Changing Prostitution Discourse in Canadian Common Law from 2010 to 2018

by

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A thesis submitted to the

School of Graduate and Postdoctoral Studies in partial

fulfillment of the requirements for the degree of

Master of Arts in Criminology

Faculty of Social Science and Humanities

University of Ontario Institute of Technology (Ontario Tech University)

Oshawa, Ontario, Canada

June 2020

THESIS EXAMINATION INFORMATION

Submitted by: **Ana Figueras**

Master of Arts in **Criminology**

Thesis title:

Changing Prostitution Discourse in Canadian Common Law from 2010 to 2018

An oral defense of this thesis took place on May 29, 2020 in front of the following examining committee:

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The above committee determined that the thesis is acceptable in form and content and that a satisfactory knowledge of the field covered by the thesis was demonstrated by the candidate during an oral examination. A signed copy of the Certificate of Approval is available from the School of Graduate and Postdoctoral Studies.

ABSTRACT

Since the first iteration of prostitution legislation in 1759, the language and discourses used to refer to 'prostitution' has undergone many changes. The constitutional challenge of *Bedford v. Canada* (2010 ONSC 4264) resulted in legislative amendments of prostitution laws (Bill C-36). Bill C-36, implemented in 2014, resulted in several significant changes, including the eradication of the word 'prostitution' from the Criminal Code, and the criminalization of buying, but not selling, sexual services. Given Bill C-36, this research inquires: How has prostitution discourse changed in Canadian common law from 2010 to 2018? A discourse analysis of 58 court decisions compared the language used before and after 2014; this revealed courts' frameworks for understanding sex work have not changed significantly despite the *Bedford* ruling, since exploitation remains the major discursive underpinning. The theoretical framework integrates anti-carceral feminist theory and governmentality, to render visible the marginalization, discrimination and stigmatization of the paternalistic punitive system on sex workers.

Keywords: sex work; sex work legislation; discourse analysis; anti-carceral feminism; governmentality

AUTHOR'S DECLARATION

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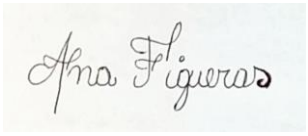

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STATEMENT OF CONTRIBUTIONS

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication. I have used standard referencing practices to acknowledge ideas, research techniques, or other materials that belong to others. Furthermore, I hereby certify that I am the sole source of the creative works and/or inventive knowledge described in this thesis.

ACKNOWLEDGEMENTS

I am immensely grateful for having such brilliant minds guide and support me throughout my research study. I faced some challenges coming from a completely different field of study; yet, Dr. Olga Marques and Dr. Jen Rinaldi guided me and taught me along the way. Dr. Marques, thank you for instilling in me the hunger for knowledge and teaching me to go beyond what I have learnt. You taught me so much, in such little time and also provided me with amazing research experience, and for that am very grateful. Dr. Rinaldi, thank you for your thoroughness and guidance through the novel and difficult path of legal studies.

I am also very grateful for having brilliant writing specialists. Tessa Troughton and Fernanda Batista, thank you for helping me improve my writing. They always were very patient and had endless advice.

My biggest support came from my family, or as I call them 'Mi familia'. They listened, they helped when my hand cramped up, they comforted me psychologically, they provided me everything and more than I could ever wanted. Gracias Mama, Papa, Ines, Maria and the rest of mi familia. Thank you to my boyfriend, for sticking by me throughout these three years and his immense patience when all I could talk about was my research. Thank you to all my friends who listened to my 'nonsense' these years and were patient with me.

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I. INTRODUCTION

On January 22, 2020 Marylène Levesque, a 22-year-old woman working as a sex worker, was found dead in a hotel room in Quebec City (Bramham, 2020). The person who killed her was Eustachio Gallese, who was previously "convicted in 2006 of killing Chantale Deschenes with a hammer and knife" (Hayes, 2020, para. 2). Gallese was on day parole when he murdered Marylène Levesque (Bramham, 2020; Hayes, 2020). Prior to his day parole, Gallese was in a halfway house where his parole officers allowed him to have his *sexual needs* met (Steuter-Martin & Pindera, 2020). On the day of his parole hearing, Canada's parole board expressed their concerns regarding the parole officers " risk management strategy" (Steuter-Martin & Pindera, 2020, para.7). Canada's parole board also stated that "Gallese wasn't deemed ready to have relationships with a woman" (Bramham, 2020, para. 2). This is concerning because if Gallese was not deemed fit to have relationships with women, how come he was allowed "to meet with women to fulfill his 'sexual needs'"? (Hayes, 2020, para.1).

Male sexual desire appears to be a right that cannot be denied, even if it compromises the safety of women. On the day of the parole hearing, Gallese's parole officers proposed a correctional plan that "included allowing him to solicit women for sexual purposes" (Harris, 2020, para. 9). Jennifer Oades, a parole board member, claimed that the correctional plan was "categorically rejected' (Harris, 2020, para. 10); yet, Gallese was categorized as "low to moderate" likelihood to reoffend (Steuter-Martin & Pindera, 2020, para.7). Even though Canada's parole board did express concern regarding Gallese soliciting sexual services (Harris, 2020; Steuter-Martin & Pindera, 2020), day parole was granted to Gallese. This suggests that there is a perceptional difference

between women who engage in sex work, and those who do not. The implied inequality entails that the bodies of sex workers are worth less than women who do not engage in sex work. Sex workers are seen as *subhuman* or *disposable* individuals (Craig, 2014). Therefore, the language used in the parole hearing was important since it implicitly defined female sexuality according to its function to male sexuality and the role of sex workers in society. Beyond sexuality, the language in the parole hearing, especially from the parole officers tacitly exposes negative perception of female sex workers, the sex industry, and of sex work itself.

Language is also referred to as discourse. Discourse encompasses language in use (Schiffrin, 2003). Thus, prostitution discourse encompasses the use of language in the criminal justice system. Thus, the setting where language is used as well as the environment and producers of language should be considered. Rules surrounding prostitution are established in the legislative and executive branches, which are then implemented and discussed in the judiciary branch. Therefore, the presence of prostitution discourse in law is not uncommon. Law establishes inappropriate and appropriate behaviour, while not recognizing the influence of "subjective areas like moral evaluations, or political bias" in its discerning process (Smart, 2002, p. 22). Prostitution discourses used in law further shape and perpetuate ideas surrounding sex work; thus, discourse has unacknowledged complex functions.

Discourse is susceptible to change, which is similar to social conventions. Social conventions change over time (Marmor, 2009). Therefore, they require a relevant population to sustain the existence of a specific convention (Marmor, 2009). This entails that a group of people or part of the population sustain the social convention, as long as

the uninscribed rules are practiced by the stated group. Certain conventions either disappear or have 'amendments' made to their rules throughout time, according to the use of individuals (Marmor, 2009). Similarly, discourse is subjected to social influence throughout time (Foucault, 1978a). Words used with a specific discourse shape and change language. Analogously to social conventions, discourse changes as long as the population changes the words and meanings used for a specific discourse.

Considering that prostitution has been around for a long time, time subjects the topic to change (Backhouse, 1985). Law establishes the regulations of prostitution; thus, the language and context of prostitution legislation are relevant to the study of prostitution discourse (Smart, 2002). Legislation is continuously amended; Canadian prostitution legislation changed in 2014, after a long-lasting constitutional challenge that started in 2010. The major changes included the implementation of a legal model that criminalized the buyer of sexual services, while not criminalizing the seller. Considering this change of legislation, this research asked: How has prostitution discourse changed in Canadian common law? This research considers how Canadian government engages with prostitution discourse, from legislation that change throughout time, to the rulings of judges and justices in Canadian courts. The array of prostitution discourses shapes the interpretation of prostitution.

Comparing Canadian judicial decisions before and after the legislative change in 2014, this research seeks to explore which words and language were and are used to refer to prostitution and the context they were and are used in. Analysis of discourses on prostitution prior and after the legislative change of 2014 identifies words and phrases and their meaning used in prostitution discourse in common law. The study explores if

the implementation of statutes reinforce or hinder negative language towards prostitution. Using discourse that addresses negative interpretations of prostitution shows a lack of tolerance and understanding of a matter that involves individuals who consensually participate in such activities. Furthermore, addressing sex work and sex workers in a negative manner leads to marginalization, victimization and discrimination, which promotes a detriment to their general well-being (Benoit, Jansson, Smith, & Flagg, 2017; Benoit, McCarthy, & Jansson, 2015; Benoit, Ouellet, & Jansson, 2016.). The dismissal of sex workers voices in the new laws is presented in literature as problematic to the extent that this absence affects their agency in matters that involve them (Abel, 2014; Anderson, 2002; Benoit et al., 2017; Benoit et al., 2015; Benoit et al., 2016; Campbell, 2015; Craig, 2011; Kantola & Squires, 2004; Krüsi et al., 2014; Miller & Schwartz, 1995; Law, 2015).

Considering Smart's (2002) ideas on the separation of law from social order, the broader question this research seeks to address is whether discourse has a transferable power that permeates to settings beyond common law. The study seeks to identify discourses surrounding sex work and discourses that contribute to the construction and practice of prostitution in common law. As a by-product of such identification the study aims to analyze the treatment of sex workers in the criminal justice system. The study provides a contemporary insight on tentative legislation reform. Last but not least the study seeks to give agency to the voices sex workers who were dismissed during previous legal reform.

A Note on Terminology

Throughout the study the terms prostitution/prostitute and sex work/sex worker are used interchangeably. The terms sex work and sex worker are umbrella terms that

encompass different types of jobs within the sex industry. Nonetheless, in this study, the terms sex worker and sex work represent the consensual transaction of sexual services for monetary compensation, where both parties are present physically. The use of the terms prostitution and prostitute in this research is due to the presence of the terms in the caselaw to be analyzed. The terms prostitution and prostitute are used in the current study interchangeably with sex work and sex worker.

Canadian legislation in the 1700s and partially in the1800s referred to sex workers as vagrants, and terminology that indicated they were 'undesirable' individuals. In legislation the term vagrants changed to prestation/prostitute during the 1800s, and this terminology was present in statutes until 2014 (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). The term prostitute has been stigmatized since the late 1700s, due to the perception that women who engaged in such activities were not pure (Backhouse, 1985; Hallgrímsdóttir, Phillips, Benoit, & Walby, 2008; Weisberg & Steinberg, 1996). The stigmatization is also promoted by ideas that depict prostitution as inherently violent and as an oppressive tool towards women (Weisberg & Steinberg, 1996). In addition, the moralization of prostitution contributes to stigmatization and discrimination since the act of prostitution is culturally perceived as an undignified act (Law, 2015; Shaver, 1994).

The terms sex work and sex worker humanize and legitimize jobs of the sex industry. In the 1970s there was an increase of the usage of these terms, which legitimized the transaction of sexual services for monetary compensation (Nussbaum, 1998). Legitimizing sex work entails accepting sex work as viable employment. To better understand this concept, Nussbaum (1998) explains how different types of jobs demand

the use of different body parts. In this sense, the body of the sex worker is the tool of work (Nussbaum, 1998). Therefore, sex workers use parts of their bodies to perform their job tasks (sexual services) (Nussbaum, 1998). In other words, sex work should be addressed and treated as any type of employment. Furthermore, the use of the term sex work steps away from the view of prostitution as inherently oppressive and advocates for voluntary involvement in the sex industry. There are accounts of sex workers who voluntarily exchanged sexual services for money since the Victorian era (Walkowitz, 1982). Shaver (2005, 1994) advocates for the term sex work and has demonstrated the possibility and the methodology to carry out research that overcomes and challenges unethical and exploitative studies. Shaver's (1994) work offers insights into the reason why sex work has not been properly examined, which entails overt and covert moralization to regulate prostitution throughout time. Given the approach of pro-prostitution scholarship, sex work and sex worker are used when speaking about pro-prostitution scholarship. Nevertheless, there are instances when the terms prostitution and prostitute are used when speaking about scholarships that are not pro-prostitution or because the scholarship itself uses the stated terms. When analyzing the caselaw, the terms prostitution and prostitute are used.

Chapter Outline

Chapter One is the introduction of this study, which touches on the treatment of sex workers as not equal to their women counterparts in Canada. The Chapter introduces discourse and its characteristic to change over time. The Chapter provides the research question, its relevancy and a note on the terminology that is used throughout the study.

In Chapter Two, I start by providing scholarship that examines prostitution discourse within legal documents. I follow by highlighting major changes in Canadian prostitution legislation, to provide the legislature's context for prostitution discourse. In the literature review, I explore a range of feminist theories to show the diversity of existing prostitution discourses, which incorporate perspectives on consent and exploitation in relation to sex work. I finish the chapter by exploring the range of available legal models to further uncover language that frame prostitution discourse as well as the impact of each on sex workers.

In Chapter Three, I discuss my theoretical approach. The epistemological assumptions that guide my research consist of Foucauldian derived concepts such as governmentality and anti-carceral feminism. I discuss sexuality in relation to power and discourse, and the control of sexuality through discourse. I also discuss the concept of governmentality, governance feminism, carceral feminism, concluding on the appropriateness of anti-carceral feminism as the main overarching theoretical framework.

In Chapter Four, I discuss the methodological approach of my study. I explain that the data, which are court decisions, are subjected to a discourse analysis. The methodological approach consists of a combination of Fairclough's (2013) three stage model, Wood and Kroger's (2000) advice on conducting a discourse analysis and the use of Foucault's (1972,1978a) ideas on discourse formation and the power of words. I also include the steps taken for the data collection, data analysis, refinement of data to be included in the data analysis, and data organization.

In Chapter Five, I discuss the socio-political context within which the changes in legislation (Bill C-36) occurred in 2014. I explore issues surrounding sex work that led

up to the *Canada v Bedford* (2010 ONSC 4264) application and the demands of the *Bedford* decision applicants. I provide historical background for the three provisions that were challenged by the *Bedford* applicants. I include a brief exposition of discourses found in the *Bedford* decision. I outline the outcomes of implementing Bill C-36 and the issues sex workers faced after the stated implementation.

In Chapter Six, I discuss the first part of the findings and analysis. I divided the findings and analysis into two chapters, discursive constructions and discursive practices. In Chapter Six I address the discursive constructions I found in the caselaw. Discursive constructions refer to the abstract, conceptual and ideological boundaries, and underpinnings of language I found in the court decisions. The chapter is divided into three major sets of findings: the definition of prostitution, moralization of prostitution and the conflation of sex trafficking with sex work.

In Chapter Seven, I discuss the second part of the findings and analysis. The discursive practices found in the court decisions comprise Chapter Seven. Discursive practices denote the material reality within which stakeholders of the sex industry and the sex industry are spoken in. The chapter is divided into two major findings which are: sex worker protection strategies and judicial approaches to the sex trafficking model. I focus on the range of sex trafficking within different discursive practices in the judiciary as well as the legislative branch.

In Chapter Eight, I discuss major findings and their theoretical implications. I use governmentality concepts as well as anti-carceral feminism to explain the paternalistic and negative effect of the punitive system on sex workers. I include a discussion about

positive discourses found in the caselaw as well as limitations and contribution to the scholarship. I conclude with a short reflection of the study.

II. LITERATURE REVIEW

This chapter has five main aims. First, I aim to provide scholarship that uses different elements from the legislative branch to study prostitution discourse and the relevance of common law in sex work discourse. Second, I am to provide a brief history of the changes in Canadian prostitution legislation. This locates sex work in a legislative historical context. Third, I am to explore various discourses that frame prostitution, which uncovers common discourses associated with sex work. Fourth, I am to identify different feminist theories of sexuality and their range of reasons for the commodification of sexual services. Fifth, I am to introduce legal models for approaching sex work used in the legislature and courts.

Prostitution Discourse in the Criminal Justice System

Academic literature uses a variety of legal documents to study prostitution discourse, as well as, study prostitution discourse to improve legal approaches to sex work. For example, Law (2015) uses Foucauldian archeology to uncover discourses that affect the regulation of erotic dancers. Law's (2015) study explores the moralization of stripping discourse, which affected regulative practices from a liberal feminist perspective. This study revealed the difficulty to identify erotic dancing as a legitimate form of employment (Law, 2015). Other studies have analyzed legislative Bills through discourse analysis (Niemi, 2010). Niemi's (2010) study uncovers discourse in legal reform to explore the use of commercial discourse in Norway and Sweden (Niemi, 2010). Niemi (2010) found that commercial language has become normalized through everyday speech, which also implies voluntary participation in the sex industry, thus, absence of oppression against workers.

Scholars have explored dominant discourses prior to legislation formation through the use of discourse analysis (Kantola & Squires, 2004). Kantola and Squires (2004) expose the shortcomings of the legislative branch when creating laws that instead of decriminalizing prostitution, aim to eradicate the visibility of street prostitution (Kantola & Squires, 2004). Other studies focus on important dualities sex workers are subjected to, such as risk and risky, when understanding the concept of community safety (Wright, Heynen, & Van der Meulen 2015). In Wright and colleagues' (2015) study ambiguity in Canadian legislation led the community to construct normative derived responses to sex work, which in turn produced unsafe and insecure conditions for sex workers to live and work in (Wright et al., 2015).

Clearly, the presence of prostitution discourse in the criminal justice system has been previously studied (Kantola & Squire, 2004; Niemi, 2010; Wright et al, 2015). The change in Canadian sex work law in 2014 with Bill C-36 has been studied in terms of the cause and outcome (Lawrence, 2015) and public perception of probable law reform (Lowman & Louie, 2012). Creating literature that explores prostitution discourse changes in common law in Canada, given the change in law in 2014 and 2019, would complement current scholarship. Prior to studying the presence of prostitution discourse in courts, it is necessary to consider the discursive models surrounding prostitution in Canadian statutory and common law. Courtrooms provide a setting through which an array of sex industry stakeholders passes. Furthermore, comprehending the construction and the change in prostitution discourse helps frame the social lens through which Canadian common law approaches cases involving prostitution.

History of Canadian Prostitution Legislation

Early Canadian prostitution law targeted street prostitution to improve the aesthetic of the streets. Consequently, in the 1700s, prostitution legislation focused on keeping public places free of streetwalkers (Hallgrímsdóttir et al., 2008). Prostitutes were considered vagrants, that is, undesirable individuals. In 1864, the United Kingdom passed *The Contagious Disease Act* which was also enacted in Canada (Backhouse, 1985). The act was an attempt at decreasing venereal diseases in soldiers, who allegedly were the individuals purchasing sexual services (Backhouse, 1985). The act was amended in 1866 to regulate prostitution, which led to regulation of bawdy houses by obliging sex workers to invasive venereal disease checks (Backhouse, 1985). As a result of the *Contagious Disease Act,* unmarried women were harassed and stigmatized (Backhouse, 1985). In 1885, *The Criminal Law Amendment Act* or *An Act To Make Further Provision For The Protection Of Women And Girls, The Suppression Of Brothels, And Other Purposes* abolished the regulation of prostitution, but criminalized procuring women for the purpose of prostitution. All the acts mentioned were enacted in the United Kingdom, but they were also implemented in Canada.

In the 19th century there was dominant notion regarding sex work. Street workers were thought to have deviant sexual behaviour, thus, deviant sexuality (O'Connell, 1988). Towards the end of the Victorian era in 1892 the laws surrounding prostitution were consolidated into the first Canadian *Criminal Code* (Backhouse, 1985). The consolidation integrated provisions that criminalized keeping a bawdy house for the purposes of prostitution and being a prostitute, which was defined as s. 175(1)(c) a person who engages in prostitution as a person who wanders outside their home and does not

give a satisfactory account of herself, this provision was also considered as “vag c” (Criminal Code, 1892).

Throughout the 20th century prostitution statutes underwent various amendments. In the early 1900s the procuring provision was amended to include procuring female immigrants or foreigners, as well as, the criminalization of males living with prostitutes. Living with a prostitute was criminalized under the provision s. 212(1)(j) living on the avails of prostitution (Criminal Code, 1892). Further amendments denoted that homes could have been deemed as bawdy houses and women who habitually used their property to carry out such acts could be convicted for the offence s. 210 keeping a bawdy house. In 1947, knowingly transporting women to a bawdy house became illegal (Backhouse, 1985). In 1972, s. 175(1)(c) was repealed and replaced by s. 195(1) every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction. In 1983 there was an amendment made to the definition of prostitution s. 197(1) which clarified that males could engage in prostitution as well as females (O’Connell, 1988). In 1985, the provision s. 195(1) was repealed and it was rewritten to s. 213 it is an offence to communicate in a public place for the purposes of prostitution in Bill C-49 (O’Connell, 1988).

In 1990, the Standing Committee on Justice reported that s. 213 did not decrease the visibility of street sex workers because they were displaced to other locations (Protection of Communities and Exploitation Act, S.C. 2014, c. 25, section 1.3.2). In 1992, The Federal Provincial Territorial Working Group on Prostitution recommended that the government review their social programs to ensure the needs of sex workers were met (Protection of Communities and Exploitation Act, S.C. 2014, c. 25, section 1.3.3).

In 2006, the Subcommittee on Solicitation Laws reported the negative effects of criminalization for sex workers (Protection of Communities and Exploitation Act, S.C. 2014, c. 25, section 1.3.4). All of these committees, working groups and subcommittees were not able to provide a law reform but expressed the concern for the safety and lack of services provided to sex workers. The problem of criminalizing prostitution is that it exacerbates the dangers sex workers face. The pro-prostitution literature reflects the latter idea, this is also echoed in Canadian common law, which will be addressed in Chapter V.

Overall, Canadian prostitution legislation has changed over time. The amendments made in 2014, which will be discussed in depth in Chapter V, and the report of the Subcommittee on Solicitation Laws target sex workers as individuals who are oppressed and coerced. Referring to sex workers as inherently oppressed individuals is not representative of all the individuals involved in the sex industry (*Bedford v. Canada*, 2010 ONSC 4264). As seen above, exploitation discourse is a dominant language in prostitution discourse but there are other discourses that shape it.

Sex Work Discourses

Sex work legislation contributes to sex work discourse, this includes sex work discourse used in the criminal justice system and sex work discourse used by the general population. Therefore, policy makers through legislation contribute to the construction and practice of sex work discourse. Sex work discourse, whether constructed or practiced in government carries underlying ideas and perceptions about sex work. Kantola and Squires (2004) emphasized the importance of sex work discourse when legislative reform occurs, since such discourse permeates to the general public. Literature addresses different existent discourses surrounding sex work.

There are several discourses that frame discussions of sex work, which ultimately shape and shift legislative and regulatory frameworks. These include: moral order or morality, public nuisance, victim or threat to the community and sex trafficking.

Moral Order or Morality.

Morality or moral order are the most significant discourses that frame discussions and thoughts about sex work. This is in part due to the view that laws as codes of morality. Therefore, when legislation addresses sex work it entails moral rules imposed on the general population (Bruckert & Dufresne, 2002; Kantola & Squires, 2004; Law, 2015). The previous idea frames sex work as an activity in which the moral values of the person who engages in sex work are questionable. Criminalization of sex work attributes a negative connotation to the engagement in the sex industry (Bruckert & Dufresne, 2002; Kantola & Squires, 2004; Law, 2015). For example, Law (2015) argues that in the late 1990s the Supreme Court of Canada (SCC) expressed how touching between an erotic dancer and the client/patron was an indecent act that lacked dignity. Describing sex work as an 'indecent' act as well as an act that 'lacked dignity' are manners of moralizing sex work discourse. Furthermore, the criminalization of sex work also contributes to the perception of sex work as deviant.

Engaging in sex work is rendered deviant, likely to the result of its criminalization. Laws serve not only to deem what is moral and immoral, but exist to shape appropriate and inappropriate behaviour. Behaviours that are inappropriate are deemed illegal. In the earlier example of the exotic dancer, the SCC commented that the dancer, due to her engagement in erotic dancing, was predisposed to act in an anti-social manner (Law, 2015). Morality discourse represents the association of sex work with an

abnormal activity. Furthermore, there are moral debates in the sex industry that uncover a classification system of the sex industry.

Morality discourse affects even stakeholders involved in the sex industry. For instance, dancers that provide lap dances are deemed “dirty girls”, while dancers that do not provide lap dancers are referred to as “good girls” (Law, 2015, p. 36). Furthermore, some dancers do not conduct lap dances because they equate the activity to prostitution (Law, 2015). The perception of lap dancers as ‘dirty’ echoes the indecency of prostitution; furthermore, it also conveys the inadequacy of sexuality outside of the home sphere (Foucault, 1978a). Physical contact for the exchange of money is seen as a morally wrong, deviant and undesirable act (Law, 2015).

On the other hand, morality discourse establishes acceptable women's sexuality and purity. In the 19th century multiple sexual encounters were equated to impurity; therefore, women prostitutes were seen as impure individuals with a lesser value (Backhouse, 1985; Hallgrímsdóttir et al., 2008). A woman’s virtuousness was her virginity, therefore engaging in premarital sexual activity was morally wrong. Even though this was a belief from the 19th century, it has been perpetuated throughout the years as one of the reasons sex work is an unacceptable behaviour. Another contributor to the morality discourse is religion (Kantola & Squires, 2004). The concept of female purity is echoed in religious discourse, more specifically in Judeo-Christian beliefs, where women must go into marriage ‘pure’ (Brundage, 2009). Such purity is attained by remaining celibate prior to marriage. This contribution to the morality discourse perpetuates the idea that sex should only be kept within marriage, therefore engaging in

sex work goes against social convention. Consequently, sex work has been stigmatized, since it is viewed as morally wrong and inappropriate.

Public Nuisance.

Similar to morality discourse, discourse associating sex work with a public nuisance is a dominant discourse in literature. Common nuisance is defined as "an unlawful act or fails to discharge a legal duty and thereby endangers the lives, safety, health property or comfort of the public" (Criminal Code, 1985, section 180(2)(a)). Nuisance can also be defined as "an unlawful act or fails to discharge a legal duty and thereby obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada" (Criminal Code, 1985, section 180(2)(b)). The perception of sex work as a public nuisance derived from the wish to free public places from street workers (Backhouse, 1985; O'Connell, 1988). The public nuisance discourse has been shaped by discourses used by prime minister candidates, parliamentary debates, and overall prostitution discourses in the criminal justice system. Discourses used by the three arms of government that shape public nuisance include the good and respectable citizen versus the others, unscrupulous sellers and buyers and overall the everlasting debate of public order versus private freedom (Outshoorn, 2004).

In 1985, the Fraser Committee released a report that could combat the public nuisance of prostitution (Outshoorn, 2004). The changes proposed included removing prostitution provisions that criminalized organized prostitution activities (Outshoorn, 2004). The removal of such provision from the Criminal Code would promote public order by providing more private freedom. On the other hand, shortly after the report was released, the Conservative government released Bill C-49, which included stricter rules

surrounding public communication for the purpose of prostitution (Outshoorn, 2004). Clearly, the desire of the government to keep public order was greater than to provide private freedom.

The stricter rules on communication for the purpose of prostitution were implemented because sex work was perceived as a public nuisance. Brock (as cited in Outshoorn, 2004) reported that associations, police officers and mayors stated that street prostitution brought a "decline in property values, an increase in traffic problems, harassment of residents and harm to 'legitimate' businesses in the area" (p. 86). Prostitution was perceived as a disruption of a well-balanced society. Moreover, as seen in the quote above, prostitution was not perceived as a viable job, since it was compared to *legitimate* businesses. The public nuisance discourse obstructs prostitution from being perceived as an industry, while constructing the values of a *good* citizen.

Outshoorn (2004) argues that parliamentary debates also promoted discourses that *othered* prostitutes and other sex industry stakeholders. For example, there was a negative effect of street prostitution on "respectable and law-abiding citizens" (Outshoorn, 2004, p. 70). The construction of citizens that do not engage in prostitution as respectable and law abiding, establishes the deviance of sex industry stakeholders. Furthermore, the heavy use of morality to validate the criminalization of prostitution allows for the use of language such as 'unscrupulous' to refer to pimps or sex workers (Outshoorn, 2004).

The moralization of sex wok shapes prostitution as an unacceptable activity, which entails that any visibility of prostitution in public spaces is a representation of unacceptable behaviour (Law, 2015). As mentioned earlier, sex work as a public nuisance derives from the perception that sex work is not a job, which hinders sex work from

obtaining a labour discourse (Law, 2015). Sexuality is implicit in sex work discourse. Street prostitution as a public nuisance is a way to say that sex is not to be showcased in the streets, and should not be used for financial gains. In the United Kingdom, one of the most dominant discourses around the early 2000s was public nuisance discourse, due to public discontent with the visibility of curb-crawling (Kantola & Squires, 2004). Later on, the Parliament received pressure on behalf of the public to decrease or abolish curb-crawling (Kantola & Squires, 2004).

Framing sex work as a public nuisance has a negative impact on sex workers. When the target of legislation is to abolish or decrease the visibility of sex work in the public eye, it pushes sex workers to perform their jobs to remote areas where they are more vulnerable to violence and assault (Anderson, 2002; Campbell, 2015; Craig, 2011; Krüsi et al., 2014; Miller & Schwartz, 1995). Sex work discourse as a public nuisance creates discrimination against sex workers by stigmatizing sex work (Kantola & Squires, 2004; O'Connell Davidson, 2014). Consequently, morality is deeply ingrained in notions of prostitution as a public nuisance, which perpetuates the stigmatization and discrimination of sex workers.

Victim or Threat to the Community.

A duality found in literature is the perception of the sex worker as either an innocent victim or a threat to the community. This debate derives from different perspectives on the role of consent when engaging in prostitution. The use of the victim discourse is based on the belief that no one willingly would engage in such practices. Therefore, sex workers must be coerced and oppressed into the sex industry (Niemi,

2010). In this sense, the sex worker is viewed as an individual who is 'at risk', a vulnerable victim of sexual exploitation (Farley, 2003, 2004, 2005; Poulin, 2003).

On the other hand, the idea that a sex worker is a threat to the community implies the sex worker is not a victim. As mentioned earlier, framing sex work as public nuisance implies that the sex worker is a threat to the community given the discussion of morality. This perspective recognizes the autonomy of the sex worker because it is established that the person voluntarily engaged in prostitution. Yet, the sex worker is engaging in an activity that is culturally regarded as lacking morals (Outshoorn, 2004). The sex worker is *othered* since their actions are seen as deviant and do not comply with normative structures (Outshoorn, 2004; Bruckert & Hannem, 2013; Wright et al., 2015). For example, in Ontario the early 2000s was a time when strip clubs were perceived as harmful to neighborhoods and their residents (Law, 2015). Law (2015) reports that lap dancing debuted in the 1990s which "introduced touching between dancers and patrons, provoking heated debates among industry stakeholders and communities across Ontario" (p. 32). Consequently, bylaws were created to prohibit dancer- patron touching, restrict owner's ability to be licensed and restrict the number of strip-clubs (Law, 2015). In the early 2000s, community groups associated strip clubs with sex trafficking and a decrease in property values, therefore an increase in crime in the area (Law, 2015). Sex workers as a threat to the community creates resistance and perpetuates otherness.

The resistance of community groups to sex work isolates sex workers by excluding them and not integrating them (Wright et al., 2015). Socially out-casting and resisting to integrate sex workers to the community creates inequality (Campbell, 2015) and perpetuates discourses of 'good' and 'respectable' citizens. The discrimination made

by differentiating respectable citizens from 'others' stigmatizes sex workers (Campbell, 2015). Moreover, the desire to 'clean' communal areas of prostitution (Kantola & Squires, 2004), further perpetuates the notion of sex workers as inferior citizens. Consequently, deeming their sexual behaviour as different from social convention established since the 1800s. Marques (2010) reports that prostitutes have been perceived as "the epitome of the incorrigible woman and sexual villain" (p. 323). The illustration of the sex worker as threat to community or a risky individual also leads to responsibilizing them for many social ills.

Community safety is a topic addressed in literature as an urgent request imposed by the general population on legislators (Backhouse, 1985; Kantola & Squires, 2004; Law, 2015). The use of the language community safety in conjunction to prostitution incorrectly depicts sex work as an inherently dangerous act. Wright et al (2015) comment that Bill C-36 made it seem that community safety only exists in the absence of sex work, without any other contributor to danger of the community. Consequently, the language of the sex worker as a threat to society holds responsible the sex worker for their own safety and the safety of the community, unlike the language of innocent victim (Kantola & Squires, 2004).

Sex Trafficking.

The term 'traffic' predated the use of the term 'sex trafficking'. In the 1900s, the term traffic was used to **"**refer to movement of persons for immoral purposes, e g, prostitution" (Howard & Lalani as cited in George, Vindhya, & Ray, 2010, p.65). Pearson (as cited in George et al., 2010) reports that in the 1970s trafficking became more encompassing of other types of exploitation. Trafficking refers to the exploitation

of human labor, as much as it can refer to the exploitation of sex (Barnhart, 2009), yet in the public minds, trafficking is always imagined as related to solely sex. The definition of sex trafficking must differ from labor trafficking.

Sex trafficking is defined as egregious actions towards a person, constituting of nonconsensual sex and a violation of rights (Barnhart, 2009; Shelley, 2003). Exploitation and harm are defining features of this type of trafficking, but not exclusive to it (Zimmerman, Hossain, & Watts, 2011). Weitzer (2005a) defines sex trafficking as the use of "force, fraud or deception to procure, transport, habours and sell persons, within and between nations for purposes of prostitution" (p.4). Zimmerman et al. (2011) reports that individuals who undergo sex trafficking are likely to experience physical violence, sexual abuse, threats, and reproductive health risks. Therefore, the language used in literature is 'traffickers' and 'victims'. Barnhart (2009) compares the different strains victims undergo when experiencing diverse types of trafficking.

Barhart (2009) states that victims of sex trafficking are believed to undergo a greater strain than victims of other types of trafficking. This is due to the violation of "a woman's bodily integrity" (Barhart, 2009, p.92). However, Barhart (2009) reports that victims of other types of trafficking have similar psychological trauma to victims to sex trafficking. Barnhart (2009) explains this finding by stating that both types of victim lose the ability to dictate over their own bodies. Regardless, sex trafficking is considered "more morally repugnant" than other types of trafficking (Branhart, 2009). Branhart (2009) justifies this by reasoning that the activities related to the commercialization of sexual services are illegal, thus, already considered deviant. Branhart (2009) introduces

the conflation of sex work to sex trafficking due to stereotypical victimization of women and moralization of womens' sexuality.

Sex work is continuously conflated with sex trafficking. This is in part due to the moralization of commercialized sex. Therefore, the idea of sex work or sex trafficking is automatically perceived as equally immoral. The most common reason why sex work is conflated to sex trafficking is due to generalizations regarding sex work and sex workers' conditions. Weitzer (2005a) critiques feminist scholars Andrea Dworkin, Catherine MacKinnon and Kathleen Barry for creating feminist theories that are extremist, absolutist and doctrinaire for the conflations of the terms. As I explore in the next section, these scholars take a radical feminist approach to prostitution. Weitzer (2005a) emphasizes that these scholars perpetuated narratives that stigmatizes sex work. Weitzer (2005a) reveals that the United States' State Department in 2004 in alliance with feminist organizations with radical beliefs created websites that treated sex work like sex trafficking, an *issue* to be *solved*. Therefore, part of the conflation of the terms is due to opposite ideologies that are anti-prostitution and pro-prostitution.

Scholars explore the major differences between anti-prostitution frameworks and pro-prostitution frameworks (Barnhart, 2009; George et al.,2010; Weitzer, 2005a). Pro-prostitution approaches usually view sex work as work, sex workers as workers, and sex work as a voluntary activity (Barnhart, 2009; George et al., 2010; Weitzer, 2005a). Above all, pro-sex work approaches believe that in engaging in the sex industry as part of the sex workers' agency, thus it can be empowering for some (Barnhart, 2009; George et al., 2010). On the other hand, anti-prostitution approaches believe the sex industry, thus sex work and sex trafficking are inherently exploitative (Barnhart, 2009; George et al.,

2010; Weitzer, 2005a). Anti-prostitution approaches believe the commodification of sexual services is a form of violence against women, thus, women's oppression (Barnhart, 2009; George et al., 2010; Weitzer, 2005a).

The main issue surrounding the continued conflation of sex work with sex trafficking is the erroneous generalization made about women sex workers. While sex trafficking exists, there are also women who voluntarily participate in the sex industry (Barnhart, 2009; George et al., 2010). Complying with the victim discourse denies the agency and empowerment of engaging in the sex industry (George et al., 2010). The common ground established between the two is that "vulnerabilities and violations of rights characterize the conditions in which women work selling sex" (George et al., 2010, p.67).

Feminist Theories

Similar to existing discourses that frame sex work, there exist diverse feminist theories to explain and understand sex work, or prostitution. Through the use of discourse, feminist theories provide reasons individuals engage in sex work, explain relations between stakeholders of the sex industry, and establish the relationship between sex workers and society. A central debate in feminist literature is whether the engagement in the sex industry is voluntary or forceful. This division creates many feminist stances which span between, pro-prostitution and anti-prostitution (Durham, 2015), and each with diverse perceptions on sex work, thus diverse legal approaches (Weisberg & Steinberg, 1996).

Radical Feminism.

In the book *Female Sexual Slavery*, Barry (1984) proposes that male sexual expectation reduce women to their sexual utility; which leads to sexual violence. This dominant dynamic of males over women is reinforced through the existence of prostitution (Barry, 1984). Prostitution as female sexual slavery is the main tenet of radical feminism (Barry, 1984;1996). Echoing Barry's (1996, 1984) work, Mackinnon (1993) states that prostitution is "the denial of women's humanity" (p.13). Mackinnon (1993) establishes that the humanity of women is denied in both social and legal spheres; the social sphere normalizes the subjectification of women bodies to "cruel and brutal treatment" (p.13). On the other hand, the legal sphere allows such mistreatment to be perpetuated by criminalizing women and allowing male customers to have no legal repercussions (Mackinnon, 1993). Clearly, the commodification of sexual services is problematic to radical feminists.

