Policy Alternatives: Improving sex worker occupational health and safety through legislative reform

by

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Abstract

This project examines potential policies to improve sex worker occupational health and safety in Canada. Purposive sampling was used to identify relevant case studies (i.e., Netherlands, Queensland, and Nevada) and expert interview participants (e.g., academics, sex worker support organizations, legal experts). Incorporating potential legal reforms in the area of criminal law, I explore the viability of current advertising provisions and their effects regarding off-street sex workers in the Canadian setting. I then provide answers to the following research questions: (1) how do support organizations, academics, and legal experts in Canada view current sex work advertising laws; and (2) are there alternatives to decriminalization, in the shorter term, that would garner stakeholder support? Findings highlight a deep-rooted resistance to the government’s use of the law in trying to control the prevalence of sex work and stress the need for greater sex worker involvement in the creation of policies governing their work.

Keywords: sex work; advertising; criminal law; labour; policy reform
Love you Dad.
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To my family and friends: thank you!
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## List of Acronyms

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>DCC</td>
<td>Dutch Criminal Code</td>
</tr>
<tr>
<td>IRPR</td>
<td>Immigration and Refugee Protection Regulations</td>
</tr>
<tr>
<td>NAC</td>
<td>Nevada Administrative Code</td>
</tr>
<tr>
<td>NRS</td>
<td>Nevada Revised Statutes</td>
</tr>
<tr>
<td>PCEPA</td>
<td>Protection of Communities and Exploited Persons Act</td>
</tr>
<tr>
<td>PLA</td>
<td>Prostitution Licensing Authority</td>
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</table>
### Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Im/migrant</td>
<td>Immigrant / migrant</td>
</tr>
<tr>
<td>Immigrant</td>
<td>Any person who is, or who has ever been, a landed immigrant or permanent resident. Such a person has been granted the right to live in Canada permanently by immigration authorities(^1)</td>
</tr>
<tr>
<td>Migrant</td>
<td>Anyone with landed immigrant or refugee status, or with a temporary work or student permit, or anyone who has moved from another country to Canada and is without immigration papers(^2)</td>
</tr>
<tr>
<td>Occupational health</td>
<td>Workers’ health and workers’ capacity to work and maintain a livelihood(^3)</td>
</tr>
<tr>
<td>and safety</td>
<td></td>
</tr>
<tr>
<td>Off-street sex work</td>
<td>Sex work that occurs indoors (e.g., BDSM services, telephone sex, cam sex, erotic massage, exotic dance, and escorting services (in-call or out-call))</td>
</tr>
<tr>
<td>Sex work</td>
<td>The consensual exchange of sexual services for remuneration between adults</td>
</tr>
<tr>
<td>Sexual services</td>
<td>A service that is sexual in nature and whose purpose is to sexually gratify the person who receives it</td>
</tr>
</tbody>
</table>

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\(^1\) Definition taken from Statistics Canada (2019)

\(^2\) Definition taken from Malle, Lam, van der Meulen, & Peng (2019)

\(^3\) Definition adapted from Canadian Alliance for Sex Work Law Reform (2017)
Executive Summary

There is ongoing concern regarding sex worker safety after the Government of Canada passed Bill C-36—*The Protection of Communities and Exploited Persons Act*. While purporting to protect women and children, this legislation reintroduces unconstitutional legal provisions struck down by the Supreme Court of Canada in *Canada (AG) v Bedford* (2013) and introduces new harms to sex workers by expanding the law’s reach into the off-street sector of the commercial sex industry (Belak & Bennett, 2016; Canadian Alliance for Sex Work Law Reform, 2017; Sterling, 2018). Considering that many sex workers willingly choose to engage in sex work and conceptualize it as a form of legitimate labour (Duff et al., 2017; O’Doherty, 2015; Pitcher, 2015), there is a critical need to ensure sex workers’ rights to safety.

This project first examines the history of policy and legal changes regarding sex work law. It is clear sex work remains inherently linked to morality and attempts at reforming sex work law result in increasingly harmful legislation (Lowman, 2011). For example, off-street workers are now experiencing heightened difficulties locating, screening, and negotiating services with clients because of the new advertising and material benefit provisions (Sterling, 2018).

