

123

law to provide safe and appropriate working conditions, based on their experience of

bosses who rarely take working conditions into account. The group discussed the

different kinds of acts they would like to see covered by workers' compensation: condom

breakage, violence, accidents due to bad working environment (Meeting 5). In a

decriminalized system, sex workers would also have access to complaint procedures and

protection under the law.

4.3.4.2 Workers' Compensation, Maternity Leave and Integration

The group felt that a decriminalized system would recognize sex work under the

labour code and integrate both autonomous and employed workers into the labour system.

Sex workers in the group wanted to be integrated into current systems that protect the

physical and mental health of workers, like the Commission de Santé et Securité au

Travail (CSST). Doing this, however, may compromise a sex worker's anonymity: "Sex

workers can pay individually into CSST, though I would be concerned about my

anonymity as a sex worker" (Project Participant 6, Meeting 5).

To respond to this, the group recommends that manager and business owners,

rather than individual workers, be integrated into the system. By recognizing managers

and business owners, the group felt that they could avoid individual registration and

hence, protect their anonymity. Members of the group felt that a decriminalized system

should allow workers this anonymity when accessing workers' compensation through the

CSST.

Registration should be available, but not mandatory. Stigma, discrimination, and

societal attitudes towards sex workers may prevent sex workers from wanting to

register and be 'in the system.' This needs to be respected. (Project Participant 3, Meeting 5)

Mandatory registration in order to access these rights was seen by the group as an infringement on their right to a fair integration of their work into society. They recommend an optional registration system.

4.3.4.3 Workers' Compensation, Maternity Leave and Autonomy

Autonomous workers in any industry currently have access to CSST if they register themselves individually. Sex workers sometimes choose to work autonomously because, in addition to the criminality that arises from current law, their rights are not respected in the context of an employer. For example: "Autonomous sex workers are often in the same position as other autonomous workers, but sex workers are autonomous not necessarily by choice" (Project Participant 11, Meeting 5).

Chapkis (1997) points out that: "A majority of prostitutes work not as true independents but rather as pseudo-employees of brothels, parlors [sic], clubs, houses, and escort agencies" (Chapkis 1997; 155). Considering many sex workers are autonomous, the group wanted the option to register autonomously for CSST. This is also key to our recommendations because current laws prevent standard working conditions. Generally, autonomous workers do not have access to maternity leave or workers compensation unless they are paying into CSST: "So there is access, but no-one is expected to get it because most sex workers are self-employed, and of course anonymous" (Project Participant 1, Meeting 5). For sex workers who do not require anonymity, therefore, the group recommended access, with protection from discrimination.

125

The group also recommended a revision of labour laws and a revision of its previsions that exclude autonomous workers. This includes access to maternity leave, currently offered to other workers through unemployment insurance (EI): "Compensation is different than maternity leave. So regardless of how she gets pregnant, whether through the job or not, she should be provided with maternity leave" (Project Participant 12, Meeting 3).

4.3.4.4 Workers' Compensation, Maternity Leave and Equality

The group raised concerns about the current illegality of sex work and whether or not they could obtain equal access to CSST, collectively or autonomously: "How can you be covered by CSST if the work you do is considered illegal?" (Project Participant 9, Meeting 5). Although sex workers can currently register for CSST legally, their work is not recognized under labour codes. CSST requires an estimation of the risk involved for recognized labour; as indicated earlier in my Canadian Guild for Erotic Labour field-notes, risk assessment for sex work is heavily influenced by politics and moralism around the work itself. One of our group members pointed out that:

> One of the biggest problems is with regard to insurance. Insurance companies refuse to cover sex work because they have never done the research to see what the risks are, and the risks are assumed to be huge because few have an idea of what the job is actually about. (Project Participant 4, Meeting 5)

4.3.5 Occupational Health and Safety

Sex workers in the group felt that while they prefer an unregulated industry, they require unique occupational health and safety guidelines specific to the sex industry.

126

Health and Safety Guidelines for Brothels, WorkCover in Australia, (2001) and *A guide to*

occupational health and safety in the New Zealand Sex Industry in New Zealand, (2004)

are both examples of guidelines put into practice within the Commonwealth. Under the

Australian system, "employees and contractors also have a range of rights and

responsibilities under the law" (WorkCover 2001; 2). In Canada, existing labour

legislation is available to sex workers, regarding occupational health and safety, workers'

compensation for injuries that occur while at work, minimum standards in employment

legislation, and crime victim compensation legislation (STAR 2005). Most sex workers

are not aware that these are applicable to them and therefore do not access these benefits.

In addition, STAR points out that:

> The applicability of the first three types of legislation depends on the legal
>
> relationship involved—whether people are considered employers, employees,
>
> independent contractors, or workers under the law. (STAR 2005; 17)

The ambiguity of employee-employer relationships in sex work, more specifically

the criminalization of third parties, coupled with the fact that most sex workers are

autonomous, ensures that most sex workers do not access these benefits nor are they

aware they exist (STAR 2005; 17). STAR notes:

> Even if a relationship were found to be that of employer-employee, the current
>
> criminalization of that relationship through the procuring laws would likely make
>
> employment standards difficult to apply. (STAR 2005; 17)

The group agreed to a regulatory board for formal complaint procedures and

occupational health and safety standards for different sectors of the industry. This would

127

typically be covered under CSST or a type of self-regulatory board. The group opted for a

self-regulatory board considering municipal laws may be equally discriminatory as

current criminal laws. The group also discussed contracts as an option under a

decriminalized system and reiterated their consensus to remove of Section 212 of the

Criminal Code to allow for these standards to be put into practice:

> I can see a contract being useful because there are always things happening in
>
> private, and it's the word of one person against the other. (Project Participant 12,
>
> Meeting 3)

> Any employer hiring someone, there is no explicit contract, there is a verbal
>
> contract there. There are laws pertaining to it. The work we do needs to be seen as
>
> contractual even if there is no document signed. (Project Participant 7, Meeting 3)

> It is a measure that you have as protection in general. (Project Participant 10,
>
> Meeting 3)

4.3.5.1 Occupational Health and Safety and Security

The right to security at work presupposes a standard by which to work. Our group

felt that decriminalization, and consequent recognition of sex work as legitimate

employment, would encourage businesses to provide higher standards of security at work.

They insisted that security be understood as an occupational health and safety issue.

Section 212, which criminalizes third party involvement and effectively any boss-

employee relationship, discourages bosses and management from seeking out

occupational health and safety standards for the workplace. One sex worker noted:

Even when we looked into group insurance for sex workers, the insurance

companies were concerned because they would be committing an illegal act by

acting as a third party, or being involved in the business of sex workers. (Project

Participant 12, Meeting 3)

4.3.5.2 Occupational Health and Safety and Integration

The group felt that the integration of sex work into society, in a newly

decriminalized system, should not include additional laws that segregate sex work from

other working industries. For example, sex workers in the group felt that while special

previsions for brothels and sex work establishments need to be created by sex workers, as

in the case of Australia and New Zealand, sex workers should not endure unequally strict

rules of health and safety in their workplaces, that are not required for other working

establishments in other industries.

4.3.6 Licensing

Licensing sex work businesses and individual sex workers is a popular topic in

law reform debates. According to Maticka-Tyndale (1999):

Licensing of escorts and escort agencies has potential to contribute to HIV

prevention through: legitimating escort work, empowering escorts, and enhancing

their integration in the community and potential access to community and health.

(Maticka-Tyndale 1999; 19)

However, members of the group felt that licensing individual workers could prove

dangerous and discriminatory: "I will not pay for a label" (Project Participant 9, Meeting

129

5). They felt that registration [through licensing] creates a two-tiered system of workers. Shaver agrees that licenses do not serve sex workers' best interests:

> Legalization of prostitution through the licensing of prostitutes and brothels is often put forward (by non-prostitutes) as the solution most likely to serve the interests of both the public and the prostitutes. (Shaver 1985; 497)

Pivot views licensing as discriminatory and points out that "Edmonton's independent escort license requires every sex worker operating on his or her own to apply to the City for a license" (Pivot 2006; 53):

> It contains a narrow and stringently enforced prohibition on persons with a criminal record from obtaining a license, a disproportionately high licensing fee, and advertising restrictions that require each worker to show their escort license at local newspapers prior to placing an advertisement. (Pivot 2006; 53)

In light of this debate, and whether or not licensing would serve sex workers' human rights, our meetings around licensing discussed both the pitfalls and benefits of a licensed system of sex work for both individual workers and businesses.

4.3.6.1 Licensing and Security

Evidenced below and as part of our recommendations, the group felt that licensing increases danger for sex workers. They felt that municipal governments should not impose licensing in a decriminalized system and saw licensing as a control mechanism the government may use to further marginalize and eventually criminalize sex workers:

We want to be able to work from our homes without a permit; you don't want to

be labelled as a sex worker with the government because it will stigmatize us in

different ways. (Project Participant 9, Meeting 3)

This particular group member was pointing to the lack of safety and inherent

discrimination of licensing systems. This concern is not unfounded and is supported by

the New Zealand Prostitutes Collective:

> The New Zealand Prostitutes' Collective was against the requirement that
>
> operators be certified. The organization worried that this requirement would keep
>
> a great deal of prostitution out of the regulatory framework, because it felt some
>
> operators would not want their names on file. (Canadian HIV/AIDS Legal
>
> Network Memo 2005; 8)

One group member felt that licensing offers a false sense of security: "I am not in

favour of licensing independent workers. I think it would just be psychologically pleasing

to society to think that they had control over sex workers" (Project Participant 3, Meeting

5). Chapkis (1997) also points out that:

> Prostitute rights advocates insist on the importance of distinguishing between
>
> policies intended to regulate prostitutes (which continue to be opposed) and those
>
> intended to regulate prostitution businesses (which receive tentative support).
>
> (Chapkis 1997; 156)

In accordance with Chapkis (1997), the group considered licensing for businesses,

but not for individual workers. Some sex workers in the group felt that bosses should be

considered responsible for security. By licensing businesses, rather than sex workers, bosses and managers would be responsible for codes of conduct for employers, workers, and customers. However, one group member pointed out that she didn't believe licensing was necessary to achieve safe working conditions: "The CSST will cover the concerns we have for appropriate and healthy work environments, a license doesn't guarantee you any more legitimacy or safety in a business" (Project Participant 1, Meeting 5).