Radical feminist theory frames prostitution as oppressive and coercive (Weisberg & Steinberg, 1996). Prostitution is seen as sexual abuse and overall violent, especially towards women, where the perpetrators are men (Barry, 1996,1984; Mackinnon, 1993; Monto, 2004; Niemi, 2010; Sullivan, 2007). Such literature heavily uses the term victim to refer to sex workers, since they are seen as victims of rape (Barry, 1996,1984; Mackinnon, 1993). Protection discourse is a common theme when this framework is used in legislation formation (Niemi, 2010). This literature does not use the language 'sex work' and 'sex worker', since this commercial language neutralizes concepts likes trafficking, which radical feminists believe is the underlying reality for all sex workers (Barry, 1996,1984). From their perspective prostitution is inherently oppressive (Niemi, 2010).

Radical feminists believe prostitution should be eradicated due to its inherent oppressive nature (Dempsey, 2010; Gerassi, 2015). Prostitution can be abolished through the criminalization of purchasing sexual services, since it is believed that the male client or customer takes advantage of women (Gerassi, 2015; Weisberg & Steinberg, 1996). Such an approach sees prostitution as degrading and equal to sex trafficking due to its apparent violent and oppressive nature (Barry, 1996, 1984; Gerassi, 2015; Niemi, 2010; Weisberg & Steinberg, 1996). Furthermore, radical feminists uncover the neglect of women experiences (Mackinnon, 1993) and the notion that "all heterosexual sex [is] coercive" (Kotiswaran, 2018, p. 86).

Socialist Feminism.

Socialist feminists believe that women are oppressed through social and psychological means (Weisberg & Steinberg, 1996). Pateman (1999) clarifies that women have control over their bodies through the creation of sexual contracts, therefore, they are able to choose to engage in prostitution. Yet, for socialist feminists, prostitution is problematized since capitalism enables the demand for sexual services (Wedum, 2014). Prostitution is problematic because the commodification of sexual services is an unacceptable act, and because the demand for such services is imposed by men (Pateman, 1999; Wedum, 2014). Even though women have the ability to decide to participate in prostitution, the exchange of sexual services for money is deemed a degradable career path (Weisberg & Steinberg, 1996).

Pateman (1999) blames male citizens of the capitalist society and poses the question "why men demand that women's bodies are sold as commodities in the capitalist market?" (p. 56). Pateman's (1999) question leads to the answer of "prostitution is part of

the exercise of the law of male sex right, one of the ways in which men are ensured access to women's bodies" (p. 56). Socialist feminists are preoccupied with the *right* of men to *access women bodies;* The latter idea entails greater social and psychological issues and ideologies of males inherent of the male-female relationship dynamic. Socialist feminism frames prostitution as the outcome of gender inequality.

Gender inequality is enhanced when women form part of the capitalist society. The professional opportunities available for men are not consistent with the opportunities women have (Wedum, 2014). As a result, socialist feminist literature refers to female prostitutes as 'victims of the system' (Weisberg & Steinberg, 1996). Socialist feminists believe in social reform as part of solving the 'prostitution issue' (Wedum, 2014; Weisberg & Steinberg, 1996). The eradication of the capitalist economic system and a social reform will restructure society to financially benefit women (Wedum, 2014; Weisberg & Steinberg, 1996). Furthermore, prostitution should be criminalized (Wedum, 2014; Weisberg & Steinberg, 1996).

Marxist Feminism.

Marxist feminism centers the oppression of women through class distinctions, corruption of wage labour, and capitalism (Weisberg & Steinberg, 1996). Engels (1972) establishes that men search for the control of women's labour and sexual faculties. In the late 1900s, women's labour as well as their sexual faculties were exploited through capitalism and the institutionalization of the nuclear family (Engels, 1972). Thus, the power of men over such institutions delineates their control over women's bodies (Engels, 1972). Therefore, Marxist feminism refers to the existence of prostitution as the

oppression of women through the economic dependence on men (Gerassi, 2015; Weisberg & Steinberg, 1996).

Engels (1972) uncovers discourses of female sexual morality, virginity, and sexual purity as the discursive practices that led women into submissive roles within the marriage sphere. Therefore, for women to engage in prostitution is to disrupt their femininity, which is partly shaped by their untouched sexuality (Gerassi, 2015). This theory proposes that the capitalist system oppresses women, which facilitates the control of female sexuality and sexual energy by men (Gerassi, 2015). Men profit off women by controlling their work (Gerassi, 2015). Prostitution is perceived as an activity that degrades women's dignities (Weisberg & Steinberg, 1996). Patriarchal control of private property also contributes to the oppression of women into prostitution (Engels, 1972). Due to the male control of private property, this limits women's access to finances, making them dependent on their male counterparts.

The literature uses discourse such as 'victim of the economic system' to refer to sex workers (Weisberg & Steinberg, 1996). The economic system as the oppressor implies that there is no voluntary engagement in the sex industry. Abolishing the oppressive capitalist system is the best approach to solve the 'prostitution issue', since its removal guarantees the eradication of the demand for prostitution (Weisberg & Steinberg, 1996). Similar to radical and socialist feminism, Marxist feminism seeks to end prostitution altogether, since it is viewed as a coercive activity.

Existentialist Feminism.

Existentialist feminists uncover the inherent inequality of social freedoms for women (Weisberg & Steinberg, 1996). The inequality is unveiled through the

normalization of women as the second or *other* gender (De Beauvoir, 2012). In *The Second Sex,* De Beauvoir (2012) explains that (a) women are defined in relation to men and (b) due to women reproductive faculties, men have gradually been able to dominate women throughout time. De Beauvoir (2012) clarifies that "it is not women's inferiority that has determined their historical insignificance: it is their historical insignificance that has doomed them to inferiority" (p.184). Yet, the historical insignificance does not inhibit women's freedom. De Beauvoir (2012) contributes to the difference between sex, biologically constructed, and gender, which is socially constructed.

De Beauvoir (2012) demonstrates that effect of the social sphere, which is not to be confused with determinism. Existentialist feminism recognizes the ability of women to engage in activities of their choice, in other words, the existence of their freedom (De Beauvoir, 2012). For example, in terms of prostitution, existentialist feminists accept voluntary engagement of sex workers into the sex industry (Weisberg & Steinberg, 1996). Prostitution can positively affect women by empowering them (Weisberg & Steinberg, 1996). De Beauvoir (2012) describes prostitutes in terms of sexual services contracts.

Unlike the previous feminist theories, women were not coerced nor oppressed into prostitution. De Beauvoir (2012) argues married women and prostitutes share in common that both are bound to contracts where their sexuality is exchanged. The key difference is the duration of the contract, and the number of clients, while married women have one male client, sex workers have multiple male clients (De Beauvoir, 2012). The contract for the married women consists of conjugal duties, while the prostitute fulfills masculine desire (De Beauvoir, 2012). The married woman is "oppressed" (p. 681), yet,

she is “respected as a human person” (p. 681), while the prostitute “does not have the rights of a person” (p. 681). The social sphere affects the formation, thus perception of women, and in the case of this study, the prostitute.

Even though the sex worker is not oppressed nor coerced into prostitution, existentialist feminism is aware of the inequality between males and females (Weisberg & Steinberg, 1996). Prostitutes are viewed as liberated women (De Beauvoir, 2012). This framework views the female prostitute as an entrepreneur, an individual who is able to financially support themselves, and support decriminalization of sex work (Weisberg & Steinberg, 1996).

Post-structuralist Feminism.

Post-structuralist feminists focus on the meaning of experiences grounded in discourse (Gavey, 1989). Discourse plays a great role in all concepts (Gavey, 1989). Post-structural feminists uncover the “binary gender system” from which society is discursively constructed upon (Butler, 1986, p. 47). Butler (1986) explores the “norms of differentiation” to establish from birth the gender category the individual goes into. This establishes that existentialist feminism is aware of the inequality between males and females (Butler, 1986). Yet, such inequality does not restrict women from engaging in sex work.

Butler (1986) studies how gender norms impose limitations on women. Gender norms are oppressive, yet, Butler (1986) explains that gender norms “persist only to the extent that human beings take them up and give them life again and again” (p. 41). Freedom for Butler (1986) is applicable to all women experiences. Therefore, women are not coerced into prostitution; it is a career the individual can engage in (Butler, 1986).

Post-structuralism feminists, like most post-feminists challenge normative systems (Fullagar & Pavlidis, 2018). Post-structuralists accept sex work as a form of labour, through which individuals sustain themselves financially (Fullagar & Pavlidis, 2018). Furthermore, since sex work is a type of labour, it should not be abolished (Weisberg & Steinberg, 1996).

Postmodern Feminism.

Postmodern feminists uncover the gender inequalities perpetuated by the patriarchal norms on which society is built (Fraser, 2017). Postmodernists recognize that the experience of women differs from the experience of their counterparts (Sands & Nuccio, 1992). Therefore, the source of oppression then becomes the inability to identify patriarchal norms imposed on women (Fraser, 2017).

Postmodern feminists use the language of 'prostitution' as well as 'sex work' (Scoular, 2004). This feminist approach establishes that sex work is a voluntary activity. Postmodernists "consider prostitution as neither a subversive sexual practice nor an inherently oppressive one" (Scoular, 2004, p. 348). Postmodernists uncover and challenge the dichotomies in sex work discourse, which are the perception of sex work as either 'good' or 'bad', or the perception of the sex worker as "whore and madonna" (Scoular, 2004, p. 348). Yet, postmodernists recognize the structural barriers sex workers encounter when performing their sexual transactions without coercive or oppressive discourses (Scoular, 2004). Therefore, postmodernists feminists advocate for the decriminalization of prostitution (Weisberg & Steinberg, 1996).

Liberal Feminism.

Similar to the post-structuralists, postmodernists and existentialists, liberal feminists expose the gender inequality of amongst the sexes in the social and legal spheres (Marilley, 1996; Weisberg & Steinberg, 1996). Therefore, liberal feminists seek gender equality and equal rights for women (Marilley, 1996; Weisberg & Steinberg, 1996). Men have greater control over the legal and economic system, which leads to the inequality women experience (Marilley, 1996).

Liberal feminist literature uses 'sex work' discourse, which derives from the belief that sex work is a type of employment (Nussbaum, 1998; Weisberg & Steinberg, 1996). Nussbaum (1998) reinforces that in sex work the body is used as a tool to carry out work tasks. Consequently, sex work engagement is voluntary, and the sex worker is an entrepreneur who seeks financial stability through one of many other options (Nussbaum, 1998; Weisberg & Steinberg, 1996; Wedum, 2014). Literature on liberal feminism addresses consent as a key player for the absence of oppression, coercion and exploitation (Sullivan, 2007). Sex work, like any other job, has difficulties the workers in terms of performance need to overcome (Weisberg & Steinberg, 1996).

Liberal feminists encounter legislative barriers, as I will show in Chapter V, to have their work recognized as legitimate. Legal reform should consider the voices of sex workers, to cater to their employment needs and physical safety (Campbell, 2015; Durham, 2015; Kantola & Squires, 2004; Sampson, 2014; Sullivan, 2007; Wedum, 2014). Sex work is a civil right; therefore, the decriminalization of prostitution is essential to the equality of the sexes (Weisberg & Steinberg, 1996).

Conditional Liberal Feminism.

Similar to liberal feminists, conditional liberal feminists consider sex work as viable employment that can financially sustain women (Weisberg & Steinberg, 1996). The main difference between liberal feminism and conditional feminism are sources of oppression. Conditional liberal feminists make an emphasis on educating women of the realities of the sex industry (Weisberg & Steinberg, 1996; Wedum, 2014). Conditional liberalists recognize the "negative forces at work that result in many women being prostitutes against their will, such as human trafficking and crippling poverty" (Wedum, 2014, p. 25). Therefore, an informed woman may not engage in prostitution. Another key difference between liberalists and conditional liberalists is the approach to sex work in the criminal justice system.

In the legal sphere, conditional liberalists believe sex work qualifies to be decriminalized. Additionally, sex work should be legalized, which entails taxation and regulation of sex work (Wedum, 2014). Wedum (2014) emphasizes that regulation is a system of control, which establishes an "accepted form of prostitution without any concern for what is best for her as an individual worker" (p. 24). Conditional liberalists believe prostitution should not be eradicated; however, it should not be encouraged (Weisberg & Steinberg, 1996).

The different feminist approaches to sex work uncover diverse discourses that shape prostitution. Prominent discourses such as gender inequality, types of oppression, and entrepreneurship reflect the permanence of specific discourses that have shaped prostitution over time. The next section will explore diverse legal models of sex work, which will reiterate themes related to decriminalization

Legal Models of Sex Work

Prohibitionist.

This legal model frames prostitution similarly to radical feminists. The prohibitionist approach derives from the belief that prostitution is degrading and inhuman, thus the engagement in it disrupts the morality of the individual (Anderson, 2002; MacKinnon, 1993). Prostitution is perceived as a public nuisance, especially for middle class citizens (Anderson, 2002). This legal model consists of criminalizing both sellers and buyers of sexual services, making this transaction illegal (Anderson, 2002). A country that has taken a prohibitionist approach is the United States of America (USA).

The implementation of the prohibitionist model in USA, except for the state of Nevada, has led to sex workers' safety issues (Anderson, 2002; Mathieu, 2004). Prostitutes are not able to receive protection against clients who become abusive or violent (Anderson, 2002). The prohibitionist legal approach forces sex workers to work in areas where they become vulnerable to violence and assault (Anderson, 2002; Miller & Schwartz, 1995). The criminalization of prostitution does not benefit sex workers who willingly part take in the sex industry.

Abolitionist.

This legal approach "prefers to see commercial sex as a private affair" (Mathieu, 2004, p.154). The approach allegedly focuses on the sex worker, who voluntarily engages in prostitution, or due to financial need (Mathieu, 2004). While prostitution is legal, soliciting, third party involvement, and organized activities are illegal (Jakobsson & Kotsadam, 2013; Mathieu, 2004); this entails the act of pimping, managing and attending brothels (Jakobsson & Kotsadam, 2013; Mathieu, 2004). Similar to conditional

liberalism, the government does not encourage participation in prostitution, and uses legislation to prevent third party involvement in the sex industry (Mathieu, 2004).

Abolitionist legal approaches view sex work as a morally wrong activity, which endangers family life. Therefore, the prostitute is perceived as "socially maladjusted" (Mathieu, 2004, p. 154). Social workers and policing are strategies used to rehabilitate prostitutes into 'normal' life and target undesirable morally wrong activities (Mathieu, 2004). On the other hand, feminist abolitionists argue that women are oppressed through patriarchal and structural inequality to participate in sex work (Dempsey, 2010).

Neo-abolitionist.

Deriving from the abolitionist approach, neo-abolitionist legal model criminalizes the purchase of sexual services (Jakobsson & Kotsadam, 2013). The neo-abolitionist approach focuses on the prostitute as a victim of sex trafficking; unlike its predecessor, this approach assumes that the prostitute does not engage in the sex industry voluntarily (Jakobsson & Kotsadam, 2013). Since the prostitute is coerced, the aim of the legal approach is to eradicate the demand of sexual services (Jakobsson & Kotsadam, 2011; Jakobsson & Kotsadam, 2013). The approach is also called the *Nordic model*, given its implementation in Sweden, Norway and Iceland (Jakobsson & Kotsadam, 2011; Jakobsson & Kotsadam, 2013).

Skilbrei and Holmström (2011) challenged the international concept of a Nordic regime as an approach to prostitution legislation reform. Sweden implemented the neo-abolitionist approach to change prostitution demands, change perceptions of gender and sexuality (Skilbrei & Holmström, 2011). On the other hand, other countries have debates surrounding the prostitution market, class inequality and globalization (Skilbrei &

Holmström, 2011). Skilbrei and Holmström (2011) uncover that the focus on the sex workers as a continuous target group for social harm reduction perpetuates the discourse of sellers as nonconsenting participants in the sex industry (Skilbrei & Holmström, 2011). Prostitution and the sex industry are equated to sex trafficking due to their apparent violent and oppressive nature (Gerassi, 2015; Niemi, 2010).

Neo-abolitionist approaches to sex work legislation, reduces prostitution to sex trafficking (Vanwesenbeeck, 2017). Similarly to prohibitionist, the approach increases over policing, and pushes sex workers to remote locations making them prone to violence and abuse (Campbell, 2015; Craig, 2011; Krüsi et al., 2014; Vanwesenbeeck, 2017; Ward & Wylie, 2017).

Legalization.

In the 19th century, prostitution was a "health hazard, where women were seen as sources of contamination" (Outshoorn, 2004, p. 7). In an attempt to control the propagation of STDs amongst male soldiers, prostitution became regulated and contained to specific locations and houses (Outshoorn, 2004). Legalization, as mentioned in conditional liberalist feminism, entails the regulation of prostitution through registration of brothels, requiring licenses to practice sex work, taxation and medical testing of prostitutes (Outshoorn, 2004; Wedum, 2014). This legal approach involves the control of prostitution through the government (Outshoorn, 2004; Wedum, 2014).

The legal model of legalization or regulation of prostitution derives from a pro-prostitution framework. As clarified earlier in this chapter, there are many types of feminisms that embrace pro-prostitution ideology. This entails using sex work discourse, instead of prostitution discourse. This preference establishes that sex workers should be

referred to as workers, employees or entrepreneurs (Nussbaum, 1998; Outshoorn, 2004; Wedum, 2014). The *work* sex workers perform should be regulated through legislations and acts that protect workers' safety (Outshoorn, 2004).

Decriminalization.

This legal approach consists on decriminalizing all prostitution legislation that prevents individuals to engage in sex work (Kuo, 2005; Wedum, 2014). This entails all prostitution-related activities, from the advertisement of sexual services, purchasing sexual services, selling sexual services, involvement of third parties or organized activities (Gerassi, 2015). The approach at times is confused with the neo-abolitionist legal approach, which partially decriminalizes the selling of sexual services (Gerassi, 2015). Yet, the goal of the two diverse legal approaches differ.

Neo-abolitionist legislation aims to decrease the demand of sex work by criminalizing the client (Skilbrei & Holmström, 2011). The seller of the sexual services is viewed as a victim of exploitation (Skilbrei & Holmström, 2011). On the other hand, proponents of the decriminalization approach emphasize that the involvement of the punitive system in the regulation or criminalization of sex work, negatively affects sex workers (Kuo, 2005; Taylor, 2018a). Therefore, decriminalization establishes that regulation of the government nor criminal sanctions should form part of sex work (Kuo, 2005). "Decriminalization combined with appropriate social services" needed by sex workers ensure their safety, and the safety of the communities (Kuo, 2005, p.135). Decriminalization steps away from the stigmatization perpetuated by legal and illegal discourses and towards nonpunitive systems (Kuo, 2005). After the decriminalization of

sex work legislation in New Zealand, there was an improvement in sex workers' safety and their human rights (Abel, 2014).

Canadian Legal Approach to Prostitution Legislation

Until 2014, Canada had a quasi- criminalized legal approach to prostitution (Lowman, 2000). Chu and Glass (2013) establish that even though the exchange of sexual services for money was not illegal "virtually every activity required to do this work" was (p. 102). Under the leadership of the Prime Minister Stephen Harper, after November 6 of 2014, Canada implemented the neo-abolitionist approach to prostitution legislation. The Conservative party led by Harper claimed that general public opinion on prostitution was prohibitionist (Lowman & Louie, 2012). This claim was debunked when seven national public opinion polls revealed that a small majority of Canadian citizens believed the decriminalization of prostitution was the most beneficial legal model (Lowman & Louie, 2012). The events that led up to the implementation of the neo-abolitionist legal model will be discussed in Chapter V.

Conclusion

This chapter provided different discourses that frame prostitution, as well as a brief historical background on Canadian legislation. The chapter served to show the different ideologies that construct diverse prostitution frameworks, which serve as a practical tool when uncovering discourses present in common law. In addition, the chapter explored the various manners in which prostitution discourse and different branches of the government intersect. Scholar literature uses different elements from governmental branches to study prostitution discourse, which establishes the pertinency of the aim to study the changes of prostitution discourse in common law. The next

chapter will address the theory used in the current study. The theory comprises Foucauldian principles of governmentality and anti-carceral feminism.

III. THEORETICAL FRAMEWORK

This chapter describes the Foucauldian, anti-carceral feminist framework that grounds my research project. I begin by uncovering the regulation of sex discourse through institutions of power. I introduce governmentality to explain the power dynamic between the state and the population. Given that women are often the envisioned gender of importance in discussions of sex work, I explore governmentality while considering feminist theories, this includes exploring feminist theories that derive from governmentality. Feminist governance is introduced to fill gaps related to gender due to Foucault's inattention to the female experience. I explore heteropatriarchal discourses within carceral feminist theory, which are damaging to sex workers as well as other sex industry stakeholders. I conclude by proposing anti-carceral feminism as the central theoretical framework to analyze prostitution discourse changes in Canadian common law.

The Regulation of Sex Discourse

Foucault (1978a) sought to discover "the way in which sex is 'put into discourse'" (p. 11) by implementing a genealogical analysis. This analysis revealed the complexity of discourse, thus, sex discourse. Foucault (1978b) uncovered that sex discourse encompasses suppressed language, language used, and social conventions attached to sex. Moreover, the genealogical analysis explained in detail the transformative power of discourse.

Foucault's (1978b) analysis revealed "the regime of power-knowledge-pleasure that sustains the discourse on human sexuality" (p. 11). This *regime* was able to exist due to the confinement of sex discourse to institutions such as the church and the state. For

example, in the middle ages to the 17th century people explained in detail their sexual desires and pleasures while in confessionals. The enunciation of sex and sexuality language within the confessionals was due to the perception of such language as illegitimate and sinful. Towards the end of the 18th century the state, through civil law, defined standards of appropriate and inappropriate sexuality. The church and the state can establish norms surrounding sex discourse, which leads to the normalization of norms imposed by stated institutions surrounding sex discourse (Foucault, 1978c). Therefore, institutions such as the government regulate sex discourse as a mechanism of power. Foucault (1978a,1978b, 1978c) establishes that institutions through their power can regulate sex discourse, which ultimately regulates sex.

The regulation of sex and sex discourse is a form of control over individuals, thus control over the population. The regulation of sex discourse is a "technique of power" (Foucault, 1978a, p. 25), meaning that the state uses sex discourse to control the population. This process of control is a third party induced subjectification (Foucault, 1982). The individual also becomes a subject of their own consciousness and self-knowledge (Foucault, 1982). In this sense, the individual subjectifies himself or herself by self- regulating sex discourse through their consciousness and knowledge about sex (Foucault, 1982). Subjectification of the population and self-subjectification of the individual are processes where sex discourses are imposed or internalized to the point that they become normalized. The subjectification of the individual and the population allows them to become governable. The action of governing the population is called governmentality, as will be noted below.

Governmentality

Governmentality encompasses government procedures that subjectify populations (Lemke, 2019). Therefore, governmentality explains the power relation between the government and the population, which is considered the macro level; and the "control of the body", which is the micro level (Macleod & Durrheim, 2002, p.49). In other words, governmentality refers to the governmental management of the population, and the self-management of individuals (McKee, 2009). Governmentality is the art of governing and an analysis that addresses the conduct of conduct (Bevir, 2018; Foucault, 1982; Glenn, 2019; Gordon, 1991; Halley, Kotiswaran, Rebouché, & Shamir, 2018; Lemke, 2001; Mckee, 2009; Moonesirust & Brown, 2019; Rose et al., 2006; Springer, 2012).

Similar to discourse, governmentality is an active practice, which is present in multiple spheres by actively engaging the subject (Gordon, 1991; Lemke, 2001; McKee, 2009). The government is able to govern the individual in diverse spheres. This entails that the conduct of individuals is governed by: themselves, other subjects (the rest of the population), social organizations besides the state, and other inherently social spheres (Bevir, 2018; Glenn, 2019; Larner, 2000; McKee, 2009). The regulation of sex discourse across diverse spheres demonstrates the governability of individuals through discourse.

Individuals become governable through relations of power they cannot control. For example, the regulation of sex and sex discourse was done through the censorship of pleasure. This new norm of confining and experiencing sexuality without pleasure conditioned the individual (Foucault, 1978a). The practice of sex inhibition and its banishment allowed the disciplining of sex to spread amongst the population (Foucault, 1978b). Even though canonical law already moralized sex and sex discourse, the moralization was exacerbated when sex work was criminalized. This introduced

discourses of criminality and deviance to a topic that was already taboo. The criminalization of sex work governs bodies by restricting the context in which sexual activity takes place; the commodification of sexual services, even if defined by Canadian law as partially legal, is linked to an illicit activity. Even though governmentality is dynamic, and explains the control of the state over the human body, the concept does not account for the existence of sex work and the female subject.

Foucault (1978a, 1978b,1978c) investigates sex and sexuality discourse but he does not address the commodification of sexuality. He does not rationalize the existence of sex work, or the experience of the prostitute. Foucault (1978b) addresses the function of brothels from the perspective of the consumer of sexual services, to rid themselves of their sexual desires and level off their sexuality. The experience of the prostitute under the Victorian regime is not discussed, and the commodification of sexual services is not addressed as an event in the genealogy of sexuality. In particular, the discussion of civil law and sex discourse should include sex work and the effect the mechanisms of power had on the discursive practices of sex work and repressed the sex worker. Furthermore, Foucault (1978a, 1978b, 1978c) often uses masculine pronouns when exemplifying the Victorian citizen. This is problematic, since he does not account for the manner in which governance differentially affects the female body.

Foucault does not explore the "implications of his work in gendered terms" (Macleod & Durrheim, 2002, p. 42). His "gender blindness" limits the analysis of the experience of the female subject (Macleod & Durrheim, 2002, p. 42); yet, feminist theorists use the Foucauldian analysis of power to explain the engendered and intersectional within which the female subject experiences power relations (Allen, 2005;

Bartky, 2015). Bartky (2015) explains that disciplinary power renders the female body more compliant than the male body. The female subject is continuously disciplined through power relations, that leads it to engage in self-surveillance as a form of obedience to the patriarchy (Bartky, 2015). Moreover, in the work of Shaver (1994) the topic of sex work is nuanced with morality and descriptors that affect the male and female subject differently. Clearly, governmentality is a resource for feminists to conceive concepts of domination, but a feminist theory is required to account for the female experience.

Post-Governmentality Feminist Theories

In this section I explore the concept of governance feminism and contradictions that render it an inadequate theoretical framework for the current study. Then, I critically explore carceral feminism. While carceral feminism echoes Foucauldian disciplining concepts, it reinforces the use of a damaging punitive system as the best approach to regulate prostitution. Furthermore, carceral feminist scholars agree on the criminalization of sex work, since from their perspective involvement in the sex industry is oppressive and coercive (Musto, 2019; Roy, 2018; Taylor, 2018b). I propose anti-carceral feminism as the main theoretical framework in conjunction with Foucaldian governmentality. Anti-carceral feminism is a theory that explains the detriment of using the punitive system to target injustices.

At the intersection of feminism and governmentality, governance feminism is conceptualized as "every form in which feminists and feminist ideas exert governing will within human affairs'" (Halley et al., 2018, p. ix). The conceptualization of governance feminism takes into consideration that the power of the government expands "beyond the

juridical into the discursive or governmental realm" (Kotiswaran, 2018, p. 77). Governance feminist scholars are aware of the benefits of participating and becoming part of institutions that govern populations (Halley et al., 2018). According to Halley (2018a), governance feminism is inclusive of an array of feminisms; this leads different types of feminists from state institutions to come together to advocate for the same cause.

Governance feminists who are able to penetrate the legal setting are given opportunities to make a positive impact. They involve themselves in legislative processes such as policy making, and even become experts in courtrooms (Kotiswaran, 2018). Overall, governance feminists uncover their arduous involvement in state institutions to advocate for issues relevant to women and vulnerable populations. However, governance feminists face barriers while working with or participating in state institutions.

Feminists inside the state and even non-profit organizations that participate in the state face the preservationist power of patriarchy due to institutional inequality, which perpetuates structural disadvantage (Halley, 2018b). Furthermore, Halley (2018c) emphasizes that legislation from United States of America is based on radical feminist ideology. Therefore, when governance feminists abide by legislation, they accept and comply with radical or dominance feminist ideology. Governance feminism has a contradictory ideology regarding the experience of the female subject.

Roy (2018) explains that feminist governance is contradictory "since the subject is supposed to act freely but is prevented so by external constraints" (p.299). This is due to "the punitive and paternalistic character of feminist governmentality" (Roy, 2018, p.299). Foucault (2012) explores the topic of prison as an outcome of a system of power

that punishes and disciplines its subjects. Constant surveillance from the disciplinary institution produces “docile bodies” (Foucault, 2012, p.138).

The necessity for punitive responses to the ungovernable led to the development of a carceral system (Foucault, 2012). Therefore, incarceration is the solution to maintaining the subjectification of the population, and also, the self-subjectification of the individual (Foucault, 2012). Consequently, incarceration is a technique of power, implemented by the state (Roy, 2018). Carceral feminists believe incarceration is a proper disciplining tool, an appropriate punitive instrument (Roy, 2018). Carceral feminists engage in governance feminism since they advocate for the penal system.

Bernstein (2007) coined the term *carceral feminism*. Carceral feminists address “feminism’s reliance on statist tools of policing, prosecution and incarceration as punishment and deterrence in order to protect women from (gender-based) violence and to further women’s human rights” (Roy, 2018, p.283). Carceral feminists propose “technologies of empowerment that are aimed at liberating women from violence, harm and deprivation are at once technologies of control, surveillance and disciplining” (Roy, 2018, p.285). Carceral feminists addresses sex work by establishing legislation that criminalizes sexual acts (Musto, 2019; Roy, 2018; Taylor, 2018b). There are two main issues at the intersection of sex work and carceral feminism. First, the perception of sex work as unidimensional, thus labeling it as a coercive and oppressive practice. Second, the negative effect of implementing sex crime policies on sex workers.

The perception of sex work as a solely coercive and oppressive activity leads to the immediate link of the term to sex trafficking. Sex trafficking is the sexual exploitation of a person against their will and to the benefit of others (George et al., 2010) This

negates the possibility of the practice of voluntary sex work, and consequently the conflation of conceptually different terms. Carceral feminism literature touches on sex work, addresses it as sex trafficking and treats sex crimes as criminalized acts due to their violent nature towards women (Engle, 2017; Kapur & Cossman, 2018; Roy, 2018; Ward & Wylie, 2017). Moreover, carceral feminists emphasizes practices that perpetuate sexual violence against women, and the carceral punishment of perpetrators of the stated violence (Bernstein, 2007; Engle, 2017; Kapur & Cossman, 2018; Roy, 2018; Ward & Wylie, 2017). Carceral feminists do not distinguish sex trafficking legislation from prostitution legislation; carceral feminists address both as sex or sexual crimes. Kapur and Cossman (2018) emphasize that studying sex crimes entails studying sexuality in the context of power, identity and practice. Kapur and Cossman (2018) recognize that the focus on sexuality "brings attention to the inappropriate and damaging ways in which consensual sexual conduct continues to be criminalized, and its oppressive impact on the lives of women and sexual minorities" (p. 270).

The implementation of sexual crime legislation has negative effects on sex workers as well as for non-sex workers. For example, Taylor (2018a) addresses negative outcomes for sex workers:

> "carceral responses do not eradicate sex work but merely drive it indoors, thus facilitating the gentrification of urban neighborhoods that were once red-light districts. Sex workers who are targeted by punitive strategies are those who remain on the streets, who are the poorest, most vulnerable and usually racialized sex workers engaged in the most dangerous forms of survival sex work. Harassed by the police, these sex workers are more likely to get into cars or go into dark alleys with strangers to evade arrest, increasing their vulnerability to assault, unsafe sex, and murder" (p. 35).

In addition to the negative outcomes sex workers face, the carceral state does not "empower the women who are the primary objects of concern, but strengthen the state's

regulatory apparatus and intensify the sexual surveillance of women's lives'" (Roy, 2018, p.299). Sex work legislation becomes a regime that targets and manages the sexuality of women for the sake of "the security of the nation-state and stability of the market" (Kapur & Cossman, 2018, p. 287). Carceral feminists disregard women while attempting to implement a solution to an issue that concerns them, and also makes women more vulnerable to sexual violence (Michalsen & Williams, 2019; Musto, 2019; Whalley & Hackett, 2017).

Carceral feminists perpetuate issues that affect women, individuals from the LGBTQIA community, and people of colour. Carceral feminists mobilize dominating discourses within feminisms, which preserves the white supremacist and heteropatriarchal ideologies of the state, and its penal system (Huxley, 2002; Taylor, 2018a; Whalley & Hackett, 2017). Abstaining from criticizing carceral feminism, contributes compliance with these ideologies that impact minoritized populations (Whalley & Hackett, 2017). Carceral feminists rely on imprisonment to solve social feminist issues that require learning from advocates of the social movement at hand (Michalsen & Williams, 2019; Whalley & Hackett, 2017).

Adopting an anti-carceral feminist approach to understand the nuances of sex work, specifically the changes of the prostitution discourse in common law, will allow for a multi-layered approach pertinent to the complex topic at hand. The anti-carceral feminist perspective is the main theoretical framework proposed for the current study, which will be explored in the next section.

Theorizing Shifts in Sex Work Discourse

The study of evolving prostitution discourse in common law requires an approach that considers the social aspect of discourse. Kapur and Cossman (2018) emphasize that when matters in criminal law are discussed it is important to question "the extent to which engagements with criminal law in particular can bring about social change, even in light of a more nuanced understanding of discursive change" (p. 270). The power of discursive change of a governmental institution—in this case common law— needs to be considered. Anti-carceral feminists caution that legislation and 'activities' in the criminal justice system may divert the attention of subjects from the function of power "which is to constitute, discipline, and normalize us" (Taylor, 2018a, p. 35). An anti-carceral feminist approach inspects the impacts of legislation on a population.

Anti-carceral feminism uncovers the structural injustices embedded within criminalization and incarceration (Carlton, 2018). Taylor (2018a) adopts an anti-carceral feminist perspective to understand the negative impact of controlling sex or sexual crimes:

> "prohibition may produce, perpetuate, or accelerate desires for what the law is prohibiting, especially in the case of sexual prohibitions. Law, on this view, far from writing normative scripts with which we then comply, contributes to the production of the kinds of deviance it intends to curtail" (p. 36).

Anti-carceral feminist theory is a robust framework that facilitates the understanding of the complex negative effects sex work legislation has on sex workers (Carlton, 2018; Michalsen & Williams, 2019; Musto, 2019). Criminalization of sex work is intertwined with the intersectionality of gender, morality, sexual orientation, amongst others; the decriminalization, and thus the decarceration of sex work entails rising above structural inequality (Musto, 2019). Anti-carceral feminists reject "false binaries between

"good" victims and undeserving criminals" (Musto, 2019, p. 49); this entails that embracing anti-carceral feminism rejects narratives such as sex workers at risk (victim) and risky. The language of victims limit the comprehension of a heavily nuanced topic. The framework also recognizes the negative effect of law enforces on sex workers and other sex industry actors (Musto, 2019).

According to anti-carceral feminists the carceral state is a paternalistic system that oppresses sex workers. The criminalization of sex work through neo-abolitionist and abolitionist legal models of prostitution victimize sex workers, which makes them further vulnerable to the carceral state (Musto, 2019). The stated legal approaches increase "policing, surveillance, and other forms of justice-involvement" in the sex work community (Musto, 2019, p. 47). The intersectional nature of the framework proposes a comprehensive theory to understand issues of the sex work community.

Taylor (2018b) implies that sex work requires more than politics of punishment to advocate for the safety of its workers. Therefore, anti-carceral feminists recognize the permeability of power within the penal state, and propose an intersectional approach of social, economic, and political settings to seek a solution to 'solve' injustices sex workers face (Taylor, 2018b). Consequently, an anti-carceral feminist approach to prostitution discourse proposes a comprehensive multidimensional understanding of sex work. It analyzes the genealogy of sexuality, and explores the permeability of sex moralization into legislation. The negative effects of neo-abolitionist legislation require a socio-economic understanding of sex work. The expected outcome is to identify dominant discourses in common law as well as socially normalized discourses that portray sex

work as a “perverse sexuality”, and decriminalize sex work since legislation negatively affects sex workers (Taylor, 2018b, p.12).

Conclusion

Overall, the current chapter provided the theoretical framework of the study. The ability of anti-carceral feminists to grasp the complexity of the issues sex work and sex workers face renders it an appropriate and pertinent framework for the current study. Anti-carceral feminists attend to the inattentiveness of the carceral state to heteropatriarchal discourses embedded in law. The proposed framework also considers the negative effect of surveillance, policing and imprisonment of sex workers and potentially of other sex industry characters. Furthermore, it recognizes power within the criminal justice system as a weapon of oppression.

IV. METHODOLOGY

In this chapter I provide the methodology and research design of the current study. I describe discourse, discourse analysis, and the pertinence of its application to the current study. I briefly describe different scholars approaches to discourse analysis and the relevance of the macro level to the current study. I introduce the methodological approach as a combination of: Fairclough's (2013) three stage model, Wood & Kroger's (2000) advice on conducting a discourse analysis and the use of Foucault's (1972,1978b) ideas on discourse formation and the power of words to fully grasp the themes the discursive texts provide. Then I outline the steps I took for data collection, data analysis and data organization.

Discourse and Discourse Analysis

Schiffrin (2003) refers to discourse as the use of language or what lies beyond its textual format. Fairclough (1985) offers a more detailed definition of discourse by encompassing non-linguistic communication and instances that do not necessarily pertain to language, such as gestures, social practices, clothes and objects that the speakers may carry. Fairclough's (1985) definition expands discourse outside textual references by embracing behavioral aspects of the speaker at the interpersonal and intrapersonal level. Other definitions of discourse involve the intrapersonal setting to define the term.

Social and historical frameworks determine discourse. Foucault is recognized for his work on comprehending discourse within a social and historical framework to understand the power words carry (Kendall & Wickham, 1998; Waitt, 2010). Discourse on a specific topic is passed down through generations, enabling discourse to penetrate social and political settings and attributing a historical significance to each discourse

(Foucault, 1978b). Discourse is affected and thus shaped by current events at a specific historical time similar to an ever-changing organism (Foucault, 1978b). As such, contrary to lay perceptions, discourse is malleable and not static.