Using case studies, this project investigates the benefits and shortcomings of contemporary models of sex work law in the Netherlands, Nevada, and Queensland. This project also utilizes expert interviews to contextualize and assess the transferability of these cases in the Canadian setting. Several policy options are analyzed in-depth, including: repealing the advertising provision and amending the material benefit provision; legalize sex work after the Queensland model and establishing a sex work licensing authority; legalizing sex work after the Netherlands model; and decriminalizing the commercial sex industry. These policies are then compared and evaluated in terms of safety, political feasibility, stakeholder acceptance, equity, cost, and freedom.

The final recommendations to the federal government are two-fold: repeal the advertising and material benefit provisions in the short term; and create a model of decriminalization for the Canadian setting that responds to the needs of sex workers. Implementing these policy recommendations should include sex workers at all stages and should also consider making changes to immigration, labour, and municipal law.
Chapter 1.

Introduction

Following the Supreme Court of Canada’s determination that the criminalization of the activities surrounding sex work increased sex workers’ risk of victimization (Canada (AG) v Bedford, 2013), the federal government, in 2014, enacted Bill C-36—the Protection of Communities and Exploited Persons Act (PCEPA). For the first time in Canadian history, the government established a framework criminalizing the purchase of sexual services—a form of asymmetrical criminalization known as the “Nordic Model.”

This legislation is based on the ideological conception of prostitution as a form of female exploitation and purports to “protect communities, and especially children, from the harms caused by prostitution” by reducing its demand and incidence—known as “end-demand” (Department of Justice Canada, 2014). To achieve these aims, Bill C-36 introduces offence provisions regarding purchasing sexual services (s.286.1), advertising the sale of sexual services (s.286.4), and materially benefitting from the sale of another’s sexual services (s.286.2), as well as modernizing the communication provision (s.213) and the procuring provision (s.286.3).

In addition to critical scholars highlighting significant empirical flaws in the research underpinning the PCEPA’s rationale (Landsberg et al., 2017; Lowman, 2014b; O’Doherty, 2015), sex workers, academics, and advocates provide empirical evidence illustrating the risks and harms flowing from asymmetrical criminalization in the Canadian context. The PCEPA not only replicates the vulnerability to victimization that was created by pre-Bedford Criminal Code of Canada [hereafter, Criminal Code] provisions but it also jeopardizes sex workers’ occupational health and safety by heightening risk of victimization (Belak & Bennett, 2016; Krüsi et al., 2014; Landsberg et al., 2017; Levy & Jakobsson, 2014; Sterling, 2018). For example, in a Vancouver cohort of 299 sex workers, 26.4% reported negative changes to their working conditions under the PCEPA, with “immigrants, women experiencing workplace violence, and those facing criminalization [being] most likely to report negative impacts” (Machat, Shannon, Braschel, Moreheart, & Goldenberg, 2019, p. 1). This includes a reduced ability to
screen and negotiate sexual transactions with clients, as well as reduced access to clients and workspaces (Machat et al., 2019, p. 4).

Considering the increasing body of knowledge acknowledging the decriminalization of the sex industry as a means of improving sex workers’ occupational health and safety (Benoit, Jansson, Smith, & Flagg, 2017; Jackson & Heineman, 2018; O’Doherty, 2015; Pivot Legal Society, 2006; Platt et al., 2018; Shaver, Lewis, & Maticka-Tyndale, 2011; van der Meulen & Durisin, 2008), the introduction of the PCEPA reaffirms that the Canadian government is not concerned about improving sex workers’ rights. To many sex workers, advocates, and support organizations this is unsurprising since previous attempts at reforming sex work law have shown an unwillingness by government to prioritize sex worker rights and safety (Lowman, 2011). If the PCEPA’s enactment is a measure of decriminalization’s current political feasibility in the Canadian context, there is a need to explore legislative alternatives that can address both government and sex worker needs.