4.3.6.2 Licensing and Representation and Inclusion

The group had concerns that licensing regimes imposed in a decriminalized system would not represent the needs of all sex workers, and would consequently discriminate amongst workers and exclude some. The group felt this would result in a two-tiered system of workers: "It [licensing] will insist on a certain practice and marginalize anyone who works outside of that practice." (Project Participant 1, Meeting 5)

In their 2006 case studies of sex work around the world, the Open Society Institute (OSI) validates this concern:

> Licensing and registration of individual sex workers forces those who cannot fulfill licensing requirements because of gender, age, history of substance use, or health status into situations of illegality. (OSI 2006; 2)

The STAR (2005) project also supports this position and states:

> Licensing regulations create a set of 'quasi-legitimate' sex work occupations and control who has the 'legal' right to work in them by controlling those who may hold a license. (STAR 2005; 20)

132

The group recommended that licences be made available to sex workers through their municipalities, but that they not be mandatory in a decriminalized system.

4.3.6.3 Licensing and Integration

The group felt that licensing facilitates strict government regulation on sex workers and impedes a smooth integration of sex work into society. Registration of sex workers is a commonplace requirement in a legalized industry. As Chapkis (1997) points out:

> In countries where prostitution is either formally or informally decriminalized, authorities often attempt to maintain control over the sex trade through registration of prostitutes. (Chapkis 1997; 156)

If licensing were imposed, the group recommends a slow integration of license registration. The group felt, however, that registration through licensing would not protect them: "sex workers can claim compensation, we just need to start accessing it, we don't need to be licensed to do it" (Project Participant 1, Meeting 6).

4.3.6.4 Licensing and Autonomy

Sex workers in the group also felt that associating a workplace with a license would restrict worker autonomy and employment options for some sex workers: "because they prohibit us from working anywhere else" (Project Participant 7, Meeting 5). The group rejected a decriminalized system where these rules are imposed. In order to respect the autonomy of workers and workplaces, the group recommended that: "Each workplace

133

determine their own code of ethics, and that this code of ethics not be determined by law but just as a general rule of the establishment" (Project Participant 3, Meeting 5).

Licenses would also put anonymity at risk. Workers rejected obligatory licensing because they stigmatize sex workers; it increases pressure to reveal oneself as a sex worker. Members of the group were therefore not comfortable imposing this regulation on other workers, and as a result did not recommend licensing as part of a decriminalized system.

4.3.6.5 Licensing and Equity

The group argued that licensing practices for the sex industry are discriminatory because workers or contractors in other industries do not require a license to operate their business. One group member observed that "there are plenty of people who practise different kinds of trades without a permit" (Project Participant 9, Meeting 5). Therefore, as part of their recommendations, the group felt that licenses should not be imposed on workers or sex work businesses.

4.3.7 Mandatory Testing

Mandatory testing was chosen as a theme based on group fears of it being imposed by government in a decriminalized system. This legislation is typically introduced in legalized systems of prostitution where government determines how, when, and where sex work should be practiced. Historically, "any discussion of legalising [sic] or decriminalising [sic] prostitution... inevitably leads to the controversy surrounding mandatory testing of sex workers for STIs and HIV" (Monet 2004; 29). Sex workers are often feared as vectors for HIV/AIDS and other sexually transmitted infections (STIs):

"Calls for mandatory testing became a fairly common political response to HIV/AIDS, partly because they create the appearance of taking a strong stand against the threats of AIDS" (Canadian HIV/AIDS Legal Network 2000).

Sex workers and advocates have long since been campaigning against mandatory testing. One reason for this is that mandatory testing provides false beliefs about HIV and STI contraction: if sex workers are mandated for testing, they are still at risk of transmission from their clients. Mandatory testing is also an unethical practice. Such medical practices are considered coercive, and contradict a sex worker's fundamental human rights through invasion of his/her privacy and the inability to refuse a medical procedure. In 1985, the International Committee for Prostitutes Rights specified in their World Charter for Prostitutes' Rights:

> Since health checks have historically been used to control and stigmatize prostitutes, and since adult prostitutes are generally even more aware of sexual health care than others, mandatory checks for prostitutes are unacceptable unless they are mandatory for all sexually active people. (ICPR 1985)

Our group named mandatory testing as a response to fear, rather than actual threat. Because of societal fear and misperception of sex workers as vectors for HIV and STIs, the group felt that mandatory testing is suggested as a solution to placate fear, rather than actually address the spread of HIV and STIs. Chapkis (1997) notes that "policies are developed in response to perceived threat" (165), and the group therefore believed that any regulation in the sex industry should be determined by actual threat that sex workers identify, rather than misguided stereotypes about sex workers. American sex worker and sex educator Veronica Monet (2004) points out that:

135

It is a foregone conclusion that prostitutes spread disease and therefore need to be

controlled in some manner if public health safety is to be maintained. It matters

little that scientific data do *not* support the common belief that sex workers are

major contributors of STIs in the USA. (Monet 2004; 29)

4.3.7.1 Mandatory Testing and Security

Our group suggested that a mandatory testing regime would not provide a more

secure working environment and, indeed, provides a false sense of security when, in fact,

only the safety of the sex worker is determined through testing. One sex worker stated:

"You are only as safe as your next client" (Project Participant 3, Meeting 6). Another

group member confirmed this: "If workers need to be tested, clients need to be tested as

well. It doesn't make sense any other way" (Project Participant 9, Meeting 6).

Others in the group were sceptical of the intentions of mandatory testing because,

as expressed earlier, it does not guarantee safety: "The only argument for benefits of

mandatory testing is that it will protect society against disease, but the theory doesn't

make sense" (Project Participant 3, Meeting 6). The group added to this that if only one

of the two people involved in a sexual encounter is tested, neither client nor worker are

protected from infection.

In their fact sheet on Mandatory Testing (2002), the Canadian HIV/AIDS Legal

Network agrees:

Mandatory testing can create a false sense of security, especially among people

who are outside its scope and who use it as an excuse for not following more

effective measures for protecting themselves and others from infection. (Canadian

HIV/AIDS Legal Network 2002; 1)

136

Members of the group expressed concern that in a mandatory testing system, "clients think that they can demand service without condom after testing" (Project Participant 5, Meeting 6). Workers, therefore, are not protected. Monet (2004) agrees:

> Mandatory testing is fraught with a multitude of issues that suggest that it is not only ineffectual in reducing the incidence and spread of STIs but it may actually cause the spread of more disease. (Monet 2004; 29)

The group therefore stood firmly against mandatory testing as a security measure, based on the belief that: "Mandatory testing is used as a control mechanism and doesn't protect sex workers against the spread of HIV and STIs" (Project Participant 1, Meeting 6). Instead, they recommended sexual health education for the general population: "Everyone should be encouraged to be tested, the general population" (Project Participant 3, Meeting 6).

4.3.7.2 Mandatory Testing and Equity

As discussed in detail above, sex workers in the group believe that mandatory testing is not equitable and does not protect their safety. In addition to this, the group noted that mandatory testing regimes are discriminatorily applied to sex workers and other marginalized populations. Veronica Monet (2004) adds that:

> Mandatory testing has been applied to smaller disenfranchised portions of the population including immigrants, boxers, military personnel, prison inmates, persons convicted of sex crimes including prostitution, and legal brothel workers. Attempts to test the general population in specific instances such as marriage have

137

been short-lived as the voters recognised it for the huge violation of their civil

rights that it is. (Monet 2004; 30)

Sex workers in the group were concerned that mandatory testing would be used to

discriminate against them. Veronica Monet (2004) supports this with an example of how

mandatory testing is applied in Nevada's licensed brothels:

> If [sex workers] are found positive they cannot begin work until they are
>
> adequately treated, followed-up, and test negative on a subsequent test. Testing
>
> positive for HIV bars them from working for life. (Monet 2004; 29)

4.3.7.3 Mandatory Testing and Labour/Workers' Rights

With respect for the workers' rights, sex workers in the group felt that free, high

quality testing for HIV and STIs should be available to sex workers upon their request.

"Too often when I get tested I am not offered the high quality testing, but as someone

who uses my body and my sexuality at work, I should have this right available to me"

(Project Participant 3, Meeting 6). Members of the group also felt that the general

population should be educated about HIV and STIs and that general testing should be

encouraged.

4.3.7.4 Mandatory Testing and Autonomy

As discussed above, the group felt that mandatory testing infringes on one's

human rights and is a coercive medical practice. As such, the group argued strongly

against it and recommended that mandatory testing not be included in any legislative

context for sex work.

4.3.8 Mandatory Condom Use

The group was ambivalent about the implementation and application of mandatory condom use programs. Who, for example, would mandate the use of condoms at work? And who would enforce it? As is evidenced below, the answers to these questions heavily influenced the group's decision to recommend further education, rather than mandate condom use.

The group raised concerns about the efficacy and compliance within mandatory condom use programs. Mandatory condom use programs for female sex workers are currently implemented in Cambodia, to attempt to lower the spread of HIV (Loff, Overs, and Longo 2003; 1982). In Australia, "some sex workers have found laws on compulsory condom use to be helpful because they supported their insistence on condom use" (Open Society Institute 2006; 6). The issue of mandatory condom use in the sex industry was raised in Canadian media recently when porn star Lara Roxxx contracted HIV on the set of a pornography shoot in March 2004 (Gravenor 2004). The program's [100% Mandatory Condom Use Policies] success and impact are regarded by sex workers with scepticism: "claims that the policy empowers sex workers in their interaction with clients are unfounded" (Loff, Overs, and Longo 2003; 1982). In light of these differing perspectives our group discussed its benefits and pitfalls for a decriminalized system.