Discourse is a dynamic concept that is affected by many factors. Attempting to analyze such a dynamic concept requires the acknowledgement of social factors such as the setting, function, topic and participants (Kendall & Wickham, 1998). Discourse analysis derives from social theory and linguistic theory, which entails considering language —which is part of discourse— for the purpose of analysis (Kendall & Wickham, 1998). Language is continuously depicted as a multifaceted concept; it invokes meaning, actions, attributions to speakers and receivers, thus the driving force of change in discourse (Wood & Kroger, 2000). Discourse analysis is an appropriate method to analyze the inherently social practice of discourse.

Discourse analysis is a comprehensive tool used to analyze discourse. As an approach to qualitative methodology, discourse analysis is capable of uncovering the complexity of discourse and the various levels through which language can be comprehended. Discourse analysis questions the functionality and aim of words (Wood & Kroger, 2000). The use of discourse analysis provides multiple levels of interpretation, which demonstrate the ability of words to construct meaning beyond the social setting. The ability and permeability of words to be interpreted in diverse settings establishes the power of language (Foucault, 1978b).

There exist different methodological approaches to discourse analysis; regardless, a three-step model that attends to discourse structure, its generation and consumption, and social practices appears to be situated in the literature as the most comprehensive

methodology —and most appropriate— given the objectives of this research (Wodak & Meyer, 2015). The next section will discuss the implementation of discourse analysis by delineating the similarities in models that also use three-steps. The next section will also discuss where the different models vary. The interconnectivity of the different levels within the models will be briefly explored as well as a common criticism of discourse analysis.

Implementing Discourse Analysis

The current section introduces two different three-stage models which have similarities and differences. The next section contrasts the two models, which emphasizes the reason to select of Fairclough's (1985, 2013) model.

Three-Step Models.

Different discourse analysis models are articulated via a series of methodological steps. Hodges, Kuper and Reeves's (2008) model, as well as Fairclough's (1985, 2013) approach to discourse analysis propose a three-step model. The first level consists of micro-analyzing the language or the description of the text (Fairclough, 2013; Hodges et al., 2008). Hodges et al. (2008) refer to the second level as empirical discourse analysis, while Fairclough (2013) introduces it as the production and the consumption of the text. The third step is macro-analysis of discourse or the effects of sociocultural occurrences on discourse (Fairclough, 2013; Hodges et al., 2008).

The third step of the model by Hodges et al. (2008) is termed critical discourse analysis. It focuses on the construction of what individuals and institutions are able to think and say (Hodges et al., 2008). Fairclough's (2013) third step includes the socio-cultural setting. Fairclough's (2013) model of discourse analysis addresses ideology and

power patterns; these are created at the third level and reflected on the other levels. In this scenario the model is a network where the levels of interpretation are constructed by texts that influence each other. The third step reflects the necessity to analyze discourse from a socio-cultural framework, which demonstrates parts of Foucault's (1978b) ideas on discourse formation since the analysis of discourse should consider factors beyond the linguistic level. Fairclough's (2013) model fits appropriately with the goal of the study.

In the second level of Hodges et al. (2008) model, empirical discourse analysis focuses on the analysis of the conversation, more specifically the production of the text. In contrast, the second stage of Fairclough (1985, 2013) model is more rounded due to the analysis of both consumption and production of the text. Moreover, while Hodges and colleagues (2008) model seeks to uncover and critique structures of power, Fairclough's (1985, 2013) model discovers not only power patterns but also ideologies. Furthermore, Fairclough's (2013) analytic framework takes culture into consideration. The socio-cultural framework is pertinent to the current study since changes in prostitution discourse are being studied within Canadian culture.

The first step of the model should not be overlooked, since the three levels of the model construct each other. An understanding of the social event or language is needed to analyze and comprehend social practices (second step). The social event or texts are analyzed within a specific context, which is the social practice and the social structure (third step). To understand the context from which a social structure exists, one should examine the social events and practices that contribute to the social structure itself. In literature, the contribution of social events and practices to a social structure reflects the

manner in which language shapes social practice and vice versa (Fairclough, 2014; Foucault, 1972; Wood & Kroger, 2000).

Criticism of Discourse Analysis.

Discourse analysis has received criticism throughout its development, like any other method of data analysis. The most common criticism this method has received is the possibility of interjecting the interpretation of discourse with the voice of the analyst (Cameron, 2001). To counteract, qualitative researchers do not believe on an objective and unbiased analysis (Tufford & Newman, 2012). This is due to preconceptions the researcher has prior to carrying out their studies (Tufford & Newman, 2012). Consequently, "preconceptions influence how data are gathered, interpreted, and presented" (Tufford & Newman, 2012, p. 2). Bracketing is a technique that allows researchers' become aware and establish their pre-conceptions prior to starting their research. Bracketing considers the subjectivity of researchers –recognizing absolute objectivity does not exist– and aids academics through heavy emotionally laden research (Tufford & Newman, 2012).

Early literature underestimated the capability of discourse (Fairclough, 1989; Foucault, 1972). The aim of discourse analysis has been to raise awareness of the power of discourse by creating conscientiousness around language (Fairclough, 1989); awareness is created by questioning the intentionality and finality of certain words and phrases (Wood & Kroger, 2000).

Application of Discourse Analysis to the Legal Setting

Previous studies surrounding sex work have used discourse analysis to analyze their data. (Hewer, 2019; Jovanovski & Tyler, 2018; Strega et al., 2014). Scholars

emphasize the inherent nature of discourse as always constructed in reference to other discourses beyond the text (Hewer, 2019; Jovanovski & Tyler, 2018; Strega et al., 2014). Hewer (2019) as well as Strega et al. (2014) emphasize that discourse analysis is pertinent to analyze diverse texts because the aim of such analysis is to identify ideological language. Sex work discourse is partially filled of specific political and social ideology (Strega et al.,2014). Discourse analysis has proven to be a versatile method, since it has been used to analyze legal documents, newspaper articles and online reviews that discuss the topic of sex work (Hewer, 2019; Jovanovski & Tyler, 2018; Strega et al., 2014). In Strega et al. (2014), Foucauldian principles were used in combination with discourse analysis to identify the construction of the sex worker's subjectivities.

Scholars have questioned the applicability of discourse analysis in law, due to potential differences between the legal field, and social science fields where discourse analysis is commonly used (Niemi-Kiesiläinen, Honkatukia, & Ruuskanen, 2007). There have been discussions about legal discourse as inherently social, which falls in line with Foucauldian principles (Niemi-Kiesiläinen et al., 2007). Academics have argued that law should be interpreted as a social phenomenon, therefore it requires to be interpreted from a sociological standpoint (Niemi-Kiesiläinen et al., 2007). For example, courts pass rulings on cases based on findings from studies that address specific issues that are targeted during sociological, criminological or psychological research (Niemi-Kiesiläinen et al., 2007). Due to the congruence between the field of sociology and law, the tool of discourse analysis can be implemented to analyze legal data.

The earlier sections have established that diverse factors that help shape discourse throughout time. Foucault (1978b) claims that the formation and prevalence of

discourse throughout history is constructed and shaped by factors such as current events, politics, legislation, common law, amongst others. This study explores the construction and potential changes of the prostitution discourse in Canadian common law from January 1st, 2010 to December 31st, 2018; Canadian prostitution discourse in common law is also affected by discourses within legislation, previous court decisions and discourses used in Bill C-36.

The next section will provide the methodological approach and study design of this study, outlining the process of data collection, data organization and data analysis.

Methodological Approach and Study Design

This study uses Fairclough's (2013) discourse analysis model as a guiding template and Foucault's (1972, 1978b) principles of discourse formation. Fairclough's discourse analytic model gives importance to the macro analytical stage, which is constituted by the social and cultural context (Fairclough, 2013; Wood & Kroger, 2000). The emphasis on the macro analytical stage supports the understanding of text in relation to social factors like power, which pertains to the current study (Wood & Kroger, 2000).

Data Collection.

The dataset comprised of court decisions, which were categorized into two groups: pre-Bill C-36 and post-Bill C-36. The pre-Bill C-36 dataset consisted of court decisions found from the time frame of January 1st, 2010 to November 5th, 2014; this specific time frame yields court decisions before the Bill C-36 was implemented. The post-Bill C-36 dataset consisted of court decisions found from the time frame November 6th, 2014 to December 31st, 2018; the time frame yields court decisions that occurred after

the implementation of Bill C-36. The following steps were taken to identify and select the court decisions that were pertinent to this study:

I. I accessed the database Lexis Advance *Quicklaw*, selected court decisions and when prompted selected all Canadian court cases.

II. The keywords used were: *communicating*, *sexual services* and *prostitution*. The keyword 'communicating' yielded casesin which the charges were communicating for the purpose of prostitution (s. 213). This was the most common sex work offence between 2009 and 2014 (Rotenberg, 2016)., therefore the inclusion of the term should yield court decisions where individuals were charged with s. 213. The keyword 'sexual services' was used since one of the changes made to the *Criminal Code* as a result of the *Supreme Court decision Canada v Bedford* was eliminating the word 'prostitution' from the legislation; therefore, there was a possibility that the post-Bill C-36 court decisions did not use the language of prostitution but instead used the language of *sexual services*. Similar to the previous idea, the keyword 'prostitution' was used since the word was used in pre-Bill C-36 legislation and was therefore present in the *Criminal Code*. The use of the three keywords in combination generated 563 court decisions.

III. Some of the 563 court decisions dated back to three to almost four decades ago. The dataset needed to represent discourses used at the moment the *Bedford* application was made to emphasize the language used at that specific moment in time. The *Bedford* application was done in 2010; therefore, including court decisions from the year 2010 provided prostitution discourses

before the change of prostitution law in 2014. The change of prostitution law was on November 6, 2014 through the implementation of Bill C-36. I created the pre-Bill C-36 dataset, which covered 4 years of court decisions prior to 2014. Adding an ending period to attain data allowed me to examine discourses used in the specific time frame; ascribing December 31, 2018 as the ending period identified discourses used post-Bill C-36. Refining the data by setting the January 1, 2010 to December 31 of 2018 time-frame also provided an equal amount of time for the pre and post datasets. The addition of the January 1, 2010 to December 31 of 2018 time-frame led to 217 cases.

IV. The study sought to understand the changes in prostitution discourse in the province of Ontario; therefore, the data was refined to identify the number of court decisions that pertained to the jurisdiction of Ontario. There were 118 court decisions that pertained to the province of Ontario.

V. The 118 court decisions had to undergo an examination to select relevant court decisions. The data prior to the inspection included cases in which the main charges were not prostitution related charges; therefore, the facts provided and analysis made by the judges did not involve the topic of sex work and issues surrounding the topic. For example, in *Sukhu v. Ramautar* ([2018] O.J. No. 4641) which was part of the 118 court decisions, the main charge was defamation of character; the presiding judge used the phrase sexual services but did not analyze the topic of sex work. Consequently, the court decision was removed from the dataset.

VI. I inspected the 118 court decisions, which entailed reading the summary of the court decision and identifying the charges. For the court decision to be part of the dataset, the main charges needed to be prostitution related. This entailed charges such as keeping or being found in a common bawdy house (s. 210), living on the avails of prostitution (s. 212(1)(j)), procuring (s. 286.3), communicating in public for purposes of prostitution (s. 213 (1)(c) or (s. 213.1(1)) and purchasing sexual services (s. 286.1), advertising (s. 286.4), receiving financial or material benefit (s. 286.2). The charges that were discussed in the court decisions had to be prostitution related. If there were charges that did not pertained to prostitution, the judge needed to discuss the topic of prostitution in the analysis of the court decision. For example, in *R. v. Lucas-Johnson* ([2018] O.J. No. 3685) there were non-prostitution charges such as forcible confinement (s. 279(2)) and concealing identity document from another person under 18 (s. 279.03(2)); yet the case included a procuring offense (s. 286.3(1)). If the charges did not include a prostitution related offence, the court decision was removed from the dataset. In court decisions where human trafficking charges were discussed, the cases were included since the judges usually stated that the person was being charged with human trafficking and "other related offences in respect of his/her relationship with" (*R. v. Crosdale*, [2018] O.J. No. 6028). The *related offenses* referred to the procuring offense (s. 286.3) or the commodification of sexual services offense (s. 286.2). After this inspection, there were 28 cases that were removed from

the dataset since the none of the charges were prostitution related offenses; the removal led to 90 court decisions to remain in the dataset.

VII. The initial thorough reading of the 90 court decisions uncovered different types of documents in the dataset. The dataset included judgements, appeals, applications, motions and sentencing documents. Judgements provided facts and an analysis of the issues. Appeals included a summary of the original judgement, additional information and an analysis of the new issues brought forward. Applications included short documents that intended to include new evidence, cross examinations, preliminary hearings, amongst others. Sentencing documents provided the original facts and analysis and the judge's rationale for the sentencing. The next section will include reasons to either include or exclude specific documents in the dataset and also unique court decisions that were included or excluded given their special circumstances.

Justification for Case Selection Unique Cases

Applications for evidence and cross examinations were removed from the dataset due to the lack of substantial information. Applications for evidence and cross examinations do not discuss the matter of sex work. They discuss the reason why specific evidence should be allowed in the courtroom or relevancy of cross-examining an individual. To illustrate, *R. v. McPherson* ([2011] O.J. No. 6549) was an application by the crown for admissibility of relevant evidence, not a court decision where the topic of sex work was discussed. Thus, the document was removed from the dataset. However, the original court decision *R. v. McPherson* ([2011] O.J. No. 6549) was included in the dataset.

Preliminary hearings were included in the dataset. The only preliminary hearing in the dataset *R. v. Alexander* ([2016] O.J. No. 7163) was kept in the dataset since the charges of sex work and trafficking were discussed and analyzed.

Sentencing documents were included in the dataset when the original judgement was not present; sentencing documents include a summary of the original judgement, therefore, having the original judgement and the sentencing document would create data duplication. For instance, the sentencing document *R. v. Robitaille* ([2017] O.J. No. 5954) was included in the dataset since the original judgement was not present. At times, the judge's rationale for sentencing implicitly uncovered their beliefs of sex work practice, for example in *R. v. Gray-Lewis* ([2018] O.J. No. 4304) paragraph 59, the judge refers to the pimp's behaviour as 'morally repugnant'.

Appeals were also included in the dataset. Appeals were included because they discuss the original judgement and give an insight into how a case can be reconsidered in common law.

Unique Court Decisions.

This section will discuss the court decisions that had unique scenarios regarding charges and defendants and the reason these court decisions were either removed or kept in the dataset.

In the pre-Bill C-36 dataset there were two cases involving the same defendant. The cases *R. v. Salmon* ([2014] O.J. No. 4887) and *R. v. Salmon* ([2014] O.J. No. 1461) discuss two different times at which the same person is being accused of different offences. Both court decisions were included in the dataset since the complainant was different and the charges for each court decision were different.

In the post-Bill C-36 dataset there were two cases that referred to the same charges. The cases *R. v. Alexis-McLymont* ([2018] O.J. No. 983) and *R. v. Alexis-McLymont* ([2018] O.J. No. 1053) were both included because they discuss the same offenders and offenses in the dataset due to dates and circumstances. They were judged on different occasions since one of the offenders was in custody for a longer time and was not able to assist the court date. The sentencing of Jaiden Alexis-McLymont and Dylan Hird occurred under *R. v. Alexis-McLymont* ([2018] O.J. No. 983) and the sentencing of Anthony Elgin occurred in *R. v. Alexis-McLymont* ([2018] O.J. No. 1053). Both court decisions had the same background information, therefore to prevent duplication of data, the background information was coded under *R. v. Alexis-McLymont,* ([2018] O.J. No. 983).

The cases *R. v. Finestone* ([2017] O.J. No. 677) and *R. v. Robitaille* ([2017] O.J. No. 5954) dealt with the same complainant. Mr. Finestone had slightly different charges from Ms. Robitaille, pertaining to the same underage sex worker. Both court decisions were included in the dataset. In both documents, the facts of the offense, victim impacts and additional impacts were the same. To prevent duplication, the information under stated categories were coded once under *R. v. Robitaille* ([2017] O.J. No. 5954).

Court decisions that challenged the constitutionality of sex work provisions and human trafficking provisions were included in the dataset. Such court decisions discuss and debate on topics relevant to uncover prostitution discourse in common law. For example, in *R. v. Boodhoo* ([2018] O.J. No. 6413) the constitutionality of s. 286.2(2), s. 286.3(2) and s. 286.4 was challenged. The application was dismissed. In *R. v. Ghotra* ([2016] O.J. No. 957) the provisions s. 172.1(3) and s. 172.1(4) were challenged since

they violated sections 7 and 11(d) of the Charter; this application was also dismissed. The court decision *R. v. D'Souza* ([2016] O.J. No. 4992) was included even though the provisions challenged addressed human trafficking due to the manner in which sex work was brought in the document.

After the inclusion and exclusion of the stated court decisions a total of 58 court decisions were used for data collection. The pre-Bill C-36 dataset constituted of 13 court decisions and the post-Bill C-36 dataset constituted of 45 court decisions (see Appendix A). The dataset included court decisions which involved minors. In the pre-Bill C-36 dataset seven cases involved minors and 27 cases in the post-Bill C-36 dataset involved minors (see Appendix B). In the pre-Bill C-36 dataset all the sex workers were female and only in one court decision the sex worker was charged. In two instances the client was charged. In the post-Bill C-36 dataset all the sex workers were female and in five cases sex workers were charged; in 35 cases the individual charged was a pimp and on seven occasions the client was charged.

Data Analysis

The guiding template for data analysis was comprised of: (a) Fairclough's (2013) three dimensional interpretation model, which allowed for a thorough interpretation of prostitution discourse at multiple levels, from the textual analysis of the data (micro level), to the societal occurrences affecting the data (macro level); (b) Wood and Kroger's (2000) general advice on conducting discourse analysis, (c) and Foucault's (1972, 1978b) principles on discourse formation which contributed to the understanding of the formation of the prostitution discourse in common law. Foucault's (1972, 1978b) contributions allowed for the understanding of the social and temporal context within

which prostitution discourse was constructed, as well as guidance for grouping discursive texts.

The first step in data analysis was to read over the court decisions several times to get a sense of what the data itself provided without imposing themes on the existing data. This abides by Wood and Kroger's (2000) assertion that: "The spirit of discourse-analytic research is inductive; that is, it involves moving from the concrete to the abstract, from the particular to the general" (p. 2). Based on Wood and Kroger's (2000) advice, attention was paid to the language used in the data, and the reaction of the researcher while being wary of attributing a negative meaning to specific discourses hastily. Upon completing the first step, the themes of s*ex worker as a victim* and *prostitution as violent* emanated from the data, which were similar discourses to the ones discussed in the literature (Bruckert & Hannem, 2013; Craig, 2011; Shaver, 2005; Skilbrei & Holmström, 2011).

The second step was familiarizing oneself with the data. Becoming familiar with the data allowed to identify different actors in common law setting. The characters identified were: the judge, the sex worker, the pimp, the client, the crown and law enforcement. Re-reading the data helped identify major topics that were mentioned when the specific character was addressed. For example, when mentioning the person who performed sexual acts information also presented was the age of the person, consensual practice, use of protection, thoughts about the practice and the relationship with the pimp or client. Recognizing the different information that was provided about each character was key to the next step of the analysis; as the analytical process "requires the identification and interpretation of patterns in discourse, that is, of systematic variability

or similarity in content and structure" (Wood & Kroger, 2000, p. 5). Therefore, familiarization with the data aids in the identification of patterns for each actor.

The third step consisted of reading each court decision as well as identifying discursive texts and classifying them by the character (sex worker, judge, pimp, client, the crown); there were additional categories formed for discursive texts that referred to language, transactions, in court and policy. The categories will be further refined with the help of Fairclough's (2013) model.

The fourth step consisted of applying the first stage of Fairclough's (2013) model to the discursive texts. The micro-analysis of the data analyzed the choice of vocabulary, grammar used and textual structure of the discursive texts. The linguistic analysis helped create subcategories like terminology, definitions under the language category.

The fifth step was to subject the discursive texts to the second stage of Fairclough's (2013) model. The meso-analysis of the discursive texts constituted of examining the relationship between the production of the text and the consumption of the text. This stage took a look at the text as a discursive practice (Fairclough, 2013). The stage of analysis required an identification and comprehension of the relationship between the texts, discourse and common law setting. The stage led to the creation of categories for each character, for example the relationship with pimp, and most categories under judge and language.

The sixth step consisted of examining the discursive texts using the third stage of Fairclough's (2013) model. The macro-analysis of the discursive texts entailed comprehending the effects of sociocultural occurrences on discourse. The stage subjected the discursive texts to an analysis that uncovered the social purpose of their production

and consumption (Fairclough, 2013). The stage allowed to further refine categories by identifying themes that needed to be understood from a social and historical framework. For example, the language category had a subcategory named interchangeability which refers to the conflation of sex work with sex trafficking.

The seventh step involved considering Foucault's (1972, 1978b) work and its applicability to the current study. Foucault's (1972, 1978b) principles of discourse formation, knowledge generation, and the power of discourse were used to comprehend the convoluted historical change of prostitution discourse in Canadian common law. Similar to the macro stage in the three-dimensional model, the use of idea formation from Foucault (1978b) allowed to comprehend diverse prostitution discourses from the discursive texts that existed due to the social and temporal circumstances of the data. Taking into consideration Foucault's (1978b) work allowed an examination of the discursive texts in the context of the history of sex work legislation in Canada up to the year of 2018. Adopting Foucault's (1972, 1978b) framework provided an identification of the associations and contributions to prostitution discourse made by the literature surrounding prostitution in Canada, the *Bedford* decision and Bill C-36.

The eighth step was to compare both pre-Bill C-36 dataset and post-Bill C-36 dataset for similarities or differences in themes.

Data Organization.

Both pre-Bill C-36 and post-Bill C-36 dataset had their own Excel document. Discursive texts found in each dataset were respectively entered in the appropriate dataset. In every Excel document there were columns for major themes: sex worker, client, pimp, judge, transaction, attorney or crown, language, references to *Bedford* and in

court. The columns were further subdivided into codes according to the discursive texts found in the data. See Appendix C for a breakdown of the codes and their meanings.

Conclusion

This chapter attended to the methodological considerations as well as the specific methods used to analyze the change in prostitution discourse between 2010 and 2018 in common law. The court decisions were subjugated to discourse analysis through the implementation of Fairclough's (2013) three-dimensional interpretation model, Wood and Kroger's (2000) general advice on conducting discourse analysis and Foucault's (1972, 1978b) ideas on discourse formation and the power of words aided in comprehending changes in prostitution discourse in common law. Discourse analysis is a pertinent and appropriate method to analyze court decisions due to its implementation on previous studies that used legal documents and other texts that discussed sex work (Hewer, 2019; Strega et al., 2014). The following chapter will introduce the *Bedford* decision as well as explore the changes in each provision challenged by the applicants of the *Bedford* case. The next chapter will also explore the themes found in the *Bedford* decision, the aftermath of the *Bedford* decision, implementation issues of Bill C-36 and scholar criticism of Bill C-36.

V. THE BEDFORD DECISION

The study of discourse is at the core of this dissertation; therefore, it is necessary to provide the context from which changes in discourse occur. This chapter establishes and explores the socio-political setting before and after the implementation of Bill C-36: *The Protection of Communities and Exploited Persons Act.* First, I present the events prior to the *Bedford* case to establish a socio-political context. Second, I breakdown the *Bedford* case with a focus on the three provisions challenged, their historical changes and the reason for their unconstitutionality. Third, I uncover the themes found in the *Bedford* decision which gives an insight to themes in Canadian common law during 2010 and the socio-legal perspective on prostitution discourse. Fourth, I explore the aftermath of the *Bedford* decision, with is the implementation of a neo-abolitionist approach to sex work legislation (also known as the *Nordic model*). Fifth, I highlight the implementation issues of Bill C-36 to uncover the negative outcomes sex workers face and scholarly criticism on the neo-abolitionist approach to sex work legislation. Sixth, I bring attention to the legislative change of Bill C-75: *An Act to amend the Criminal Code, the Youth Criminal Justice Act, and other Acts and to make consequential amendments to other Acts*, which reveals a step towards decriminalization of sex work.

Events Prior to the Bedford Case

On December 20, 2013, the Global News[1] website produced a brief article attempting to summarize the Canadian history of sex work legislation (Global News,

[1] The year 2013 marks the year the *Bedford* decision ended. News articles from the year 2013 report on: oppositional perspectives on sex work as showcased in *Bedford v. Canada, 2010 ONSC 4264*, an explanation as to why the Supreme Court of Canada (SCC) struck down the provisions s. 210, s. 212(1)(j) and s. 213 and the court experience and opinions of Terri-Jean Bedford (Fine, 2013; MacCharles, 2013; Supreme Court strikes down Canada's prostitution laws, 2013). The article *A Chronology of Canadian Prostitution Laws* (2013) was picked amongst other articles to emphasize the depiction of amendments to

2013). The article provided 11 instances of legislative changes in Canada to diverse laws that addressed sex work throughout Canadian history; which is not representative of the numerous legislative changes of prostitution provisions throughout Canadian history, as it will be seen later on in this chapter. The article reinforced the idea that prostitution has been portrayed as undesirable in Canadian legislation between 1800s to the late 1900s (A chronology of Canadian prostitution laws, 2013); the lack of context, plus the missing information fails to recognize the origin of the social undesirability and the existence of the voices that are in favour sex work. While this study does not aim to question the uncritical sense of 'objectivity' in the article, it does seek to highlight the lack of equal representation on matters that address sex work. As one of the key events in history, the article mentions the legal case of Robert Pickton (A chronology of Canadian prostitution laws, 2013).

In the 1980s, there was a rise of female homicides in Port Coquitlam and area, that went uninvestigated (Cameron, 2010). Reporters Pemberton and Hall (from the Vancouver Sun) pressed the police and continuously reported on various deaths and disappearances of women, who also happened to be sex workers (Cameron, 2010). They understood the victims were seen as "throwaways", thus investigations regarding their disappearances and deaths were never performed (Cameron, 2010, p. 62). Sex workers grew anxious about the killings; as a means to emphasize to law enforcement their

prostitution law the general public had access to. The article represents the information consumed by the general population of Canada, thus it demonstrates the language the general population was exposed to regarding the topic of sex work and the limited information to be tentatively consumed by the general population upon reading the article. The article simplifies sex work through a lack of comprehensive legislative changes, which has occurred throughout time prior to the Pickton case. This ultimately overlooks that sex work exists and is discussed at the level of policymaking since the inception of Canadian legislation.

concerns over an increased amount of disappearances and killings, sex workers reported every attack, robbery or assault they experienced to the point that within two years (from 1987 to 1989) reports on sex worker attacks increased by 75% (Cameron, 2010). Given the lack of investigations and resolutions, the Downtown East-side Women's Centre[2] was advising sex workers to decline offers to take them for work to Port Coquitlam (Keller, 2012). Regardless of the Downtown Eastside Women's Centre's advice, the killings and disappearances continued until early 2000s.

In 2000, a sex worker reported encountering Robert William Pickton, who offered to take her to Port Coquitlam, and admitted to having dead corpses of sex workers on his property (Keller, 2012). The police did not take the sex worker's report seriously, yet Robert William Pickton had already been one of the primary suspects of the killings since early 1990s (Cameron, 2010). In 2002, Robert Pickton was arrested and convicted of murdering six female sex workers from Vancouver's downtown east side (Matas, 2010). Mr. Pickton had 26 murder charges, but the maximum sentence under the Canadian legal system was amounted after 6 murder charges. Therefore, the 20 outstanding charges were stayed (Cameron, 2010; Matas, 2010). The Pickton case unveiled pre-existing issues with and perceptions of sex work.

A major flaw of the Canadian criminal justice system was a lack of thoroughness of law enforcement in their investigations and lack of compliance with the community's demand for action. Another shortcoming was their perception of sex workers as

[2] The Downtown East-Side Women's Centre was formed around 1989. It consisted mostly of Indigenous women who were friends, family members of the victims –the women that had gone missing and or been killed since the early 1980s– and advocates of sex workers. They came together initially to urge law enforcement on the issue of the missing and dead women. Noting the negligence and dismissal of their concerns, the Centre decided to educate sex workers on protective strategies against potential kidnapping, assaults and death threats (Cameron, 2010).

disposable victims. Legal scholarship emphasizes that, before the Pickton case took center stage, individuals from Vancouver's downtown east side were perceived as *subhuman* and disposable (Baddorf, 2007; Craig, 2014; Matas, 2010); sex workers were perceived as insignificant and disposable, which delayed investigations and closure of cases for more than two decades (Cameron, 2010; Craig, 2014). Despite Pickton's conviction, sex workers from the Vancouver Downtown Eastside faced socio-legal issues.

Sex workers in Vancouver's Downtown Eastside experienced a rise in violence, due to increase in patrolling post-Pickton (Pablo, 2008). Advocates of sex workers unsuccessfully demanded a moratorium from local police, which would allow sex workers to report the violence against them without being criminalized (Pablo, 2008). Libby Davies, Democratic Party Member of Parliament, noted a lack of civil action, and attempted to meet the demands of the community by becoming an advocate for sex workers.

When Pickton was charged in 2002, Libby Davies voiced her concerns regarding the dangers provisions s. 210, s. 212(1)(j) and s. 213 posed for sex workers (Davies, 2002a). Davies stated that sex work provisions were putting workers at risk and they should be reviewed (Davies, 2002b). Davies initiated a motion with the Standing Committee on Justice and Human Rights to review federal laws around solicitation, which resulted in the Subcommittee on Solicitation Laws (SSL), which was a study of Canada's criminal prostitution laws (Davies, 2003). In addition, sex workers around Vancouver's downtown east-side were pressing the Mayor to legalize brothels for the upcoming winter Olympics in 2010 (Baddorf, 2007), and demanded the decriminalization

of sex work. The Pickton case reached a conclusion in 2007 with a life sentence. Craig (2014) emphasizes that Pickton's ability to carry out the murders of numerous women is due to structural inequality in Canada, which is maintained through the dehumanization of sex workers.

The year of 2006 exemplified the relation between the hegemonic structures in Canada and sex work legislation. The report by the Subcommittee on Solicitation Laws (SSL), titled *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws* came out in December 2006, shortly after the Conservative party took federal office in February of the same year (Marques, 2006). While the SSL "had a mandate seeking to improve the safety of individuals selling sexual services and communities overall", different political parties had diverse reasons and approaches to sex work legal reform (House of Commons Canada, 2006, p. 2).

There was a disagreement between the Conservative government and the other parties (Liberal, New Democratic and Bloc Québécois) on the nature of sex work and legal reform. In the SSL report, members from the Liberal, New Democratic, and Bloc Québécois parties wanted acknowledgement and action taken on the contradictory prostitution laws. The parties understood that sex work was legal, but it was nearly impossible to practice it without breaking the law (Marques, 2006). The three parties concurred that sexual transactions between consenting adults should not be regulated by the government, and emphasized that the focus should be on protecting sex workers without discriminating against the manner in which they did their work. The three parties were inclined to legislative reform with the goal of decriminalizing of sex work when the

transaction is consensual (Marques, 2006). As discussed below, the Conservative party had a different socio-legal approach to and overall perception of sex work.

The Conservative party wanted a socio-legal reform that criminalized clients, pimps and exit plans for sex workers. Unlike the other three parties, the Conservative party believed that decriminalization was not the solution (House of Commons Canada, 2006). In the SSL report, the chapter *The Conservative Perspective* described sex work as a form of violence, where clients and pimps are abusers and sex workers are victims. The opinion of the Conservative party on sex work is not only radical in nature, it also ignores voluntary practices in the sex industry. Due to the fact that multiple political parties had opposite approaches to legal and social reform the SSL was rendered inconclusive (Marques, 2006).

Even though the SSL final report was ambiguous, advocates of sex workers' rights still persisted on their efforts to ameliorate working conditions. From 2007 to 2010, Libby Davies kept encouraging the government to reform sex work legislation (Davies, 2007a; 2007b; 2009; 2010b). Davies' stance questioned the perspective of the Conservative party, stating that sweeping regulatory changes was an irresponsible approach (Davies, 2010a). Davies was not able to obtain a response from the Conservative party from 2006 onwards. Subsequently, in 2010, the *Bedford* application was initiated.

The Bedford Case

In 2009, Terri Jean Bedford, Amy Lebovitch and Valerie Scott challenged the constitutionality of s. 210 keeping common bawdy house, s. 212(1)(j) living on the avails of prostitution, and s. 213(1)(c) communicating for the purpose of prostitution because

the three provisions violated their section 7 right to life, liberty and security of the person (*Bedford v. Canada (Attorney General)*, [2009] O.J. No. 2739). The applicants also challenged the constitutionality of s. 213(1)(c) of the *Criminal Code of Canada* because it violated their section 2(b) right to freedom of thought, belief and opinion in addition to freedom of expression (*Bedford v. Canada (Attorney General)*, [2009] O.J. No. 2739). The Christian Legal Fellowship, REAL Women of Canada, and Catholic Civil Rights League were not accepted as friends of the court (*Bedford v. Canada (Attorney General)*, [2009] O.J. No. 2739), yet this decision was appealed and upheld in September of 2009 (*Bedford v. Canada (Attorney General)*, [2009] O.J. No. 3881). The case, which is recognized as the *Bedford* decision was carried out in 2010 (*Bedford v. Canada*, 2010 ONSC 4264). The three provisions were found unconstitutional by Justice Himel (2010 (*Bedford v. Canada*, 2010 ONSC 4264). In the same year, the Attorney General of Canada appealed for a stay of Justice Himel's judgement (*Bedford v. Canada (Attorney General)*, 2010 ONCA 814). Justice Rosenberg allowed the stay of Justice Himel's judgement until the appeal was to be argued (*Bedford v. Canada (Attorney General)*, 2010 ONCA 814). The appeal was carried out in 2012, the Justices Doherty, Rosenberg, Feldman, MacPherson and Cronk partially allowed the appeal of Himel's judgement (*Canada (Attorney General) v. Bedford*, 2012 ONCA 186). Bedford, Lebovitch and Scott were granted a cross-appeal which required the Supreme Court of Canada (SCC) to review judgement of the Court of Appeal for Ontario (*Canada (Attorney General) v. Bedford*, 2013 SCC 72). The SCC recognized that the three provisions were violations of the *Charter*, by upholding the provisions challenged by the appellants (previously referred to as applicants) (*Canada (Attorney General) v. Bedford*, 2013 SCC 72).

In the 2010 application, the three provisions —s. 210, s. 212(1)(j) and s. 213(1)(c)— were challenged on the grounds that they violated their rights under section seven of the *Charter of Rights and Freedoms* (*Bedford v. Canada,* 2010 ONSC 4264). The three provisions were s. 210 keeping or being found in a common bawdy house, s. 212(1)(j) living on the avails of prostitution and s. 213(1)(c) communicating in public for purposes of prostitution. The appellants argued that the legislation violated their constitutional right to security, since the provisions created an unsafe environment and practices for their lawful jobs.

The appellants argued a pro-decriminalization stance. The appellants argued that suspending the stated provisions would benefit the overall safety of sex workers, moreover, allow them to safely practice their legal jobs (*Bedford v. Canada,* 2010 ONSC 4264). The appellants were sex workers who willingly and consensually exchanged sexual services for money. The appellants intention was to ameliorate working conditions and thus the overall well-being of sex workers (*Bedford v. Canada,* 2010 ONSC 4264). The stance they took on sex work was that engagement in the sex industry is voluntary, between two consenting adults. Thus, the exchange of sexual services for money should not be sanctioned, decriminalization is the most beneficial legal model. From their perspective sex work is a form of labour; therefore, as workers, the appellants had the right to be protected under s. 7 of the *Charter of Rights and Freedoms* (*Bedford v. Canada,* 2010 ONSC 4264).

The case was opposed by the Attorney General of Ontario (AG Ontario), Christian Legal Fellowship, REAL Women of Canada and the Catholic Civil Rights League (respondents) who took an anti-prostitution stance (*Bedford v. Canada (Attorney*

General), [2009] O.J. No. 2739). The respondents argued against the suspension of the provisions, since from their perspective the practice is inherently violent (*Bedford v. Canada*, 2010 ONSC 4264). The respondents believed that sex work leads to negative psychological repercussions, and argued that prostitution is linked to sex trafficking (*Bedford v. Canada*, 2010 ONSC 4264). The respondents' perspective on sex work was that the practice is inherently coercive; therefore, sex workers are seen victims. The respondents advocated for sex work to be criminalized due to its alleged inherent violent nature towards women (*Bedford v. Canada*, 2010 ONSC 4264).

The *Bedford* case involved conflicting views on sex work. The opposing sides of the case represented two diverse approaches to sex work legislation ―criminalization versus decriminalization―and overall perspectives on the practice itself, voluntary versus coerced. The next section will include: the historical changes of each provision and the reason why each provision was argued to be unconstitutional.

Section 210: Keeping or Being Found in a Common Bawdy House.

The provision s. 210 keeping or being found in a common bawdy house originated from earlier legislation that addressed the vagrancy offence (*Bedford v. Canada*, 2010 ONSC 4264). In *An Act Respecting Vagrants* (S.C. 1869, c. 28), the term *vagrant* included keepers of bawdy houses, a synonym for a "house for the resort of prostitutes". The early provision also defined *clients* as vagrants, since the provision criminalized people who frequented such establishments. A few decades later in *An Act Respecting Offences against Public Morals and Public Convenience* (R.S.C. 1886, c. 157, s. 1), the inmates of bawdy houses were also defined under the term vagrant, which

ultimately criminalized the practice of sex work and individuals who facilitated the practice.

In 1892, the first Canadian Criminal Code classified the provision that addressed bawdy houses as a nuisance, which fell under the broader category of "Offences against Religion, Morals and Public Convenience" (*Bedford v. Canada,* 2010 ONSC 4264; Criminal Code, 1892).The term bawdy house was defined as "a house, room, set of rooms or place of any kind kept for purposes of prostitution" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 231). In 1913, an amendment was made to the provision, which criminalized individuals who owned the place that was being used as a bawdy house by knowingly allowing the location to be used for such purposes (*Bedford v. Canada,* 2010 ONSC 4264). During that time the legislation was rephrased to criminalize individuals who were "found in" the bawdy houses (*Bedford v. Canada,* 2010 ONSC 4264 at para. 234).