One possible avenue of inquiry relates to the expansion of criminalized activities surrounding sex work. While most of the provisions in the PCEPA are reiterations of pre-Bedford legislation, the advertising provision increases the scope of harms in the off-street sector. Driven partly by an increasing trend of conflating sex work with human trafficking (Mackenzie & Clancey, 2020), the PCEPA creates negative changes to off-street immigrant and migrant workers’ working conditions (Machat et al., 2019), enhanced barriers to health access (Mcbride et al., 2019), and a heightened risk of victimization generally by banning the use of online spaces for advertising (Campbell, Sanders, Scoular, Pitcher, & Cunningham, 2018).

Access to online spaces for advertising allows sex workers to leverage personal safety enhancing strategies, such as client screening and service negotiation, to safeguard their occupational health and safety (Campbell et al., 2018; Moorman & Harrison, 2016; Sanders, Connelly, & King, 2016). Given that the material benefit and advertising provisions currently criminalize such access, there is a need to address these gaps through alternative policy measures. The question then becomes: what policy measures, if any, are politically feasible in the Canadian context and can improve sex workers’ occupational health and safety? To answer these questions, purposive sampling is used to identify relevant case studies (i.e., Netherlands, Queensland, and
Nevada) and expert interview participants (e.g., academics, sex worker support organizations, legal experts). With this information, the Government of Canada has an opportunity to better respond to the findings in the *Bedford* case, and ultimately improve sex worker safety.
Chapter 2.

Background

While there is growing discourse surrounding the Canadian commercial sex industry and the lived experiences of those working in it, policies continue to rely on moralistic arguments that see prostitution as a form of female exploitation (Department of Justice Canada, 2014) rather than a form of legitimate labour. In this background, I outline the history of the commercial sex industry in Canada, touching on notable policy reforms. I then comment on the current state of sex work policy, highlighting alternative regulatory frameworks and organizational calls for change. I conclude by explaining how the current project seeks to bridge a fundamental gap that currently exists in the literature—namely, an in-depth analysis of potential policy alternatives, relating to sex work advertising, that could improve occupational health and safety for off-street sex workers through means other than decriminalization.

2.1. Commercial Sex Industry in Canada

The commercial sex industry has existed since before Confederation. It encompasses an array of individuals including those providing sexual services in exchange for remuneration (i.e., sex workers), those acquiring sexual services in exchange for remuneration (i.e., clients), and individuals supporting sex workers through the provision of support services (i.e., third parties: drivers, bodyguards, managers, etc.). “Sex worker” is an umbrella term used to refer to individuals working in different contexts of the sex industry, which can be roughly divided into two sub-categories: outdoor or street-based sex workers; and indoor or off-street sex workers. The indoor category includes but is not limited to those that provide BDSM (bondage, discipline/domination, submission/sadism, and masochism) services, telephone sex, camera sex, erotic massage, exotic dance, and escorting services.

Prostitution, otherwise known as “sex work,” refers to the exchange of sexual services for remuneration. These terms are interchangeable, however there are differences in how the terms are employed in research and advocacy. Phrases like “prostituted women” denote an abolitionist viewpoint—that the sex industry should be
abolished because it is a form of oppression, exploitation, and violence against women by men (Comte, 2013). Under this school of thought, women lack agency and cannot rationally enter into the sex industry, meaning they are victims being “prostituted out” by “pimps”\(^4\)—also known as procurers—and exploiters (Farley, 2004; Raphael & Shapiro, 2004).

In contrast, the term “sex work” is typically employed by individuals hailing from a sex worker rights viewpoint. They acknowledge that sex work is a legitimate form of labour that individuals can freely engage in and that the majority of sex workers exercise agency over their bodies and are not victims in need of protection (McCarthy, Benoit, & Jansson, 2014; O’Doherty, 2015; Parent & Bruckert, 2013). Individuals using the term “sex work” typically acknowledge that while there are instances wherein individuals are forced into providing sexual services, they recognize that the best way to protect individuals from exploitation is to ensure sex workers have rights and access to safe working conditions (Belak & Bennett, 2016; O’Doherty, 2015; Pitcher, 2015; Pitcher & Wijers, 2014; van der Meulen & Durisin, 2008). Acknowledging the diversity in sex workers’ lived experiences, this project employs the term “sex work” and “sex workers” when referring to the exchange of sexual services for remuneration.