4.3.8.1 Mandatory Condom Use and Security

Sex workers in the group did not feel that mandatory condom use will necessarily guarantee their sexual health and safety, and might have the unintended effect of putting their safety at risk. For example, mandatory condom use will have to be enforced by an

139

outsider in order for it to increase their safety in sexual health, but an aggressive or coercive type of enforcement might increase aggression in clients. The group preferred to negotiate condom use with their clients:

> We have to remember that the pressure [not to use a condom] typically comes from the client. Any mandatory condom use should give the sex worker power to negotiate. (Project Participant 1, Meeting 6)

Author of *Whores in History,* Nickie Roberts, supports this claim: "Whores know that it is not themselves who are the problem, but the men who use their services, many of whom will offer from two to five times the going rate for unprotected sex" (Roberts 1992; 335).

Others felt that emphasis on condoms could be obtained through education to both management and clients:

> I do think employers have a responsibility to have safe working environments, because testing isn't perfect and condoms aren't perfect...there is a lot of peer pressure in the industry. (Project Participant 3, Meeting 6)

Roberts (1992) agrees: "In fact, it is the client who is in need of health education, not the whore" (336). When discussing pornography as an education tool, one group member comments:

> When other people are watching pornography, I think there is a responsibility that people educate and use condoms. But prostitution as an act between two people, nobody can see it, so I am not sure about mandatory use there. (Project Participant 2, Meeting 6)

Other group members expressed their concern that mandatory condom use would create a two-tiered system of legal enforcement for sex workers: "We don't want to impose rules such as condom use because then the girl who doesn't wear one is going to be the busiest, it will put pressure on others not to use" (Project Participant 4, Meeting 2).

Overall, the group felt that any mandatory regime would be detrimental to their impact to negotiate safety within their industry. They did not believe that sex workers needed a mandated policy to encourage condom use since "most sex workers use condoms, or want to use condoms, it's the pressure from the clients" (Project Participant 12, Meeting 6).

4.3.8.2 Mandatory Condom Use and Labour/Worker's Rights

The group considered that mandatory condom use could be beneficial if businesses were mandated, rather than individual workers. Mandating individual workers would criminalize them: "People who will get in trouble for it should be the managers, not the sex workers" (Project Participant 1, Meeting 6). As individual workers, they felt it was their right to negotiate condom use in the privacy of their interaction with the client.

4.3.8.3 Mandatory Condom Use and Equity

One sex worker in the group felt that a mandatory condom use policy would discriminate against sex workers:

I don't think that condoms should be mandated. If they are mandated, I am almost certain that the most marginalized women will be the ones to be blamed if the

141

condom is not used. The police will push for certain things, depending on what they want, and they will go after whom they want. (Project Participant 9, Meeting 6)

Overall, the group did not feel comfortable recommending mandatory condom use, but rather felt that education around condom use should continue amongst workers, bosses, and clients.

4.3.9 Age of Consent

Age of consent was the group's most heated and contentious debate, and one where we did not reach consensus on all areas of the discussion. We could not agree on an appropriate age of entry into the sex industry and we felt that laws for minors (under 18 years of age) exist within grey zones. Some workers in the group, for example, felt that age 17 was an appropriate age for one to be in the industry, while others were not comfortable with anyone under the age of 18 in the industry. Our process of organizing was particularly important here in that we agreed to abstain from making recommendations with regards to age of consent. In fact, the group decided that we would not include our entire discussion as part of this Blueprint. Our one recommendation was that people under the age of 18 should be consulted for law reform. We addressed notions of inclusion and representation and agreed not to stand in for this community, as is often done for sex workers. For this reason, we include some of our discussion of the issues, but do not make any recommendations on age of consent.

Our discussions of people under 18 working in the sex industry focused around popular debates around child prostitution. The group noted their discomfort with the

public debate and conflation of issues of sexual abuse and prostitution. They felt that many of the issues for youth are rarely addressed:

> I don't think that the grey zones that exist for under 18s are specific to sex work; we think they envelop the issues of youth and homelessness, support, finances, globalization, and the social construction of work and ethics. (Project Participant 12, Meeting 7)

Some members of the group who began working in the sex industry when they were under 18 years of age, expressed their frustration around age of consent laws and how current prostitution laws do not protect minors but rather try to save them. For example, one is able to work in the labour force at age 14, but not in the sex industry, and one is permitted to have sex, but not in the sex industry. While group members did not identify 14 as an appropriate age to work in the sex industry, they felt that laws for minors were contradictory. The group therefore rejected the pathologizing of people in the industry who are under 18 years of age and expressed a desire to harmonize age of consent laws with prostitution laws. One group member commented: "If I am old enough to have sex legally, then I am old enough to charge for it" (Project Participant 12, Meeting 1).

Sex workers in the group recommended a review of policing practice with regards to youth prostitution; they felt that youth prostitution is used as a repression tactic against sex workers and businesses. Catherine Healy reveals that:

> Within a couple of months of the [New Zealand Prostitution] Act's passage, there were at least three raids on Wellington brothels in which the police claimed to be acting on suspicions relating to underage prostitution. Healy suspects that the real

motivation was in fact a desire to demonstrate police power in the wake of the

Act. (Canadian HIV/AIDS Legal Network Memorandum 2005; 12)

Overall, the group did not reach consensus on recommendations for a legislative

context for youth in sex work and agreed that the discussion requires further

consideration, as a youth issue, rather than one issue specific to prostitution. Instead of

including youth prostitution as a sex work issue on the decriminalization agenda, the

group recommended the government address the grey zones that define youth and

adulthood. This would include a discussion of issues for youth such as motherhood, drug

use, and homelessness.

4.3.10 Taxation Systems

Taxation for sex work is a popular topic in law reform discourse. In fact, sex

workers are often charged with public suspicions of tax fraud. The group agreed that

paying tax is a responsibility, but that responsibilities work in tandem with human rights.

Because sex workers are currently denied their rights, few saw the advantage of paying

taxes. Some members of the group were conflicted about paying taxes into a system that

does not protect them. Others expressed an interest, but felt that current taxation systems

make it difficult to pay taxes: "Essentially the government is making it harder for us to

file our taxes, to register, to declare ourselves. You have more liberties underground than

being declared" (Project Participant 7, Meeting 5).

The STAR recommendations (2005) for sex work law reform support a similar

argument:

There are distinct risks [for sex workers] to filing tax returns...such information

can be used as the basis for a criminal investigation. Some sex workers attempt to

deflect the attention of CRA [Canadian Revenue Agency] and the criminal justice

system by listing a different occupation on their tax returns. Yet doing so

contravenes the tax act and may also open them to charges. (STAR 2005; 31)

Many sex workers in the group spoke to this concern about being exposed and

criminalized through taxation systems:

I don't declare myself as a sex worker right now because I am afraid of the

harassment. I am afraid they will use the surrounding laws and find me. That's one

of the reasons that people may not pay their taxes, because they are afraid of fees,

and a criminal record. (Project Participant 12, Meeting 7)

In fact, sex workers do, indeed, pay taxes but find that current taxation systems do

not integrate them effectively: "You need to declare yourself as an artist, because there is

no option to check off sex worker on the tax form" (Project Participant 9, Meeting 5).

Another group member shared her technique:

I declare my income, but I don't declare them as an escort. I think it would be

drawing attention to the police and asking for trouble. There is no way to do it

completely 100% within the law, almost impossible. (Project Participant 12,

Meeting 1)

Below is our discussion of taxation systems for a decriminalized system and our

recommendations driven by our principles of human rights.

145

4.3.10.1 Taxation Systems and Security

Members of the group felt that paying taxes would provide security for their investments and their families. They criticized the current system of criminalization that denies them of their security, rights and responsibilities:

When sex work is not recognized as work and is criminalized, sex workers don't want to pay taxes, or can't. A criminalized context, for me, is a reasonable excuse not to pay taxes. Normally, your responsibilities come with your rights, and when these rights are denied, your responsibilities are minimized. (Project Participant 4, Meeting 7)

In a decriminalized system, the group felt that sex work would be recognized and they could pay taxes and guarantee their security. The group also acknowledged that some sex workers prefer to remain underground and not pay taxes. While our group valued safety, they also value sex worker perspectives and therefore recommend further discussion with other sex workers.

4.3.10.2 Taxation Systems and Integration

Sex workers in the group felt that taxation systems should be integrated slowly into a decriminalized system. They also recommended that sex workers be exempt from an audit or 'back-taxes' for past work; they wanted an acknowledgement from policy makers that the criminalization of sex work made some sex workers were reluctant to pay taxes. The group recommended a transition period of five years, in a newly

146

decriminalized system, for sex workers to adjust their business to work within a new system, and learn how to pay taxes as a sex worker:

> It should be an agreement with both federal and provincial governments so that all measures of bureaucratization would be simplified for sex workers, because many of us are not accustomed to a system that has not left room for us, for changes to come progressively and not at the same time so that people have a chance to adapt. (Project Participant 5, Meeting 7)

> "We are ready to enter into a certain system, but it becomes difficult if we are not used to it, and are not recognized as workers." (Project Participant 11, Meeting 7)

4.3.10.3 Taxation Systems and Workers'/Labour Rights

Group members wanted sex work to be legitimized and incorporated into labour codes to facilitate a formal process for paying taxes. Because sex work is not recognized as employment, workers do not have any proof of work:

> Once we decriminalize, we can declare. But even for those who aren't criminalized right now, if they want to pay their taxes, they can't. Because there is no paper trail. Our government needs to think about that—people working in massage parlours or dance clubs where they don't get a receipt for their work, their bar fees, etc. A decriminalized system needs to account for all workers. (Project Participant 3, Meeting 7)

4.3.10.4 Taxation Systems and Equity

Sex workers in the group were concerned that they would be disproportionately targeted for tax fraud, as they are disproportionately targeted for other municipal laws (cf. discussion in Chapter 2). They recommend equal enforcement of tax evasion laws across industries. For taxation systems overall, the group recommended that the government consider the paradoxical relationship between criminality and paying taxes, and the challenges that criminalization poses to sex workers when paying taxes. When moving into a decriminalized industry, they recommend a period of time that respects the transition from criminalization to legitimized work.