In subsequent years, being an *inmate* in a common bawdy house was criminalized and also the provision was removed from the vagrancy section (*Bedford v. Canada,* 2010 ONSC 4264). The provision underwent amendments that led it to include *acts of indecency* in 1917 (*An Act to amend the Criminal Code and the Canada Evidence Act*, S.C. 1917, c. 14). Furthermore, in 1947, it was criminalized to transport a person to a bawdy house and the maximum penalty for such provision was increased (*Bedford v. Canada*, 2010 ONSC 4264). Major changes to the provision before the *Bedford* decision were made between 1953-1954 when the bawdy house offences were moved into Part V of the Criminal Code *Disorderly Houses, Gaming and Betting,* in an attempt to distance the provision from vagrancy and nuisance provisions. Besides the classification change,

there was also a definition change to "a place that is (i) kept or occupied, or (ii) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 236). The provision underwent a few changes throughout times and the *Bedford* decision posed a new change to the provision.

Terri Jean Bedford, Amy Lebovitch, and Valerie Scott argued that indoor practices reduce if not completely eliminate violence against sex workers (*Bedford v. Canada*, 2010 ONSC 4264). The claim made by the appellants was not only based on their personal experiences, but also expert evidence which established that indoor practices give the sex worker control over the negotiations with the clients which leads to violence avoidance (Krüsi et al., 2012). In the decision, the expert evidence of the appellants stated that "working in-call is the safest way to conduct prostitution; however, it is illegal due to the bawdy house provisions" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 127). The ability to carry out their practices indoor enables the sex worker to gain control over their practice by establishing boundaries with clients, which renders indoor environments safer for the sex workers in terms of violence prevention (Krüsi et al., 2012).

Even studies done from an anti-prostitution framework suggest that indoor environments have less physical violence than outdoor environments (Raphael & Shapiro, 2004). Scholars from an anti-prostitution stance attempt to minimize such findings by unsuitably defending the idea that prostitution is inherently violent (Farley, 2005; Raphael & Shapiro, 2004). The expert evidence of the respondents did not address the constitutionality of the legislation, it addressed prostitution in general as "violent or

harmful because of a systemic power imbalance between female prostitutes and male clients" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 131).

The appellants argued that the impact the provision had on sex workers was grossly disproportionate to its original purpose (*Bedford v. Canada,* 2010 ONSC 4264). Based on expert evidence from the appellants and the respondents, it appears that the provision s. 210 compromises the physical security of sex workers, which automatically compromises their rights under s. 7of the *Canadian Charter of Rights and Freedoms*.

Section 212(1)(j): Living on the Avails of Prostitution.

Section 212(1)(j), living on the avails of prostitution, was originally part of the vagrancy offence, which defined vagrancy as "Everyone is a loose, idle or disorderly person or vagrant who . . . having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 256). In 1913, the procuring provision included s. 216(l) "(ii) being a male person, lives wholly or in part on the earnings of prostitution" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 256).

Once the amendment to the offence of procuring was made, the Criminal Code had two provisions—s. 238(j) and s. 216(l)—that addressed living on the avails of prostitution. Judge Mackenzie explained the difference between the provisions by stating that:

> "The distinction between the two sections really seems to be that s. 238(j) is intended for the transient who wanders about and occasionally falls back upon the avails of prostitution as a means of eking out a precarious existence, while s. 216(l) is aimed at the man who engages himself in gleaning the earnings of prostitution as a business or stable means of livelihood. As supporting this view reference may be had to the second paragraph of s. 216" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 256).

The passage above also blatantly describes the perpetrators of such crime in the eyes of the common law. The comment made by Judge Mackenzie reflected how, as early as 1939, there was a perception that the transgressors of such crime were males. The use of such an example to distinguish between the nature of the two provisions shows how arguments are made in court decisions, which exemplifies how specific discourse prevails in common law.

The Criminal Code amendment in 1953-1954 led to the change of wording in the procuring provision to be living on the 'avails', instead of 'earnings' (An Act to amend the Criminal Code, 1947*)*. The amendment in 1953-1954 also removed any prostitution related offenses from the vagrancy offense, thus, *living on the avails* became part of the procuring offense (*Bedford v. Canada,* 2010 ONSC 4264). The last three amendments made to the procuring provision were designed to address child prostitution.

The appellants in *Bedford* argued that the provision problematizes business relations between the sex worker and others, such as individuals who were not in the sex industry but have a business relationship with the sex worker. This made it difficult for sex workers to have intimate relationships without having their partners infringing the law. The provision was also problematic since any financial transaction made by the sex worker, puts the recipient of the money at risk of being charged.

In the realm of labour, the provision was problematic because it prevented sex workers from hiring personnel that could assist them. For example, the appellants mentioned how the sex workers are not able to hire drivers, security personnel, and assistants since it would make them live on the avails of prostitution. The appellants

emphasized that being able to hire such personnel "can reduce or eliminate the incidence of violence faced by prostitutes" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 11). The fact that sex workers could not spend their income without criminalizing the recipient demonstrates that sex work was not recognized as labour.

Nussbaum (1998) presented the idea that sex work should have a labour discourse since sex workers use their body parts, just like any other worker, to make a financial gain. Considering this idea in conjunction with the fact that sex work was not illegal at the time of *Bedford* case, the provision deprived sex workers of using their earnings by criminalizing the recipients of the money, intimate partners or any dependents. The expert evidence of the appellants stated that "Some strategies to reduce these risks, such as hiring a driver or bodyguard or meeting a client in a public place beforehand, run afoul of the law" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 127). The expert evidence of the appellants proved that the provision prevented safe practices because the sex workers were unable to hire drivers or body guards for protection.

Respondents' expert evidence did not address every specific provision. Their expert evidence addressed prostitution in general, upholding how harmful it is since "prostitution is a form of violence against women" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 131). The expert evidence of the respondents did not justify the provision as constitutional, but the appellants' argument supported the claim that the provision compromised the livelihood, thus the safety and security of the sex workers. The provision was found to be overbroad, since it could criminalize people whose intentions are non-coercive or exploitative and grossly disproportionate to its original intent (*Bedford v. Canada,* 2010 ONSC 4264).

Section 213: Communicating in Public for Purposes of Prostitution.

The origins of the s. 213, communicating in public for purposes of prostitution, derived from the vagrancy laws, where being a prostitute was an offense. The legislation read "s. 175(1)(c) being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 273). In 1972, s. 175(1)(c) was replaced with a provision that addressed solicitation, the new legislation read "s. 195.1 made it a summary conviction offence to solicit any person in a public place for the purpose of prostitution" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 273). The Fraser Committee advised Parliament to repeal s. 195.1 and make respective amendments. In 1985, as a response to the Fraser Committee findings Bill C-49 was enacted, which led to the introduction of s. 213 (1)(c). The communicating provision underwent a few changes overtime prior to the *Bedford* decision.

The appellants in *Bedford* stated that the provision s. 213 is unconstitutional because it led sex workers to make "hasty decisions without properly screening customers when working on the streets, thereby increasing their risk of danger" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 11). In this sense, due to the existence of the provision, sex workers were not able to speak about the transactions involving their work, which was technically legal. Expert evidence from Dr. John Lowman for the appellants mentioned:

> "how various law enforcement initiatives to enforce the communicating provision in Vancouver have had the effect of displacing street prostitutes from some of the city's traditional strolls into a more isolated commercial and industrial area. Dr. Lowman described this area as an "orange light district", which was not actively patrolled by police in order to diminish complaints from residents in more populated areas. He says that from 1995 to 2001, approximately 50 women who

> worked in this orange-light district went missing" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 130).

The appellant's expert evidence exemplified how the provision about communicating in public compromised the physical safety of the sex workers. However, the provision should have been justified by the respondents in order to sustain its place in the Criminal Code.

As mentioned earlier, the respondent's expert evidence supported general views on prostitution, which did not explicitly argue for the constitutionality of the provision about communicating in public. The lack of expert evidence addressing the necessity of the provision about communicating in public further validated the points made by the applicant's expert evidence. Considering the overall expert evidence, the applicant's expert evidence defended and supported that s. 213(c) was unconstitutional given how it compromised s. 7of the *Canadian Charter of Rights and Freedoms*.

Justice Himel recognized that "the law as it stands is currently contributing to danger faced by prostitutes" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 536). Justice Himel proceeded to voice how the provisions should not have "force and effect" taking into consideration the violation of the Charter (*Bedford v. Canada,* 2010 ONSC 4264 at para. 536). Justice Himel commented on the responsibility of the Parliament to amend legislation, but accepted the decision of the sex workers. The *Bedford* case is considered a landmark in scholarship and Canadian legislative history. The themes found in the decision emphasize discourses that construct prostitution. The themes found in the *Bedford* decision will be discussed in the next section.

Themes Found in The Bedford Decision

The *Bedford* decision, articulated by the Ontario Superior Court of Justice, is filled with descriptive language that addressed issues surrounding sex work. This section will explore themes presented throughout the decision. The themes under exploration are: character construction, moralization of prostitution, prostitution as a nuisance, prostitution as a threat to the public and prostitution as coercive and oppressive.

Character Construction.

Throughout *Bedford v. Canada* (2010 ONSC 4264), Justice Himel depicted the actors in the sex industry setting by citing previous court decisions and legislations. Justice Himel expressed that individuals living on the avails of prostitution were male, for example "while s. 216(l) is aimed at the man who engages himself in gleaning the earnings of prostitution as a business or stable means of livelihood" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 256). The use of masculine nouns and pronouns established the gender of the beneficiary of sex work in such circumstances, which genders the construction of the participants in the sex industry.

At certain points throughout history, legislation has been constructed by gendered language (Lauritsen, 2010). In the decision, Justice Himel highlighted provisions that addressed living on the avails of prostitution, which blatantly states:

> "(1) It is an offence for a man knowingly to live wholly or in part on the earnings of prostitution.
>
> (2) For the purposes of this section a man who lives with or is habitually in the company of a prostitute or who exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 260).

The excerpt above ascribed a feminine pronoun to the sex worker. On the other hand, third parties financially benefiting from the transaction were described as male. Therefore, the characters of the pimp (third party or beneficiary) and the sex worker were presented as dominant males versus susceptible females.

The dominant-susceptible dichotomy is problematic. Embracing such dichotomy perpetuates the idea that sex workers are victims of violence and coercion, which further feeds into the discourse of sex workers as individuals at risk (Kantola & Squires, 2004; Law, 2015; Wright et al., 2015). This perpetuates the conflation of sex work discourse to coercive and oppressive discourse. Additionally, it prevents sex work discourse to be associated to voluntary engagement in the sex industry nor labour discourse.

Moralization of Prostitution.

The *Bedford* decision discussed the applicability of morality as a constitutionally valid legislative objective. The appellants argued that the provisions had a historical moral objective that should no longer be considered constitutional (*Bedford v. Canada*, 2010 ONSC 4264). While the decision did not further expand on the appellants' argument, the respondent's arguments were developed as follows:

> "The CLF argues that prostitution is immoral, should be stigmatized and that it demeans the dignity of the prostitute and her client and harms women and the community at large. The CLF takes the position that morally based legislative objectives are constitutionally permissible where the laws are a reflection of society's core values that are otherwise compatible with Charter values" (*Bedford v. Canada*, 2010 ONSC 4264 at para.219).

The excerpt depicted that the concept of sex work was referred to in terms of immorality and indignity. The comment further problematized sex work since it did not

comply with society's core values. The respondent further developed their argument when stating:

> "all sexual gratification in exchange for payment is inconsistent with respect for the human dignity of the seller of sexual services. Because the law requires that a criminal prohibition must be founded upon a demonstrable apprehension of harm, the AG Ontario argues that the term "harm" should be interpreted to include the commodification of sex and attitudinal harm that would accrue to women as a result of legally sanctioned prostitution. Accordingly, [page390] the prevention of harm to and exploitation of prostitutes and the protection of their dignity as human beings are valid constitutional objectives" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 220).

The excerpt above exemplified the moralization of sex work through the entanglement of sexual services to discourses of harm in common law. The respondent's stance was that harm is a commodification of sex. This brought forward a negative association of sex work, since the plea identified sex work discourse as violent. The transaction of sexual services for financial gain was perceived as an act that lacked dignity for the person who provided sexual services. In this excerpt, the dignity of a woman is reduced to the use of their genitalia; this limits the definition of dignity as one-dimensional. The dignity of a woman is solely defined in relation to their body. This is reflective of Nussbaum's (1998) idea that female sexuality is moralized to delineate a specific standard of appropriate and inappropriate sexuality without justification. In this sense, the excerpt referred to women as a commodity themselves, by taking their agency. The appellants proposed the ability of women to commodify their own sexual services. Furthermore, the use of words about the women's dignity being 'protected' fed the victim discourse, which ultimately fed into the idea that sex workers do not have agency over their own bodies. Protecting women's dignities also allocates great importance to what women do sexually; this entails that women's worth is measured in relation to their sexual capacities.

Justice Himel concluded the discussion about morality by saying “These decisions recognize that a law grounded in morality remains a proper legislative objective so long as it is in keeping with Charter values” (*Bedford v. Canada,* 2010 ONSC 4264 at para. 225). The framework from which the provisions and expert evidence was examined emanated from the perspective that sex work is a moral matter. This framework is problematic, since prostitution at the time was not illegal, therefore it should not have been up for moral debate. The expert evidence of the respondents addressed sex work from the perspective of morality; yet this perspective needs to be considered from a historical context to comprehend the reason the topic was originally moralized.

The reason to call for historical context is to depict the changes Canadian law has undergone. For example, in the first Canadian Criminal Code, prostitution laws fell under "Offences against Religion, Morals and Public Convenience" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 230). Later on, the provisions s. 210 for bawdy-houses and s. 213 were moved to the section titled *Disorderly Houses, Gaming and Betting*. This change illustrates legislative amendment as a similar structure to the Foucauldian (1978b) approach to discourse change (see Chapter III). The appellants’ concern was due to the lack of consideration of how historical context played a role in the moralization of sex work. Such a lack of context establishes the development of discourses that have historically problematized sex work. The moralization of sex work is convoluted, since it creates an inappropriate link between discourses of nuisance, coercion, oppression, and public threat. Such discourses fuel the conceptualization of sex work as wrong, which serves to moralize the term.

Prostitution as a Nuisance.

In the *Bedford* decision, sex work is referred to as a *public nuisance*. For example, when speaking about provision s. 210, the Justice Himel stated that the objective of the legislation was about "control of common or public nuisances" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 255). Justice Himel also addressed that s. 213 is in place to control "the social nuisance associated with street prostitution" (para. 278). In this sense, nuisance discourse contributes to the idea that sex work is a matter that needs to be contained. Nuisance discourse problematized sex work by ascribing a negative connotation to the practice, since it allegedly affected the general population (Hubbard, 1998).

Prostitution as a Threat to the Public.

The discourse of sex work as a threat to society conceptually overlaps with nuisance discourse. By deeming sex work as a threat to the public, it further problematizes it. The respondents in the *Bedford* decision argued that while Parliament makes amendments, the provisions should not be suspended in order to protect the public (*Bedford v. Canada*, 2010 ONSC 4264).The continuous labeling of sex work as a threat to society throughout the decision further stigmatized the practice (Kantola & Squires, 2004; O'Connell Davidson, 2014). The stigmatization of sex work supports the duality of at risk versus risky, which represents the sex worker as either a victim or a threat.

The discourse of sex work as a threat to the public, binds the practice to a fixed context in which sexual services are exchanged. The ideology that sex work is a threat to society overlooks the fact that relationships between individuals have commercial transactions similar to sex work, but they are deemed as courtship (Nussbaum, 1998). In

this sense, the transaction of sexual services for financial gain has been constructed to be appropriate in the context of romantic relationships, but inappropriate and thus illegal, in the context of labour (Nussbaum, 1998). The explanation Nussbaum (1998) gave for such criminalization of sex work was due to its association to immorality. Furthermore, Nussbaum (1998) asserts that:

> "prostitution (frequently at least) is bound up with gender hierarchy, with ideas that women and their sexuality are in need of male domination and control, and the related idea that women should be available to men to provide an outlet for their sexual desires" (p.77).

Nussbaum (1998) explained the gender hierarchy, where female sexuality was perceived as dangerous, and thus a threat to the patriarchal control of women. In this sense, delineating the standards in which sex work could be carried out represents patriarchal control over women's bodies.

Prostitution as Coercive and Oppressive.

The nature of sex work was a topic brought up throughout the decision by the respondents and by Justice Himel. For example, the respondent's expert evidence focused on delivering the message that:

> "prostitution is inherently violent, regardless of the legal regime in place or how or where prostitution is practiced, citing high rates of violence against prostitutes internationally. Most of their opinions did not deal directly with the legal regime in Canada or its impact, or lack thereof, on violence against prostitutes" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 344).

The theme of coercion and oppression from part of the ideological framework of anti-prostitution stance in the respondent's expert evidence. Justice Himel made a comment on the respondent's expert evidence submitted by Farley (2005):

> "I found the evidence of Dr. Melissa Farley to be problematic. Although Dr. Farley has conducted a great deal of research on prostitution, her advocacy appears to have permeated her opinions. For example, Dr. Farley's unqualified assertion in her affidavit that prostitution is inherently violent appears to contradict her own findings" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 353)

The evidence provided by Farley was also seen as problematic by Weitzer (2005b, 2005c). Weitzer (2005b, 2005c) explained that Farley's ideology interfered with the rationalization of her research findings. Weitzer (2005b, 2005c) also argued that such ideology ignores the existence of voluntary and consensual sex work practice, since from an anti-prostitution standpoint, coercion and oppression are inherent in the practice to some degree.

Coercion and oppression discourses problematize sex work since it fails to recognize its basic conceptualization. The term *sex work* entails the provision of voluntary and consensual sexual services (George et al., 2010). Therefore, attaching coercion and oppression discourses to sex work nullifies the core of its definition. The association of coercion and oppression as inherent in sex work feeds into the discourse of victim and *at risk* which takes away the agency of the sex worker (Weitzer, 2005b, 2005c). Coercion and oppression disocurses correspond to activities done without consent, therefore corresponding to the term of trafficking (George et al., 2010).

Overall, the themes surrounding sex work found in the *Bedford* decision demonstrate the dominant negative discourse attached to sex work practices. Such ideologies emanate from an anti-prostitution stance which moralizes sex work, on the grounds that sex work is social problem that should be contained due to its alleged inherent evil nature. This account fails to recognize the voice and research of *pro-prostitution* individuals who continuously emphasize the erroneous conceptualization of

sex work as coercive and oppressive. Scholars continuously attempt to normalize the discourse of sex work as labor, voluntary and consensual (Krüsi et al, 2012; Nussbaum, 1998; Shaver, 1994; Weitzer, 2005b).

The *Bedford* decision noted where and how the law of sex work was created (*Bedford v. Canada*, 2010 ONSC 4264). The decision exposed the issues with sex work legislation, thus, uncovering the regulation of sex work throughout Canadian history. The act of exchanging sexual services for financial gain was not illegal when the decision was made, but all the activities surrounding such transaction were illegal. Lowman (2004) emphasizes that the legislative approach at the time of the decision allowed the Canadian government to criminalize sex work without explicitly having a law that prohibited the transaction of sexual services for money. Some of the themes found in the *Bedford* decision form part of themes found in the court decisions, while other themes lead to the discovery of alternate themes in the data, as stated in Chapter IV.

Bedford Aftermath: Bill C-36

In 2013, the Supreme Court of Canada upheld the Court of Appeals decision finding stated the provisions in question unconstitutional due to the dangerous conditions they posed for sex workers (*Canada (Attorney General) v. Bedford*, 2013 SCC 72). The provisions were struck down, and the word 'prostitution' was removed from the Criminal Code. Even though the Supreme Court of Canada showed a thorough understanding of the negative impact the provisions had on sex workers, the provisions were in effect for a year, until Parliament amended the Criminal Code. The Canadian government was under the ruling of the Conservative party when Parliament delivered the amendments on 2014.

In 2014, Parliament proposed Bill C-36, *Protection of Communities and Exploited Persons Act* (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). The Bill's objective —which can be found in the Background section of the legislative summary— was: to reduce the demand for sexual services, protect victims of sexual exploitation, and protect communities from the harms caused by prostitution (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). Bill C-36 introduced the application of the Nordic model or a neo-abolitionist legal approach to sex work legislation, which will be further discussed later in the current chapter. The provision of sexual services in the public setting remained legal (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25).

Provision Changes.

This section will address the amendments made by the Parliament on the provisions s. 197(1), s. 210, s. 212(1)(j), s. 213(1)(c).

(a) Bawdy House Provision.

Section 197(1) was amended (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). Prior to Bill C-36, s. 197(1) included the definition of prostitution, which was repealed in 2014. Under the section of Description and Analysis, section s. 197(1) kept the definition of *common bawdy houses* as "the practice of acts of indecency, a place that is kept or occupied or resorted to by one or more persons" (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25, section 2.11). The provision s. 210 was amended to have it comply with the removal of the word *prostitution*, which was changed to *sexual services for consideration* (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). Additional comments emphasized prohibition from

frequent or regular use of the same locations for sex work (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25).

(b) Living on The Avails Provision.

The provision s. 212 was repealed in its entirety and replaced with s. 286(1) *offence to obtain sexual services of an adult for consideration* and s. 286(3)(1) *offence to procure an adult* (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25, section 2.17.1). Bill C-36 stated that the new legislation was amended to reprimand people who parasitically benefitted from the financial gain of sex work. Therefore, the new law did not criminalize individuals who hold non-exploitative relationships with the sex worker (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25).

(c) Communicating Provision.

The provision s. 213(1)(c) was repealed and replaced by s. 213(1)(1). Section s. 213(1)(c) stated "anyone that stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person everyone" (Criminal Code, 1892). The new legislation reads: "anyone is guilty of an offence punishable on summary conviction who communicates with any person–for the purpose of offering or providing sexual services for consideration–in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare center" (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25, section 2.13). *Public place* is defined under s. 213(2) as including "any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view" (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25, section 2.13). Additional legislation made it an

offence to advertise sexual services for sale and gave common law power to remove such material from the internet (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25).

Bill C-36 seemed to not have taken into consideration the SCC's ruling and the appellant's expert evidence that emphasized the importance for sex workers to control their environment in order to maintain their safety and well-being (Jeffrey & MacDonald, 2006; Lewis & Maticka-Tyndale, 2000; Lewis, 2010; O'Doherty, 2007). The provisions in 2010 did not allow sex workers to control their work environment, therefore the provisions should have been struck down and reformed. Parliament did not seem to grasp the rationale behind striking and suspending the provisions, since the provisions were only amended (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). The new legislation regarding sex work introduced a novel legislative approach in Canadian law.

Legislative changes continued to criminalize the activities surrounding sex work, without explicitly criminalizing the act of selling sexual services. Bill C-36 recognized the difficulty of engaging in sex work without committing a crime (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). The changes brought forward by Bill C-36 for each provision were minimal, with the most relevant change being the removal of the word prostitution form the Criminal Code. The next section will explore the issues in implementation and scholarly criticism of the bill.

Implementation Issues of Bill C-36

Bill C-36 implemented amendments to the provisions challenged on the *Bedford* case and also implemented a neo-abolitionist approach to sex work legislation. Bill C-36

refers to the neo-abolitionist approach to sex work legislation as the *Nordic model*. Nordic countries have different approaches to sex work legislation and also had diverse reasons for implementing their law systems, therefore, is not appropriate to call the neo-abolitionist approach the *Nordic model* (Skilbrei & Holmström, 2011, 2016). This section focuses on the consequences after the enactment of Bill C-36.

As discussed in Chapter II, the neo-abolitionist approach to sex work legislation criminalizes buying sexual services, while it does not criminalize selling them. Even though street prostitution remained legal under Bill C-36, the practice of sex work involves breaking the law according to s. 286.1 (obtaining sexual services for consideration), s. 286.4 (advertising an offer to provide sexual services for consideration), s. 210 (keeping or being found in a bawdy house) and s. 213(1)(c) (communicating in public places for the purpose of exchanging sexual services). Bill C-36 states to provide legal immunity to sex workers of charges; yet, such immunity does not protect sex workers from mental or physical consequences that Bill C-36 has enabled.

The enactment of Bill C-36 compromised the physical safety of sex workers. It has been found that constant police enforcement over certain areas pushes sex workers to minimize safety tactics (Krüsi et al., 2014). The legislation post-*Bedford* leads sex workers to not screen clients properly and displace them to remote areas, where they are at risk of violence and being forced to have unprotected sex (Krüsi et al., 2014). The partial criminalization of sex work compromises the physical safety of workers by promoting displacement of the sex worker, which leads to potential violence and abuse. Nevertheless, sex workers have also faced mental and psychological impacts after the implementation of Bill C-36.

The post-*Bedford* sex work law created stigma against sex workers, which affected their working conditions. After Bill C-36 was enacted, it was found that as the stigmatization of sex workers increases, depression in the sex workers also increases (Benoit et al., 2015). Benoit et al. (2016) found that sex workers were dismissing their mental and physical needs after the implementation of Bill C-36 due to fear of discrimination and stigmatization. Some sex workers that were interviewed revealed that there was apprehension to reach out to health services due to fear of being judged by healthcare practitioners and possible police involvement (Benoit et al., 2016). The last ideas demonstrate the detrimental effects of Bill C-36 on sex workers, which isolates the sex worker due to their fear of being stigmatized and charged.

The neo-abolitionist approach to sex work law perpetuates unwarranted violence against sex workers. Some studies defend the idea partial criminalization of sex work compromises the legal protection of the sex worker (Amnesty International, 2015; Deering et al., 2014). For example, Amnesty International (2015) reported that adoption of the neo-abolitionist system in Norway led to a decrease of 'good' buyers; which meant that clients requesting services were less likely to respect the agreements made with the sex worker (Amnesty International, 2015). The report also highlighted that sex workers were still being criminalized and marginalized for their jobs, even though they were supposed to be protected under the law (Amnesty International, 2015). The neo-abolitionist approach leads to isolation of sex workers, which increases violence and abuse incidents; ultimately, this creates apprehension in sex workers to reach out to health services or law enforcement (Amnesty International, 2015; Anderson et al., 2016;

Shannon & Csete, 2010). In addition to perpetuating of violence, Bill C-36 dismisses the voices of practicing sex workers.

Bill C-36 did not include the opinions of non-coerced sex workers on the legislative changes discussed for living on the avails, keeping a bawdy house and communicating for the purposes of sexual services transactions. Research carried out after the change in legislation proved that sex workers felt that their policy recommendations were not being heard (Benoit et al., 2017). The newly adopted neo-abolitionist model used oppressed and coerced discourse (victim or at-risk discourse) to represent sex workers, which was not a representation of the *Bedford* appellants and other practicing workers (Lowman & Louie, 2012). Furthermore, Bill C-36 denied recognizing sex work as a profession by ignoring the voices of the advocates of sex work.

The sex work legislation implemented in 2014 (s. 210, s. 286(1), s. 286(3)(1), s. 286.4 and s. 213(1)(1)) still did not recognize sex work as a profession. This is reflected in Bill C-36 where the sex industry is referred to as a public nuisance and also when overtly stating that the new legislation attempts to eradicate the demand for such services (*Protection of Communities and Exploitation Act*, S.C. 2014, c. 25). The disregard of sex work from the context of labour through its moralization leads to discrimination and stigmatization against workers who engage in the sex industry (Benoit et al., 2016). Unfortunately, the enactment of Bill C-36 has not been the only instance when sex workers were stigmatized and discriminated against.

Bruckert and Hannem (2013) conveyed that sex workers have faced structural stigmatization throughout legislative history. The themes discussed earlier (prostitution as inherently coercive and oppressive, prostitution as a nuisance, prostitutes as victims and

at risk) derive from the ideology that sex work is inherently violent and confuses it with sex trafficking. Regardless, Parliament used such themes as the reason to amend the previous legislation (Bruckert & Hannem, 2013). As discussed before, taking a negative approach to sex work mutes the voices of sex workers who willingly work in the sex industry (Weitzer, 2005b, 2005c). The previous abolitionist and the current neo-abolitionist approaches to sex work legislation are described in literature as filled with discourse of immorality that portray sex workers as victims (Bruckert & Hannem, 2013). Some scholars explain the association of immorality with sex work to the construction of the early Canadian constitution based on Judeo-Christian beliefs, meaning the rubric from which common law performs is currently tainted with such beliefs (Bruckert & Hannem, 2013). Lauritsen (2010) reasoned that the stance Parliament took with the new amendments reflects the gendered history of sex work legislation.

The legislative amendments made in Bill C-36 partially criminalizes prostitution, which enables the recurring pattern between the worker and structural stigmatization. Scholars recognize the importance of the *Bedford* case, as it opened a conversation about the socio-legal issues that sex work and the experience of sex workers (Campbell, 2015; Sampson, 2014). In literature, researchers urge municipal lawmakers to consider Justice Himel's ruling and conclusion on the case, when she validated the unconstitutionality of the provisions challenged in *Bedford* (Craig, 2011). Considering discourses found in *Bedford* and the role they play in common law improves the understanding of the historical socio-legal construction of the prostitution discourse in common law.

New Horizons: Bill C-75

Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts,* was introduced on March 29, 2018, and received royal assent on June 21, 2019. The purpose of the Bill was to "make the criminal justice system more modern and efficient and to reduce delays in criminal proceedings" (*Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, S.C. 2019, c. 25, section 1). The Bill removed certain provisions from the Criminal Code that had been ruled unconstitutional by the Supreme Court of Canada (*Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts,* S.C. 2019, c. 25).

In the legislative summary of Bill C-75, under description and analysis, the provisions regarding bawdy houses (s. 210 and s. 211) were repealed due to the discriminatorily use "against the LGBTQ community and no longer serve a legitimate criminal law purpose" (*Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, S.C. 2019, c. 25, section 2.1.1). The s. 210 provision was not listed in section 2.1.9 Unconstitutional Provisions because it did not form part of the proposed amendments of Bill C-39 or Bill C-32. Regardless, the wording "repeals provisions that have been ruled unconstitutional by the Supreme Court of Canada" was misleading (*Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, S.C. 2019, c. 25, section 2.1.9). The wording implied that all the provisions ruled as unconstitutional in the past, such as s. 212(1)(j) and s. 213(1)(c) were to be removed from the Criminal Code.

A Comment on Bill C-75.

While the removal of s. 210 from the Criminal Code was a step towards decriminalizing sex work, there were some issues with the repeal. First, the repeal made it seem like only the LGBTQIA community was negatively affected by the criminalization of keeping a bawdy house. As proposed in this chapter, the appellants of the *Bedford* decision established that sex workers, regardless of their gender or their sexual orientation, could have benefitted from decriminalizing s. 210. Second, the repeal of s. 210 and s. 211 read as an afterthought on the legislators' minds, since it was addressed in a small paragraph that followed a list of provisions that were to be repealed. Addressing the decriminalization of s. 210 should have included not only the negative effect on the LGBTQIA community, but also the negative effect on the working conditions the criminalization of s. 210 posed for all sex workers. The decriminalization of s. 210 should have mentioned the *Bedford* decision and the main argument of the appellants to remove s. 210 from the Criminal Code. Third, it is insufficient to only decriminalize s. 210. Criminalizing s. 210 keeping a bawdy-house was a provision through which police punished consensual queer sex (Hooper, 2019), thus the reason to decriminalize it was to appease the LGBTQIA community. LGBTQIA sex workers are negatively affected by other sex work related provisions (Chu & Glass, 2013; Lewis, Maticka-Tyndale, Shaver, & Schramm, 2005); this entails that both LGBTQ sex workers and non-LGBTQIA sex workers are endangered by sex work related provisions. Fourth, repealing s. 210 did not annul the implementation of the Nordic model. Even though keeping or being found in a bawdy-house is legal, it also implies involvement in illicit activities through the purchase of sexual services and other sex work related activities.

Sex work is still criminalized to this day, which negatively affects sex workers (Benoit et al., 2015; Benoit et al., 2016; Benoit et al., 2017; Campbell, 2015).

Conclusion

The Pickton case and the Subcommittee on Solicitation Laws were crucial to understanding the issue the appellants of the *Bedford* decision proposed (Bill C-36). The appellants of the *Bedford* decision addressed an issue that was previously identified by Libby Davies, which was supposed to be addressed by the Subcommittee on Solicitation Laws report. Similarly, to the outcome of the Subcommittee on Solicitation Laws, the *Bedford* decision led to a 'solution' where sex work was still problematized since discourses of violence, at risk and public nuisance were present in Bill C-36. Discourses in Bill C-36 are reflective of the themes found in the *Bedford* decision. Post Bill C-36 research emphasize the psychological and physical issues sex workers face after the implementation of Bill C-36 (Benoit et al., 2015; Benoit et al., 2016; Benoit et al., 2017; Campbell, 2015). While Bill C-75 was a step towards decriminalizing sex work, there is an issue on solely decriminalizing s. 210. This chapter has demonstrated that Davies' petition and the *Bedford* case has established recurring patterns in the Canadian socio-legal setting. The current chapter explored the events that led up to the *Bedford* decision, the themes found in the *Bedford* decision and the aftermath of Bill C-36 and Bill C-75. The next chapter will focus on common law setting and the themes found in court decisions pre and post Bill C-36.

VI. DISCURSIVE CONSTRUCTIONS FOUND IN CANADIAN COURT DECISIONS BETWEEN 2010 AND 2018

Research findings reflected several overarching categories:(a) the construction and practice of discourse addressing sex industry stakeholder, (b) sex work ideology, and (c) legislation in the legal setting. I separated the findings into two chapters—this chapter (Chapter VI) and the next chapter (Chapter VII)—in order to organize and present findings as either discursive *constructions* or discursive *practices* in the legal setting. In this chapter I present findings that represented discursive constructions which further shape prostitution discourse and perpetuate ideologies regarding sex work. Discursive constructions refer to the abstract, conceptual and ideological boundaries, and underpinnings of language found in court decisions. Through the use of discourse analysis on court decisions I found three major themes: the definition of prostitution, moralization of prostitution and the conflation of sex trafficking with sex work. The three major themes constitute the three parts of this chapter. Each section presents dominant themes, where findings of the pre-Bill C-36 dataset will be presented first, followed by the post-Bill C-36 dataset findings. Prior to the three sections reflecting the findings of the current study, I briefly discuss the structure of court decisions and legislative development since the creation of the Canadian criminal justice system.

Part I. Definition of Prostitution and Use of Sex Work Discourse

This section will uncover discursive constructions found in both pre and post-Bill C-36 datasets regarding the definition of prostitution, and the use of the term ‘sex work’ versus ‘prostitution’. As outlined in the literature review, there does not exist a consensus in the academic literature as to the status and meaning of the terms ‘prostitution’ and ‘sex work’. The terms ‘sex work’ and ‘prostitution’ co-exist as evidence that scholars cannot

agree on conceptualizations of and legislative approaches to sex work (Weitzer, 2005a, 2005b, 2005c). These debates were also found in the case law, whereby the definition of prostitution was discussed as well as the use of the terms 'sex work' versus the use of 'prostitution'.

Definition of Prostitution.

The definition of the term prostitution was found in the pre-Bill C-36 dataset as "lewd acts for payment for the sexual gratification of the purchaser" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 248). The definition appeared three times in the pre-Bill C-36 dataset. The definition used the discourse of indecent or vulgar acts to refer to sexual services; furthermore, this recycled definition defined prostitution in relation to the buyer. This definition dismissed the involvement, thus the agency, of the prostitute or sex worker who is the individual providing the services. In contrast, definitions of prostitution in the literature are inclusive of the seller and the buyer (Perkins & Bennett,1985; Høigård & Finstad, 1992), or are solely centered on the sex worker (Plant, 1990).

In the post-Bill C-36 dataset the definition of prostitution changed to "the exchange of sexual services in return for payment" (*R. v. Griffiths*, [2015] O.J. No. 5674 at para. 38). This definition was used twice in the post-Bill C-36 dataset. The term was defined according to the functionality of the transaction; the definition of prostitution in post-Bill C-36 changed to a technical definition without centering on the participants of the sex transaction. This was done in an attempt to use neutral language, that is, language that attached neither negative nor positive meaning. Phoenix (1995) proposes that prostitution involves complex relations and activities; thus, *neutral* definitions of

prostitution are limited to the worker-client relationship. However, the new definition does not limit prostitution; it describes the *exchange* of sexual services, which involves the seller and the buyer.

Defining prostitution also involves defining the sexual services or acts the sex worker provides. In the pre-Bill C-36 dataset the term ‘sexual services’ was used 22 times, while ‘sexual acts’ appeared three times (see Appendix B). In the pre-Bill C-36 dataset the term ‘sexual services’ was not explicitly defined, but it was mentioned that ‘blowjobs’ and ‘sexual intercourse’ were forms of sexual services. It was not identified what comprises sexual intercourse, but judges stated that the users of sexual services were male. Furthermore, in *R. v. Samuels* ([2013] O.J. No. 4200), the terms ‘erotic services’ and ‘sexually explicit photographs’ were used; the terms did not disclose if the erotic services, sexual services or sexually explicit photographs referred to female or male masturbation, penetration by means of dildos or male genitalia, vaginal, oral or anal sex. Overall, the context and language surrounding sexual services was restrictive and ambiguous.

In the post-Bill C-36, ‘sexual services’ was mentioned 143 times and ‘sexual acts’ appeared 16 times (see Appendix B). However, in some court decisions the debate centered around the definition of sexual services. In *R. v. Griffiths* ([2015] O.J. No. 5674), the judge cited *R. v. Mara* ([1996] O.J. No. 364) and stated that performing lap dances was a form of prostitution. In *R. v. N.A.* ([2017] O.J. No. 1369), the Crown stated that sexual services entailed engaging in ‘sexual acts’ with men, with *stripping* not constituting a sexual act. The two examples shed light on the lack of consensus around what comprised ‘sexual services’ or ‘prostitution’. The post-Bill C-36 dataset also had

ambiguity in the discursive construction of sexual services. One important insight is that judges defined sex work terminology based on previous court decisions that were decades old; the use of sex work definitions from such old court decisions implies that discourse used in common law is outdated.