2.2. History of Policy and Legal Changes

The first laws surrounding sex work in Canada derive from British common law and characterize owning and operating a bawdyhouse, procuring women into prostitution, and being a “common prostitute” as vagrancy—a public nuisance. This vagrancy statute was mainly used to control street-based sex work until 1972 (Lowman, 2011). With the exception of the vagrancy statute, the bulk of the criminal laws surrounding sex work that existed in Canada up until 2014 were established by 1915: procuring a person to have illicit sexual intercourse; aiding and abetting or controlling for gain the prostitution of another person; enticing a person who is not a prostitute to a common bawdy house or concealing a person in a common bawdy house (s.212(1)); living on the avails of the prostitution of another person (s.212(1)(j)); owning, keeping,__________

\(^4\) Pimps are defined in Canadian law as individuals who facilitate the prostitution of another person or anyone who lives parasitically on the avails of the prostitution of another (see R. v Downey, 1992)
frequenting, being a landlord of, or being found in a “common bawdy house” (s.210); transporting a person to a bawdy house (s.211).

2.2.1. Special Committee on Pornography and Prostitution - 1985

In 1972, the vagrancy statute controlling street solicitation was repealed on the grounds that it contravened the 1960 Canadian Bill of Rights. It was replaced by a solicitation law but by 1978 police were not enforcing it because there was a prosecutorial requirement to prove that the solicitation was “pressing and persistent” (Lowman, 2011). With growing concern around street solicitation, the Liberal government created the Special Committee on Pornography and Prostitution (i.e., the Fraser Committee) to study the problems associated with pornography and prostitution (Special Committee on Pornography and Prostitution, 1985, p. 5).

The Committee argued for a complete rethinking of prostitution laws, stressing that the best way to address public nuisance, while acknowledging the rights of prostitutes, is to clarify in which contexts prostitution can occur. The Committee did not opt for decriminalization, stating that removing all criminal provisions regarding adult prostitution (i.e., bawdy houses, procuring, living on the avails, and soliciting) would mean an inadequate ability to respond to exploitation and coercion through the use of general Criminal Code provisions (Special Committee on Pornography and Prostitution, 1985, p. 536). As such, they believed that the Criminal Code provisions should continue to concern themselves with prostitution-related offences but argued that the constraints on these activities should be narrowed.

They recommended that: prostitution related activities be removed from the Criminal Code to the extent that they contravene non-prostitution related provisions and do not create definable nuisances (recommendation #55); Criminal Code provisions dealing with exploitative conduct should be confined to violent conduct or conduct which threatens force, and any prostitution businesses which operates without contravening the Criminal Code should be subject to municipal regulation (recommendation #56); the criminal law relating to prostitution establishments should allow small numbers of prostitutes to organize their activities out of a place of residence, and so as not to prevent provinces from permitting and regulating small scale, non-residential commercial prostitution establishments employing adult prostitutes.
The Committee recognized the necessity of criminal law change and a need to eradicate underlying economic disparity and discrimination in employment generally (p.526). In addition to recommending the development of programs to support people wanting to exit prostitution, they recommended that the provincial and federal governments: strengthen their commitment to removing economic and social inequalities between men and women (recommendation #50); and ensure there are adequate social programs to assist women and young people in need (recommendation #51).

Rather than following the Committee’s recommendations, the newly elected 1984 Conservative government held that the increase in street solicitation was due to a failure of the solicitation law itself (Lowman, 2011). Opting instead to develop a communication provision that could be leveraged more easily than the previous solicitation law, the government enacted s.213 of the Criminal Code which criminalizes individuals for communicating in public for the purposes of prostitution. After its enactment, the communication provision became the most frequently used provision relating to prostitution (Lowman, 2011).