4.3.11 Visas/Migrant Work

Migrant work and working across borders was added as a theme during our fourth meeting. The 'Dancer Scandal' that had taken place in Canada in November 2004, led to public criticism of the Canadian government for granting 601 exotic dancers' visas to enter the country:

> Controversy over Immigration Minister Judy Sgro's alleged issuance of an exotic dancer visa to a campaign worker from Romania has led to serious concerns that Canada may be complicit in human trafficking. It has been revealed that last year alone, 601 foreign women received temporary work permits for exotic dancing; 582 of them from Romania. (LifeSiteNews.com 2004)

Abolitionist feminists charged the Canadian government with pimping (Audet 2004) and ensuing public hysteria led to the suspension of exotic dancing visas. Many sex workers in Canada were left without work and without temporary residency: "In reaction

to public pressure to discourage exotic dancing and migration of women into Canada, the visa program was temporarily suspended" (Open Society Institute 2006; 13). Debates around sex work were conflating with trafficking and the victim perspective of sex workers prevailed. Abolitionists continued to seize on the issue of trafficking as a way to promote the criminalization of clients and their lack of support for sex workers. According to Pivot (2006):

> The intersection of criminal and immigration issues makes migration and sex work a very complex matter. The potential of arrest, detention and removal from Canada means that migrant sex workers can be doubly punished for engaging in sex work. This has the effect of driving migrant sex workers underground...and will often prevent them from seeking the assistance of police, emergency service, community organizations, and other social services. (Pivot 2006; 224)

Abolitionist feminists have contributed heavily to the confusion around sex work and trafficking. These issues are often conflated in public debate and discussed in terms of a "forced versus choice dichotomy" (Doezema 1998a; 35). International sex work activist Jo Doezema claims that "this dichotomy is replacing the abolitionist model of prostitution...and has become another way of denying sex workers their human rights" (Doezema 1998a; 35). Our group attempted to understand the nuances of the conditions for migrant workers, as separate from a forced versus choice dichotomy and felt that the distinction between coerced sex workers and those who choose the profession unnecessarily creates a divide between those who are worthy of rights (coerced) and those who are not (choice). Doezema (1998) supports this:

149

It reproduces the whore/Madonna division within the category "prostitute." Thus,

the Madonna is the "forced prostitute"—the child, the victim of trafficking; she

who, by virtue of her victim status, is exonerated from sexual wrong-doing. The

"whore" is the voluntary prostitute: because of her transgression, she deserves

what she gets. This distinction reinforces systems that abuse sex workers' rights.

(Doezema 1998; 47)

While our group wanted to discuss migrant rights as separate to this forced

dichotomy, they felt that the absence of migrant workers made it difficult. Although we

did not make any overall recommendations, we have highlighted our points of discussion

and suggestions for further consultation.

The group criticized current immigration law as unsafe for sex workers who

migrate to work. There is a lack of safety mechanisms to secure migrant workers' rights

and they are often the victims of police raids and cruel deportation methods. "This is also

because migrant workers are regulated to unregulated labor [sic] markets, without rights

and without protection" (Wijers 1998; 71). The group recommends the government

improve protection of migrant sex workers and reduce the use of immigration law to

demoralize sex workers. Others like the American-based human rights organization, the

Open Society Institute (OSI) agree: "Migrant sex workers are criminalized or

marginalized by multiple means such as laws against trafficking, by immigration

restrictions and by labor [sic] codes" (OSI 2006; 2).

Where travel for work is concerned, the group wanted to grant sex workers legal

permission to travel for sex work, since the majority of sex work is contract work and

often requires travel. One group member expressed her frustration with this:

When you arrive from working abroad with a lot of money, you can't just deposit

that money in the bank, it's too dangerous. What can I do, what can't I do, is what

I am asking myself all the time. I find it draining." (Project Participant 9, Meeting

1)

Our discussion around migrant work merely skimmed the surface of immigration

issues and migrant worker safety. While the group members did not make

recommendations, they suggest further consultation with migrant workers and sex

workers who travel, to ensure that legislation addresses their needs and can appropriate

include their preoccupations.

4.4 Other Issues for Law Reform Initiatives

Legal decisions are simply one move to effect change in a much larger political

game. Unless politicians are prepared to force the moral weight of a legal decision,

little of a substantial nature is likely to be done. (Doe 2003; 286)

It has been highlighted throughout the Blueprint and overall thesis that criminal

and municipal law reform is not the only mechanism that will protect and fulfill sex

workers' human rights in a decriminalized system. Our group firmly believed that issues

other than legislation need recognition to reduce the stigma, violence, and discrimination

that sex workers suffer from at the hands of society. These issues address the societal

misconceptions, morals, and unequal treatment of marginal communities that, in addition

to legislation, needs to be reformed in our societies.

4.4.1 Application of the Laws

It has been discussed throughout this thesis that in addition to criminal law, municipal laws are used against sex workers. This skewed application of the law maintains a cycle of criminality for sex workers that, in the absence of criminal law, the group believed, would not cease to exist:

> In addition to the *Criminal Code* provisions related to prostitution, police in certain jurisdictions rely upon provincial and municipal laws to control prostitution and related activities. (Canadian HIV/AIDS Legal Network 2005; 23)

Street-based sex workers are at particular risk for this discriminatory practice, because of their visibility. This group recommendation does not suggest further criminalization across different sex working milieus, but rather highlights that criminalization is a function of stigma and consequent action to further marginalize a community. The group urges that government to encourage measures to stop this discriminatory practice.

4.4.2 Education

From our definitions of decriminalization, it is understood that a decriminalized system would not eliminate stigma, discrimination, or fear of sex workers. Sex workers in the group acknowledged the importance of continued education efforts to reduce societal stigma against sex workers. We saw our role as providing visibility to sex work, as reducing what is unfamiliar, and as making sex work less marginal:

> I feel like a bridge between my world and the clients I see. When I educate my clients and the world, they understand that I am a part of society too. (Project Participant 13, Meeting 1)

Other allies and academics agree:

Law reform is not enough…Education and sensitivity training should be provided

for all levels of government, law enforcement and emergency services staff who

make decisions that affect sex workers and the sex industry. (Pivot 2006; 224)

Educational efforts by sex workers often extend beyond the workforce to include

outreach to clients, police, and the general public. Such efforts are essential in de-

stigmatizing prostitution and creating a climate of respect for sex workers.

(Chapkis 1997; 188)

4.4.3 Transitory Period

Our group acknowledged that a transition period for legislation and social change

is necessary when switching into a decriminalized system. This is discussed more

specifically with regards to taxation systems, but acknowledged as important to a new

system of legislation; sex workers need a transition period to reduce the internalized

stigma and alternative coping mechanisms sex workers develop over years of

criminalization. This translates into a reduction of police resources used to criminalize

sex workers:

If there is a very quick [legislative] change that happens, the most marginalized

groups will be further marginalized with a tough government regime. (Project

Participant 5, Meeting 5)

We can't just expect that if decriminalization were to happen, all sex workers would just 'go into the system.' Most sex workers have been living for years with their rights denied to them in a typical system, so it will take time, trust, and a slow integration. (Project Participant 12, Meeting 5)

4.5 Importance of this project

The recommendations for law reform detailed in this Blueprint (Chapter 4) are essential for legislative reform if it is to appropriately fulfil and protect sex workers' human rights. Our attempt to define decriminalization through criminal law and identify themes for law reform is a unique contribution to law reform initiatives, and to our movement. Concepts of decriminalization had not been defined by Montreal sex workers before this project. With the onslaught of violence against sex workers across the country, and the lack of concrete recommendations in the parliamentary committee report released on December 13, 2006, our need to define a safer legislative system is increasingly pressing. Recent decriminalization in New Zealand with their *Prostitution Reform Act 2003* has pioneered a system for other governments to consider. Impetus for law reform was similar to the one that initiated a review of prostitution law review in Canada: a member of Parliament in New Zealand, Tim Barnett, acknowledged the dangers of current criminal law on sex workers' lives and work. However, whereas some of the sex workers' perspectives in New Zealand were incorporated into their current decriminalized system, the Canadian government was unwilling to follow.

This project was therefore paramount to sex workers in Montreal who seek a governmental response to the current lack of human rights for sex workers, through

legislative change. When asked why this project was important to them, group members responded:

> We ask for decriminalization, and we know everything that we are against, what's wrong with the system as it is. But I found that we had a really hard time putting words on exactly what it is that we want. We would analyze and critique other peoples' legal recommendations but we didn't exactly know how to articulate our own. I think we are ready [to define exactly what we want]. (Project Participant 1, Meeting 1)

> There are always people who want to take care of us, whether they are doctors, lawyers, or police...and we need to participate in any law or anything that involves us, and our working conditions. (Project Participant 12, Meeting 1)

> I want to be a part of it and have my voice heard and raise my concerns. (Project Participant 3, Meeting 1)

In short, our group deemed sex worker leadership as necessary to prostitution debate and sex workers' realities as primordial to reform.