The word ‘prostitute’ was used in the pre-Bill C-36 dataset 82 times (see Appendix B). One definition found in the pre-Bill C-36 dataset proposed that a series of negative experiences such as teenage motherhood, foster care and lack of education constructed a prostitute. In another instance, it was said that being a prostitute was not illegal. On the other hand, the word ‘prostitute’ was mentioned 130 times in the post-Bill C-36 dataset (see Appendix B); prostitute was defined as “a person who offers or provides sexual services for consideration” (*R. v. Evans*, [2017] O.J. No. 3424, at para. 136). This definition was not always used, at times the term ‘prostitute’ was defined as a consequence of “the group home system and had been manipulated, exploited and prostituted by a pimp when she was a minor” (*R. v. Safieh*, [2018] O.J. No. 3880, at para. 12). Defining prostitute as a by-product of negative experiences demonstrates the negative discourses and stigma attached to the term ‘prostitute’. The shift in the definition of prostitute from the pre-Bill C-36 to post-Bill C-36 dataset seems virtually non-existent except for the inclusion of a definition with *neutral* language.

Sex Work versus Prostitution.

In the pre-Bill C-36 dataset the terms ‘prostitute’, ‘prostitution’, ‘sex trade’ and ‘sex trade workers’ were commonly used. The judge in *R. v. Samuels* ([2013] O.J. No. 4200) questioned the appropriate term to be used by referring to the sex worker as an “escort” and referring to sex work as “escort prostitution services” (at para. 31). The

Bedford decision used the term ‘survival sex workers’ to define sex workers who were homeless and drug addicts; in the pre-Bill C-36 dataset this was the only court decision that used the language of ‘sex work’ which was conflated with discourses of homelessness and drug addiction. The term ‘sex trade’ was used six times and ‘sex work’ was used four times, which is minimal when comparing such numbers to the use of the word ‘prostitution’ —108 times— and the word ‘prostitute’, which was used 82 times (see Appendix B).

In the post-Bill C-36 dataset the term ‘prostitution’ was used 183 times, even though such language was struck from the Criminal Code as of November 6, 2014 (see Appendix B). The abolishment of the term ‘prostitution’ should be no surprise considering that since the 1970s, sellers of sexual services and their advocates protested against poor work conditions, lack of beneficial legislative reform and overall social stigma (McClintock, 1993). As a result, sellers of sexual services prefer the term ‘sex work’ and ‘sex worker’, as it derives from the description of their jobs. The lack of regard for the word ‘prostitution’ was found in *R. v. Majdalani* ([2017] O.J. No. 1252) where the sex worker stated that “she was an escort, a term she prefers to prostitute” (at para. 108). Regardless, in the post-Bill C-36 dataset, the word ‘sex work’ was only used 27 times, while ‘sex worker’ was used only 22 times (see Appendix B). When comparing such numbers with the 130 instances that the word ‘prostitute’ was used, and the 183 times the term ‘prostitution’ was used, it reflected a lack of understanding in common law regarding the thoughts of sex workers as well as a lack of understanding of sex workers as laborers.

The shift from the pre-Bill C-36 dataset to the post-Bill C-36 dataset laid in the theoretical removal of the word 'prostitution' on November 6, 2014, yet the term 'prostitute' remained prevalent in both datasets. This demonstrates the lack of understanding in Canadian common law regarding the need to improve the work conditions of sex workers by means of legal reform and prohibiting social stigma against sex workers.

Part II. Moralization of Prostitution

This section will present instances from both pre and post-Bill C-36 datasets in which sex work was referenced in relation to morality. The literature surrounding the moralization of prostitution comprised discourses of religion, male domination, and over-concern with women's sexuality (Backhouse, 1985; Brundage, 2009; Engels, 1972; Hallgrímsdóttir et al., 2008; Kantola & Squires, 2004). References to morality was found in both pre and post-Bill -36 datasets. The topic of sex work was moralized by deeming the commodification of sexual services as inappropriate, deviant and a danger to society.

Commodification of Sexual Services as Inappropriate.

In the pre-Bill C-36 dataset the term 'morality' was mentioned three times; two of the three instances addressed morality as the grounding based of Canadian legislation (see Appendix B). There were four times in which the term 'immoral' was used (see Appendix B). In two of those instances, it was said that "prostitution is immoral" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 219); while the two other mentions were to explain that because of the immorality of prostitution, and specifically the compromise of social values, sex work should be stigmatized (*Bedford v. Canada*, 2010 ONSC). Prior to the implementation of Bill C-36 prostitution discourse was conflated with immorality

and disruption of social values. Furthermore, legislation —law— was used to define the citizen's integrity, and thus shape which acts are immoral. In terms of the citizen's integrity, another principle meshed in prostitution discourse is dignity.

In the pre-Bill C-36 dataset, 'dignity' appears four times (see Appendix B). In one of those instances it is stated that:

Excerpt 1

> "all sexual gratification in exchange for payment is inconsistent with respect for the human dignity of the seller of sexual services. Because the law requires that a criminal prohibition must be founded upon a demonstrable apprehension of harm, the AG Ontario argues that the term 'harm' should be interpreted to include the commodification of sex and attitudinal harm that would accrue to women as a result of legally sanctioned prostitution. Accordingly, [page390] the prevention of harm to and exploitation of prostitutes and the protection of their dignity as human beings are valid constitutional objectives" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 220).

In Excerpt One, the construction of citizens' integrity was referred to as the commodification of sexual services as both an endangerment of the dignity of the seller as well as an act that causes harm to the seller of the services. The passage did not expand on the conceptualization of dignity; therefore, to state the dignity of the seller was at risk was vague. It was problematic to solely focus on one person involved in the exchange, when there are two people involved. In general, relationships amongst individuals are transactional (Nussbaum, 1998). In a romantic relationship there are exchanges of gifts, sexual acts, and emotional services, amongst the most common exchanges (Nussbaum, 1998). The same concept is applicable to the exchange of skills for money, in other words, employment (Nussbaum, 1998); Excerpt One emphasized that the commodification of sexual acts has been framed in law as an undignified act, as immoral, without discussing the components of dignity of the citizen. Yet, Excerpt One actively

constructed the dignity of the seller and dismissed the dignity of the buyer or client. The client's dignity was not endangered, even though their actions —which are buying and forming part of the sexual act— were part of a process deemed undignified. The 'endangerment of dignity' referred by the judges in pre-Bill C-36 cases targeted the dignity of the seller, thus the sex worker. Furthermore, Excerpt One highlighted the manner in which prostitution acquired the language of exploitation by means of harm towards the seller; in this sense, prostitution was constructed to be a 'risky' or 'dangerous' activity.

On the other hand, in the post-Bill C-36 dataset, the term 'morality' was not present, but the word 'moral' was used four times (see Appendix B). The four uses represented diverse instances, from judges recognizing the *moral blame* of the criminal system to the *moral culpability* of a young sex worker (*R. v. A.S.*, [2016] O.J. No. 5838; *R. v. Gray-Lewis*, [2018] O.J. No. 4304; *R. v. Robitaille*, [2017] O.J. No. 5954; *R. v. Safieh*, [2018] O.J. No. 3880). Even though the terms 'moral' and 'morality' were scarcely used, there were instances where sex work was moralized. Similar to the pre-Bill C-36 dataset, the idea that the commodification of sexual services compromised the human dignity of the seller was found in the post-Bill C-36 dataset. The word 'dignity' appeared in the dataset four times (see Appendix B). One of the most compelling findings was the absence of the word' immorality' in the post-Bill C-36 dataset; sex work was moralized in the post-Bill C-36 dataset through the use of adverbs.

The post-Bill C-36 dataset relied heavily on adverbs to indicate the inappropriateness of exchanging sexual services for money. For example, "Accordingly, in a very real and practical sense, pimps' traffic in the human resources of prostitutes,

callously using their sexual services as an endlessly available commodity to be simply bought and sold in the market place" (*R. v. Lopez,* [2018] O.J. No. 4145 at para. 52). The adverb 'callously' attributed a negative intention on behalf of the pimps to use the sex workers; therefore, the act —sexual services— was described in a problematic context. In other instances, sex work was also deemed as inappropriate because it was equated to trouble or danger. For example, "C.S. claimed she had never done stuff like that before and that she was 'always the type of girl who didn't get into trouble'" (*R. v. Dykes,* [2018] O.J. No. 2979 at para. 12). The example illustrated the association of sex work as a deviant activity which was outside the normal standards that regulate the activities categorized as appropriate and inappropriate.

Identifying prostitution as inappropriate was also perpetuated in both datasets by defining it as a dangerous activity and a lewd act. In the pre-Bill C-36 dataset, prostitution was defined as a lewd act; furthermore, judges constantly analyzed the effect of prostitution on the community. In the pre-Bill C-36 dataset, the criminalization of prostitution was established as a means to protect the public from the nuisance of prostitution. Correspondingly, in the post-Bill C-36 dataset prostitution was referred as a danger 14 times (see Appendix B). For example, "The social ills and dangers associated with prostitution" (*R. v. Safieh,* [2018] O.J. No. 3880 at para. 18); the *risk* the passage refers to is the risk prostitution poses on society. Therefore, through the moralization of prostitution, the discourse prostitution as a threat to society was accepted and embraced by judges in Canadian common law.

Prostitution as a Threat to Society.

The continuous depiction of prostitution as an inappropriate act enables the discourse of endangerment of dignities. Additionally, the risks of prostitution in the pre-Bill C-36 dataset were portrayed as having an effect on the general public. In the *Bedford* decision, the effect of sex work on the community was discussed when referring to bawdy-houses as

Excerpt 2

> "detrimental to the public, as they promote cheating and other corrupt practices; and incite to idleness and [page395] avaricious ways of gaining property persons whose time might otherwise be employed for the good of the community" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 238).

The s. 210 provision that criminalized keeping or being found in a bawdy-house has been repealed with Bill C-75 in 2019; yet, the language used prior to Bill C-36 implied that sex workers practiced acts that put the community at risk. Sex workers and sex work were portrayed in a damaging light. The language of 'avarice', 'idleness', 'corruption' and 'cheating' further feeds into the perception that prostitution and its industry are dangerous, and thus a threat to the integrity of citizens. This framing makes sex workers responsible for the decision making of others, such as infidelity.

In the post-Bill C-36 dataset prostitution was depicted as a threat to society given the alleged correlations to crime, and exposure of children to such crime and potential exploitation. For example,

Excerpt 3

> "Prostitution also negatively impacts the communities in which it takes place through a number of factors, including: related criminality, such as human trafficking and drug-related crime; exposure of children to the sale of sex as a commodity and the risk of being drawn into a life of exploitation; harassment of residents; noise; impeding traffic; unsanitary acts, including leaving behind dangerous refuse such as used condoms or drug paraphernalia; and, unwelcome

> solicitation of children by purchasers" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 52).

Excerpt Three was filled with discourse that associates prostitution to crimes, human trafficking, and a focus on the potential negative effect on children. Excerpt Three (a) responsibilizes the sex industry as a whole for the negative effects of sex work in the community, and (b) assumed that harassment, noise, impeding traffic as well as polluting the environment with condoms and paraphernalia solely exists because of prostitution. Such discourse feeds the language of sex work as risky (Wright et al., 2015); such normative ideas of a *safe community* create resistance to integrate sex worker as citizens of the community (Wright et al., 2015). Additionally, embracing the discourse of prostitution as a threat to society deemed the language of sex workers as *unwanted*.

Similarly, to the pre-Bill C-36 dataset, the post-Bill C-36 dataset also deemed the commodification of sexual services as inappropriate. For example,

> **Excerpt 4**
>
> "Prostitution reinforces gender inequalities in society at large by normalizing the treatment of primarily women's bodies as commodities to be bought and sold. In this regard, prostitution harms everyone in society by sending the message that sexual acts can be bought by those with money and power. Prostitution allows men, who are primarily the purchasers of sexual services, paid access to female bodies, thereby demeaning and degrading the human dignity of all women and girls by entrenching a clearly gendered practice in Canadian society" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 52).

The example used gendered and moralized views of prostitution to argue that prostitution is a threat to society. Excerpt Four generalized that sex workers were women and the buyers were men. These findings resembled findings from the pre-Bill C-36 dataset, in which the human dignity that was compromised belonged to the sellers, not the buyers. This led to over-preoccupation with women, which was not a new concept (Engels,

1972). One striking difference between datasets is the explicit referral of women as the sex workers, thus the stakeholders whose dignities are being 'degraded' and 'demeaned'.

The shift from 'endangered dignities' to 'demeaned' and 'degraded dignities' delineated a change from total loss of dignity to a partial loss of dignity. In the pre-Bill C-36 dataset, when the dignity of the sex worker was said to be endangered, it illustrated that the dignity itself was at risk, therefore engaging in prostitution presumably took away all of the dignity of the prostitute. On the other hand, to have the dignity demeaned or degraded imparted the idea that by engaging in prostitution the prostitute lowers or loses part of their dignity. Nevertheless, the shift from a total loss of dignity to a partial loss of dignity moralized prostitution by upholding sexuality to be what constructs the dignity of women (Engels, 1972; Nussbaum, 1998). Additionally, the moralized discourse of prostitution that constructed the dignity of women demonstrated its regulative power over women's bodies.

Overall, both datasets deemed prostitution as inappropriate. The pre-Bill C-36 dataset explicitly used the language of 'morality' and 'immorality' to regard prostitution as inappropriate; while the post-Bill C-36 dataset relied on adverbs like 'callous' and the use of 'dangerous' to imply the inappropriateness of the commodification of sexual services. In both datasets the language used to describe prostitution as a threat to society was moralized in an attempt to make discourse more enticing; the pre-Bill C-36 dataset moralized language referred to the *endangerment* of dignity while the post-Bill C-36 dataset moralized language spoke about the *degradation* of dignity.

Part III. Conflation of Sex Trafficking and Sex Work

The conflation of the terms ‘sex trafficking’ and ‘sex work’ occurs due to the lack of discernment between voluntary engagement in the sex industry and the coercion of individuals into sex trafficking. This idea is constantly debated when different feminist theorists do not agree on the nature of sex work, whether the engagement is voluntary or coerced and have different legal models (Weitzer, 2005a, 2005b, 2005c). I will explore the following themes to understand the conflation of sex work to sex trafficking: voluntary and consensual practices, victim blaming sex workers, and the belief that third parties are the sole financial beneficiaries of sex work. The former idea refers to instances when sex work is perceived as coercive and lack of agency on behalf of sex workers. The last topic of the section will be the erroneous conceptualization of sex work as sex trafficking, and as a consequence of such, the normalization of prostitution as inherently evil.

Voluntary Engagement in Sex Work.

In the pre-Bill C-36 dataset the judges used phrases like ‘decided to’ and ‘her own choice’ to demonstrate the willingness of the sex worker to engage in the sex industry. For example, in *R. v. Salmon* ([2014] O.J. No. 4887) the judge made a comment that “she was prostituting herself by her own choice, without any pressure from him” (*R. v. Salmon,* [2014] O.J. No. 4887 at para. 20). Here, the judge recognized the agency of the sex worker, as well as that involvement in the sex industry can be a voluntary practice; yet, the judge still used the pejorative phrasing of ‘prostituting herself’, as if the standard of the sex industry was to have someone else ‘prostitute’ the individual (Weitzer, 2005a).

This is relevant when considering comments made in the *Bedford* decision where the respondents side supported that the practice of sex work is never completely voluntary.

In the pre-Bill C-36 dataset, sex workers were at times described as independent from pimps. This independence referred to the control of transactions, and the ability of sex workers to decide their transactions. For example, "Ms. Hughes who controlled the appointments she made with clients. The appointment lists were in her handwriting according to her testimony. She contacted clients, she set her fees and controlled if and when she worked as an escort" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 120). The *free will* of the sex worker was represented as the ability to establish her transactions. In *R. v. Burton* ([2013] O.J. No. 1748) free will was presented by stating "A.S. testified that she could have gone to someone else, but she did not want to" (*R. v. Burton,* [2013] O.J. No. 1748 at para. 21). The previous example acknowledged the freedom that sex workers have over their work, contrary to often-touted perspectives that all sex workers lack free will, or agency, over the commercial sexual exchange (Farley, 2005).

Free will, agency and voluntary involvement in the sex industry were also spoken about from the context of consent. The judges in the pre-Bill C-36 dataset expressed that the sex workers' consent was irrelevant. For instance: "Again, consent is not relevant. And even if it was somehow relevant, I find that M.B. never consented to the activities which form the subject-matter of any of these offences" (*R. v. K.O.,* [2014] O.J. No. 2792 at para. 176). Contrarily, some other judges treated voluntary engagement as a crucial factor. For example, "Both these women were over the age of 18 and were escorts by choice" (*R. v. Byron,* [2013] O.J. No. 5396 at para. 18). Consent or voluntary engagement

should not be treated as irrelevant, because it is a key factor when distinguishing sex work and sex trafficking.

In the post-Bill C-36 dataset when the judges referred to the willingness of the sex worker to perform sexual acts, the language used included the terms ‘coercion’, and ‘trafficked’. This can be seen in *R. v. A.R* ([2016] O.J. No. 6184) when the judge stated “A. does not believe she was coerced by her boyfriend to enter the sex trade” (*R. v. A.R.,* [2016] O.J. No. 6184 at para. 35). In *R. v. Dykes* ([2018] O.J. No. 2979) a sex worker expressed “she was not being trafficked” (*R. v. Dykes,* [2018] O.J. No. 2979 at para. 53). The language of ‘decided’, ‘agreed to’, and ‘it was her idea’ were present in the dataset. For example, “The complainant agreed to leave London and return to York Region to work in the sex trade with Ms. Najafi” (*R. v. Moradi,* [2016] O.J. No. 7031 at para. 2) and “C.R. testified that it was her idea to do extras” (*R. v. Griffiths,* [2015] O.J. No. 5674 at para. 17). At times judges emphasized that the pimps rarely had to *coerce* workers which reflects the erroneous belief that sex work entails a nonconsensual practice.

In the post-Bill C-36 dataset, free will or voluntary practice was portrayed as sex worker independence and control over their transactions. For example,

Excerpt 5

> “She decided where to work and she set her own rates. On her own volition she moved around numerous clubs in order to maximize her earnings, rather than working exclusively at one club. She covered her essential living needs by staying in motels and taxing to and from work. She sold cocaine to supplement her income. And she was no pushover: on one occasion, she smashed a bottle over a customer's head who tried to ‘finger’ her without her permission. Overall, I am not persuaded she ceded much influence to anyone” (*R. v. Morgan,* [2018] O.J. No. 3377 at para. 41).

Excerpt Five described the sex worker’s autonomy to emphasize that the sex worker was not influenced by others. The willingness to participate in the sex industry was found in

other court decisions through the use of the terms “in control at all times” and “out of her own volition” (*R. v. Korof*, [2017] O.J. No. 963 at para. 193; *R. v. Rocker*, [2018] O.J. No. 3193 at para. 23). The concept of ‘consent’ was dominant in the post-Bill C-36 dataset. This could be due to the necessity to discern between sex trafficking and sex work since it is necessary to prove if the worker was trafficked or was practicing sex work on her/his own accord.

Victim Blaming Sex Workers.

In the process of differentiating voluntary engagement of the sex worker from them being sex trafficked, the discourse of victim blaming appeared in the data. There were moments in the data when judges recognized the agency and autonomy of the sex worker, which was used to responsibilize sex workers for their assaults or abuse. This is problematic because sex workers and their advocates refer to these instances as poor working conditions. Bedford, Lebovitch and Scott were striving to improve these working conditions in their 2010 *Charter* challenge.

Judges engaged in victim blaming when they questioned the decisions of the sex worker. For example, “The defence questioned why she did not seek help then but instead allowed herself to return with Mr. Byron” (*R. v. Byron*, [2013] O.J. No. 5396 at para. 32). The word ‘help’ was vague and did not fully explain the types of resources the sex worker could have used or that were available. The use of the word and phrase ‘instead’ and ‘allowed herself’ attributed responsibility to the sex worker for any assault or abuse that occurred once she worked again with Mr. Byron. Furthermore, other language used in the pre-Bill C-36 dataset was ‘could have’ (*R. v. Burton*, [2013] O.J. No. 1748) and ‘opportunity to flee’ (*R. v. K.O.,* [2014] O.J. No. 2792) to refer to opportunities sex

workers had to disengage from providing sexual services. Such discourse was used in the context when sex workers were assaulted or mistreated; therefore, the judges took these instances to remind sex workers that they had the ability to prevent the physical or verbal assaults by disengaging their sexual services. The engagement of victim blaming discourse negatively affected sex workers, as the implementation of Bill C-36 did.

Responsibilizing the sex worker for poor working conditions in Canada's sex work industry is analogous to negative experiences of sex workers after the implementation of Bill C-36. Sex workers were displaced; they were forced to perform their work in remote areas, which made them vulnerable to violence and assault (Campbell, 2015; Krüsi et al., 2014). The issue did not exclusively pertain to the displacement of sex workers; another outcome of this issue was that sex workers did not attend to their mental and physical health, which was perpetuated by their fear of being discriminated and stigmatized (Benoit et al., 2016). Therefore, when judges responsibilized sex workers for poor working conditions, they engaged in discrimination and stigmatization of sex workers.

Similarly, the post-Bill C-36 dataset had victim blaming language that targeted sex workers. The common words and phrases used in the post-Bill C-36 dataset were 'did not leave', 'despite of', 'instead of going to the police', and 'she knew what she was getting into'. In 10 examples, judges emphasized the option of leaving due to maltreatment on behalf of pimps. The phrase "she knew what she was getting into" (***R. v. Lucas-Johnson,*** [2018] O.J. No. 3685 at para.239) was an example of victim blaming discourse and described the sex industry as inherently violent. The appearance of victim blaming discourse in the post-Bill C-36 was contradictory.

The contradiction in victim blaming language in the post-Bill C-36 dataset denoted that (a) blaming the victim for the violence and coercion they underwent goes against the functionality of Bill C-36, and (b) voluntary engagement of sexual services existed but has restrictive socio-legal barriers. As of November 6, 2014, sex work was deemed inherently exploitative and coercive. Therefore, all sex workers should have been treated as victims, to comply with the idea that sex workers lack the 'option' to leave the situation they are in; yet, it was demonstrated in both datasets that even judges recognized that all individuals presented before the court were not victims. Furthermore, to comply with the language and ideology used in Bill C-36 would be to say that judges blamed individuals for the violence, coercion and oppression they faced. Judges are agents that further conflate sex work to coercive and oppressive activities through the use of victim blaming.

Police officers were also found to be a barrier in the socio-legal setting. Judges in three cases from the post-Bill C-36 dataset stated that sex workers were not going to the police for help. Apprehension to be involved in legal issues, discrimination and stigmatization were some of the reasons sex workers in Canada did not reach out to police officers (Benoit et al., 2016). This was seen in the post-Bill C-36 dataset when "Constable Bentley testified that she was concerned about that narrative because MCW implied she had been held against her will, yet indicated that she was left alone in the room. The officer thought she could have simply got up and left" (*R. v. Majdalani*, [2017] O.J. No. 1252 at para. 51). The use of the word 'yet' undermined the statement provided by the sex worker and insinuated that the sex worker could have prevented being 'held against her will'. The example demonstrated that police officers recognized

that sex workers were not victims, yet they were not willing to help sex workers in circumstances when they were confined, assaulted or abused.

Financial Beneficiaries of Sex Work.

One of the reasons sex work is conflated with sex trafficking is due to the belief that the monetary gain goes to other people, rather than the sex worker. The former idea implies that the existence of a third party increases the risk of sex worker exploitation. The section aims to provide instances in the datasets that overtly or covertly state that the beneficiaries of sex work transactions are usually third parties.

In the pre-Bill C-36 dataset the financial beneficiaries of sex work are said to be "humiliating" the sex worker (*R. v. Salmon*, [2014] O.J. No. 4887 at para. 22). Feminists who believe women cannot benefit from sex work also believe it is a form of violence and oppression against women (Farley, 2005; Gerassi, 2015; Jakobsson & Kotsadam, 2013). On the other hand, in the 13 instances in the pre-Bill C-36 dataset when there was a referral to money exchanged for sexual services, it was not specified that the recipient of the money would be someone other than the sex worker. The language used was the client 'offered' (*R. v. K.O.*, [2014] O.J. No. 2792), the sex worker 'charged' (*R. v. Soulliere*, [2013] O.J. No. 3174) or the sex worker was 'paid' (*R. v. Wasser*, [2010] O.J. No. 2526). This can be interpreted as the recognition on behalf of judges that sex workers financially benefitted from their sexual services.

In the post-Bill C-36 dataset, there were instances where it was bluntly put that only third parties benefit from the practice of sex work. For example,

Excerpt 6

> "Third parties promote and capitalize on this demand by facilitating the prostitution of others for their own gain. Such persons may initially pose as

> benevolent helpers, providers of assistance and protection to those who 'work' for them. But the development of economic interests in the prostitution of others creates an incentive for exploitative conduct in order to maximize profits" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 52).

In Excerpt Six, the language of *exploitation* and *manipulation* is used to depict how third parties benefit. Additionally, the post-Bill C-36 dataset had language such as 'capitalize on her vulnerability', which further emphasized the perception of the sex worker as a weak individual who was being used. The language of perceiving the sex worker as vulnerable and a victim is reflective of the implementation of Bill C-36, since the language of victim, vulnerable, and at-risk was used in this Bill.

The language used in the post-Bill C-36 dataset as reflected in Excerpt Six was blunt; yet, out of the 22 instances when money was exchange for sexual services there was only one case where the sex worker provided someone else all their earnings. Moreover, there were four instances when the third party —the alleged pimp— split the money with the sex worker, to cover the costs of transportation, booking and overall protection of the sex worker. However, in only one of the four cases a judge admitted that "No exploitation had occurred" (*R. v. Victorine,* [2017] O.J. No. 2960 at para. 41). This demonstrated that even though the discourse of third parties as financial beneficiaries existed, the language of sex workers as primary financial beneficiaries also existed in common law. Therefore, sexual services exchanged for money without exploitation exists and the terms 'sex work' and 'sex trafficking' should differ in conceptualization.

Erroneous Conceptualization of Sex Work and Sex Trafficking.

The previous themes found in part three explained the conflation of sex work and sex trafficking at a theoretical level through: the discussion of voluntary and coercive sex work engagement, the responsibilization of sex workers for poor working conditions as

well as the belief that sex work entails exploitation of the sex worker to the financial benefit of third parties. This current theme will pin-point instances where the definitions of sex trafficking ideology was confused, and thus attached to sex work.

In the pre-Bill C-36 dataset one of the most relevant markers of this conflation was that prostitution "was generally described as being a harmful activity with links to drugs, violence, organized crime, child exploitation and human trafficking (one officer called prostitution a form of 'slavery')" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 90). The definition provided in the *Bedford* decision added a crucial aspect to the conceptualization of prostitution: 'a form of slavery', 'child exploitation' and 'human trafficking'. This crucial part referred to practices where the person being enslaved, exploited, and trafficked did not do so voluntarily; therefore, those practices were coercive, oppressive and exploitative. Similar definitions of the sex industry and sex workers were found in the pre-Bill C-36 dataset through the terms 'coercive control', 'exploitation' and 'forced into'. The words used in the pre-Bill C-36 dataset denoted that individuals were forced into the sex industry and thus conceptualized the discourse of prostitution as a nonconsensual exchange.

In the pre-Bill C-36 dataset, prostitution was conceptualized to be evil and also a form of slavery. This was due to the alleged disadvantage of sex workers because they were "characterized as victims, commonly poverty-stricken, abused and drug-addicted" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 90). These descriptors were not representative of sex workers. They were representative of individuals being sex trafficked. Regardless, the Crown's characterizations and judges' comments from the *Bedford* decision persisted on describing sex workers with "physical and psychological

harms" due to "the inherent inequality that characterizes the prostitute-customer relationship, and not from the Criminal Code" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 90). The example defended that the legislation surrounding the criminalization of prostitution did not create inequality for sex workers; this responsibilizes the prostitute-customer relationship for any potential harms sex workers undergo. Moreover, the example did not recognize the negative effect of sex work criminalization on sex workers, which perpetuates violence in the sex industry. Thus, legislation prior to Bill C-36 supports a lack of sex workers labour rights.

The post-Bill C-36 dataset had examples of judges who understood the difference between sex work and sex trafficking. For example, in *R. v. D'Souza* ([2016] O.J. No. 4992) the judge indicated that:

> **Excerpt 7**
>
> "here is a distinction between voluntary prostitution and forced sex trafficking; that there is no standard definition of exploitation; that there is a great debate between commentators on whether existing definitions of human trafficking are too narrow or too broad; and that there is an even more vociferous debate between commentators on whether it is harmful to conflate the concepts of prostitution and human trafficking" (*R. v. D'Souza*, [2016] O.J. No. 4992 at para. 41).

Excerpt Seven referred to the erroneous conceptualization as a conflation of the terms, which will be seen in the next chapter when the terms are used in common law interchangeably. The example also reflected upon the heated debate between pro-sex work and anti-sex work perspectives. The judge brought awareness to the conceptual debate scholars such as Weitzer (2005b) and Farley (2005) engaged in: rather than viewing the concept from one perspective by complying and perpetuating an anti-sex work stance. The attention centered on diverse feminist frameworks that depicted the various socio-legal approaches to sex work, which were described in Chapter II.

Different feminist theories contributed to the conflation of sex work and sex trafficking. The scholar Ronald Weitzer gave expert evidence, to which the judge of the court decision commented:

> **Excerpt 8**
>
> "[Ronald Weitzer] harshly criticizes what he calls 'radical feminism' and its efforts to equate prostitution with human trafficking. He thinks that it is absurd and argues that there is nothing wrong with recognizing that many prostitutes voluntarily choose that life and are not victims of sex trafficking" (*R. v. D'Souza*, [2016] O.J. No. 4992 at para. 42).

Even though scholars like Weitzer (2005a, 2005b, 2005c) attempted to shed light on the conceptual differences between the two terms, the use of language such as 'exploitation', and 'coercion' appeared respectively 54 and 17 times in the post-Bill C-36 dataset (see Appendix B). The predominance of the language can be attributed to the greater number of court decisions in the post-Bill C-36; another reason such language prevailed could be due to the language from Bill C-36, which was analogous to the language of oppression and coercion.

Similar to the pre-Bill C-36 dataset, the post-Bill C-36 dataset contained language that explicitly demonstrated a lack of voluntary engagement in the sex industry. Discourses used were: 'coercive exploitation', 'controlling actions', 'form of slavery' and 'disadvantaged women'. There were new terms introduced, such as 'degradation' and 'subordination of women'. The use of *degradation* moralized sex work in an attempt to deem it an inappropriate line of work. In literature, the subordination of women has been understood to be the patriarchal control of women through their labour and reproductive capacities (Engels, 1972). The appearance of 'subordination of women' discourse in post-Bill C-36 data was an attempt to establish sex trafficking as a form of subordination of

women. De Beauvoir (2012) argues that women have always been subordinated. If women have always been subordinated, yet, it only appeared in the post-Bill C-36 dataset, there is a possibility that a. the language of subordination of women was different in the pre-Bill C-36 dataset or b. subordination of women post-Bill C-36 existed but not with an affinity to sex trafficking. The implementation of Bill C-36 catapulted the use of the language of subordination. Discourse of *subordination of women* both contributed to belief in sexual subordination, where the sexual act takes power from women and enables their domination, and further perpetuated the subordination of women by wrongly associating the term with acts where women are not coerced (Wolken, 2006).

Due to the erroneous conceptualization of sex work as sex trafficking, in the post-Bill C-36 dataset the idea of prostitution as inherently evil was perpetuated through discourses such as: 'form of slavery', 'subordination of women' and 'coercive exploitation'. For example, the pimp-sex worker relation was considered "inherently exploitive, coercive and controlling" and the control of sex workers through "a variety of tactics including emotional blackmail, verbal abuse, threats of violence and/or pure physical violence and brutality" (*R. v. Lopez*, [2018] O.J. No. 4145 at para. 52). The discourse of prostitution as inherently evil was preserved through stereotypes attached to sex workers, pimp-sex worker relationships and the sex industry. Stereotypes based on anti-sex work ideology negated sex worker agency and free will—as seen in part two of the current chapter—and the continuous moralization of the topic deemed commercialization of sexual services inappropriate.

The data found in post-Bill C-36 exemplified the normalization of prostitution as inherently evil by constructing the sex industry as coercive and exploitative in nature. For

example, “The Defence counters by saying that perhaps the reasonable observer equates prostitution with exploitation, and thus, nothing further is needed” (*R. v. D'Souza,* [2016] O.J. No. 4992 at para. 78). The phrase ‘reasonable observer’ attempted to normalize the subsequent phrase ‘equates prostitution with exploitation’ by seeking to make the statement that could not be invalidated nor disputed. Moreover, the normalization of prostitution as inherently evil was seen in metaphors such as “guided the girls as they descended into the seedy world of the sex trade” (*R. v. J.L.,* [2016] O.J. No. 513 at para. 13). The judge did not question the nuances of the sex industry, the judge used the adjective ‘seedy’ to describe the sex industry as dangerous, evil and shameful.

Conclusion

This chapter presented key discursive constructions found in both pre-Bill C-36 and post-Bill C-36 datasets. The themes found in both datasets were subjected to a comparison to understand discourse changes in the themes found before and after the implementation of Bill C-36. Overall, the current chapter found an almost imperceptible shift in the definition of prostitution and prostitute by attempting to adopt a more neutral and gender inclusive language in the post-Bill C-36 dataset. The moralization of sex work was portrayed differently in both datasets. In the pre-Bill C-36 dataset sex work was described as an inappropriate activity due to its immorality, while the post-Bill C-36 dataset mostly used adverbs to moralize sex work. Another significant finding was the shift from endangered dignities to degraded or demeaned dignities of the sex workers. A major finding from Part Three revealed the acknowledgement that sex work existed in the absence of exploitation but judges resisted such idea through engaging in victim blaming discourse in both pre and post-Bill C-36 datasets. The erroneous conceptualization of sex

work as sex trafficking was prevalent in both datasets but the post-Bill C-36 had an example that addressed the harm of conflating the two terms. In both datasets prostitution was conceptualized and normalized to be inherently evil; the post-Bill C-36 data used metaphors to describe the sex industry as an evil charged setting. The slight changes in discursive constructions demonstrated the slow changes in discursive constructions that still held a positionality that reflected radical feminist believes, moralization of the topic, victim blaming discourse and a criminalization legal approach to prostitution. The next chapter, Chapter VII, will present discursive practices found in Canadian common law that shape stakeholder construction and sex worker protective strategies, discursive practices that oppose negative sex work ideology, and discursive practices that accept negative sex work ideology.

VII. DISCURSIVE PRACTICES FOUND IN CANADIAN COURT DECISIONS BETWEEN 2010 AND 2018

This chapter is the second chapter of findings and analysis. The previous chapter, Chapter VI, presented the discursive constructions of the sex industry in Canadian common law. In this chapter I uncover and analyze discursive practices. *Discursive practices* refer to discourses or languages used in Canadian common law. Examining discursive practices from caselaw uncovers language used to describe or address stakeholders, legislation, safety strategies and overall sex work ideology. The discourse analysis led to the discovery of two major themes: sex worker protective strategies and judicial approaches to sex trafficking model. In sex worker protective strategies, I address discourses surrounding health and physical protection. In the second section I provide a range of approaches to the sex trafficking model within the judiciary that at times can lead to contradictions. Similar to Chapter VI, the two major themes represent the two parts of this chapter. Each section provides dominant themes, where findings of the pre-Bill C-36 dataset are presented first, followed by the post-Bill C-36 dataset findings.

Part I. Sex Worker Protection Strategies

The discursive practices related to protection strategies reveal the manner in which protection has been framed from 2010 to 2018 in common law.

Health Protection.

The topic of sex workers' health is usually explored as a result of their envisioned exposure to sexually transmitted diseases (STD). While some studies are concerned with the knowledge surrounding AIDS, STDs and condom use as a preventative measure (Basuki et al., 2002; Hor, Detels, Heng, & Mun, 2005), others are concerned with the

frequency of condom use and socio-demographic factors that affect sex workers' condom use (Basuki et al., 2002; Pickering, Quigley, Hayes, Todd, & Wilkins, 1993; Pilkington, Kern, & Indest, 1994). The data found in both datasets gave importance to the use of condoms.

The word 'condom' appeared 11 times in the pre-Bill C-36 dataset while it appeared 22 times in the post-Bill C-36 dataset (see Appendix B). In the pre-Bill C-36 dataset 'condoms' were referred as items supplied by third parties to sex workers, and also instances where a third party forced the sex worker to perform sexual services without condoms, which was said to endanger the sex worker's "health" (*R. v. Byron*, [2013] O.J. No. 5396 at para. 41). The health of the sex worker was endangered because "over time the services IB offered on her web pages provided little or no protection from her from sexually transmitted diseases or infections" (*R. v. Byron*, [2013] O.J. No. 5396 at para. 13). The judge from *R. v. Byron* ([2013] O.J. No. 5396) expressed concern for the sex worker's exposure to STDs and was aware that unprotected sex was not a common service.

Condoms are considered a barrier that separates work sex from non-work sex. Non-work sex is sex in the personal lives of sex workers, where they may not use condoms (Sanders, 2002). Positive feelings, such as love and trust, evoked by romantic partners have been found to make the individual be less likely to use condoms (Murray et al., 2007; Pilkington et al.,1994). On the other hand, work sex is usually performed with condoms (Sanders, 2002). Even though literature delineates condom use as an emotional or intimacy barrier, the multiple uses of the word 'condom' in the pre-Bill C-36 dataset linked the word to the health of the sex worker.