2.2.2. The Subcommittee on Solicitation Laws - 2006

In light of the Robert Pickton case and the increasing number of missing and murdered Indigenous women in Vancouver, another review of prostitution law was undertaken by the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which later became the Standing Committee on Justice and Human Rights. Comprising the subcommittee were Liberal, Conservative, New Democrat and Bloc Québécois federal political party leaders tasked with “[reviewing] the solicitation laws in order to improve the safety of sex-trade workers and communities overall, and to recommend changes that will reduce the exploitation of and violence against sex-trade workers” (Standing Committee on Justice and Human Rights, 2006, p. 2).

Every party, except for the Conservative members who stood in opposition to lawful prostitution of any kind, acknowledged the need to invest more in services designed to help people wanting to exit the sex industry and the need for harm reduction

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5 Robert Pickton was found guilty on several counts of first-degree murder. The victims were street-based sex workers in Vancouver’s downtown eastside (R. v. Pickton, 2010).
(Standing Commitee on Justice and Human Rights, 2006). They recognized that there is a difference between consenting adults wanting to engage in commercial sex and those that are forced into selling sex, arguing that consenting adults should not face criminal penalties for engaging in prostitution. While no substantive recommendations were made in terms of law reform, all four parties agreed that the current laws were unacceptable (Standing Commitee on Justice and Human Rights, 2006).

2.2.3. Standing Committee on the Status of Women - 2007

Primarily tasked with looking at human trafficking in Canada, the Standing Committee on the Status of Women (2007) recommended the adoption of the Nordic model which criminalizes the purchase of sexual services and the third party support of individuals providing sexual services. Unlike the previous committees which heard from representatives from both sides of the argument—abolition and regulation—the Committee invited only abolitionists to make submissions (Lowman, 2011). Hailing from the perspective that, in any context, prostitution is a form of sexual exploitation, it is unsurprising that they recommended demand-side prohibition.

2.2.4. Canada (AG) v Bedford - 2013

Despite consensus from the federal political party leaders that the laws surrounding sex work were unacceptable, no substantive changes were made, and no clarification was given by the federal government regarding the circumstances under which sex work could occur. The discussion was then introduced in the courts by three individuals that either work or worked in the sex industry (i.e., Valerie Scott, Terri-Jean Bedford, and Amy Lebovitch) in the case of Canada (AG) v Bedford (2013). In this case, the applicants argued that the criminal laws surrounding sex work violated their rights to life, liberty, and security of persons as guaranteed under section 7 of the Charter of Rights and Freedoms.

The Supreme Court of Canada, in a 9-0 decision, ruled that the bawdy house, communication, and the living on the avails of prostitution provisions violated sex workers’ rights (Bedford, 2013). They found that the laws disproportionately increased sex workers’ vulnerability to violence and victimization by preventing them from employing safety strategies. Specifically, the laws prohibited sex workers from working
indoors, working with others, and being able to employ other personal safety strategies like hiring security guards or screening clients (Bedford, 2013). Rather than immediately declaring the laws invalid, the Court suspended their declaration of invalidity for one year to give Parliament time to devise a new legislative approach.

2.3. Different Regulatory Frameworks

Governments typically take three approaches to legislating sex work: criminalization (full, indirect or asymmetrical); legalization; and decriminalization.

2.3.1. Criminalization (full, indirect, or asymmetrical)

Full criminalization involves banning all aspects relating to the exchange of sexual services for remuneration (McCarthy, Benoit, Jansson, & Kolar, 2012). It is usually applied symmetrically to both purchasers and sellers, and up until 2014, if an individual was charged under the Criminal Code (1985) provisions regarding owning, keeping or being found in a bawdy house (s. 210), procurement (s. 212), living on the avails of prostitution of another person (s. 212(1)(j)), or communicating in public for the purposes of prostitution (s. 213), they risked fines or imprisonment (Lowman, 2011; Perrin, 2014). These criminal sanctions were often more harsh for third parties since they are assumed to be pimps and exploiters (McCarthy et al., 2012). Full criminalization is the most practiced approach to legislating sex work (McCarthy et al., 2012).