The recommendations we make in our Blueprint are important and unique to law reform debates. While prostitution debates have been dichotomized into forced versus choice, and parallels with public versus private, our discussions challenge these notions, emphasizing sex workers' human rights. For example, sex workers in our group challenged the idea that sex work was public, but acknowledged that the commercial nature of sex work moved it to the public domain. Nevertheless, our group views sex

155

work itself as a private business, but sex workers as deserving public rights. The group wanted the distinction between their private businesses and their public working rights to be acknowledged and included in law reform. We recommend that prostitution law reform debates incorporate private work rights into public regulation.

The group also challenges notions of youth and laws that aim to protect people under the age of 18. We highlight the ambiguity of legislation for minors and suggest that reform incorporates minors in their discussions. We also highlight that many of the issues facing youth in prostitution get conflated with prostitution itself. For this reason, we recommend further consultation on youth issues, not specific to prostitution.

This dialogue has set the foundation for a larger consultation of this nature. From group member's experience within the sex industry, this critique of law reform issues comes from an informed place. Rather than addressing sex work as a social problem, our discussions were oriented and guided by principles of human rights, and by pragmatic needs. Sex workers' demands that are guided by principles of human rights, security, representation, inclusion, integration, autonomy, rights, and equity, are important guiding principles for law reform debate if laws are to represent the needs of the people affected by them. The recommendations laid out in this Blueprint are therefore important to consider and begin in discussion within families, communities, and in Parliament.

CHAPTER 5. CONCLUSION: POST-DECRIMINALIZATION, MOVING INTO A NEW SYSTEM

Throughout history, prostitution law and prostitution itself has been up for public debate. As witnessed throughout this thesis, most of these laws are influenced by public opinion and morality debates. Very rarely are sex workers' perspectives included in these debates or are their realities able to sway the debate for a more inclusive law reform. Fulfilling and protecting sex workers' human rights has therefore been the focus of sex worker rights movements internationally. Through community initiatives, sex workers have been able to create mechanisms and resources to mediate their human rights. In the face of social adversity, sex workers have enacted change in their own lives through self-determination and actions that consider their needs as fundamental.

Not only have sex workers impacted on their lives through community organizing, they have developed ways that research can be conducted through community-based principles. Through this project, we have created research that not only responds to the relevance to sex workers' daily lives, but results in a truly empowered response where communities define their own research needs.

This project was created with the intention of giving voice and space to sex workers' perspectives on prostitution law reforms. This project reinforces the importance of community organizing and the principles that drive that solidarity and organization. Our research group incorporates sex workers' concerns into recommendations for law reform, and offers a Blueprint for legislation to provoke further discussion and debate. It offers something new and unique to the community in terms of dialogue and political power. Our process of organizing around law reform is therefore not limited to

influencing policy, but also important to community building and empowerment amongst sex workers. Eric Shragge (2003) emphasizes the importance of process in community organizing:

> The process of organizing is what is important, not just the outcome. This includes raising critical consciousness in those participating in the organizing process about the necessity of social transformation as the means to achieve social justice and democracy. (Shragge 2003; 197)

As a project that was guided by sex workers at every stage, it was a significant effort and example of community organizing as a way of promoting social change through research.

5.1 Project Evaluation

Organizing within sex worker communities has proven instrumental on a number of levels, but is not void of its challenges. Thus, we used our last meeting to evaluate our processes and discuss possibilities for future organizing and research. Based on the group's evaluation of the project, we felt that this consultation was just the beginning of a much larger process that needs to take place. Below we discuss some of the challenges we faced and the elements we consider when organizing effectively to recommend strategies for change. The guiding principles for law reform identified in our discussions point to some of the elements which are essential to making decisions for a collective. Using the guiding principles for reform discussed in our Blueprint, the group was able to address how to find consensus, how to represent our community, how to make these issues relevant for sex workers, and how to have impact on decisions that affect sex workers'

lives and work. While other sex workers and communities may differ from our opinions and identify different strategies in how to achieve them, there are ubiquitous values for human rights that we share in common. As evidenced in our Blueprint in Chapter 4, we acknowledge the importance of specifying elements of work that sex workers share in common, and connecting them to our broader goals for human rights. Our group felt that the discussions we provide around each theme relate our needs to a common goal for human rights; the discussions around each recommendation were viewed as equally important to our recommendations:

> It's not everyone who will take the time to think, so everyone needs to go through this kind of reflection. If people don't see all of our discussions, instead of just our recommendations, they are missing a lot of information about why we said what we said. I think the reflection is important, the process is important. I don't care if people agree or not with what we have said, I want them to talk, I want them to think. (Project Participant 3, Meeting 12)

Below is a discussion of our organizing process. By considering the elements important to organization around law reform, whether that organizing be lead by sex workers, or considered by policy makers, we provide tools for a more comprehensive strategy to design laws that are coherent and relevant to sex workers' human rights and worker rights.

5.1.1 Finding Consensus

> Democracy isn't perfect. We will never have it. We need to respect that we have our own ideas and our ideas are valid. . I think what we have said is good because

159

it creates the base for something, and we can change it, add to it, and move it

around. But it's the foundation for something. (Project Participant 1, Meeting 12)

While finding consensus was a challenging task for our group, we maintained a

mutual respect to arrive at some discussion points. We acknowledged that the consensus

found within our group was not representative of other sex workers' perspectives. Though

we were eager to find consensus, we also felt that the discussions alone were a means of

advancing sex workers' rights:

> Our discussions will help with a broader societal reflection. If we can even just
>
> make people think with what we have said. Even though we did not reach a
>
> consensus, we came up with a lot of ideas. And our ideas can educate people.
>
> (Project Participant 8, Meeting 12)

How did finding consensus factor in with our ideas of social change? If we did not

find consensus on particular issues, would we be compromising our impact on social

change? If we did find consensus, were we compromising sex workers' human rights?

Can we even achieve social change if we concede on particular issues? These were some

of the challenges that impacted on our ability, or our reluctance, to find consensus.

> I am aware that what I want for myself may not be what other sex workers want
>
> for their work. I don't want to impose my needs on other sex workers. But we do
>
> need to consider who is most affected by the laws—and that is typically the most
>
> marginalized sex workers. They are the ones who are taking the heat for all of us.
>
> (Project Participant 3, Meeting 2)

Our recommendations, therefore, were often compromised by the group's desire not to impose our perspectives on other sex workers. They also do not represent 'ideal' conditions, but rather take other community perspectives into account and focus primarily on human rights. The discussions provided with our recommendations highlight our concern to concede rather than to offer alternative recommendations on particular issues. Though we did arrive at a consensus around particular issues (e.g. mandatory testing or condom use), other concessions we made around zoning, for example, are laden with options. While the group was not comfortable with zoning, they agreed that if it were to be imposed in a decriminalized system, there would have to be various zones for various workers with various elements to consider.

These compromises and options, or what we informally dubbed elements of our "Plan B," highlight sex workers' realities and needs, but allow for further discussion and input from different sex workers. In fact, consensus was difficult to achieve because the group wanted to consider the lives and work of sex workers not present in our meetings. As well, sex workers in the group wanted to account for the needs of other communities. Since our utopic vision would certainly not correspond to the general public opinion on prostitution, we left an option for future negotiation with those communities. Our "Plan B" was also a strategy that we used to ensure that even if our ideal model of law reform were not considered, sex workers' perspectives could, at the very least, be considered. Overall the group felt that our Blueprint would serve as a foundation for the diversity of opinions we have, and a catalyst for future discussion and debate. Our discussions alone were seen as a success.

Some group members thought that while consensus was important, our voices were equally important:

I don't care what 80% have to say, what I have to say is still important. At what

point does what I want matter? We can't change what we want just because people

don't agree. It's valid what each and every one of us has said here. I don't want

my opinions to be invalidated just because all sex workers can't find consensus.

(Project Participant 10, Meeting 12)

5.1.2 Representation

In Chapter 3, we discussed the importance of representation in research, and

touched on the struggles for representation within the sex worker rights movement.

Representation was a huge issue for the group in terms of our recommendations and

organizing process. How much should we consider representation? At what point would

we ever be representative?

We need to consider different parts of the industry, and different workers within

the different sectors. One of the difficulties in this project was that I kept

questioning whether we were able to find consensus since we all came from such

different working contexts. (Project Participant 3, Meeting 12)

In fact, we often had a difficult time devising recommendations because certain

sex workers were not present, and those particular groups would be the most affected by

any decision we made. For example, the absence of migrant sex workers, sex workers

under the age of 18, and the absence of street-basd sex workers limited our discussions

around migration, age of consent, and zoning, respectively. Even though the group did

not feel we were representative of the sex industry, they valued their own input and their

process:

162

Though we're not representative of what is happening in the sex industry, we need to start with a foundation. If we want to have a political voice, we should take these questions, our themes, and go across Canada with this and ask other sex workers. Ask the same questions, have different reflections, but at the end have something to work with that is more representative. (Project Participant 2, Meeting 12)

I am not certain about the representation about what we have said as a 'law project'. Every province has a particular context. Our basic principles are different. The document can serve as a catalyst for something, but the process is very important because it obligates us to speak a lot. If this process isn't respected I am not sure we can get at people's thinking. (Project Participant 8, Meeting 12)

Others felt that while representation was important, the perspectives from a non-representative group was still valid:

If even one person asks for rights, it's legitimate. Maybe sex workers don't want this, maybe it's not good for them. But just asking for human rights, its not illegitimate to have fewer sex workers saying that. (Project Participant 7, Meeting 12)

Nevertheless, we felt that future consultation with a larger group of sex workers from across Canada, and from different part of the industry, would strengthen our Blueprint.

5.1.3 Relevance

In order to succeed in any law reform process the issues need to be relevant to sex workers. While we believed this project was relevant to the movement, was it relevant to the daily lives of sex workers? How could it impact on other sex workers' lives?