‘Health’ was mentioned seven times in the pre-Bill C-36 dataset (see Appendix B). In one instance, the sex worker clarified that she liked “being healthy” and the services she provided were “safe” (*R. v. Soulliere*, [2013] O.J. No. 3174 at para. 71). Even though the sex worker did not explicitly mention how she was being safe, it was understood that the services were performed with condoms.

Unlike the pre-Bill C-36 dataset, the post-Bill C-36 data placed emphasis on discerning whose idea was it to use condoms. For example, “Condoms were provided, although on one occasion the victim engaged in sexual intercourse with a customer and a condom was not used. There is no evidence before the court that Mr. Finestone ordered this, knew about it or had any role in it” (*R. v. Robitaille*, [2017] O.J. No. 5954 at para. 73). The data also presented multiple instances where pimps emphasized to sex workers to “use condoms always” (*R. v. Badali*, [2016] O.J. No. 544 at para. 32). In this sense, condom use became a health practice, which was part of the job.

The term ‘health’ was only mentioned 4 times (see Appendix B), for diverse reasons, one being the difficulty of the sex worker to engage in healthy relationships (*R. v. Badali*, [2016] O.J. No. 544). The minimal presence of the word ‘health’ could be due to the predominance of the condom use rule third parties were imposing on sex workers. On the other hand, in *R. v. Lopez* ([2018] O.J. No. 4145) a third party forced a sex worker to engage in “bare-back” (at para. 19) (unprotected) sexual services to the point of contracting two sexually transmitted diseases. The reinforcement of third parties condom use rule could be interpreted as a concern of third parties on the physical health of sex workers. Another interpretation could be that third parties recognized the distinction between work sex and non-work sex. Considering *R. v. Lopez* ([2018] O.J. No. 4145)

leads to believe that sex workers do not voluntarily engage in unprotected sexual services. Therefore, condom use was a reference to the health of the sex worker and also the difference between work sex and non-work sex.

Physical Protection.

In the pre-Bill C-36 dataset, the physical protection of sex workers included "working in a familiar environment; having regulars as clients; verifying price, services and contact information with a potential client before a session; and hiring a driver to wait during appointments" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 86). The pre-Bill C-36 data addressed the lack of physical protection due to barriers pre-Bill C-36 legislation posed on sex workers.

The post-Bill C-36 dataset had instances that exemplified how sex workers maintained physical protection. Physical safety was addressed in the context of indoor practices, since "working in massage parlours was safer. There was better control over who got in and there were other people around" (*R. v. Evans*, [2017] O.J. No. 3424 at para. 25). The use of body guards promised the sex workers physical safety, in case clients attempted to assault or attack the sex worker.

The need for physical protection declared in the pre-Bill C-36 dataset, was exemplified in post-Bill C-36 data. Physical protection is needed due to the possibility of violence against sex workers (Sanders, 2004). Just as mentioned in both datasets, strategies for protection include screening clients through pre-non-sexual meetings, use of chaperons, and have third parties outside the room or house (Sanders, 2004). The use of violent and theft prevention strategies resembles protocols from organizations and companies to ensure the safety of workers and employees.

Overall, discursive practices surrounding protection strategies reveal the existence of disease discourse to be associated with forced engagement in the sex industry. While health discourse was present, it was as discussed as the topic of third parties imposing the rule of condom use. This finding leads to the discernment between work sex and non-work sex. The necessity for physical protection was exemplified in post-Bill C-36 data.

Part II. Judicial Approaches to The Sex Trafficking Model

A vast amount of discursive practices in common law had discourses that derive from sex trafficking ideology. That is, the discursive practices had discourses of exploitation, coercion and oppression. This section showcases discursive practices that: shape stakeholders involved in the sex industry, perpetuate and oppose the conflation of sex work to sex trafficking.

Descriptions of Stakeholders Involved in The Sex Industry.

In literature, the most commonly described actors in commercial sexual exchange are: pimps, sex workers, clients ('johns'), and law enforcement. Depending on the approach to sex work, scholars implicitly describe the stakeholders of the sex industry. For example, when sex work is described from an economic framework, the actors of the sex industry are referred to as principals (sex workers and clients) and intermediaries (pimps and brothel owners) (Farmer & Horowitz, 2013). When sex work is framed from an anti-prostitution stance the stakeholders are called victims (sex workers) and victimizers or perpetrators (pimps and clients) (Raphael & Myers-Powell, 2010). The previous framework is based on sex trafficking ideology. Another popular framework is pro-prostitution, which views sex work as viable employment; the stakeholders are sex workers, the clients and third parties (pimps) (Lewis & Shaver, 2006; Wright et al.,

2015). Similarly, the stakeholder constructions found in the datasets were deeply intertwined with beliefs about the roles and the nature of the stakeholders. Discursive practices were influenced by narratives such as: at risk versus risky, the moralization of prostitution, and prostitution as inherently evil.

Pimp.

In both datasets, pimps were referred to as the 'defendant' or the 'accused', that is, the charges were laid against them. In the pre-Bill C-36 dataset there were 10 court decisions where pimps were charged. The most common charge was s. 212(1)(j) living on the avails of prostitution, followed by s. 212(1)(d) procuring a person to become a prostitute. Both s. 212(1)(j) and s. 212(1)(d) established that the target was to criminalize third parties, not the sex workers. Of the 10 third parties accused, only one was female; which established a male dominance in the data. The discursive practices of judges also prescribed a masculine gender to the accused third parties.

The pre-Bill C-36 dataset demonstrated that judges used masculine pronouns and masculine nouns to describe pimps. Pronouns and nouns such as 'he', 'himself', 'male person', and 'man' were used to referred to pimps or individuals who took advantage of the sex worker. For example,

Excerpt 9

> "a person may fairly be said to be living in whole or in part on the earnings of prostitution if he is paid by prostitutes for goods or services supplied by him to them for the purpose of their prostitution which he would not supply but for the fact that they were prostitutes" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 264)

In Excerpt Nine, the judge assumed that a person who lived on the avails of prostitution was male, because the pronoun 'him' was used. This was also reflected when legislation

was discussed. For example, a judge mentioned that "while s. 216(l) is aimed at the man who engages himself in gleaning the earnings of prostitution as a business or stable means of livelihood" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 256). The judge did not state 'pimp' but referred to men as collectors of money that derived from sex work, therefore, the people charged in the court decisions were procurers or people living on the avails of sex work. After such stakeholders were deemed individuals charged and accused, the judges of the court decisions referred to them as pimps.

In the pre-Bill C-36 dataset pimps were described to be "a bad person and low-life pimp, who exploited women and deserved to be punished" (*R. v. Samuels,* [2013] O.J. No. 4200 at para. 54). They were said to have a self-grandiose perception. They were also described as 'manipulative', 'abusive', 'exploitative', and even 'malevolent'. The use of the word "malevolent*"* (*Bedford v. Canada,* 2010 ONSC 4264 at para. 263) is important here, as it served to establish pimps as innately evil doers, a discursive construction that changes in the later dataset, as will be discussed later in this section. Furthermore, the other discourses described the pimp as a dominant subject, which created a power dynamic within the pimp-sex worker relationship. This *power dynamic* has been referred to as something horrifying that should not be glorified in the context of sexual exploitation of women (Sharpley-Whiting, 2007). The role of pimps was framed in relation to sex trafficking, which was consistent with the words used to describe pimps and their overall behaviour; this entailed an exploitative conduct and engaging in non-consensual activities.

The description of pimps occurred from a moralistic framework of sex work, which views sex work as an immoral activity. This was reflected when pimps were

described as the violators of the sex workers' "sexual integrity" (*R. v. K.O.,* [2014] O.J. No. 2792 at para. 96). This responsibilized pimps for: the victimization of sex workers, perpetuated the dominant-submissive narrative, and promoted characterizations of sex work as sex trafficking. Additionally, the belief that pimps are coercers and oppressors seemed to be deeply ingrained in judges' opinions. For example, when speaking about the possibility of pimps providing protective services to sex workers, Lord Reid (from the British House of Lords) stated that "even if their relationship were dressed up as a contract of service; and a man could not escape because he acted in some such capacity for a number of women. His occupation would still be parasitic" (as cited in *Bedford v. Canada*, 2010 ONSC 4264 at para. 266). Lord Reid emphasized that pimps are inherently related to prostitutes in a parasitic manner. The reference to pimps as parasites also exists in literature, along with pimps as abusers or diseased (Henry, 1970; Moore 2006; Shelby, 2002). Lord Reid implied that pimps could not have a labour relationship when stating in the above quote, as an aside, 'even if their relationship were dressed up as a contract of service'. The use of 'dressed up' indicated that contracts between pimps and sex workers were facades, therefore, such contracts did not possibly exist.

On the other hand, the post Bill C-36 dataset had 35 court decisions where pimps were charged, of which only two of the accused were women. The most common charge was s. 286.3 procuring, followed by s. 286.2 material benefit from sexual services, and s. 286.4 advertising sexual services. A common charge that accompanied the charges previously stated was s. 279.01 trafficking in persons, which should be no surprise considering the heavy-laden sex trafficking ideology of Bill C-36. The descriptions of pimps post-Bill C-36 shared similarities to the descriptions of pre-Bill C-36 pimps.

Specifically, the post-Bill C-36 data described pimps as masculine. The words and common phrases to describe them were ‘dangerous criminals’, ‘coercers’, ‘oppressors’, and individuals who ‘prey on women’. For example,

Excerpt 10

> “Pimps prey upon these young women's need for love, security or money. They use romance, blackmail or violence to coerce these young women into having sexual relations with johns. These pimps are dangerous criminals, deserving of the most serious sanctions” (*R. v. Joseph*, [2018] O.J. No. 4241 at para. 19).

The judge from Excerpt Ten took an anti-prostitution position to inform descriptions of the pimps. Additionally, the discourse ‘dangerous criminals’ was a novel description of pimps. ‘Dangerous’ entailed that the individual may or may not cause harm or injury to the sex worker; on the other hand, ‘criminal’ described the pimp as deviant. The phrase ‘prey on women’ referred to a power dynamic that was immanent in the pimp-sex worker relation, where the animals at risk were women. Therefore, the shift from ‘violators of sexual integrity’ and ‘malevolent’ to ‘dangerous criminals’ and ‘prey on women’, described a shift from pimps as ill-intentioned and innately evil to a potential cause of harm, and the belief that is in their animalistic nature to be dominant. There was a shift in the data from describing pimps as ill-intentioned to responsibilizing them for their ill-intentioned actions.

Additionally, pimps went from being described as violators of women’s sexual integrity to preying on women. This shift delineated the existence of ideologies such as *vulnerable women* and *strong men*. Discourses of dominant or strong men resemble the social construction of hegemonic masculinity (Bird, 1996). Connell’s study (as cited in Bird, 1996) states that hegemonic masculinity entails “the maintenance of practices that institutionalize men's dominance over women” (p.120). Connell (as cited in Bird, 1996)

notices that hegemonic masculinity is established “in relation to women” (p. 120). This is reflected in both pre and post-Bill C-36 datasets, since the descriptions of pimps were done in relation to sex workers, which determined that pimps preserved power over them. Some scholars do not comply with the idea that pimps are born, they are made (Raphael & Myers-Powell, 2010). The construction of pimps as ill-intended could potentially derived from their potential problematic pasts.

The construction of pimps in literature focuses on the experience of diverse types of maltreatment during childhood, which leads individuals to become pimps. In a study by Raphael and Myers-Powell (2010), the equifinality into pimping can be due to experiences of physical abuse, childhood sexual assault, and substance use during childhood. The discursive practices of the pimp stakeholder could derive from the pre-conception of pimps as individuals with a troubled past. Regardless, part of the literature overlooked the nature versus nurture debate and associated pimps as perpetrators of violence against sex workers (Bruckert & Law, 2013).

The discursive practices in the post-Bill C-36 dataset surrounding the stakeholder of the pimp were mostly done from an anti-prostitution and sex trafficking framework. The pimps were said to use manipulation to groom individuals to join the sex industry, where the sex workers were not consenting to exchange sexual services. The language used was “exercise control over” the sex worker, which is similar language judges used to determine that sex trafficking had occurred (*R. v. Rocker*, [2018] O.J. No. 3193 at para. 17). In scholarship, the term ‘pimp’ is used in the context of sex trafficking by depicting pimps as traffickers, and describing them as coercers and exploiters (Fox & Reid, 2019:

Jackson et al., 2009; Wolfe, 2018). However, there were instances in the datasets when pimps were described from a labour and pro-prostitution framework.

Pimps in the post-Bill C-36 dataset were described by sex workers as "someone who was supposed to protect" them (*R. v. Evans,* [2017] O.J. No. 3424 at para. 71). The role of the pimp from the perspectives of sex workers was to provide physical protection, "clothes, drugs and beauty products" (*R. v. Campbell,* [2017] O.J. No. 633 at para. 7). In the post-Bill C-36 dataset the word 'protection' was invoked 17 times (see Appendix B). Such instances described the concern of pimps with the protection of the sex worker, to make the sexual service transaction safer for sex workers (*R. v. Korof,* [2017] O.J. No. 963 at para. 24). In the pre-Bill C-36 dataset, there were no instances where protection was discussed by pimps. However, in the pre-Bill C-36 dataset there were instances where pimps provided services that helped sex workers "earn money in the sex trade" (*R. v. Michon,* [2013] O.J. No. 2484 at para. 1). Furthermore, protection was discussed in the pre-Bill C-36 dataset in the *Bedford* decision by the applicants, who established that third parties like bodyguards and drivers are the means to the physical protection of sex workers.

Sex Worker.

Sex workers, similar to pimps, were described depending on the framework used to understand prostitution. There are scholarly perspectives of sex workers as vulnerable victims of sexual exploitation (Farley, 2003, 2004, 2005; Poulin, 2003), while other scholars perceive sex workers as workers and individuals with agency (Bruckert & Law, 2013; Nussbaum, 1998; Lewis et al., 2005; Lewis & Maticka-Tyndale, 2000; Lewis &

Shaver, 2006; Shaver 1994, 2005). Both datasets had discursive practices similar to the ones found in literature.

In all 58 court decisions that comprised the data, the sex workers were female. Only in the post-Bill C-36 dataset were three sex workers charged for s. 286.3 procuring, s. 286.2 receiving material benefit from sexual services, and s. 211 keeping a bawdy house (this was before s. 211 was repealed in 2019). In Excerpt One, found in Chapter VI, the judge explained that harm should be encompassing of the commodification of sexual services and attitudinal harm, which was understood to be the 'protection' of women. This discursive practice constructed the sex worker as female and also established that the voluntary commodification of sexual services was implausible, which is a perspective that has been influential since the late 1800s (McLaren, 1986). This perspective feeds the anti-prostitution, sex trafficking ideology that sex work is sexual exploitation and engaging in the sex industry could never be voluntary (Bruckert & Law, 2013; Farley, 2003, 2004, 2005).

Discourses present in pre-Bill C-36 caselaw included 'victim', 'vulnerable', 'poverty-stricken', 'abused', 'drug-addicted', and 'turning her into a prostitute'. The language described sex workers as coerced, oppressed and manipulated individuals. Fake relationships and emotional manipulation were the means through which the sex workers are allegedly manipulated. All these discursive practices built a susceptible stakeholder. This description feeds into the discourse of *at risk* or *victim*, which are pre-existing discourses in literature (Kantola & Squires, 2004; Law, 2015; Wright et al., 2015). Additionally, judges used similes to emphasize the disadvantage sex workers endure in the sex industry. For example, "For 18 months he used her body as his wallet" (*R. v.*

McPherson, [2013] O.J. No. 1254 at para. 30). Even though judges engaged in discursive practices that establish sex workers as victims, they also engaged in discursive practices that blame female sex workers for the behaviour of others.

Discursive practices in Canadian common law responsibilize sex workers for the conduct of others. In the *Bedford* decision, Lord Reid was quoted discussing that the occupations of pimps "would still be parasitic; it would not exist if the women were not prostitutes" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 266). Prior to the above statement, the provision living on the avails of prostitution was discussed. The passage presents a problematic idea, which is that prostitute women are responsible for the exploitative existence of pimps. The assumptions made are that (a) pimps exist due to prostitution and (b) pimps' function solely in an exploitative manner. Therefore, the discursive practices limit the characterizations of pimps, while responsibilizing female prostitutes for the destructive behaviour of pimps. Clearly, the sex worker was also discursively constructed to be a stakeholder who can exist outside the conceptualization of victim and at risk.

In the pre-Bill C-36 dataset judges commented on the court behaviour of sex workers that did not benefit their credibility. The judges perceived their testimonies as contradictory and untrustworthy if the sex workers "had an agenda to assist" the pimps, and if their testimonies were perceived as "rambling", "incoherent" or "inconsistent" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 72). For example, "That evidence is inconsistent with and contradicted by her testimony" (*R. v. Salmon,* [2014] O.J. No. 4887 at para. 59). The evidence presented by sex workers is perceived as unreliable and contradictory by judges if their in-court behaviour "became aggressive", "combative" or

if the sex worker "attempted to obfuscate her conduct" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 72). The phrase 'attempted to obfuscate her conduct' refers to sex workers denying their involvement in the sex industry. Such discursive practices shaped sex workers to be untrustworthy, inconsistent and problematizes a positive working relationship between third parties and sex workers. Moreover, such discursive practices did not consider the feelings of apprehension sex workers potentially had due to fear of being charged for activities that were legal at the time.

The post-Bill C-36 dataset clearly established that sex workers are "often women and children forced into the sex industry, but also include men, women and children" (*R. v. D'Souza,* [2016] O.J. No. 4992 at para. 60). Including men to the definition of the sex worker came at the expense of sex workers' agency. While the legislative definition of sex worker evolved to include men, unfortunately the definition was rooted in sex trafficking ideologies. The term 'forced' discursively constructed sex workers as oppressed and coerced, contrary to individuals who choose to engage in sex work. An anti-prostitution conflation of sex work with sex trafficking also formed part of the construction of the sex worker.

The word 'victim' was used 105 times in the dataset (see Appendix B). Other discourses such as 'vulnerable persons', 'power imbalances' referred to sex workers, which constructs a susceptible and powerless subject. Additionally, the theme at risk was found in the post-Bill C-36 dataset, since sex workers were said to be engaging in

Excerpt 11

> "an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place, both from purchasers of sexual services and from third parties" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 52).

In Excerpt Eleven, the sentence 'regardless of the venue or legal framework in which it takes place' attributed permanency to the *risk* sex workers are exposed to. Additionally, there were other risks sex workers were exposed to. The judges assumed that pimps use sex workers as "nothing more than a captive sexual slave" (*R. v. Alexis-McLymont,* [2018] O.J. No. 983 at para. 133). The body and the mind of the sex worker were compromised, in addition to their possible subordination. Such discursive practices rendered sex workers as individuals at risk.

The behaviour of sex workers in court was also scrutinized in the post-Bill C-36 dataset. Similar to the pre-Bill C-36 dataset, the sex worker was perceived as untrustworthy if their demeanor was interpreted as either "mocking", "sarcastic", or if they are "unresponsive" (*R. v. Moradi,* [2016] O.J. No. 7031 at para. 18). Multiple judges from the caselaw gave importance to instances when sex workers were inconsistent when reporting how and when they engaged in the sex industry. Additionally, there were times in the post-Bill C-36 dataset when sex workers were perceived as credible stakeholders.

In the post-Bill C-36 dataset there were times when the sex worker's court behaviour was perceived as sincere or genuine. For example, "Having said all of that, I generally found KJ to be a sincere witness. She did not display any particular vitriol for Mr. Evans, but gave her evidence in a matter-of-fact style" (*R. v. Evans,* [2017] O.J. No. 3424 at para. 57). The example illustrated that when sex workers expressed themselves with certainty, they were perceived as credible. Moreover, the example identified the *standard* judges held for a person to be considered to be a credible witness or to have a credible testimony. The standard entailed vocalizing the testimony with certainty, no rambling, no expression of emotions, answering questions when asked and no changes in

the testimony. Meeting the stated standard entailed increasing the credibility of sex workers in common law. Therefore, engaging in this discursive practice subjects sex workers to meet the credible criteria. Judges used the in-court sex worker behaviour to deem and differentiate between victims and non-victims.

One of the most interesting findings was that judges had an established script for victims. In the post-Bill C-36 dataset there was a comment made about a relation between having a strong personality and the inability of someone to coerce the individual into the sex industry. For example,

Excerpt 12

> "B.M.'s response at trial that she was too scared to ask cannot be reconciled with her subsequent explanation that she agreed to give M.M. all her money because he promised her that he would use the money to get a rent-to-own condo and to hire a lawyer who could help her regain custody of her daughter. Neither of those explanations can be reconciled with B.M.'s personality. B.M. may have been young but it was evident that she was strong and defiant who marched to her own tune. She was determined and she did not come across as somebody who would tolerate being used or abused" (*R. v. M.M.,* [2018] O.J. No. 781 at para. 204).

Excerpt Twelve exposed the problem of having a victim script. The sex worker did not fit into the victim script because of her personality. The personality of the sex worker deemed it implausible to abuse her. While the sex worker was voicing her concerns, the judge was focused on discerning whether she could be coerced or not. Furthermore, the judge used the word 'defiant' to describe the sex worker, which normalized discourses that represent sex workers as risky or a threat. This description of the sex worker as defiant entails that the sex worker was not behaving in the manner that was expected. The sex workers' behaviour was disobedient, or resistant, which did not comply with the codes of conduct in common law. Common law, in this sense has a regulatory power over

the conduct of individuals in it. Furthermore, the language of sex workers as risky described their bodies as possible threats to society (Dasgupta, 2018).

Both pre-Bill C-36 and post-Bill C-36 datasets demonstrated that sex workers were being described as vulnerable victims. Yet, the post-Bill C-36 data emphasized that sex workers were not only susceptible subjects, they were also at risk or were risky individuals. The post-Bill C-36 dataset saw the sex workers in a relationship with a power imbalance. This major shift towards powerlessness discourse made sex work an urgent topic to be addressed. Discursive practices regarding in-court behaviour of sex workers revealed the standard that sex workers need to meet in order to be deemed a trustworthy and credible witness. On the other hand, the non-victim in-court behaviour of sex workers changed from problematic to deviant and uncontrollable. These descriptions of sex workers limit them to be either risky individuals or individuals at risk.

Law Enforcement.

Police officers are key stakeholders in the sex industry who play an important role, since their presence can negatively affect the work conditions of sex workers (Campbell, 2015; Krüsi et al., 2014). Scholars have addressed the effect of police officers on the physical and mental health of sex workers (Benoit et al., 2016; Krüsi et al., 2014). The depiction of police officers in both datasets was limited to the function of police officers to collect evidence and charge individuals.

In the pre-Bill C-36 dataset officers were described as "poorly trained", "a waste of taxpayer's monies" and "a disservice to the criminal justice system" (*R. v. McPherson*, [2013] O.J. No. 1254 at para. 17). The descriptions addressed the lack of thoroughness when collecting evidence, which was described to be a "significant oversight by the

police in the conduct of their investigation" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 98). In the passage above, the judge was dissatisfied with the investigation etiquette of law enforcement. This is because law enforcement are crucial subjects who facilitate the criminalization of sex work, who provide part of the evidence for trials. Therefore, judges want the evidence that is used by the prosecutor (crown) to be irrefutable. Nonetheless, there were instances when the evidence provided by law enforcement was subpar.

In the court decision *R. v. Soulliere* ([2013] O.J. No. 3174) the detectives were not able to record conversations made between the accused and the complainant. There were utterances that "that were too low and they did not record" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 109). The few notes the detectives took were not used by the crown since the judge deemed that

Excerpt 13

> *"Words do not become admissible merely because they are uttered out of the mouth of the accused. It is for the party tendering the evidence to prove the connection between the evidence tendered and the fact...*The issue here is not whether the officer is telling the truth that the accused uttered these words, but whether any meaning can be put on the words. Are they an admission? Certainly if they are, they are relevant and highly probative. ... In this case the factual question is whether or not there is a statement discernible of meaning. Authenticity of the words is not in issue - meaning is" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 104)

In Excerpt Thirteen, the judge recognized the need of evidence from which meaning could be extracted upon. The judge stated that 'authenticity of the words is not in issue — meaning is', which implied that officers should have attributed a meaning to the utterances made between the third party and the sex worker. This could be problematic, since officers could have the liberty to ascribe a meaning to the utterances and conversations among other sex industry stakeholders as positive or negative.

On the other hand, the post-Bill C-36 dataset provided more information regarding officers, their relation with the sex industry, and their negative effect on the stakeholders of the sex industry. Police officers were involved in the narrative of sex workers as victims. In *R. v. Evans* ([2017] O.J. No. 3424) the police officers suggested to the sex worker 'that she was a victim', this occurred after the officers charged the sex worker. In the end the sex worker "came forward with a second statement in which she implicated Mr. Evans in criminal activity. The charges against her were dropped shortly thereafter" (*R. v. Evans*, [2017] O.J. No. 3424 at para. 92). In their desire to target pimps, police officers in *R. v. Evans* ([2017] O.J. No. 3424) deemed sex workers victims of accords that were consensual. This is problematic because of the erroneous and manipulative imposition of the victim discourse to sex workers discourse, and also the inaccurate criminalization of individuals. The wrongful criminalization of individuals can be detrimental to the individual and question the adeptness of law enforcement.

In *R. v. Joseph* ([2018] O.J. No. 4241) the judge implicitly reflected on the role of law enforcement on the victim discourse associated with sex workers, since police officers attributed the victim discourse to sex workers and wrongfully charged a third party causing him "irreparable damage" (*R. v. Joseph*, [2018] O.J. No. 4241 at para. 17). Furthermore, officers seemed to not comprehend the nuances of consent since a judge commented that

Excerpt 14

> "The officers appeared to have difficulty gleaning what had happened. They did not have the luxury of judicial reflection or the organized presentation of evidence. They failed to understand that MCW had willingly engaged in prostitution on a prior occasion, but not this occasion. They also failed to understand what MCW was telling them when she said the perpetrators were trying to have her become a prostitute. She was explaining a scenario whereby she

> had been taken to the motel room against her wishes, but ultimately no clients attended and she did not provide any sexual services that evening" (*R. v. Majdalani,* [2017] O.J. No. 1252 at para. 135).

Excerpt Fourteen exemplifies the reasons sex workers after Bill C-36 were apprehensive to speak with law enforcement (Benoit et al., 2016; Krüsi et al., 2014), because of the inability of officers to understand that assault and coercion occurs as a result of lack of legislation that protects sex workers' labour rights and physical safety (Benoit et al., 2017; Benoit et al., 2015; Kantola & Squires, 2004). Additionally, there were other instances where officers "did not seem to care" that the sex worker "had been held against her will or that her daughter had been involved" (*R. v. Majdalani,* [2017] O.J. No. 1252 at para. 38). This conflicts with research post-Bill C-36 implementation that has indicated that officers were concerned with the safety of sex workers (Krüsi et al., 2014). One possible explanation is that officers were concerned with the sex workers' safety if the sex worker *fit* the victim script. The examples depicted a shift from presenting law enforcers not thorough in their investigative practices to pin-point the involvement in the normalization of the victim discourse, while perpetuating stigma and discrimination against sex workers and third parties. The data found in the post-Bill C-36 dataset exposed law enforcement of their shortcomings.

Clients.

Clients or customers, (or pejoratively, 'johns') are the usual names attributed to the individuals purchasing sexual services. They are crucial to the transaction of sexual services for money. The common context they are described within is sex trafficking, which portrays them as perpetrators of violence against sex workers and carriers of disease (Hor et al.,2005; Karandikar & Prospero, 2010; Weitzer, 2007).

In the pre-Bill C-36 dataset there were two court decisions where the client was charged. In one of the two cases, the sex worker was an undercover police officer posing as a female adolescent. On the other hand, the post-Bill C-36 dataset had seven court decisions where the client was charged. All the clients from both datasets were male.

In the pre-Bill C-36 dataset the word 'client' appeared 28 times, while the word 'customer' appeared only four times (see Appendix B). Surprisingly, in the post-Bill C-36 dataset the word 'client' was used 36 times and the word 'customer' was used 38 times (see Appendix B). Even though the words 'client' and 'customer' are synonyms of each other, the word 'client' refers to an individual seeking advice or services (Client, n.d.), while 'customer' is defined as an individual who buys a service or commodity (Customer, n.d.). The prominent use of the word 'customer' in the post-Bill C-36 dataset recognized that sexual services were paid for, which also contributes to the labour discourse of sex work, which will be discussed in the second section of this chapter.

In the pre-Bill C-36 dataset clients were perceived as 'well-intentioned' if they helped the sex worker exit the sex industry. One judge commented that the client

Excerpt 15

> "Mr. Derouchie was a well-meaning man on that evening, but his initial hope was to enjoy the company of a prostitute. I find that once he realized that E.D. was being forced into this activity, he facilitated her escape by providing clothing, food and the taxi to get her to safety which he paid for" (*R. v. K.O.,* [2014] O.J. No. 2792 at para. 71)

Excerpt Fifteen demonstrated that the judge shamed the client through the use of the sentence 'but his initial hope was to enjoy the company of a prostitute'. This sentence established that 'well-meaning' and 'enjoying the company of a prostitute' were not notions that could be coupled, nor exist simultaneously. The implicit shaming done by

the judge resembled the negative representation of client-sex worker relations, which leads to the stigmatization of individuals who purchase sexual services (Weitzer, 2018).

In the post-Bill C-36 dataset, judges characterized purchasers of sexual services as male by using the noun "men" (*R. v. Badali,* [2016] O.J. No. 544 at para. 46). There was a variety of descriptions for clients: at times they were described as "honest", and "mortally embarrassed" if they did not engage in sexual intercourse with the sex workers (*R. v. H.H.,* [2015] O.J. No. 388 at para. 23). In other instances, the clients were described as "wary" and "intelligent" when the clients questioned if the sex workers were undercover police officers (*R. v. Haniffa,* [2017] O.J. No. 4048 at para. 27). The positive description of clients due to a lack of sexual intercourse reinforces the moralized stakeholder of the client, where paying for sexual services was deemed an act for which one should be 'embarrassed'. Furthermore, the descriptions of clients did not provide a standardized illustration of the stakeholder.

In client literature, there seems to be an understanding that purchasers of sexual services vary greatly in characterizations (Weitzer, 2007, 2012). Weitzer (2012) noted that the diversity of clients is so great that one should abstain from categorizing and generalizing. Yet, Weitzer (2012) commented on differences between indoor and street sex work clients. The street clients vary more than indoor clients. In-door clients have more opportunities than their counterparts to build a rapport with sex workers, by engaging in non-sexual activities, which can be deemed romantic (Weitzer, 2012). The prevalence of male clients seeking to purchase sexual services from minors, as reflected in the results, can be attributed to the vast difference of clients and their diverse purpose

and intentions when purchasing sexual services (Weitzer, 2007). Regardless, this finding should not generalize the intention and characteristics of all clients.

In summary, stakeholder construction of third parties, sex workers and clients was evident in both datasets through the framework of sex trafficking ideology. Pimps became responsibilized for their ill-intended actions, while being urged to be protectors. Sex workers were described as either at risk or risky, and the shift in post-Bill C-36 data emphasized the power imbalance in the pimp-worker relation. Law enforcers were described as tools of normalization of victim discourse and perpetrators of stigma and discrimination. Clients varied in their descriptions, which is consistent with literature.

Discursive Practices in Common Law that Contribute to the Conflation of Sex Work with Sex Trafficking.

Based on the discursive constructions found in Chapter VI, this section will present the discursive practices that conflate sex work with sex trafficking. Part of this conflation is due to the construction of sex industry stakeholders from a sex trafficking framework, and the constant moralization of sex work, deeming it an inappropriate exchange —thus, not accepting sex work as a legitimate form of employment. Furthermore, the section will present instances where judges used the terms ‘prostitution’ and ‘sex trafficking’ interchangeably, and also will highlight similarities between sex work and sex trafficking legislation.

Interchangeable Use of The Terms Prostitution and Sex Trafficking.

The term ‘sex trafficking’ was not found in the pre-Bill C-36 data, however, the word ‘trafficking’ appeared 10 times in the pre- Bill C-36 dataset (see Appendix B). While the terms ‘prostitution’ or ‘sex work’ were not explicitly interchanged in the pre-

Bill C-36 data, prostitution was found to be used in the context of trafficking or human trafficking. For example, "Mr. Burton engaged in human trafficking and prostitution-related offences in relation to three young women" (*R. v. Burton,* [2013] O.J. No. 1748 at para. 1). Upon further analysis, it was found that in the pre-Bill C-36 dataset prostitution and trafficking were treated as different concepts. In the *Bedford* decision prostitution was linked to "a number of harmful activities, such as violence, drug and alcohol addiction, organized crime and human trafficking" (*Bedford v. Canada,* 2010 ONSC 4264 at para. 133). Thus, the pre-Bill C-36 data deemed prostitution as equally pernicious as trafficking, but the two terms had different conceptualizations.

In the post-Bill C-36 dataset the term 'sex trafficking' was found three times, yet the term 'trafficking' was encountered 65 times (see Appendix B). This demonstrated the popularity of the term 'trafficking' over 'sex trafficking', since trafficking was also popular over sex trafficking in the pre-Bill C-36 dataset. Humans are trafficked for diverse reasons, one of them being for sexual slavery (Kempadoo, Sanghera, & Pattanaik, 2015). Sex trafficking is the most common form of trafficking (Barrows & Finger, 2008). The lack of specificity even in the post-Bill C-36 data regarding sex trafficking led to a common social belief that there was no wish to detangle the many types of trafficking. Human trafficking is a modern term for slavery (Barrows & Finger, 2008; Kempadoo et al., 2015) that recognizes the diverse reasons for which humans are trafficked. The interchange of prostitution and trafficking was found in post-Bill C-36 data.

In the post-Bill C-36 dataset judges used prostitution and trafficking interchangeably when it came to the involvement of a minor. For example,

Excerpt 16

> "It is beyond doubt that severe harm can be caused even by the least serious cases of child trafficking. The horrors and evils of child prostitution are well documented both in the case law and in the academic literature which has been referenced by the intervenor" (*R. v. Safieh*, [2018] O.J. No. 3880 at para. 18).

The interchangeable use of the terms invoked victim discourse and prevented sex work discourse to be separated from exploitation discourse. On the other hand, one possible explanation for the interchange of the terms could be the involvement of a minor. The judge used the enticing language to make a point, of course, at the expense of sex work. The post-Bill C-36 data also had the term 'human trafficking' in the context of prostitution. For example, when referring to Bill C-36 a judge mentioned "the intention of Parliament in enacting the human trafficking and related provisions" (*R. v. Crosdale,* [2018] O.J. No. 6028 at para. 145). The 'related provisions' referred to the changes to sex work legislation post-Bill C-36, which entailed that the changes of provisions referred to human trafficking provisions rather than sex work provisions. George et al. (2010) argues that radical feminists use the terms interchangeably, since for them both sex work and sex trafficking represent the same activity. The lack of the interchangeable use of the terms in the pre-Bill C-36 data aggravated the problematization of sex work after the implementation of Bill C-36.

Similarities Between Sex Work and Sex Trafficking Legislation.

In the pre-Bill C-36 data the phrase 'control, direction or influence' appeared three times (see Appendix B). It was revealed that the provision s. 212(1)(j) included such phrase because

Excerpt 17

> "In 1913, the procuring provisions were expanded to include living on the earnings of prostitution. 1. for the purposes of gain, exercises control, direction or influence over the movements of any woman or girl in such a manner as to show that he is

> aiding, abetting or compelling her prostitution with any person or generally; or being a male person, lives wholly or in part on the earnings of prostitution" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 256)

The phrase 'control, direction, or influence' is relevant because it appears in prostitution as well as human trafficking provisions. This was highlighted by the judge in *R. v. Gray-Lewis* ([2018] O.J. No. 4304). The phrase appeared 20 times in the post-Bill C-36 dataset (see Appendix B).

The Technical Paper: Bill C-36, *Protection of Communities and Exploited Persons Act* also pointed out that the previous procuring offense (s. 212(1)(h)) and the trafficking offence (s. 279.01) used "some of the same language as found in new section 286.3" (Department of Justice Canada, 2014). The new provision addressing procuring reads

Excerpt 18

> "286.3 (1) Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years"(Criminal Code, 1985).

For clarification purposes, the trafficking persons provision reads

Excerpt 19

> "279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable" (Criminal Code, 1985).

Excerpt Eighteen and Nineteen have similar wording which criminalizes the coercion and exploitation of a person; yet, it is problematic to use similar language to criminalize both the commodification of sexual activity and human trafficking. First, the separate sections

presume that there are two completely different offenses, nonetheless, both address coercion and exploitation of a person. Second, sex work discourse becomes further polluted with the language of illicit and illegitimate.

Overall, the predominant use of the term ‘trafficking’ over ‘sex trafficking’ further conflated sex work with harmful practices. While the pre-Bill C-36 data distinguished between prostitution and sex trafficking, the post-Bill C-36 data used the terms interchangeably and in so doing worsen the problematization of sex work. The similarities in human trafficking and procuring provisions demonstrated the goal of conflating the two terms through the criminalization of both. Discursive practices that aid the conflation of the two terms demonstrate the role of the judiciary in the perpetuation of exploitation discourse when speaking about sex work.

Discursive Practices in Common Law that Oppose the Conflation of Sex Work with Sex Trafficking.

This section seeks to present discursive practices that do not comply with the conflation of sex work to sex trafficking. Sex work is presented as labour, and existent as a non-coercive nor oppressive type of employment. The themes explored are: the use of labour discourse, recognizing sex work as viable labour, admitting that legislation infringes sex workers’ rights, and reflections of judges of Bill C-36.

Use of Labour Terminology.

In the pre-Bill C-36 dataset sex work was referred to with language that pertained to the commercialization of products and services. Language such as ‘business’, ‘marketing discussions’, ‘business relationship’, ‘generate more business’, and ‘advertise’ were used. The language used to refer to the exchange of sexual services was

framed from a business context. The examples demonstrated the various aspects sex workers and third parties must consider when engaging in the sex industry: creating marketing strategies to sell the services, establishing business relationships with third parties as well as clients, and the maintaining the supply-demand of the service.