Under full criminalization, differential impacts exist depending on the context in which sex workers operate. Coupled with the visibility of their work and the public’s “not-in-my-backyard” (NIMBY) sentiments, female street-based sex workers continue to be disproportionately targeted by the law and law enforcement efforts (Deering, 2012), leading to higher rates of displacement (Armstrong, 2017) and rushed negotiations (Landsberg et al., 2017). While off-street sex workers are less targeted by the law and law enforcement, migrant and immigrant (im/migrant) sex workers are disproportionately and increasingly targeted over concerns of sex trafficking (Lam, 2018), leading to increased rates of violence (Anderson et al., 2015) and health inequities (Mcbride et al., 2019).
Indirect criminalization involves prohibiting the activities surrounding the sale and purchase of sexual services while not explicitly banning selling or purchasing. Like the pre-Bedford era laws surrounding sex work, one could purchase or sell sexual services without facing criminal sanctions; however, the activities surrounding the purchase and selling of sexual services (e.g., communicating in public, being found in a bawdy house) were criminalized. Even though selling sexual services has never been illegal in Canada, the indirect criminalization made it virtually impossible to engage in sex work without violating the law (Belak & Bennett, 2016).

Asymmetrical criminalization is the one-sided criminalization of either the purchase or sale of sexual services. Since 2014, Canada has been operating under an asymmetrical criminalization framework called the Nordic Model, which criminalizes the purchase and third-party facilitation of sexual services (Lowman, 2011). It does so on the basis that “those who sell their own sexual services [are] victims who need support and assistance, rather than blame and punishment” (Department of Justice, 2017, para 37). One fundamental shortcoming of asymmetrical criminalization is that it replicates harms under full or indirect criminalization, specifically sex worker vulnerability to victimization (Belak & Bennett, 2016; Krüsi et al., 2014; Landsberg et al., 2017; Levy & Jakobsson, 2014; O’Doherty, 2015; Sterling, 2018).

2.3.2. Legalization

Another approach to legislating sex work is legalization. Under this framework, the sale of sexual services is legal only if certain conditions are met (McCarthy et al., 2012). For instance, the Netherlands restricts the legal selling of sexual services to certain areas and brothels using zoning laws (Wahid, Ahmad, Nor, & Rashid, 2017). Legalized frameworks involve higher rates of government control and oversight, wherein workers typically acquire a licence from the government, thereby allowing them to legally provide sexual services in designated areas. Having a licence means sex workers usually acquire labour protections because their workplace is regulated by the government, thereby allowing them greater assurances over their occupational health and safety (Pitcher & Wijers, 2014, p. 24; Wahid et al., 2017).

Legalized schemes exist alongside criminal laws, potentially facilitating the victimization of sex workers that cannot access the legal market (McCarthy et al., 2012;
O’Doherty, 2015). Simply, legalized workspaces often require citizenship (Rössler et al., 2010), a permanent address, and routine health checks (see section 4.1.3 below). If indoor workers are unable to afford or comply with increased levels of regulatory oversight (i.e. STI testing, licences, etc.) or enforcement, they are more likely to shift to street-based work where there are higher STI rates (Gertler & Shah, 2011). Moreover, licensing fees are usually expensive, making it disproportionately harder for street-based sex workers (Anderson et al., 2015; Craig, 2011) and im/migrant sex workers to practice sex work legally indoors (Lewis & Maticka-Tyndale, 2000; van der Meulen & Durisin, 2008). Critics also note that requiring registration can increase general stigmatization and heighten police persecution by making the personal information of sex workers known (Lewis & Maticka-Tyndale, 2000; O’Doherty, 2015).

2.3.3. Decriminalization

Another legislative framework is decriminalization. Full decriminalization involves the removal of all criminal sanctions surrounding the sale, purchase, and support of sexual services (McCarthy et al., 2012, p. 266). New Zealand is the only country that operates within a decriminalized setting; however, there is still one criminal sanction relating to adherence with safe sex practices during commercial sex exchanges (Prostitution Reform Act, 2003).