We spent our first few meetings identifying themes relevant to sex workers' daily lives and to sex workers in other working contexts. These themes laid the foundation for our discussions. The group was certain that other issues of relevance would arise with further consultation. The group felt they identified issues that would effectively mobilize sex workers into further discussion and recommended further discussion. As part of our Blueprint, we include the dialogue that accompanies each recommendation to demonstrate relevance to sex workers' lives. Where we lacked information and knowledge of particular issues, like age of consent and migrant work, there was a lack of relevance to the daily lives of sex workers within our group. Therefore, a larger consultation is needed to address these other relevant issues.

One group member was eager to add to the list of themes we identified:

I would be curious.... I think we should diffuse this information amongst sex workers, and see what they have to say. I would be curious to see if they approve or disapprove of what we have said. And they can add to it, with their own issues, and make it even more relevant to their lives and work. (Project Participant 4, Meeting 12)

The group believed that while the issues may not be relevant to all sex workers, they were still important to consider for law reform:

As a social movement, whoever believes in our philosophy, in what we are saying

if it is relevant them, they will follow. As a group, however, we believe these

issues are relevant to us. (Project Participant 10, Meeting 12)

5.1.4 Impact

Community organizing, to be a force for social change, has to be able to mobilize

locally, but must act in conjunction with wider alliances that share a politics of

opposition. (Shragge 2003; 197)

When organizing around prostitution law reform, we needed to consider priorities

for our group, but societal priorities as well. This tied in heavily with our process of

negotiating and finding consensus on particular issues; while all of the decisions that the

group made were not the ideal conditions, they were ones that respected sex workers'

human rights, and left option for other societal concerns. To increase the impact in our

efforts, we felt that we needed to leave room for discussion and negotiation in a wider

public debate.

The group mused over different ways the project could impact and mobilize sex

workers into action. Conducting a wider consultation was one of these suggestions:

What we say is strong and relevant to us, but we can also strengthen and have

more impact with more voices by affirming our views or negating our views with

other sex workers' voices. (Project Participant 7, Meeting 12)

In addition to this, we wanted to publicize our discussions as means of inciting

conversation in different communities. As a more 'invisible' community, we felt that

through this publication sex workers' realities will become more visible. We discussed

various political and educational campaigns that we could mobilize with the results and

discussions of the Blueprint.

5.2 Suggestions for Future Organizing and Research

Decriminalization is but one of the recommendations that sex workers in Montreal

made in this Blueprint; their recommendations reach far beyond this legal reform.

Strategies include other societal factors that sex workers can address and ones that have

already been employed by the sex worker rights community.

Recommendations for reforming societal views on sex work were as important to

the group as reforming law. Only with a change in societal moral codes around

prostitution would sex workers feel safer in their communities. Even if our government

were to decriminalize sex work, much would have to be done around public opinion and

support. Future organizing and campaigning around these issues was seen as paramount

to the group.

The group also identified areas of relevance to law reform, but ones that require

further consultation with different populations of sex workers. Migrant work and age of

consent were two of these themes. Often research conducted on both of theses issues is

void of experience from these communities. Organizing around human rights for both of

these groups was also seen as important to further sex workers' human rights.

Above all, the group offers this Blueprint as a tool to provoke further discussion in

different groups within society. While the group wants law and policy makers to include

its perspectives, group members also recommend further consultations of this kind with

detailed debates around different themes for law reform. Sex workers from different

milieus, including more street-based sex workers, need to be included. Transsexual and transvestite sex workers equally need inclusion.

5.3 Conclusion

This project provided an opportunity for a sex worker rights community in Montreal to be included in research for social change and to organize around their preoccupations. Not only did it help us to reflect on how we make decisions for the sex worker community, it also helped us refine our ideas for our continual struggle for law reform. Sex workers' perspectives are essential to this process and must be incorporated into further documentation and study. This project serves as an example of how to involve communities in research and in their own struggle for self-determination. While sex workers have been making strides over the years through their visibility, their perspectives have yet to be incorporated into laws and policies. This Blueprint lays the foundation for this social change. As a design for prostitution law reform, we attempt to create a more receptive society—one that is receptive to sex workers' voices, sex workers' fight for human rights, and receptive, above all, to social change.

BIBLIOGRAPHY

Alexander, P. "Reflections" in "Why We Need a Sex Workers' Union." *Sex Work, Mobility and*

   Health in Europe. Eds. S. Day and H. Ward. United Kingdom: Kegan Paul, 2004. 261-

   274.

- - -. "Why Feminism is Still a Difficult Issue for Feminists." *Sex Work: Writings by Women in*

   the Sex Industry, 2nd Edition. Eds. F. Delacoste and P. Alexander. San Francisco: Cleiss

   Press, 1999. 184-230.

Alliance pour la Securité Des Prostituées. *Alliance pour la Securité des prostituées.*

   Montreal, Quebec. 1986.

Arrington, M. "Community Organizing." *Good Girls, Bad Girls.* Ed. L. Bell. Canada: Canadian

   Scholars Press, 1987.104-108.

Audet, Elaine. "Le Canada contribue au traffic des femmes à des fins de prostitution."

   Sisyphe.org. December 8, 2004. January 9, 2007.

   <http://www.sisyphe.org/article.php3?id_article=1378>

Banach, L. and S. Metzenrath. "Principles for Model Sex Industry Legislation." Report by

   Scarlet Alliance and Australian Federation of AIDS Organisations. 2000. Sydney,

   Australia. December 24, 2006.

   <http://www.afao.org.au/library_docs/policy/sex_law.pdf>

Barnett, T. "Prostitution Reform Act: What is the Story One Year On?" Report. December 2005.

    December 24, 2006. <http://www.timbarnett.org.nz/prostitution.php>

Bayswan. December 24, 2006. www.bayswan.org

Bell, L. *Good Girls, Bad Girls.* Canada: Canadian Scholars Press, 1987.

Bochner, A.P. "Criteria Against Ourselves." *The Qualitative Reader*, Eds. N.K. Denzin and Y.S.

    Lincol. United States: Sage Publications, 2002. 266-272.

Brock, D. "Making the Identity Prostitute" *Law as a Gendering Practice.* Eds. D.E> Chunn and

    D. Lacombe. UK: Oxford University Press, , 2000, 79-99.

Brock, D and V. Scott. "Getting Angry, Getting Organized." *Fireweed: Sex Work Issue*, Issue

    65. Toronto, Canada, 1999: 8-21.

Canadian Criminal Code, Department of Justice Canada. R.S. 1985, c. C-46. January 9, 2007.

    <http://laws.justice.gc.ca/en/C-46/>

Canadian HIV/AIDS Legal Network, and Stella, and Maggie's. "Not Up to the Challenge of

    Change: A Comment on the Report of the Subcommittee on Solicitation Laws." February

    2, 2007. February 7, 2007. <http://www.aidslaw.ca/sexwork>

Canadian HIV/AIDS Legal Network. "Information Sheet HIV Testing #12: Mandatory Testing."

    2000. Canada. December 24, 2006.

        <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=276>

- - -. "Memorandum: Prostitution Reform Act 2003 (New Zealand)." Internal communication.

    Toronto, Canada. July 22, 2005.

- - -. "Press Release: Commons Report on Prostitution Fails Sex Workers: Criminalization

    Leaves Women Working in Unsafe Conditions." December 13, 2006. January 9, 2007.

        <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=930>

- - -. "Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution." July 2005.

    Canada. December 24, 2006.

        <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=197>

Chapkis, W. *Live Sex Acts: Women Performing Erotic Labor.* New York: Routledge, 1997.

Church, K. *Forbidden Narratives: Critical Autobiography as Social Science.* Amsterdam:

    Gordon and Breach Publishers, 1995.

Clamen, J. "Submission to the Subcommittee on Solicitation Laws of the Standing Committee on

    Justice, Human Rights, Public Safety and Emergency Preparedness." House of Commons,

Session 1, 38th Parliament. March 16, 2005a. December 24, 2006.

<http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=105937>

- - -. "Submission to the Subcommittee on Solicitation Laws of the Standing Committee on

Justice, Human Rights, Public Safety and Emergency Preparedness." House of Commons,

Session 1, 38th Parliament. May 30, 2005b. December 24, 2006.

<http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=0&SourceId=119574&S

witchLanguage=1>

Clamen, J. and Gillies, K. "When Sex Works: A Call for Worker Solidarity." *The Workers'*

Voice, Vol. 2, No 5. Winter 2004: 10-12.

Clamen, J. and Lopes, A. "Why we need a sex workers' union." *Sex Work, Mobility and Health*

in Europe. Eds. S. Day and H. Ward. London, United Kingdom: Kegan Paul. 2004: 39-

52.

Clerk of the House of Representatives. Prostitution Reform Act: Public Act 2003, No 28. New

Zealand, 2003. December 24, 2006. <www.legislation.govt.nz>

Commercial Sex Information Service. December 26, 2006. www.walnet.org/csis

"Committee Examining Prostitution Laws Can't Agree" *CTV News* December 13, 2006. January

6, 2007.

<http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061213/prostitution_061213?

s_name=&no_ads>

Conseil du statut de la femme. "La prostitution: Profession ou exploitation ? Une réflexion à

poursuivre." *Synthèse*, No. 202-04-I. Quebec, Canada. May 2002: 17. January 6, 2007.

http://www.csf.gouv.qc.ca/telechargement_publication/index.php?id=291

Cusick, L. and M. Goodyear. "Protection of Sex Workers" *BMJ* January 13, 2007. February 6,

2007.

<http://www.bmj.com/cgi/content/full/334/7584/52?ijkey=mjkq1iVzYd7AKfi&keytype=

ref>

Czajka, M. "A new era for sex workers in Germany?" *Sex Work, Mobility and Health in Europe.*

Eds. S. Day and H. Ward. United Kingdom: Kegan Paul, 2004. 53-73.