Even though the commodification of sexual services is only referred to twice as a sex industry, the word 'working' was used 32 times to refer to the labour of sex workers (see Appendix B). The acknowledgement on behalf of judges to state that sex workers were *working* demonstrated that sex work has acquired labour discourse. Furthermore, the word 'business' was used 12 times, once to state 'an indoor prostitution business' and also 'lawful business' in the *Bedford* decision (see Appendix B). Studies of sex work and the sex industry from economic frameworks utilize business discourse, which are popularized by pro-prostitution literature, such as the terms 'business transactions', 'principals', 'intermediaries', and 'third parties' (Farmer & Horowitz, 2013; Bruckert & Law, 2013).

The post-Bill C-36 data comprised words and phrases such as 'well versed in the business', 'promote and capitalize', 'advertised', 'enterprise', and 'business'. The new word 'enterprise' appeared 13 times (see Appendix B). While the word 'enterprise' is a synonym of business, it entails engaging in a difficult or complicated project (Enterprise, n.d.). This could be reflective of the complexity of the sex industry, since sex workers encounter socio-legal barriers to practice their work (Campbell, 2015; Kantola & Squires, 2004). This slight, but significant, shift recognizes the nuanced labour of sex workers. The word 'working' appeared 69 times while the word 'business' was encountered 53 times, which further emphasized sex work discourse conflated with business language

(see Appendix B). Another major finding was the appearance of administrative like job titles.

In the post-Bill C-36 dataset there were instances where the stakeholders of the sex industry were attributed administrative like job titles. For example, "There was substantial evidence that Ms. H.H. played a supervisory role in the prostitution transactions" (*R. v. H.H.,* [2015] O.J. No. 3881 at para. 25). The judge recognized the similarity between roles of stakeholders of the sex industry to hierarchical roles found in companies or organizations. Furthermore, the use of the term 'worker', which was used 28 times more than in the pre-Bill C-36 dataset, recognized and attributed the employee discourse to sex workers (see Appendix B). Another word that pertains to the business discourse but is commonly overlooked is the word 'services'. The word 'services' appeared 38 times in the pre-Bill C-36 dataset and 186 times in the post-Bill C-36 dataset (see Appendix B). A judge in the post-Bill C-36 dataset made a comment that "any form of services, not just sexual services, can qualify for services" (*R. v. N.A.,* [2017] O.J. No. 1369 at para. 100). This idea emphasized that sexual services were already interpreted to be a commercialized service.

Recognition of Sex Work as Viable Labour.

The constant moralization of sex work has become a barrier to speak about labour and sex work conjointly in the political and legislative spheres (Law, 2015), even though the language used to refer to actions within it come from a business perspective. Sex work is body work, where the worker needs to manage their own body, their emotions, and the emotional responses of the customer (Wolkowitz, Cohen, Sanders, & Hardy,

2013). There were instances in both datasets were judges recognized sex work as employment, where individuals use different parts of their bodies to perform work tasks.

The pre-Bill C-36 dataset had instances where judges recognized sex work as employment by (a) normalizing the use of the business discourse, and also by (b) recognizing sex work exists outside of coercive and oppressive practices. Even though judges normalized the use of the business discourse, at times, they discredit sex workers. For example, a judge stated that a sex worker "moved to another hotel, presumably to generate more business. She had Mr. Salmon take pictures of her while she was dressed in lingerie. She then put an ad in a local newspaper advertising her services" (*R. v. Salmon,* [2014] O.J. No. 1461 at para. 10). The use of the word 'presumably' can be interpreted in two different ways. The word could have been used to reiterate the actions of the sex worker; thus, 'presumably' is interpreted as legal jargon used to speak of events without attributing negative nor positive meaning to the actions of the sex worker. An alternate interpretation removes the certainty that the goal of the sex worker was to generate business. The uncertainty instilled by the judge could have aided to disrupt the credibility of the sex worker. Additionally, the judge speaks of the agency of the worker by stating that she initiated the actions of taking pictures and putting advertisements online. The recognition that sex work existed without the oppression and coercion of third parties also helped framed sex work as viable employment.

A judge made a comment about the relationship between a sex worker and a third party. The judge stated

Excerpt 20

> "Ms. Hughes was consistent in her evidence that Mr. Soulliere did not put pressure on her to work as an escort to earn money. Consequently, I am of the

> opinion that there is evidence before me that satisfies me on a balance of probabilities that Mr. Soulliere was in a common law relationship with Ms. Hughes where they both shared in mutual expenses" (*R. v. Soulliere,* [2013] O.J. No. 3174 at para. 128).

Excerpt Twenty emphasized the lack of coercion put on the sex worker to engage in the sex industry. This entailed that judges were able to recognized voluntary engagement and willingness to participate in sex work. Furthermore, the judge accepted the common law relationship as normal, where there was more than one financial provider for the household.

In the post-Bill C-36 dataset, sex work was recognized as viable employment through the use of business discourse and also testimonies of sex workers who willingly engaged in the sex industry. Language such as 'enterprise' and 'earned' normalized the use of business discourse in sex work. There were instances that the word 'enterprise' replaced sex workers and their engagement in the sex industry. Additionally, the word 'earned' was used 27 times and it entailed that sex workers were performing work tasks that were exchanged for money, which further normalized the business discourse (see Appendix B).

In the post-Bill C-36 dataset there were 27 examples where sex workers willingly engaged in the sex industry. For example, "Mr. Crosdale did not 'recruit' T.T. because she was already interested in participating in the sex trade, and she told the police that she acted of her own free will, and by choice" (*R. v. Crosdale,* [2018] O.J. No. 6028 at para. 165). There was an emphasis that the sex worker was not recruited, that she engaged by her own free will. The over-emphasis made it seem like it was expected for the sex worker to be coerced into the sex industry. In comparison to the findings of pre-Bill C-36, the shift went from judges creating uncertainty to establishing an expectation of sex

workers being coerced. The over-emphasis of voluntary engagement is interpreted to be a shift to accepting sex work as viable employment, but the traces of moralization could be seen in the data.

The data did not represent the conventional means to establish sex work as employment. Scholars such as Nussbaum (1998) and Wolkowitz et al. (2013) established the use of the body of sex workers as the tool to perform their jobs, thus, comparing sex work to other jobs in which individuals utilize different parts of their body. Hakim (2010) commented that erotic capital is commonly controlled through disdain and contempt. This explains the use of uncertainty and the expectation of coercion towards sex work, even though the heavy use of labour discourse was present. The view of the human body as a tool to execute work tasks renders the business and labour discourse pertinent in the context of sex work.

Recognition of Legislation that Infringes Sex Workers' Rights.

Discursive practices that recognized that legislation violated sex workers' rights constituted an important version of opposition to the conflation of sex work to sex trafficking ideology. The criminalization of sex work is problematic, because prohibitionist legislative approaches have multiple effects on sex workers, not solely displacing sex workers to unknown areas (Campbell, 2015; Hakim, 2010; Kantola & Squires, 2004).

In the pre-Bill C-36 dataset, as discussed in Chapter V, the *Bedford* decision addressed how the applicants challenged the provisions s. 210, s. 212(1)(j) and s. 213 due to that the provisions infringed their right to safety. In the *Bedford* decision it was stated that,

Excerpt 21

> "These laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the person as protected under the Canadian Charter of Rights and Freedoms (the 'Charter'). I have found that these laws infringe the core values protected by s. 7 and that this infringement is not saved by s. 1 as a reasonable limit demonstrably justified in a free and democratic society" (*Bedford v. Canada*, 2010 ONSC 4264 at para. 3).

Excerpt Twenty-one referred to the violation of the sex workers' right to safety, as per directed under s. 7 of the *Canadian Charter of Rights and Freedoms*. The provisions went against the pillars of the Canadian Centre for Occupational Health and Safety (CCOHS)[3], who regulate the rights of workers at the federal level. As seen so far, there were findings that demonstrated the normalization of labour discourse for sex work, therefore, the rights that other Canadian workers have should be granted to sex workers. This is eminent due to the poor working conditions sex workers faced (McClintock, 1993).

Similarly, in the post-Bill C-36 dataset the unconstitutionality of certain provisions was discussed, because they breached the right to security. For example,

Excerpt 22

> "The applicants argue that s. 286.4 is in breach of the right of sex workers to security of the person, because it makes sex work more dangerous, because 'it limits their ability to work together and limits their ability to create referral opportunities for one another that can enhance safety, and could have a chilling effect on the ability of sex workers to use websites as sources of pre-screening information by limiting their ability to work together'" (*R. v. Boodhoo*, [2018] O.J. No. 6413 at para. 42).

[3] The *Occupational Health and Safety Act* deems the three basic worker rights, which are:

1. The right to know about health and safety matters.
2. The right to participate in decisions that could affect their health and safety.
3. The right to refuse work that could affect their health and safety and that of others.

Provision s. 286.4 advertising sexual services was one of the new provisions created post-Bill C-36. The applicants of *R. v. Boodhoo* ([2018] O.J. No. 6413) explained the danger s. 286.4 posed on their bodies and prohibiting protection strategies known to be successful. The pre-Bill C-36 dataset provided instances where sex workers explained in detail the effect of legislation on their work, such as the sex workers did in Excerpt Twenty-two. There was no change between both datasets, which could be attributed to the detrimental effect of neo-abolitionist legislation on sex workers (Anderson, 2002; Campbell, 2015; Craig, 2011; Hakim, 201; Krüsi et al., 2014; Kantola & Squires, 2004; Miller & Schwartz, 1995).

Judges' Reflections on Bill C-36.

Some judges complied with the amendments made to the legislation post-Bill C-36, and thought that such legislation was not "overbroad or grossly disproportionate, and do not offend s. 7 of the Charter" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 36). Yet, the same judge reminded the people of the court that Bill C-36 attempted to "reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it, and ultimately abolishing it to the greatest extent possible" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 23). Additionally, the judge commented that Bill C-36

Excerpt 23

> "reflects a significant paradigm shift away from the treatment of prostitution as 'nuisance', as found by the Supreme Court of Canada in Bedford, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls. Bill C-36 signals this transformational shift both through its statement of purpose, as reflected in its preamble, and its placement of most prostitution offences in Part VIII of the Criminal Code, Offences Against the Person" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 23).

Excerpt Twenty-three was the disagreeing response the judge gave when a sex worker stated that the purpose of Bill C-36 was "to enhance the safety, security, and dignity of people involved in sex work" (*R. v. Boodhoo,* [2018] O.J. No. 6413 at para. 22). Clearly, the judge understood that Bill C-36 was implemented to eradicate sex work, not to protect sex workers.

Overall, both datasets had business or labour discourses, yet the post-Bill C-36 data had language that reflected the complexity of sex work, and job titles reflective of administrative roles. The use of a labour discourse and examples of voluntary engagement in the sex industry were the methods in which sex work was recognized as employment. It was found that judges resisted the labour discourse through the introduction of uncertainty and expectation of exploitation. Therefore, sex trafficking discourse present in the judiciary was used to resist pro-prostitution sex work discourse. It was found in both datasets that sex workers voiced the violation of their rights due to insensitive legislation. One judge made a point that the purpose of Bill C-36 was not to enhance the safety, security, and dignity of individuals in the sex industry, it was to reduce, if not eradicate its demand.

Conclusion

The current chapter analyzed key discursive practices found in both pre-Bill C-36 and post-Bill C-36 datasets. The themes found in both datasets were subjected to a comparison to understand discourse changes in the themes found before and after the implementation of Bill C-36. Sex workers protective practices entailed the use of condoms, body guards, and third parties. The most practiced protection practice was condom use, imposed by third parties on sex workers. Thus, health safety of the sex

worker was referred to as condoms. A major finding was that sex trafficking ideology is present in diverse discursive practices in the judiciary. Stakeholder construction of pimps, sex workers and clients were done through the framework of sex trafficking ideology. The stakeholders of law enforcement engaged in the stigmatization and discrimination of sex workers, as it was reflected in the literature. The interchangeable use of prostitution and trafficking, in addition to their legislative similarity, contributed to the conflation of sex work to sex trafficking. Discursive practices that opposed to the conflation of sex work and sex trafficking included the heavy-laden use of labour and business discourse. It was found that even though judges used labour or business discourse, they resisted through the use of uncertainty and expectation of exploitation. It was also found that pre- and post-Bill C-36 legislation was perceived as a violation to sex workers' rights, and was not created to protect sex workers. The themes and changes in discursive practices reflected the prevalence of moralization of sex work and its conflation with sex trafficking. The next chapter, Chapter VIII Discussion and Conclusion, will seek to comprehend the reason such themes appeared and the changes within them with the help of governmentality and anti-carceral feminist theory.

VIII. DISCUSSION AND CONCLUSION

In this chapter I synthesize the major findings of this research using Foucauldian governmentality and anti-carceral feminist theory to understand the changes in Canadian common law. The theoretical framework that I established in Chapter III will aid in the analysis of the detrimental effect of the punitive system on sex workers. I uncover the progressive language in the findings; this is due to discourses that promote the separation of sex work ideology to sex trafficking ideology. The limitations and contributions of this study are also addressed.

Regulation of Prostitution Discourse

This study explored whether, and how, prostitution discourses changed in Canadian common law from 2010 to 2018. This time period is significant as it included a landmark change to Canadian criminal regulation of prostitution in 2014. Prostitution discourses encompass concepts related to sex work, such as the definition of the term itself and stakeholders of the sex industry. Prostitution discourse also refers to discourses in it, such as morality, nuisance, threat to the public, amongst others; also, prostitution includes narratives such as sex workers as risky individuals or individuals at risk. This study separated the data to report changes in the form of discursive constructions, Chapter VI, and discursive practices, Chapter VII. This section will present the major changes in the sections from Chapters VI and VII to analyze the manners in which prostitution discourse changed after the implementation of Bill C-36.

Major Findings from Discursive Constructions.

The discursive constructions, presented in Chapter VI, demonstrated that even though the word ‘prostitution’ was removed from the Canadian Criminal Code in

November 6, 2014, the word was still in circulation in common law after 2014. This is representative of the importance of discourse and the cycle of supplier and recipient of discourse. Judges were the suppliers of prostitution discourse, which deemed the other stakeholders of common law recipients who may become suppliers of such discourse; this perpetuates the cycle of usage of the word 'prostitution' to refer to sex work. The removal of the word prostitution from the Criminal Code of Canada did not permeate common law. The lack of permeability is a form of resistance to accept, thus use, terms such as 'sex work'. The use of the term 'sex work' entails embracing definitions of the commodification of sexual services that do not have derogatory connotations. The derogatory connotations found in the data were partly due to the moralization of prostitution.

The moralization of prostitution was found in both datasets. The use of the words 'morality' and 'immorality' shifted to the use of terms like 'callous' and 'dangerous' to refer to prostitution; this marked the activity in both datasets as inappropriate. Yet, this change is an adaptation of inappropriateness to mask the moralization of prostitution to blatantly deem it a perilous activity. This also occurred with dignity discourse, shifting from the endangerment of dignity to the degradation of dignity; in both instances dignity discourse established stated and unstated—or legal and social—rules of prudence for Canadian population. The codes of prudence enable Canadian inhabitants to engage in self-subjectification, thus disciplining themselves, which prevents them from engaging in prostitution. Derogatory connotations of prostitution were also found to be due to the conflation of sex trafficking to sex work.

The conflation of sex trafficking and sex work was a contradictory finding. Both datasets demonstrated that judges recognized that prostitution was a voluntary and consenting activity. Yet, judges engaged in victim blaming discourse to responsibilize the sex worker for any abuse or assault experienced. Moreover, the engagement of law enforcement and judges in victim blaming discourse prevented sex work to free itself from derogatory connotations and work equality for sex workers in the socio-legal setting. Even though pro-prostitution literature has consistently sought to differentiate sex work and sex trafficking (Gerassi, 2015; Weitzer, 2005a, 2005b, 2005c), the conflation of the terms in common law reconceptualizes sex work as exploitative. The conflation of the terms imposes a reconceptualization on sex work, which is facilitated by the moralization of prostitution and enticing language such as metaphors that contravene consensual sexual services. The judge from *R. v. D'Souza* ([2016] O.J. No. 4992) recognized that "there is a distinction between voluntary prostitution and forced sex trafficking" (at para. 41). The judge recognized also the "vociferous debate between commentators on whether it is harmful to conflate the concepts of prostitution and human trafficking" (*R. v. D'Souza*, [2016] O.J. No. 4992 at para. 41); the awareness of the judge and the vocalization of the conflation is a step in the direction of detangling the conflation of sex work to sex trafficking.

Major Findings from Discursive Practices.

The discursive practices found in Chapter VI demonstrated the range of sex trafficking ideology on prostitution discursive practices. The construction of stakeholders in the sex industry was usually done through the framework of sex trafficking ideology, especially post-Bill C-36. Prior to Bill C-36 pimps were described as ill- intended, this

shifted to descriptors that legally responsibilized pimps for the oppression and coercion of sex workers. Descriptors in the post-Bill C-36 dataset emphasized the power dynamic between the pimp and sex worker, where the sex worker assumed a position with less power. The character of the sex worker was described in a contradictory manner. Usually sex workers were described as victims, yet when sex workers did not fit the description of victim, the judges reconciled by engaging in victim blaming discourse. For example, when the sex worker from *R. v. Lucas-Johnson* ([2018] O.J. No. 3685) reported on the violent relationship with the third party the judge made comments such as "ML knew full well what she was getting into at the Spa" (at para. 239) and "ML was fully aware of the implications of that. She was not a stranger to the sex trade" (at para. 239). The last comment of the judge implies that the sex industry is inherently disadvantageous to female sex workers. Law enforcers, similar to judges, normalized victim discourse, engaged in victim blaming discourse and perpetrated stigma and discrimination. This demonstrates that the prostitution framework has a direct impact on discourse that shapes the stakeholders of the sex industry. Moreover, it demonstrates that discourse is a power mechanism in Canadian common law. The prostitution framework also establishes different narratives from which actors are described, for example, sex workers were described from the risky and at risk (victim) narrative; this limits the portrayal of actors of the sex industry.

The discursive practices surrounding sex workers were also limited to scripts imposed by judges on sex workers. Upon further analysis, I comprehended that the 'script' that enabled judges to discern between victims and non-victims formed part of the politics of victimhood. Victim discourses have important components as well as

diverse uses. It is essential "to clarify how we are to think about victims, how we even determine who they are, what it means to take their view, and what is involved in giving victims their due (Lu 2017, 66)" (Gordon, 2018, p.16). Judges and law enforcement as noted earlier have the discursive power to establish the status of victimhood upon sex workers. An important component of victim discourses is that "victim claims are not neutral discursive appeals, but rather are deeply intertwined with relations of power" (Gordon, 2018, p.17). The victim discourse is produced by stakeholders of the criminal justice system, which entails that the producers hold positions of power. Furthermore, discourses of victimization are used in affective contexts, which facilitates the manipulation of the topic. In this study, the sex trafficking discourse was used to mobilize the victim discourse onto sex workers (Gordon, 2018). Victim and victim blaming language in the findings were used as tools of power, meaning that such language perpetuates derogatory ideologies regarding sex work.

The data also reported on instances when sex workers were victimized. While discussing condom use in Chapter VII, the sex worker from *R. v. Lopez* ([2018] O.J. No. 4145) was forced to provide unprotected sexual services. This served as reminder that sex workers can be the recipients of abuse, or maltreatment. It is important to differ between victimization of sex workers with the goal of depicting sex work as inherently exploitative from victimization of sex workers due harmful legislation, that do not protect their safety. Sex workers undergo abuse and assault, those are instances where they are victims of the actions done upon them. Yet, the literature tells us that due to apprehension of being discriminated against or being stigmatized sex workers do not report incidents to

law enforcement, and even avoid seeking medical services (Amnesty International, 2015; Anderson et al., 2016; Benoit et al., 2016; Shannon & Csete, 2010).

There were instances in the data where sex work discourse differed from sex trafficking discourse. The opposition to conflating the terms was asserted through labour discourse. Both datasets demonstrated the use of business discourse. Additionally, judges often emphasized the voluntary engagement of the sex worker in the exchange of sexual services and engaging in the administrative aspects of sex work. This demonstrated that sex work should be defined within the parameters of entrepreneurship, consumerism of sexual services, in other words, discourses pertaining to the economic sector. While sex workers were spoken in discourses of business and labour, the sex worker is not viewed as a "responsible consumer/entrepreneur" (Marques, 2010, p. 329), thus society "is morally indifferent to them" (Marques, 2010, p. 329). Social disregard is analogous to the resistance of judges to using labour discourse; this resistance took the form of judges' expectations of exploitation and uncertainty. Court resistance to business discourse normalizes unacceptability of sex work as labour, which becomes part of the current regulations of sex work discourse.

Major findings of this study included shifts in discursive practices that contributed to the conflation of sex work to sex trafficking. It was noted in Chapter VII that in the pre-Bill C-36 dataset the terms were conceptually different, yet both terms referred to activities of similar gravity. On the other hand, the implementation of Bill C-36 indicated that the terms were used interchangeably, which erroneously conceptualize sex work in relation to sex trafficking ideology. Conflating sex work to sex trafficking thrived prior to the implementation of Bill C-36 due to similarities in legislation language. As a

consequence, the interchangeable use of trafficking and sex work further conflates the terms and calls into question the decision to implement Bill C-36, an exploitation discourse and victim discourse ridden document. The decision to implement Bill C-36 served as a strategy to control discourses of exploitation and victimization, which became conflated with sex work and sex worker. The ability to further conflate sex trafficking discourse with sex work discourse was due to the susceptibility of the latter to moralization, and pre-existent barriers to recognize the activity as viable labour. The shifts brought through the implementation of Bill C-36 further regulate sex work discourse.

Comprehending Discursive Changes Through Governmentality and Anti-Carceral Feminism

As established earlier, there have been changes in prostitution discourse in Canadian common law from 2010 to 2018. The changes in discourses reflect the introduction of discourses with similar conceptualizations to previous discourses, conflation of conceptually diverse terms, and resistance to discourses that connote consensual practices or labour. The theory of anti-carceral feminism in this paper uses the Foucauldian concept of governmentality, thus, the discursive constructions and practices within it to comprehend the power of legislation and systems of the criminal justice system to discipline, and govern the population (Taylor, 2018a). Therefore, legislation and institutions of the criminal justice systems do not benefit the sex worker; this is due to the construction of such institutions from a hetero-patriarchal perspective (Huxley, 2002; Taylor, 2018a; Whalley & Hackett, 2017). Morality discourses, which deem sex work as an inappropriate activity, carry connotations of paternalism; this disciplines, and

thus regulates, the subject from engaging in 'inappropriate' activities. Other discourses, such as exploitation and coercion, also undergo similar subjectification into disciplining the public. Furthermore, the exploitation discourse is used in conjunction to the victim discourse; the discursive practices that identifies victims is a legislative tool, which is perpetuated by Bill C-36. Yet, the paternalistic undertones of discursive constructions and practices have existed before the implementation of Bill C-36.

The report from the Subcommittee on Solicitation Laws foresaw potential issues with the Nordic model. The political parties who were against the implementation of the Nordic model reasoned it to be paternalistic (House of Commons, 2006). The model dismissed the voices of sex workers who exchanged sexual services consensually and voluntarily (House of Commons, 2006). Furthermore, the political parties argued that the discursive practice of victim on sex workers took away the agency of sex workers, and all was an attempt at redirecting the issue of the safety of sex workers towards the abolishment of prostitution (House of Commons, 2006). The Nordic model became a tool of the penal system in 2014; subsequently, the literature argued for the negative effect of the neo-abolitionist approach on sex workers (Benoit et al., 2015; Benoit et al., 2016; Benoit et al., 2017; Campbell, 2015; Krüsi et al., 2014). The failure of legislation demonstrates the legislative power that ineffectively and negatively affect the individual it 'seeks' to protect (Michalsen & Williams, 2019).

The Canadian penal system underwent a major discursive change after the report from the Subcommittee on Solicitation Laws. In the SSL report, the Conservative government proposed to criminalize clients and pimps, and provided exit plans for sex workers. The Conservative government used the law to eradicate sex work, because they

perceived sex work as a form of violence, not as a source of employment (Marques, 2006). Furthermore, this caused over-policing in areas of high concentration of sex workers; unfortunately, over-policing negatively affected sex workers by displacing them towards isolated and unfamiliar locations (Campbell, 2015; Krüsi et al., 2014). This example not only serves to demonstrate the ineffectiveness of the patriarchal criminal justice system, it also demonstrates a shift in victimhood discourse. As previously mentioned in the current chapter, the discursive use of victims is closely intertwined to institutions of power (Gordon, 2018). The early 1900s Canadian legislative discourse of a prostitute constructed their sexuality as deviant, "promiscuous and unmanageable" (Marques, 2010, p. 323). Discourses of promiscuous and unmanageable sexuality were forced to co-exist with discourses of victim, abused, coerced, and exploited, which were brought forward by legislative proposal of the Conservative party (House of Commons, 2006). The findings of the current research have a vast number of examples of the latter discourses.

There was an overrepresentation of discourse of morality, exploitation, victim and sex trafficking in the findings. The shifts were at times almost imperceptible if the meaning of the new language used was not taken into consideration. Discourses of agency, financial independence, business and labour were present, yet resisted through discourses of victim-blaming, expectation of exploitation and incredibility. The overrepresentation and resistance occurred due to (a) the Canadian penal system being established upon heteropatriarchal white ideologies, (b) sex work legislative reform throughout history perpetuating conservative, thus paternalistic, ideologies, and (c) previous and current discourses in the criminal justice system that perpetuate the

ideologies mentioned earlier. Clearly, conservative, heteropatriarchal, sex trafficking ideologies do not align nor represent discourses of agency, empowerment, voluntary and consensual engagement, labour nor entrepreneurship. This recycle process of ideologies within the Canadian criminal justice system serve as barriers for pro-prostitution sex work advocates that seek decriminalization.

Anti-carceral feminists recommend mindfulness surrounding legislative reform (Whalley & Hackett, 2017); this is due to punitive systems'control over freedom (Whalley & Hackett, 2017). As established earlier, legislative reform that uses exploitation discourse, and focuses on criminalizing third parties has negative outcomes for sex workers (Canadian Alliance for Sex Work Law Reform, 2017); paternalistic legislative reform make sex workers vulnerable, and prevents them from reporting any abuse or assault in their jobs (Albright & D'Adamo, 2017). Furthermore, sex work discourses in legislation represent sex workers through victim discourse, and associate the activity of sex work with exploitation and coercive discourses. Excluding the removal of s. 210 from the Canadian Criminal Code, prostitution reforms in Canada have only served to further discriminate and stigmatize sex workers. Decriminalization of sex work proposes a beneficial legal reform for sex workers.

Decriminalization of sex work, steps away from the repressive and punitive legislation to control sex work. Legalizing sex work will ensure safer working conditions for sex workers, destigmatization, and overall marginalization of sex workers (Albright & D'Adamo, 2017). At the level of discourse, decriminalization opposes the discursive assimilation of sex work to sex trafficking (Vanwesenbeeck, 2017). Decriminalization shifts the focus to structural issues sex workers undergo, rather than preoccupying itself

with the regulation of sexuality (Vanwesenbeeck, 2017). A pro-prostitution legislative reform hinges on decriminalization of sex work, and implementing strategies that are based on recommendations from sex work advocates and organizations that seek the well-being of sex workers (Whalley & Hackett, 2017). Decriminalization fits in the framework of anti-carceral feminism given the overlap of the perception of the criminal justice system as an inappropriate instrument to tackle the structural issues sex workers face (Vanwesenbeeck, 2017). Anti-carceral feminist theory in conjunction with governmentality establishes the power of prostitution discourse in Canadian common law, prostitution discursive practices as regulatory discourses, and the inefficiency of the criminal justice system as a tool to regulate sex work.

The theory of governmentality complements anti-carceral feminist theory by explaining how sex work is regulated. The findings revealed the existence of exploitation, prudence and morality discourses. Such discourses are produced by judges and law enforcement, thus individuals who hold a position of power. The caselaw uncovers that judges were self-disciplined through the normative ideologies derived from legislation. Judges also disciplined sex industry stakeholders through the reproduction of stated discourse. Law enforcers were disciplined to comply and enforce with existent legislation and also subjectified sex workers. This illustrates the processes through which sex trafficking language, thus its ideology permeates from legislation to Canadian common law. Similarly, previous studies on governmentality of institutions exposed that individuals were subjected to responsibilization as a means to establish discipline (Siltaoja, Malin, & Pyykkönen, 2015). Moreover, the permanence of exploitation, prudence and morality discourses and victim blaming principles throughout time indicate

the ingrained regulations of sex work on the Canadian subject. The disciplining through sex work discourse is such, that after 150 years since the creation of the Canadian criminal justice system there are still discourses that view the commodification of sex as deviant, inappropriate, exploitative.

Progress Through Awareness

A striking finding was a judge's awareness of the actual purpose of Bill C-36. Judge Bale stated that the purpose of Bill C-36 was to "reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it, and ultimately abolishing it to the greatest extent possible" (*R. v. Boodhoo*, [2018] O.J. No. 6413 at para.23). The statement of Judge Bale was a reminder to a sex worker in the court that the Bill did not aim to protect sex workers' safety. The necessity of Judge Bale to separate safety or protection discourses from discourses established by Bill C-36 brings awareness of the issues with the legislative reforms. The contribution of Judge Bale serves to establish discursive practices that problematized Bill C-36 in common law. This highlights the issues previously discussed regarding paternalistic penal systems. The finding of the use of labour discourse was also considered progressive.

The use of labour and business discourse in common law was not an unexpected finding. That is, when considering the presence of pro-prostitution discourses in the *Bedford* decision, which provided a vast collection of scholarship framed from a pro-prostitution stance. Furthermore, other circumstances that has exposed the criminal justice system to pro-prostitution discourses include committees that have analyzed sex work legislation from multiple angles; this includes the Fraser committee, the Badgley Committee and the Subcommittee on Solicitation Laws. The presence of discourses of

sex work, sex worker, and business language emphasized the influence of pro-prostitution discourses and labour discourses in Canadian common law. The resistance of judges to such discourses through victim-blaming, expected exploitation and incredibility demonstrates the work ahead for pro-sex work advocates towards complete acceptance.

Limitations and Future Directions

While this study uncovered discursive constructions and practices in Canadian common law, the caselaw was from Ontario. Future studies could expand on the findings by including caselaw from other provinces. This could allow for a provincial comparison of discourses prior and after the implementation of Bill C-36. Furthermore, the inclusion of British Columbia caselaw could be particularly insightful, given that prior to the *Bedford* decision, there were tensions in between law enforcement and sex workers. The area of the Vancouver downtown eastside was an overpoliced location after the arrest of Robert Pickton, which directly impacted sex workers in the area (Campbell, 2015; Krüsi et al., 2014; Pablo, 2008). Future studies could also expand the time range of the pre and post-Bill C-36 time-frame.

Adjusting the range of the pre and post datasets to have them include more years would create more data. The change in data can bring others discourses or emphasize the existence of discourses already found. This study allowed for a four-year window for each pre and post-Bill C-36 dataset. The range of each dataset was adjusted to be equal to provide natural changes occurring from 2010 to 2018. Furthermore, the removal of s. 210 from the Canadian Criminal Code in the summer of 2019 could uncover the effect of the decriminalization of keeping a bawdy house on sex work discourses in Canadian common law.

Contribution to Scholarship

This study contributes to the Canadian literature on the intersection of sex work discourse, and the criminal justice system. The study provides the socio-political setting prior to the implementation of Bill C-36, which included a summary of events that catapulted the application and appeal of the *Bedford* decision, the legislative history of provisions s. 210, s. 212(1)(j) and s. 213, and the aftermath of Bill C-36. The data of the study provides an insight on the discursive constructions of prostitution discourses, as well as discursive practices of judges in Canadian common law. The study also uncovers the major changes of sex work discourse hinged on the exploitation discourse brought by Bill C-36. More specifically, it uncovers changes on prostitution discourse in Canadian common law from a pro-sex work and anti-carceral feminist perspective. This advances the knowledge on tools the paternalistic punitive system ineffectively implements. Such tools are detrimental to sex workers and sex work discourse, not only in Canadian common law, but the Canadian criminal justice system. Furthermore, the study emphasizes the permanence of discourses rooted in sex trafficking ideology in the criminal justice system.

Even though there are studies that address the intersectionality between anti-carceral feminism and sex work (Musto, 2019; Taylor, 2018a; Taylor, 2018b), at times it is conveyed that an unstable economy, thus lack of alternate jobs are causes for individuals to engage in sex work (Taylor, 2018a). Such discourse compromises the meaning of voluntary engagement in the sex industry, since it implies that the individual is coerced by the economic system. The current study approaches the engagement in the sex industry as voluntary, and not coercive. The study uses both governmentality as well

as anti-carceral feminism to comprehend the sex work discourses in Canadian common law. The study aims to contribute to the pro-sex work literature with the hopes of uncovering changes in prostitution discourse in Canadian common law from 2010 to 2018.

CONCLUSION

This study sought to uncover the manner in which prostitution discourse changed in Canadian common law from 2010 to 2018. Researching changes in prostitution discourse in common law provides an insight to the effect of Bill C-36 on prostitution discourse. Furthermore, the research uncovers the positionality of stakeholders in common law on the topic of sexuality. After the implementation of Bill C-36 the prostitution discourse consisted of discourses of exploitation, victimization, victim-blaming, expected exploitation, amongst the most common findings. Regardless, discourses of inappropriateness and exploitation to regard prostitution were present prior to the implementation of the Bill C-36; yet, exploitation and victimization discourses were more prominent in the post-Bill C-36 data. Governmentality explains that such discourses are disciplining tools, laden with power, which enable the criminal justice system to govern individuals. Anti-carceral feminist theory uncovers that institutions of the criminal justice system do not advocate for sex workers. The institutions serve as tools of power that are constructed from hetero-patriarchal white ideology, thus, sex workers' work environments become further compromised when the punitive system implements a restrictive legislative reform, surveillance or over policing. As indicated earlier in the current chapter, there were some findings that indicated the existence of voluntary engagement, labour and business discourse in common law, even though such discourses were resisted by judges. This finding demonstrates the progress towards detangling the erroneous conflation of sex work to sex trafficking ideology. A legislation reform can also bring about discursive change in common law.

The results of the current research provide an insight for policy makers of the predominant discourses in common law prior and after the implementation of Bill C-36. Östergren (2017) created a policy classification system that categorizes sex work policies as either repressive, restrictive and integrative. Repressive policies represent prohibitionist legal approaches (Östergren, 2017). Restrictive policies use neo-abolitionist legal models and integrative policies use a combination of social restructuring, legalization and decriminalization (Östergren, 2017). In Canada, as well as other countries policy makers have opted for the use of restrictive policies; this fuels the conflation of sex work to sex trafficking through moral panic and reinforcement imagery of hopeless victims (Abel, 2019).

Benoit et al.' (2019) study argues that integrative approaches to sex work policy has the strongest empirical evidence to reduce intersecting social inequalities for sex workers. Therefore, Canadian policy makers can consider integrative policies as well as influence of dominant discourses. Abel (2019) reported the difficulty of policy makers to "separate values from evidence" (p. 1926) since their "response is much less likely to be evidence-based when an issue is publicly sensitive and highly charged" (p.1926). Adopting an integrative policy can include the labour rights the Bedford applicants demanded for sex workers and correct the negative effects of neo-abolitionist legislation over sex workers.