Decriminalized frameworks are the most advantageous for ensuring sex worker rights because they recognize sex work as a legitimate form of labour. One of the main benefits is that decriminalization facilitates mechanisms through which sex workers can bring forward employment and working condition complaints by treating sex work like other forms of mainstream work (McCarthy et al., 2012). It also allows sex workers to work indoors, improve client screening, and work in shared spaces, thereby improving the level of control they have over their occupational health and safety (Abel, Fitzgerald, & Brunton, 2009; Belak & Bennett, 2016; McCarthy et al., 2012).

While decriminalization may seem like the ideal approach to ensuring sex worker rights, it is not guaranteed to necessarily reduce sex worker stigma or discrimination (Abel et al., 2009; Krüsi et al., 2014). Sexual morality continues to dominate discussions around sex work law in New Zealand, showing that the public acceptance of sex work, based on such moral views, will likely remain fixed for the foreseeable future (Abel et al.,
There is also the overrepresentation of addiction and mental health concerns among street-based sex worker populations (Weitzer, 2009b) that require more than just the decriminalization of the sex industry to address in full (Pivot Legal Society, 2006). Until societal views change, sex workers will likely continue to experience negative externalities from their involvement in sex work in public arenas like employment and government institutions (Bruckert & Hannem, 2013).

2.4. Current State

In response to Bedford, the Conservative Party of Canada (CPC) drafted the PCEPA. As part of that policy development process, the CPC held parliamentary committee hearings where they heard arguments from witnesses both against and in favour of the new legislation. While such processes are usually less partisan (Docherty, 2005), research demonstrates both a distributional inequality in the number of pro and con witnesses (favour toward pro-PCEPA witnesses) and a bias in the nature, tone, and content of questions being asked (Johnson, Burns, & Porth, 2017). It is unsurprising, therefore, that the Harper-led CPC enacted the PCEPA, receiving royal assent November 6, 2014.

The PCEPA aims to decrease the prevalence of sex work by targeting its demand. It is a form of asymmetrical criminalization that views those purchasing sexual services and those supporting the sale of sexual services (i.e., third parties) as exploiters. Under this paradigm, individuals selling sexual services are exempt from criminalization because they are thought to be victims in need of rescuing (Department of Justice Canada, 2017).

The PCEPA introduces the purchasing provision in s.286.1. It criminalizes “everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person.” Note that before the PCEPA, clients were not prohibited under the law from purchasing sexual services. This change is a clear expansion of the law’s reach, to include not only purchasing in public spaces but private spaces as well.

Advertising sexual services has also been made a criminal offence under s.286.4. Like s.286.1, the advertising provision is a hybrid offence that criminalizes
“everyone who knowingly advertises an offer to provide sexual services for consideration.” While there is an immunity to this provision to the extent that individuals are allowed to advertise their own sexual services, the updated living on the avails provision—known now as the material benefit provision (s.286.2)—effectively makes it impossible for sex workers to advertise their services. As s.286.2 states, “everyone who receives a financial or other material benefit knowing that it is obtained by or derived directly or indirectly from the [purchase of sexual services] is guilty of an offence.” This means third-party web hosts could be criminalized for allowing sex workers to advertise services on their website.

Perhaps in response to the belief that prostitution is harmful to children and communities, the communication provision (s.213) expands to explicitly criminalize the communication for the purposes of purchasing or selling sexual services near places where children could reasonably be expected to be found. Specifically, s.213(1.1) states that “everyone is guilty of an offence…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 centre.”

### 2.4.1. Criminal Law

It appears the PCEPA makes sex work more dangerous. While Machat et al. (2019) conclude that most sex workers’ working conditions have not changed since the enactment of the PCEPA, they report that 26.4% of their sample of 299 participants in Metro Vancouver reported negative changes to their working conditions, with im/migrant women most likely to report such changes (Machat et al., 2019). Such negative changes include reduced ability to screen and negotiate sexual transactions with clients, as well reduced access to clients and workspaces (Machat et al., 2019, p. 4).