Davis, S. and M. Shaffer. "Prostitution in Canada: the Invisible Menace or the Menace of

Invisibility." 1994. December 24, 2006. <www.walnet.org/csis/papers/sdavis.html>

Day, S. and H. Ward, eds. *Sex Work, Mobility and Health in Europe.* London, United Kingdom:

Kegan Paul, 2004.

Doe. J. *The Story of Jane Doe.* Toronto, Canada: Random House, 2003.

Doezema, J. "Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy."

   Global Sex Workers: Rights, Resistance, and Redefinition. Eds. K. Kempadoo and J.

   Doezema. New York and London: Routledge, 1998a. 34-50.

- - -."International Activism." *Global Sex Workers: Rights, Resistance, and Redefinition.* Eds. K.

   Kempadoo and J. Doezema. New York and London: Routledge, 1998b. 204-209.

Eriksson, J. "What's Wrong with the Swedish Model." *eXXXpressions: Forum XXX*

   Proceedings. Montreal: Stella, 2005.

Federal/Provincial/Territorial Working Group on Prostitution. "Recommendations in respect of

   legislation, policy and practices concerning prostitution-related activities." Ottawa:

   Department of Justice Canada, December 1998. December 24, 2006.

   <www.canada.justice.gc.ca/en/news/nr/1998/toc.html>

Fédération des femmes du Québec (FFQ). December 25, 2006.

   http://www.ffq.qc.ca/presentation/comite-prostitution.html

Frampton, C., G. Kinsman, A.K. Thompson and K. Tilleczek. *Sociology for Changing the*

   World: Social Movements/Social Research. Nova Scotia, Canada: Fernwood Publishing,

   2006.

Gravenor, Kristian. "Post-Porn Plans." *Montreal Mirror*, May 13-19, 2004. December 26, 2006.

   <www.montrealmirror.com/archives/2004/051304/news3.html>

Herland, K. "Managing Montreal's Sex Industry: Prohibition and Profit." Trans. into French by

    Pascale Galipeau for *L'Itinéraire*. Vol. VI, No. 5, May 1999. 6-16.

Highcrest, A. *At Home on the Stroll*. Canada: Alfred A. Knopf, 1997.

House of Commons Debates, Edited Hansard 055, 37th Parliament, 2nd Sesesion. Canada:

    February 7 2003. January 6, 2007

    http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=684641&Language=

    E&Mode=1&Parl=37&Ses=2

International Committee for Prostitutes' Rights. "World Charter for Prostitutes' Rights."

    February 1985. Reprinted in *Perspective,* fall 1994. 17.

Ironstone-Catterall, P. "Feminist Research Methodology and Women's Health: A Review of the

    Literature." Project and report for the National Network on Environments and Women's

    Health (NNEWH). Toronto, Canada: October 1998.

Jeffrey, L.A. and G. MacDonald. "It's the Money, Honey: The Economy of Sex Work in the

    Maritimes." *The Canadian Review of Sociology and Anthropology*; Vol. 43, Issue 3,

    2006. 313-328.

Jeffreys, S. *The Idea of Prostitution*. Australia: Spinifex Press, 1997.

Jenness, V. *Making It Work: The Prostitutes' Rights Movement in Perspective (Social Problems and Social Issues)*. Canada: University of British Columbia Press, 1993.

Jessen, L. "Prostitution seen as Violence Against Women." *Sex Work, Mobility and Health in Europe*. Eds. S. Day and H. Ward. London, United Kingdom: Kegan Paul. 2004: 201-213.

Jordan, S. "Who Stole my Methodology? Co-opting PAR [1]." *Globalisation, Societies and Education*, Vol.1, No.2, 2003. 185-200.

Kaiser, E. "Intercourses: $pread Speaks with a Lawmaker." *$pread Magazine*, Vol. 1, Issue 3, Fall 2005. 66-68.

Kempadoo, K. and J. Doezema. *Global Sex Workers: Rights, Resistance, and Redefinition*. Eds. K. Kempadoo and J. Doezema. New York and London: Routledge, 1998.

Kinnell, H. "Why Feminists Should Rethink Sex Workers' Rights." Prepared for the International Network of Sex Work Projects. 2003. December 24, 2006. <www.nswp.org>

Kirby, S. and K. McKenna. *Experience, Research, Social Change: Methods From the Margins*. Toronto: Garamond Press, 1989.

Kvale, S. "The Social Construction of Validity." *The Qualitative Inquiry Reader*. Eds. N.K.

Denzin and Yvonna S. Lincoln. United Kingdom: Sage Publications, 2002.

Leigh, C. "Inventing Sex Work." *Whores and Other Feminists*. Ed. J. Nagle. London and New

York: Routledge, 1997. 225-231.

LifeSiteNews.com. "Stripper Visa Scandal Exposes Complicity in Human Trafficking."

November 30, 2004. Full article reposted by Joel Johannesen, November 30, 2004.

February 6, 2007. <http://www.proudtobecanadian.ca/index/weblog/2004/11/>

Lippel, K. and F. Shaver. "Work, Restructuring, Health and Policy Implications: The Sex Trade

Environment. Part II: Access to Compensation for Workers in the Sex Industry who are

Victims of Crime." A report prepared for the National Network on Environments and

Women's Health (NNEWH). Canada, 2002. February 6, 2007.

<http://www.yorku.ca/nnewh/netPubs_reports.htm>

Loff, B., C. Overs and P. Longo. "Can Health Programmes Lead to Mistreatment of Sex

Workers?" *The Lancet*, Vol. 361, June 7, 2003. January 13, 2007. <www.thelancet.com>

Longo, P. "From Subjects to Partners: Experience of a Project in Rio de Janeiro, Brazil."

Research for Sex Work. Vol. 7. 9-10. Netherlands: Vrije University Medical Centre, 2004.

Lopes, A. *Organising in the Sex Industry - An Action Research Investigation*. Diss. University of

East London, Department of Sociology and Anthropology, 2005.

176

Lowman, J. "Submission to the Subcommittee on Solicitation Laws of the Standing Committee

on Justice, Human Rights, Public Safety and Emergency Preparedness." May 30, 2005.

December 24, 2006.<http://mypage.uniserve.ca/~lowman/>

- - -. "Prostitution Law Reform in Canada." *Toward Comparative Law in the 21ˢᵗ Century*. Ed.

The Institute of Comparative Law in Japan. Tokyo: Chuo University Press, 1998. 919-

946.

- - -. "Violence and the Outlaw Status of (Street) Prostitution in Canada." *Violence Against*

Women, Vol. 6, No. 9, September 2000. 987-1011.

Maggie's. "Press Release: Commons Report Ignores Sex Workers' Voices, Undermines Sex

Workers' Rights." December 13, 2006. January 9, 2007.

<http://www.chezstella.org/stella/?q=en/report122006>

Mappes, T. and J. Zembaty. *Biomedical Ethics, Second Edition*. Montreal: McGraw-Hill, 1986.

Maritime Centre of Excellence for Women's Health. "Community-Based Research Ethics."

Moving Towards Women's Health, No. 5, October 2000. September 2003.

<www.medicine.dal.ca/mcewh>

Maticka-Tyndale E. and J. Lewis. "Escort Services in a Border Town: Literature and Policy

Summary." Report to the Division of STD Prevention and Control, Laboratory Centre for

Disease Control, Health Canada, 1999.

<http://web2.uwindsor.ca/courses/sociology/maticka/star/escortreport.pdf>

Metzenrath, S. "In Touch with the Needs of Sex Workers." *Research for Sex Work*, No.1.

Netherlands: Vrije University Medical Centre, 1998. 11-12.

Monet, V. "Mandatory Testing: The Fear that Feeds the Falsehood" *Research for Sex Work*,

No.7, June 2004. Netherlands: Vrije University Medical Centre. 29-33.

Morris, M. "Participatory Research and Action: A Guide to Becoming a Researcher for Social

Change." Ottawa: CRIAW/ICREF, 2002. December 24, 2006.

<http://www.criaw-icref.ca/pubs/publicationDetails_e.asp?id=46>

Myers, T. and K. Boyer. *Power, Place and Identity: Historical Studies of Social and Legal

Regulation in Quebec.* Canada: Montreal History Group, 1998.

Namaste, V. *C'était du spectacle! L'histoire des artistes transsexuelles à Montréal 1955-1985.*

Canada: McGill-Queen's University Press, 2005.

Network of Sex Work Projects (NSWP). The Nuremburg Code reprinted from Trials of War

Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10,

Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government Printing Office, 1949.

December 25, 2007. www.nswp.org

New Zealand Ministry of Justice. *Prostitution Reform Act 2003.* http://www.justice.govt.nz/plr/

January 26, 2006.

NSW Health Department. *Health and Safety Guidelines for Brothels.* Australia: WorkCover

NSW Health and Safety Guide, 2001. December 24, 2006.

<http://www.workcover.nsw.gov.au/NR/rdonlyres/BFFA4789-E98E-478E-B110-

C86A1EA6402E/0/guide_wc_brothels1201.pdf>

Oakley, A. "Interviewing Women: A Contradiction in Terms." *Doing Feminist Research.* Ed.

Helen Roberts. Boston: Routledge and Kegan Paul, 1981. 30-61.

Occupational Safety and Health Service. *A Guide to Occupational Health and Safety in the New*

Zealand Sex Industry. Wellington, New Zealand: Occupational Safety and Health

Service, Department of Labour, 2004. December 24, 2006.

<www.osh.dol.govt.nz/order/catalogue/235.html>

Office of Libby Davies. Press release. Canada: November 18, 2002.

Open Society Institute: Sexual Health and Rights Project. "Eight Working Papers/Case Studies:

Examining the Intersections of Sex Work Law, Policy, Rights and Health." New York,

2006. December 24, 2006.

<http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/ca

sestudies_20060601>

Parliament of Canada. December 25, 2006. www.parl.gc.ca

Pheterson, G., Ed. *A Vindication of the Rights of Whores*. Seattle: Seal Press, 1989.