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R. v. Boodhoo, [2018] O.J. No. 6413

R. v. Burton, [2013] O.J. No. 1748

R. v. Byron [2013] O.J. No. 5396

R. v. Campbell, [2017] O.J. No. 633

R. v. Crosdale, [2018] O.J. No. 6028

R. v. D'Souza, [2016] O.J. No. 4992

R. v. Dykes, [2018] O.J. No. 2979

R. v. Evans, [2017] O.J. No. 3424

R. v. Finestone, [2017] O.J. No. 677

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R. v. Korof, [2017] O.J. No. 963

R. v. Lopez, [2018] O.J. No. 4145

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APPENDIX A

Pre-Bill C-36 Court Decisions

Case	Age of sex worker	Gender of sex worker	Person charged	Age of the person charged	Gender of person charged	Charges	Charges Codes	Outcome
R. v. Michon, [2013] O.J. No. 2484	adult	female	pimp	adult	male	procures or attempts to procure; exercise control direction or influence over movement with a view to aiding or compelling her to engage in prostitution, for gain; live on the avails of prostitution	s. 212(1)(d), s. 212(1)(h), s. 212(1)(j)	not guilty
R. v. Salmon, [2014] O.J. No. 4887	adult	female	pimp	adult	male	living on the avails of a prostitute who happened to have been less than eighteen years of age	s. 212(2)	acquitted
R. v. Salmon, [2014] O.J. No. 1461.	minor	female	pimp	adult	male	living on the avails of a prostitute who happened to have been less than eighteen years of age	s. 212(2)	guilty
R. v. McPherson, [2013] O.J. No. 1254.	adult	female	pimp	adult	male	entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution; procuring a person to become a prostitute; exercise control direction or influence over movement with a view to aiding or compelling her to engage in prostitution, for gain	s. 212(1)(b), s. 212 (1)(d), s. 212 (1) (h)	guilty
R v. Byron, [2013] O.J. No. 5396.	minor	female	pimp	adult	male	procuring a person who was under the age of 18 for the purposes of engaging in prostitution; exercise control direction or influence over movement with a view to aiding or compelling her to engage in prostitution, for gain; living off the avails of that prostitution	s. 212(4), s. 212(1)(h), s. 212(2.1)	guilty

R. v. K.O., [2014] O.J. No. 2792.	minor , adult	female	pimp	adult	female	procuring a person to become a prostitute; sexual assault; lack of consent to traffic; trafficking in a person under the age of eighteen years; forcible confinement	s. 212(1)(d), s. 271, s. 279.011(1), s. 279.011(2), s. 279(2),	guilty
R. v. Burton, [2013] O.J. No. 1748.	minor, adult	female	pimp	adult	male	procuring a person to become a prostitute; living on the avails of prostitution; aggravated sexual assault	s. 212(1)(d), s. 212(1) (j), s. 273(1)	not guilty
R. v. Soulliere, [2013] O.J. No. 3174	adult	female	pimp	adult	male	keeping common bawdy-house landlord or inmate; living on the avails of prostitution	s. 210(2), s. 212(1)(j)	dismissed
R. v. Samuels, [2013] O.J. No. 4200	minor	female	pimp	adult	male	living off the avails of prostitution; living off the avails of prostitution of a person under 18; exercise control direction or influence over movement with a view to aiding or compelling her to engage in prostitution, for gain	s. 212(1)(j), s. 212(2), s. 212(1)(h)	appeal allowed
R. v. Hervieux, [2010] O.J. No. 486	adult (undercover officer)	female	client	adult	male	solicitation for the purpose of obtaining the sexual services of a prostitute.	s. 213(l)(c)	appeal allowed
R. v. Husain, [2012] O.J. No. 4848	minor	female	pimp	adult	male	attempt to procure	s. 212 (1)(d)	appeal dismissed
R. v. Wasser, [2010] O.J. No. 2526	minor	female	client	adult	male	paying for sex with a person under 18 years of age	s. 212(4)	appeal allowed

Bedford v. Canada, 2010 ONSC 4264								

Post-Bill C-36 Court Decisions

Case	Age of sex worker	Gender of sex worker	Person charged	Age of the person charged	Gender of person charged	Charges	Charges Codes	Outcome
R. v. M.M., [2018] O.J. No. 781	minor	female	pimp	adult	male	obtaining sexual services for consideration from person under 18 years; material benefit from sexual services provided by person under 18 years; trafficking in persons; receiving material benefit due to trafficking	s. 286.3(2), s. 286.1(2), s. 286.2(2), s. 279.011, s. 279.02(2),	acquitted
R. v. Crosdale, [2018] O.J. No. 6028.	minor, adult	female	pimp	adult	male	trafficking in persons; procuring; advertising sexual services	s. 279.01, s. 286.3, s. 286.4	guilty
R. v. Esho, [2017] O.J. No. 5418	adult	female	pimp	adult	male	obtaining sexual services for consideration; receiving a financial or other material benefit from sexual services exchange; exception to receiving material benefit from sexual services exchange; robbery with a weapon	s. 286.1 (1), s. 286.2(1), s. 286.2(4), s. 343(d)	not guilty for obtaining sexual services or receiving financial other material benefit. guilty for the other charges
R. v. Evans, [2017] O.J. No. 3424	minor	female	pimp	adult	male	procured two young females to become prostitutes; trafficking in persons	s. 286.3(1), s. 279.01(1)	charges acquitted for procuring, guilty for trafficking in persons
R. v. Dykes, [2018] O.J. No. 2979	adult	female	pimp	adult	female	forcible confinement; trafficking in persons; procuring a person to offer or provide sexual services for consideration	s. 279(2), s. 279.01(1), s. 286.3(1)	acquitted
R. v. Chheda, [2018] O.J. No. 2515	minor	female	client	adult	male	child luring; obtaining sexual services for consideration from a person under 18 years; communicating for the purpose of obtaining sexual services from a person under 18 years	s. 172.1(2), s. 286.1(2), s. 286.1(1)	guilty
R. v. H.H., [2015] O.J. No. 3881.	minor	female	pimp	minor	female	procures or attempts to procure; exercise control, direction or influence over the movements of T.T. in such a manner as to show that she was aiding, abetting or compelling her to engage in prostitution	s.212 (1)(d), s. 212(1)(h)	guilty
R. v. Rocker, [2018] O.J. No. 3193.	minor	female	pimp	adult	male	trafficking in persons; receiving financial or material benefits from trafficking in persons; advertising sexual services for consideration	s. 279.011(1), s. 279.011(2), s. 286.4	not guilty of trafficking, receiving financial or material benefit, advertising sexual services for consideration
R. v. Korof, [2017] O.J. No. 963	adult	female	pimp	adult	male	procure or attempt to become a prostitute; exercise control, direction or influence over the movements in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution with unknown males	s. 212(1)(d), s. 212(1) (h)	guilty
R. v. Lucas-Johnson, [2018] O.J. No. 3685	minor	female	pimp	adult	male	trafficking a person under age 18; concealing identity document from another person under 18; procuring to offer sexual services of another person under 18 years; forcible confinement; material benefit from trafficking another person under age 18; material benefit from sexual services of another person under age 18	s. 279.011(1)(b), s. 279.03(2), s. 286.3(2), s. 279(2), s. 279.02(2), s. 286.2	guilty for procuring. not guilty for trafficking related charges and receiving material benefit

R. v. N.A., [2017] O.J. No. 1369	adult	female	pimp	adult	male	procuring or attempt to procure; obtaining financial or material benefit from sexual services; obtaining sexual services for consideration; trafficking in persons; receiving financial benefit from trafficking in persons	s. 286.3(1), s. 286.2(1), s. 286.1(1), s. 279.01(1), s. 279.02	guilty for trafficking in persons obtaining material benefits from trafficking in persons
R. v. Victorine, [2017] O.J. No. 2960	adult	female	pimp	adult	male	procuring or attempt to procure; obtaining financial or material benefit from sexual services; trafficking in persons; receiving financial benefit from trafficking in persons	s.286.3(1), s. 286.2(1), s. 279.01(1), s. 279.02	acquitted
R. v. Safieh, [2018] O.J. No. 3880	minor	female	pimp	adult	male	Obtaining sexual services for consideration from person under 18 years	s. 286.1(2)	guilty
R. v. Gray-Lewis, [2018] O.J. No. 4304	minor	female	pimp	adult	male	procuring a person under the age of 18; material benefit from sexual services provided by person under 18 years: advertising sexual services	s. 286.3(2), s. 286.2(2), s. 286.4	not guilty of s. 286.3(2), s. 286.4 guilty of s. 286.2(2).
R. v. Griffiths, [2015] O.J. No. 5674	adult	female	pimp	adult	male	procure or attempt to become a prostitute; exercise control, direction or influence over the movements in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution with unknown males	s. 212(1)(d), s. 212(1)(h)	not guilty of s.212(1)(d) guilty of s.212(1)(h)
R. v. Liyanage, [2017] O.J. No. 2557	minor	female	client	adult	male	communication for the purpose of engaging the services of an underage prostitute	s. 286.1(2)	not guilty
R. v. Haniffa, [2017] O.J. No. 4048	minor	female	client	adult	male	obtaining sexual services for consideration of an underage person	s. 286.1(2)	guilty
R. v. Moradi, [2016] O.J. No. 7031	adult	female	pimp	adult	male	trafficking in persons; receiving material benefit from trafficking; advertising sexual services; procuring or attempts to procure	s. 279.01, s. 279.02, s. 286.4, s. 286.3	dismissed
R. v. Alexis-McLymont, [2018] O.J. No. 1053	adult	female	pimp	adult	male	trafficking of a person under the age of 18 years; procuring a person under the age of 18 to offer or provide sexual services for consideration; receiving a material benefit from trafficking of a person under 18 years	s. 279.011(1), s. 286.3(2), s. 279.02	guilty
R. v. Alexis-McLymont, [2018] O.J. No. 983	adult	female	pimp	adult	male	trafficking of a person under the age of 18 years; procuring a person under the age of 18 to offer or provide sexual services for consideration; receiving a material benefit from trafficking of a person under 18 years	s. 279.011(1), s. 286.3(2), s. 279.02	guilty
R. v. Majdalani, [2017] O.J. No. 1252	adult	female	pimp	adult	male	trafficking in persons; receiving a material benefit from trafficking of a person under 18 years; advertising sexual services; receiving material benefit from sexual services; procuring; forcible confinement	s. 279.01, s. 279.02(1), s. 286.4, s. 286.2(1), s. 286.3(1), s. 279(2)	guilty of s. 279.01, s. 286.3(1)
R. v. J.L., [2016] O.J. No. 5131	minor	female	pimp	minor	male	procuring a person under the age of 18 years to provide sexual services for consideration; receiving a financial or material benefit from the sale of sexual services; advertising the sale of sexual services	s. 286.3(2), s. 286.2(1), s. 286.4	guilty

R. v. Lopez, [2018] O.J. No. 4145	adult	female	pimp	adult	male	trafficking in persons; receiving a financial benefit from the offence of human trafficking; procuring; advertising sexual services for money; knowingly receiving a financial benefit from the sexual services of the complainant	s. 279.01(1)(b), s. 279.02 (1), s. 286.3(1), s. 286.4, s. 286.2 (1)	guilty
R. v. Joseph, [2018] O.J. No. 4241	minor	female	pimp	adult	male	receiving a benefit from the prostitution of a person under the age of eighteen years; procuring a person to offer to provide sexual services; advertising an offer to provide sexual services for consideration; possessing child pornography	s. 286.2(2), s. 286.3(1), s. 286.4, s. 163.1(2)	not guilty of s. 286.2, s. 163.1(2)
R. v. Morgan, [2018] O.J. No. 3377	adult	female	pimp	adult	male	receiving a material benefit from the purchase of sexual services; procuring; advertising sexual services for consideration	s. 286.2, s. 286.3, s. 286.4	guilty of s. 286.2. not guilty of s. 286.3, s. 286.4
R. v. A.R., [2016] O.J. No. 6184	minor	female	sex worker	minor	female	procuring a person under the age of 18 years to provide sexual services for consideration	s. 286.3(2)	guilty
R. v. Pichumani, [2017] O.J. No. 3205	minor	female	client	adult	male	communicating for the purpose of obtaining, for consideration, sexual services	s. 286.1	guilty
R. v. Jaffer, [2018] O.J. No. 1002	minor	female	client	adult	male	communicating with a person for the purpose of obtaining for consideration the sexual services of a person who was under the age of 18 years; child luring	s. 212(4), s. 172.1(2)	guilty

R. v. Robitaille, [2017] O.J. No. 5954	minor	female	sex worker	adult	female	receiving a material benefit from the sexual services minors	s. 286.2(2)	guilty
R. v. Finestone, [2017] O.J. No. 677	minor	female	pimp	adult	male	trafficking a person under the age of 18	s. 279.011(1)	guilty
R. v. A.S., [2016] O.J. No. 5838	adult	female	pimp	adult	male	sexual assault; benefitting from trafficking in persons; procuring to become a prostitute; procuring to carry on prostitution; trafficking in persons	s. 271, 279.02(1), s. 212(1)(d), s. 212(1)(h), s. 279.01(1)	guilty
R. v. Campbell, [2017] O.J. No. 633	minor	female	pimp	adult	male	exercising control over a person to compel engagement in prostitution	s. 212(1)(h)	guilty
R. v. Brissett, [2018] O.J. No. 4337	minor	female	pimp	adult	male	living off the avails of juvenile prostitution; exercising control, direction or influence over the movements of the victim to aid, abet or compel her to engage in or carry on prostitution	s. 212(2), s. 212(1)(h)	guilty
R. v. Kirkeby, [2018] O.J. No. 1754	adult	female	pimp	adult	male	procuring a woman to engage in prostitution and in directing her actions	s. 212(1)(h)	guilty

R. v. Badali, [2016] O.J. No. 544	minor	female	pimp	adult	male	living on the avails of prostitution of a female person under the age of 18 years; procuring that under-18-year-old person to become a prostitute; obtaining sexual services of that under-18-year-old person for consideration.	s. 212(2), s. 212(1)(d), s. 212(4)	Guilty
R. v. Goolcharan, [2015] O.J. No. 5166	minor	female	client	adult	male	attempt to obtain sexual services of a person under the age of 18	s. 212(4)	Guilty
R. v. Ellis, [2017] O.J. No. 3196	adult	female	pimp	adult	male	procuring a person to have illicit sexual intercourse with another person; procuring a person to become a prostitute; exercising control, direction or influence over the movements of a person in such a manner as to show that he is aiding, abetting, or compelling that person to engage in prostitution	s. 212(1)(d), s. 212(1)(a), s. 212(1)(h)	Guilty
R. v. D'Souza, [2016] O.J. No. 4992	minor	female	pimp	adult	male	Trafficking in persons; trafficking of a person under the age of 18; receiving financial or material benefit from trafficking in persons; procuring or attempts to procure; living on the avails of prostitution; uttering threats	s. 279.01, s. 279.011(1), s. 279.02 s. 212(1)(d), 212(1)(j), s. 264.1(1)	application dismissed
R. v. Ghotra, [2016] O.J. No. 957	Minor (undercover cop)	female	client	adult	male	obtaining sexual services for consideration from person under 18 years; receiving a material benefit from sexual services; procuring a person under the age of 18 years	s. 286.1(2), s. 286.2(2), s. 286.3(2)	application dismissed

R. v. Boodhoo, [2018] O.J. No. 6413	minor	female	pimp	adult	male	receiving material benefit from sexual services provided by a person under the age of 18 years; procuring a person under the age of 18 years; advertising sexual services	s. 286.2(2), s. 286.3(2), s. 286.4	application dismissed
Rotondo v. Ottawa (City) Police Services Board, [2016]			sex worker	adult	female	keeping common bawdy-house landlord or tenant; living off the avails of prostitution from a person under the age of eighteen years	s. 210(2)(c), s. 212(2)	motion dismissed
R. v. Brar, [2016] O.J. No. 5143	minor	female	pimp	adult	male	sexual assault; prostitution of a person less than 18 years of age	s. 271(a), s. 212(4)	appeal allowed in part
R. v. Korof, [2018] O.J. No. 4741	adult	female	pimp	adult	male	procure to become a prostitute; exercise control, direction or influence over the movements in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution with unknown males	s. 212(1)(d), s. 212(1) (h)	appeal dismissed
R. v. Badali, [2016] O.J. No. 4799	minor	female	pimp	adult	male	living on the avails of prostitution of a female person under the age of 18 years; procuring that under-18-year-old person to become a prostitute; obtaining sexual services of that under-18-year-old person for consideration	s. 212(2), s. 212(1)(d), s. 212(4)	appeal dismissed

R. v. M.M., [2018] O.J. No. 782	minor	female	pimp	adult	male	procuring a person under the age of eighteen years; obtaining sexual services for consideration from person under 18 years; material benefit from sexual services provided by person under 18 years; trafficking in underage people; receiving material or financial benefit from a trafficking in an underage person	s. 286.3(2), s. 286.1(2), s. 286.2(2), s. 279.011, s. 279.02(2),	acquitted

APPENDIX B

Statistics of Court Decisions

	Number of Cases
Pre-Bill C-36 dataset	13
Post-Bill C-36 dataset	45
Total	58

	Number of Cases
Pre-Bill C-36 cases involving underage sex workers	7
Pre-Bill C-36 cases involving female sex workers	15
Pre-Bill C-36 cases where females were charged	1
Pre-Bill C-36 cases where pimps were charged	10
Pre-Bill C-36 cases where clients were charged	2
Pre-Bill C-36 cases where sex workers were charged	0

	Number of Cases
Post-Bill C-36 cases involving underage sex workers	27
Post-Bill C-36 cases involving female sex workers	45
Post-Bill C-36 cases where females were charged	5
Post-Bill C-36 cases where pimps were charged	35
Post-Bill C-36 cases where clients were charged	7
Post-Bill C-36 cases where sex workers were charged	3

Statistics of Discourse in Pre-Bill C-36 Dataset

Discourse	Number of Times Discourse Appears in Data	Court Decision
Sexual services	22	*R. v. K.O.*, [2014] O.J. No. 2792 *R v. Byron*, [2013] O.J. No. 5396 *R. v. Samuels*, [2013] O.J. No. 4200 *R. v. McPherson*, [2013] O.J. No. 1254 *R. v. Hervieux*, [2010] O.J. No. 486 *R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. Wasser*, [2010] O.J. No. 2526 *Bedford v. Canada*, 2010 ONSC 4264
Sexual acts	3	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. McPherson*, [2013] O.J. No. 1254 *R. v. K.O.*, [2014] O.J. No. 2792
Erotic	7	*R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. Samuels*, [2013] O.J. No. 4200
Erotic services	1	*R. v. Samuels*, [2013] O.J. No. 4200
Prostitute	82	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. K.O.*, [2014] O.J. No. 2792 *R. v. Salmon*, [2014] O.J. No. 4887 *R. v. Michon*, [2013] O.J. No. 2484 *R. v. Burton*, [2013] O.J. No. 1748 *R. v. Soulliere*, [2013] O.J. No. 3174 *R v. Byron*, [2013] O.J. No. 5396 *R. v. McPherson*, [2013] O.J. No. 1254 *R. v. Hervieux*, [2010] O.J. No. 486 *R. v. Husain*, [2012] O.J. No. 4848 *R. v. Samuels*, [2013] O.J. No. 4200
Prostitution	108	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. Michon*, [2013] O.J. No. 2484 *R. v. Salmon*, [2014] O.J. No. 4887 *R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. Samuels*, [2013] O.J. No. 4200 *R. v. McPherson*, [2013] O.J. No. 1254 *R v. Byron*, [2013] O.J. No. 5396 *R. v. Burton*, [2013] O.J. No. 1748 *R. v. K.O.*, [2014] O.J. No. 2792
Sex trade	6	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. Samuels*, [2013] O.J. No. 4200

		R. v. Soulliere, [2013] O.J. No. 3174
Sex work	4	*Bedford v. Canada*, 2010 ONSC 4264
Sex worker	3	*Bedford v. Canada*, 2010 ONSC 4264
Morality	3	*Bedford v. Canada*, 2010 ONSC 4264
Immoral	4	*Bedford v. Canada*, 2010 ONSC 4264
Dignity	4	*Bedford v. Canada*, 2010 ONSC 4264
Danger	7	*R. v. Salmon*, [2014] O.J. No. 4887 *Bedford v. Canada*, 2010 ONSC 4264
Money exchanged for sexual services	13	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. Salmon*, [2014] O.J. No. 1461 *R. v. K.O.*, [2014] O.J. No. 2792 *R. v. Burton*, [2013] O.J. No. 1748 *R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. Samuels*, [2013] O.J. No. 4200 *R. v. Wasser*, [2010] O.J. No. 2526
Exploitation	11	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. Michon*, [2013] O.J. No. 2484 *R. v. Salmon*, [2014] O.J. No. 1461 *R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. K.O.*, [2014] O.J. No. 2792
Coercion	1	*Bedford v. Canada*, 2010 ONSC 4264
Coerce	1	*R v. Byron*, [2013] O.J. No. 5396
Condom	11	*R v. Byron*, [2013] O.J. No. 5396 *R. v. McPherson*, [2013] O.J. No. 1254 *R. v. K.O.*, [2014] O.J. No. 2792 *R. v. Michon*, [2013] O.J. No. 2484 *R. v. Soulliere*, [2013] O.J. No. 3174 *Bedford v. Canada*, 2010 ONSC 4264
Health	7	*Bedford v. Canada*, 2010 ONSC 4264 *R v. Byron*, [2013] O.J. No. 5396 *R. v. Soulliere*, [2013] O.J. No. 3174

Protection	3	*R v. Byron*, [2013] O.J. No. 5396 *Bedford v. Canada*, 2010 ONSC 4264
Victim	11	*R v. Byron*, [2013] O.J. No. 5396 *Bedford v. Canada*, 2010 ONSC 4264 *R. v. K.O.*, [2014] O.J. No. 2792
Client	28	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. Soulliere*, [2013] O.J. No. 3174 *Bedford v. Canada*, 2010 ONSC 4264 *R. v. Salmon*, [2014] O.J. No. 1461
Customer	4	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. K.O.*, [2014] O.J. No. 2792
Sex trafficking	0	
Trafficking	10	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. K.O.*, [2014] O.J. No. 2792 *R. v. Burton*, [2013] O.J. No. 1748
Control, direction or influence	3	*R. v. Michon*, [2013] O.J. No. 2484 *Bedford v. Canada*, 2010 ONSC 4264
Working	32	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. K.O.*, [2014] O.J. No. 2792 *Bedford v. Canada*, 2010 ONSC 4264 *R. v. Salmon*, [2014] O.J. No. 4887 *R. v. Burton*, [2013] O.J. No. 1748 *R v. Byron*, [2013] O.J. No. 5396 *R. v. Soulliere*, [2013] O.J. No. 3174
Business	12	*R. v. Michon*, [2013] O.J. No. 2484 *R. v. Salmon*, [2014] O.J. No. 1461 *Bedford v. Canada*, 2010 ONSC 4264
Worker	7	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. Salmon*, [2014] O.J. No. 1461 *R. v. Samuels*, [2013] O.J. No. 4200
Services	38	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. Michon*, [2013] O.J. No. 2484 *R. v. K.O.*, [2014] O.J. No. 2792
		R v. Byron, [2013] O.J. No. 5396 *R. v. Salmon*, [2014] O.J. No. 1461 *R. v. Samuels*, [2013] O.J. No. 4200 *R. v. McPherson*, [2013] O.J. No. 1254 *R. v. Hervieux*, [2010] O.J. No. 486 *R. v. Soulliere*, [2013] O.J. No. 3174 *R. v. Wasser*, [2010] O.J. No. 2526
Earned	6	*Bedford v. Canada*, 2010 ONSC 4264 *R. v. Salmon*, [2014] O.J. No. 4887 *R. v. K.O.*, [2014] O.J. No. 2792 *R v. Byron*, [2013] O.J. No. 5396

Statistics of Discourse in Post-Bill C-36 Dataset

Discourse	Number of Times Discourse Appears in Data	Court Decision
Sexual services	143	*R. v. Chheda*, [2018] O.J. No. 2515 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Liyanage*, [2017] O.J. No. 2557 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Haniffa*, [2017] O.J. No. 4048 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Pichumani*, [2017] O.J. No. 3205 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Jaffer*, [2018] O.J. No. 1002 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Badali*, [2016] O.J. No. 4799 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Jaffer*, [2018] O.J. No. 1002 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Ghotra*, [2016] O.J. No. 957 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. D'Souza*, [2016] O.J. No. 4992

Sexual acts	16	*R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Finestone*, [2017] O.J. No. 677
Erotic	0	
Erotic services	0	
Prostitute	130	*R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Liyanage*, [2017] O.J. No. 2557 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. H.H.*, [2015] O.J. No. 3881 *R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Pichumani*, [2017] O.J. No. 3205 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Brissett*, [2018] O.J. No. 4337
Prostitution	183	*R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Esho*, [2017] O.J. No. 5418

		Rotondo v. Ottawa (City) Police Services Board, [2016] *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. H.H.*, [2015] O.J. No. 3881 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Brar*, [2016] O.J. No. 5143 *R. v. Ellis*, [2017] O.J. No. 3196
Sex work	27	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Boodhoo*, [2018] O.J. No. 6414 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Ellis*, [2017] O.J. No. 3196
Sex worker	22	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Ellis*, [2017] O.J. No. 3196
Morality	0	

Moral	4	*R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. A.S.*, [2016] O.J. No. 5838
Dignity	4	*R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Boodhoo*, [2018] O.J. No. 6413
Immorality	0	
Danger	14	*R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. A.R.*, [2016] O.J. No. 6184
Money exchanged for sexual services	22	*R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Chheda*, [2018] O.J. No. 2515 *R. v. H.H.*, [2015] O.J. No. 3881 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Haniffa*, [2017] O.J. No. 4048 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Badali*, [2016] O.J. No. 544 *R. v. D'Souza*, [2016] O.J. No. 4992 *Rotondo v. Ottawa (City) Police Services Board*, [2016]
Exploitation	54	*R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. H.H.*, [2015] O.J. No. 3881

		R. v. Safieh, [2018] O.J. No. 3880 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Alexander*, [2016] O.J. No. 7163
Coercion	17	*R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Kirkeby*, [2018] O.J. No. 1754
Condom	22	*R. v. Dykes*, [2018] O.J. No. 2979 *R. v. M.M.*, [2018] O.J. No. 781 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Korof*, [2017] O.J. No. 963 *R. v. N.A.*, [2017] O.J. No. 1369 *Rotondo v. Ottawa (City) Police Services Board*, [2016] *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Morgan*, [2018] O.J. No. 3377
Health	4	*R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Badali*, [2016] O.J. No. 544
Protection	17	*R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Ghotra*, [2016] O.J. No. 957
Victim	105	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Pichumani*, [2017] O.J. No. 320

		R. v. Robitaille, [2017] O.J. No. 5954 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Boodhoo*, [2018] O.J. No. 6414 *R. v. Liyanage*, [2017] O.J. No. 2557 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. Majdalani*, [2017] O.J. No. 1252

Client	36	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Haniffa*, [2017] O.J. No. 4048 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Badali*, [2016] O.J. No. 544 *Rotondo v. Ottawa (City) Police Services Board*, [2016] *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Ellis*, [2017] O.J. No. 3196
Customer	38	*R. v. Korof*, [2017] O.J. No. 963 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Evans*, [2017] O.J. No. 3424

		R. v. A.S., [2016] O.J. No. 5838 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Boodhoo*, [2018] O.J. No. 6414 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Brissett*, [2018] O.J. No. 4337
Sex trafficking	3	*R. v. D'Souza*, [2016] O.J. No. 4992
Trafficking	65	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Dykes*, [2018] O.J. No. 2979 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. H.H.*, [2015] O.J. No. 3881 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Finestone*, [2017] O.J. No. 677 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Alexander*, [2016] O.J. No. 7163
Control, direction or influence	20	*R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. H.H.*, [2015] O.J. No. 3881 *R. v. Korof*, [2017] O.J. No. 963 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Brissett*, [2018] O.J. No. 4337

		R. v. Ellis, [2017] O.J. No. 3196
Working	69	*R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Badali*, [2016] O.J. No. 544 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. Haniffa*, [2017] O.J. No. 4048 *Rotondo v. Ottawa (City) Police Services Board*, [2016] *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Campbell*, [2017] O.J. No. 633 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Dykes*, [2018] O.J. No. 2979
Business	53	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Esho*, [2017] O.J. No. 5418 *Rotondo v. Ottawa (City) Police Services Board*, [2016] *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. Pichumani*, [2017] O.J. No. 3205 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. A.R.*, [2016] O.J. No. 6184

		R. v. D'Souza, [2016] O.J. No. 4992
Enterprise	13	*R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Alexis-McLymont*, [2018] O.J. No. 983 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. D'Souza*, [2016] O.J. No. 4992
Worker	35	*R. v. M.M.*, [2018] O.J. No. 781 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. D'Souza*, [2016] O.J. No. 4992 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Ellis*, [2017] O.J. No. 3196
Services	186	*R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Chheda*, [2018] O.J. No. 2515 *Rotondo v. Ottawa (City) Police Services Board*, [2016] *R. v. Esho*, [2017] O.J. No. 5418 *R. v. Haniffa*, [2017] O.J. No. 4048 *R. v. Crosdale*, [2018] O.J. No. 6028 *R. v. M.M.*, [2018] O.J. No. 781 *R. v. Evans*, [2017] O.J. No. 3424 *R. v. N.A.*, [2017] O.J. No. 1369 *R. v. Boodhoo*, [2018] O.J. No. 6413 *R. v. A.R.*, [2016] O.J. No. 6184 *R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Liyanage*, [2017] O.J. No. 2557 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. A.S.*, [2016] O.J. No. 5838 *R. v. Robitaille*, [2017] O.J. No. 5954 *R. v. Moradi*, [2016] O.J. No. 7031 *R. v. Griffiths*, [2015] O.J. No. 5674 *R. v. Safieh*, [2018] O.J. No. 3880 *R. v. Dykes*, [2018] O.J. No. 2979 *R. v. Pichumani*, [2017] O.J. No. 3205 *R. v. Victorine*, [2017] O.J. No. 2960 *R. v. Alexis-McLymont,* [2018] O.J. No. 983 *R. v. Jaffer*, [2018] O.J. No. 1002 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Finestone*, [2017] O.J. No. 677

		R. v. Badali, [2016] O.J. No. 4799 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Alexander*, [2016] O.J. No. 7163 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. Joseph*, [2018] O.J. No. 4241 *R. v. Kirkeby*, [2018] O.J. No. 1754 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Ellis*, [2017] O.J. No. 3196 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. D'Souza*, [2016] O.J. No. 4992
Earned	27	*R. v. Lucas-Johnson*, [2018] O.J. No. 3685 *R. v. Korof*, [2017] O.J. No. 963 *R. v. Rocker*, [2018] O.J. No. 3193 *R. v. Lopez*, [2018] O.J. No. 4145 *R. v. Gray-Lewis*, [2018] O.J. No. 4304 *R. v. Brissett*, [2018] O.J. No. 4337 *R. v. Morgan*, [2018] O.J. No. 3377 *R. v. Majdalani*, [2017] O.J. No. 1252 *R. v. Esho*, [2017] O.J. No. 5418 *R. v. J.L.*, [2016] O.J. No. 5131 *R. v. Ellis*, [2017] O.J. No. 3196

APPENDIX C

Code Book and Definitions of Codes

Sex worker: person engaging in the exchange of sexual acts for profit

- **Age:**
  - *Minor*: person under the age of 18 years
  - *Adult*: person of and above the age of 18 years
- **Charges:** charges of which the sex worker was charged in the trial.
- **Breach of rights:** instances where rights of the sex worker has been violated, not limited to instances where the sex worker views/feels their Charter of rights and freedoms are not being exercised completely.
- **Lack of information:** instances where the sex worker was not aware or had knowledge regarding the premises of the work they were/will be involved in. This code also applies to lack of knowledge regarding the legitimacy of sex worker's employment or knowledge about the criminal justice system.
- **Use of protection:** instances where sex worker had or lacked protection. Certain data covers best practices to ensure the protection of the sex worker.
  - *Lack of Protection:* instances where sex worker did not have or was not provided protection, whether it was for their health (condoms/ STD checks) or physical to prevent violence and abuse. This label also covers practices that are detrimental to the sex worker's well-being, meaning "worst practices"
  - *Health*: sex worker informs about the protection of their health via the use of condoms, STD checks, assessment of client's health and hygiene, etc. It also covers steps to best practices to ensure health protection of the sex worker
  - *Physical:* instances where sex worker was provided protection of their body to prevent violence and abuse towards them. This would mean use of the buddy system, bodyguards, etc. This label also includes best practices or any protective strategies that promote the overall protection of the sex worker.
- **Practice:** pertaining to the act of exchanging sexual services for profit, the code also refers to individuals who dance and strip for money.
  - *Willing:* the sex worker voluntarily engaged in the practice of exchanging sexual services, dancing and/or stripping for a financial gain. It also includes instances where the individual expressed interest in participating in such activities
  - *Unwilling*: the individual is pressured or forced by another individual to engage in the practice of exchanging sexual services, dancing and/or

stripping for a financial gain. It also includes instances where the individual expressed thoughts of not wanting to continue to participate in such activities

- ➢ *Thoughts/ Feelings:* the sex worker expresses their thoughts and/or feelings on the participation of the sex industry. This includes moments where the sex worker also expresses thoughts/ feelings of the people involved in the sex industry about their surroundings. It also includes comments on the overall experience of the individual/sex worker

- **Relationship with pimp:** referring to the relationship between the sex worker/individual with the pimp prior and during the practice of the sex worker's exchange of sexual services, dancing and/or stripping for a financial gain.
  - ➢ *Negative*: interactions between the pimp and sex worker where the pimp attempts or carries out acts that were physically, emotionally or mentally violent towards the sex worker. For example, shoving, pushing, hitting, yelling, verbal threats, use of weapons/ objects to perform assaults, sexual assault, rape. This also entails the pimp destroying or throwing objects of the sex worker.
  - ➢ *Positive:* interactions between the pimp and the sex worker where the pimp provided for the sex worker. In this case to "provide" entails providing financially, emotionally, provision of shelter, food, material goods. It also includes moments where the sex worker perceives the pimp as a caring person, views that their relationship has a romantic component, that makes them feel reassured and cared for.
  - ➢ *Power dynamic:* interactions between the pimp and sex worker where the pimp holds a certain level of control, power and direction over the sex worker's body and the sex worker's work. This includes moments where the pimp expresses their expectations of the sex worker, gives sex worker instructions or withholds financial gains. The code tries to define instances where the dynamic between the sex- worker and pimp is not in equilibrium due to authority the pimp has over the sex worker.
- **Relationship with client**
  - ➢ *Positive:* interactions with clients who respect the sex worker, meaning, complying with the rules the sex worker sets in terms condom use and hygiene and services to be provided. In cases where the individual performing the sexual acts was coerced into such activities, the codes serves to identify clients who protect the coerced individual by "covering" for them or providing resources to escape the coercion.
  - ➢ *Negative:* interactions with clients who do not respect the sex worker, meaning, they do not comply with the rules the sex worker sets in terms condom use and hygiene and services to be provided and use violence

against the sex worker. Violence represents: verbal, physical or emotional/mental, sexual violence against the sex worker.

- **Case:** brief summary of what led to the charges of the trial. It includes important details about the trial
- **Labour:** moments where the language used **(**use of language regarding sex work as as business)

Client: buyer of sexual services

- **Charges**

Pimp: third parties

- **Charges**

Judge: trial judge or sentencing judge

- **Performance:** allows to take a look into the process of analysis for trials in terms of credibility and reliability of evidence for the defendant and complainant
    - ➢ *Lack of thoroughness:* dismissing further analysis of evidence
- **Perception of sex worker:** comments from the Judge obtained from the analysis section, where he/she explores the evidence and legal framework to come to a verdict
    - ➢ *Threat*: perception of the sex worker as an individual who engages in risky behavior. Risky entails unacceptable behavior deemed by the Judge's perception of society normalcy
    - ➢ *Person at risk*: comments on the sex worker that depicts them as a victim of the ordeal. It can entail blatantly stating " the victim"
    - ➢ *Court behavior:* comments on the demeanor and/ or behavior of the sex worker. Usually pertains to statements about their reactions, mannerisms, attitudes when giving testimonies and when being cross-examined. At times interpretations of the sex worker's emotions/feelings
    - ➢ *Labor:* comments on transaction of sexual services for money view as a line of work. Thus, referring to it as a business transaction.
    - ➢ *Exercising free will*: comments on the ability of the sex worker to make their own decisions, their level of independency. At times this entails recognizing the sex worker was in the sex industry due to their own volition.
- **Perception of Crown:** comments on the performance of the crown to prove through evidence the guilt of the defendant beyond a reasonable doubt
    - ➢ *Lack of thoroughness*: inability of the crown to prove charges against defendant beyond a reasonable doubt

- **Perception of detectives/ officers:** comments on the performance and involvement of the detectives/ officers during the process of the charges being laid, comments on their trial testimonies.
    - ➢ *Lack of thoroughness:* comments that negatively depict the ability to carry out the job of the detective/ police officer. This also includes comments on their in-court testimonies
- **Perception of pimp:** comments on the charges, court behavior and overall demeanor while in court of the pimp.
    - ➢ Negative: comments that imply an exploitative and coercive demeanor towards sex worker. At times personal opinions of the "disgust" of the charges and their involvement in such acts are stated.
- **Verdict:** aftermath of the trial or sentence

Transaction: transactions of sexual services or ability to work for non-financial benefits, including shelter, food, transportation, groceries.

- **Money for Sexual services**: comments of the sex worker or characters involved in the transaction of sexual services for money on such act. Sometimes it includes the types of services provided by the sex worker, sometimes rates are included.
- **Non-specified transaction:** transactions that do not explicitly state the exchange of money for sexual services. For example, the comment may include the existence of the sexual service, without expressing receiving money.

Attorney/Crown

- **Perception of sex worker- pimp relationship:** comments on the relationship between the sex worker and the pimp. At times it entails descriptions of the Attorney/Crown on the role of the sex worker in the dynamic of the pimp- sex worker.
    - ➢ *Coercive*: comments on the coercion the pimp exerted unto the sex worker.
- **Perception of sex worker- client relationship:** comments on the relationship between the sex worker and the pimp. At times it entails descriptions of the Attorney/Crown on the demeanor and role of the sex worker or the client.
    - ➢ *Coercive:* comments on the coercion the client exerted unto the sex worker.

Language

- **Labor:** comments where the transaction of sexual services for money is referred to as a business or described as work. To a certain extent is the commodification of sexual services.
- **Definitions:** comments that address definitions from the trials and sentences. Definitions of prostitution, services, etc. Under this category are also coded the many labels of "sex work/ sex worker". Realities from the realm of the sex industry are also coded (issues in legislation)

- ➢ *Construction of characters* subtle comments that shape (or construct) the many characters involved in the transaction of sexual services for financial gain, this includes: workers, consumers, etc. This category establishes how members of common law refer to people involved of the sex industry

- **Interchangeability:** comments from trials where the language of human trafficking and prostitution are either used interchangeably and also exemplifying how through this specific process Judges recycle the ideas and maintain certain notions in use.
- **Consent:** comments from trials addressing the notion of consent within the practice of the transactional relationship of sexual services for financial gain
- **Negative:** comments that depict the context from which the terminology of the sex industry is spoken in. In this instance terminology refers to the many labels used in trials, which are "prostitute, prostitution, sex trade, sex trade worker".
    - ➢ *Coercive*: comments from trials that refer to the act of the exchange of sexual services for money as exploitative and coercive
    - ➢ *Threat to society* comments from trials that refer to the act of the exchange of sexual services for money as a threat to society. This also includes instances where characters in the trial refer to society and the effect of the topic at hand on it
    - ➢ *Responsibilizing sex worker*: comments made on behalf of court characters that emphasize that the sex worker that imply they could have done something to avoid the predicament of the matter

References to Bedford: instances where the Bedford decision or the issue addressed by the trial of Bedford is mentioned or discussed

Policy: comments on legislation

- **Failure:** comments made on the legislation that has failed to achieve its purpose

In court

- **Testimonies**
    - ➢ *Detectives:* testimonies of detectives and or police officers regarding their involvement in the case of the defendant and complainant. Testimonies are used primarily as evidence
        - ➔ Changing: instances where the original testimonies changes, mostly after undergoing cross examination
    - ➢ S*ex worker*: testimonies of sex workers, consisting primarily of evidence.
        - ➔ Changing: instances where the original testimonies change, mostly after undergoing cross examination. Usually Judges make comments on the reliability and credibility of the sex worker due to their "inconsistent" nature.