Pinzer, M. *The Maimie Papers*. New York: The Feminist Press, 1977.

Pivot Legal Society. "Beyond Decriminalization: Sex Work, Human Rights and a New

    Framework for Law Reform." June 2006. December 24, 2006.

    <http://pivotlegal.org/Publications/reports.htm>

- - -. "Voices of Dignity: A Call to End Harms Caused by Canada's Sex Trade Laws." March

    2004. December 24, 2006. <http://pivotlegal.org/Publications/reports.htm>

Private Members' Business Solicitation Laws. "Transcript of debate on motion M-192." Office

    of Libby Davies, February 7, 2003. December 24, 2006. <www.libbydavies.ca>

Ramazanoglu and Holland. *Feminist Methodology: Challenges and Choices*. Thousand Oaks,

    CA: Sage, 2002.

Ristock, J. L. and J. Pennell. *Community Research as Empowerment: Feminist Links,*

    Postmodern Interruptions. New York: Oxford University Press, 1996.

Roberts, N. *Whores in History: Prostitution in Western Society.* United Kingdom:

HarperCollins*Publishers,* 1992.

Sasha. "Safety Last." *Montreal Mirror*, January 4-10, 2007. January 4, 2007.

<http://www.montrealmirror.com/2007/010407/sasha.html>

Scarlet Alliance Legal Working Party and Banach, L. "Response to Western Australian

Government's Prostitution Control Bill 2002." Australia, February 2003.

Shaver, F. M. "A Critique of Feminist Charges Against Prostitution." *Atlantis,* Vol. 14, No. 1.

1998a. 82-89.

- - -. "Prostitution: A Critical Analysis of Three Policy Approaches." *Canadian Public Policy,*

Vol. XI, No. 3, 1985. 493-503.

- - -. "Prostitution: The Dark Side of the Service Industry." *Post-Critical Criminology.* Ed. T.

Fleming. Scarborough, Ontario: Prentice Hall, 1996a. 42-55.

- - -. E-mail communication, February 11, 2005.

- - -. "The Regulation of Prostitution: Avoiding the Morality Traps." *Canadian Journal of Law*

and Society Vol. 9 No. 1, 1998b. 123-146.

- - -. "The Regulation of Prostitution: Setting the Morality Trap." *Social Control in Canada,* Eds.

    B. Schissel and L. Mahood. Oxford University Press, 1996b. 204-226.

- - -. "Sex Work Research: Methodological and Ethical Challenges." *Journal of Interpersonal*

    Violence. Vol. 20, No. 3. Sage Publications: 2005. 296-319.

Shragge, E. *Activism and Social Change: Lessons for Community and Local Organizing.*

    Toronto, Canada: Broadview Press, 2003.

Sisyphe. December 25, 2006. http://sisyphe.org

STAR. "Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House

    of Commons Subcommittee on Solicitation Laws (SSLR)." June 2005, updated July

    2006. December 24, 2006.

    <http://web2.uwindsor.ca/courses/sociology/maticka/star/pdfs/safety_and_security_report

    _final_version.pdf>

Stella, l'amie de Maimie. December 24, 2006. www.chezstella.org

- - -. "Déjà-vu: The Subcommittee on Solicitation Laws of the Standing Committee." 2007.

    January 8, 2007. <http://www.chezstella.org/stella/?q=en/subcom2006>

- - -. *eXXXpressions: Forum XXX Proceedings*. Montreal, Canada: Stella, 2006a. December 24,

    2006. <http://www.chezstella.org/docs/eXXXpressionsE.pdf>

- - -. Sex Workers, Human Rights, and the Fight Against HIV. August 2005. December 15,

    2007. www.chezstella.org

- - -. "Press Release: Encore un rapport qui laisse tomber les travailleuses du sexe." December

    13, 2006b. January 9, 2007. <http://www.chezstella.org/stella/?q=rapsouscomite132006>

- - -. "Stella and the Prostitution Debate." Canada: Stella, 2002.

-   - -. *XXX Guide: A Sex Workers' Handbook.* Montreal, Canada: Stella, 2004. December 24,

    2006. <http://www.chezstella.org/stella/?q=guideXXX>

Stringer, E. *Action Research.* 2nd Edition. Thousand Oaks, CA: Sage, 1999

Subcommittee on Solicitation Laws (SSLR). *The Challenge of Change: A Study of Canada's*

    Criminal Prostitution Laws. Report of the Standing Committee on Justice and Human

    Rights, Report of the Subcommittee on Solicitation Laws. Canada, December 2006.

    January 6, 2007.

    <http://cmte.parl.gc.ca/cmte/CommitteeHome.aspx?Lang=1&PARLSES=391&JNT=0&S

    ELID=e17_&COM=10474>

- - -. Reports of meetings December 9, 2004 to November 22, 2005. January 6, 2007.

    <http://cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=391&JNT=0&SE

    LID=e21_&COM=10946>

Sex Workers Outreach Project (SWOP)-USA. *Angel Initiative: Measure Q.* Berkeley,

    California, November 2004.

    http://swop-usa.org/press/BallotQualificationPressRelease.php. December 14, 2006.

Thiboutot, C. "Le mouvement des prostituteés: bientot vingt ans." *Perspectives*, Vol. 7, No. 1,

    Fall 1994. 14.

Van der Meulen, E. "A History of Law Reviews in Canada." *$pread Magazine*, Vol. 2, Issue 1,

    Spring 2006. 31.

Weitzer, R. "Prostitutes Rights in the United States: The Failure of a Movement." *The

    Sociological Quarterly*, Vol. 32, No. 1, 1991. 23-41.

Wijers, M. "Women, Labor, and Migration: The Position of Trafficked Women and Strategies

    for Support" *Global Sex Workers: Rights, Resistance, and Redefinition.* Eds. K.

    Kempadoo and J. Doezema. New York and London: Routledge, 1998. 69-78.

Young, Alan. "Legalize Prostitution, For All Our Sakes." *Globe and Mail*, January 19, 2007.

    <www.globeandmail.com>

APPENDIX 1: CONFLICT RESOLUTION TECHNIQUES

Conflict Resolution Techniques

1. The personal does not always have to be political

Let's acknowledge that there are situational factors that impact on our discussions and our varying opinions. We all have the right to have these opinions, but need to acknowledge that they may only be relevant to our individual experience.

2. Negotiation is key

We can negotiate with each other and create a safe space for discussion. We need to build trust amongst members of our group to ensure we all have our perspectives heard. Sometimes this may mean we need to discuss issues amongst members of the group, rather than the whole group.

3. Time is of the essence

We need to allow time and space for people to speak, to ensure we are all heard. This means dedicating time to issues that present conflict for us, but not using the entire meeting to debate an issue. We need to respect each others' time.

4. Be clear about your needs

Assertive communication, versus aggressive conversation will help clarify our ideas and create a clear dialogue.

5. Avoid judgement

Remain open-minded to other opinions and try to build an agreement that works. Approach issues with flexibility for other opinions.

APPENDIX 2: CONSENT FORM

<u>CONSENT FORM TO PARTICIPATE IN RESEARCH GROUP</u>

This is to state that I agree to participate in the research being conducted by :
Jenn Clamen of the Special Individualized Program of Concordia University.

I have been informed that this Masters Thesis research project explores how the sex worker rights idealizes model legislation for the sex industry, and how this community organizes around law reform. I understand that it involves the creation of a document that reflects the needs of sex workers for law reform.

What about your privacy?
I understand that my participation in this study is CONFIDENTIAL. No personal information about me will be available to those outside of the research group and will not be published in the thesis. My name, however, can appear on the final policy document if I choose. I am free to use a fake name.

The information and tape recording from the meetings I take part in will either be destroyed or copied to me after the research project is completed.

If, at any point during the group discussions, I become uncomfortable and decide to end my participation, I understand that I am free to withdraw my consent and discontinue my participation at any time without negative consequences. My input and the information I have provided, however, will be considered part of the group discussion and will not be destroyed.

I understand that I must respect the confidentiality of other committee members.

What will happen with your comments and ideas?
I understand that the information from this research group will be published into two documents: a thesis document that will be a confidential report of our views on law reform and a policy document. A summary of the recorded meetings will be drafted by the principal researcher and returned to me to review its accuracy. The position paper may be printed in several different formats and may be presented at conferences, workshops, and community based forums. I understand that i twill also be used as a lobbying document and will be made available to policy makers and interested parties.

How much time do I need to commit?
I am aware that each group meeting may take approximately 2 hours and will be tape-recorded. Additional time may be needed.

I am also aware that as a group member I have an active role in the research process and will be required to read, analyze, and comment on each stage of the research process. I am aware that I may need to commit 30mins-1hour per week, in addition to the 8-10 group meetings, for reading documents related to our discussions.

I have carefully studied the above and understand this agreement. I freely consent and voluntarily agree to participate in this project.

I have been provided with a project summary and contact details for a Concordia University Research Ethics and Compliance Officer, should I have any questions about research ethics.

NAME (please print) _____

SIGNATURE _____

APPENDIX 3: LIST OF INTERVIEWEES

Anonymous member from the International Union of Sex Workers (IUSW). Interview Date: January 20, 2006.

Basman, Lainie, sex worker activist and former employee at Stella (Montreal, Canada). Interview Date: January 21, 2006.

Crago, Anna-Louise, sex worker activist and founder of the Coalition for the Rights of Sex Workers (Montreal, Canada). Interview Date: December 16, 2006

Healy, Catherine, sex worker activist and president of the New Zealand Prostitutes Collective (NZPC), (Wellington, New Zealand). Interview Date: February 2004.

Ross, Rene, director of Stepping Stone (Halifax, Canada). Interview Date: February 15, 2006.