These conclusions are similar to other research in this area, finding that asymmetrical criminalization not only replicates the vulnerability to victimization that was created by pre-Bedford Criminal Code provisions but that it also jeopardizes sex workers’ occupational health and safety by heightening the risk of victimization (Belak & Bennett, 2016; Krüsi et al., 2014; Landsberg et al., 2017; Levy & Jakobsson, 2014). Specifically, the criminalization and policing of communication and clients leads to rushed client screening and displacement to less safe areas (Krüsi et al., 2014;
Landsberg et al., 2017) and less negotiating time (Dodillet & Östergren, 2011), effectively increasing the risk of violence and victimization experienced by sex workers (Belak & Bennett, 2016).

The advertising and material benefit provisions also expand criminalization to online spaces. This is problematic since online spaces work to help maximize sex workers’ occupational health and safety by providing a space for them to employ risk management strategies (Campbell et al., 2018; Moorman & Harrison, 2016; Sanders et al., 2016). Perhaps unsurprisingly, the ability to effectively screen clients and negotiate the terms of a transaction decreases the likelihood of experiencing violence and victimization (Argento et al., 2018; Bruckert & Law, 2013; O’Doherty, 2015). Indeed, three quarters of Campbell et al.’s (2018) participants (n=641) stated that the internet is important for their safety and for their ability to carry out safety strategies.

Additionally, the material benefit provision works to further harm sex workers by preventing them from hiring security guards, drivers, managers, receptionists, or any other form of third-party support. Similar to the effects of the living on the avails provision, Belak and Bennett (2016) document that the material benefit provision prevents sex workers from working with others, and specifically disadvantages those lacking the resources to work independently, forcing them to work alone (p. 58). Prohibiting sex workers from organizing like other forms of labour increases the risk of violence by excluding them from employment protections, health and safety regulations, and workers’ rights protections that other forms of labour can access (Belak & Bennett, 2016, pp. 58–59; Bruckert & Law, 2013; O’Doherty, 2011).

Given the similar effects regarding sex work safety between pre and post-Bedford laws, one might think that the PCEPA would fail under judicial scrutiny. Indeed, a recent court case found the advertising provision and the procuring/material benefit provisions to be unconstitutional (Hayes, 2020). This is a positive sign for sex worker rights advocates, yet the ruling was made at the provincial court level and will likely be appealed by the Crown. Nevertheless, uncertainty regarding the law’s scope is problematic for sex workers because the parameters of the criminalized activities are unclear.
Police enforcement is also problematic. Prior to the PCEPA, the Vancouver Police Department (VPD) had a non-enforcement policy regarding the communication provision which led to sex workers not being charged under section 213. This meant that sex workers could engage in client screening more safely. With the introduction of the PCEPA however, the VPD developed new sex work enforcement guidelines stating that enforcement action would only be taken in “high risk” situations (Vancouver Police Department, 2013). While this may appear to give police officers discretion regarding enforcement, the definitions of exploitation and violence in the PCEPA (i.e., sex work is violence) effectively removes police discretion by characterizing all clients as violent abusers. As a result, there has been a 51% increase in arrests on “prostitution” charges against clients (Krüsi et al., 2014). This not only forces clients to change their behaviour to evade police detection but also affects sex workers insofar as they must compromise their safety in order to engage with clients (Krüsi et al., 2014).

### 2.4.2. Other Areas of the Law

Other areas of legal concern are municipal law and immigration law. Cities like Vancouver (License By-Law no. 4450), Edmonton (Bylaw 13138), and Toronto (Article 31, Chapter 545) regulate body-rub studios and massage parlours through licensing. While the requirements under these by-laws present serious concerns to working in these venues (Anderson et al., 2015; Bruckert & Law, 2013; Lewis & Maticka-Tyndale, 2000; McBride et al., 2019), the laws themselves are potentially problematic insofar as the municipal government are materially benefitting from the sale of someone else’s sexual services through the collection of licensing fees (Craig, 2011; van der Meulen & Valverde, 2013).

Additionally, the Immigration and Refugee Protection Regulations (IRPR) were amended to include s.183(1)(b.1)—a provision preventing temporary residents from working in collective sex workspaces. In the face of these laws, im/migrant workers, who make up a large portion of the in-call industry (i.e., body rub studios, massage parlours), are increasingly fearful of police raids (Goldenberg, Krüsi, Zhang, Chettiar, & Shannon, 2017; McBride et al., 2019).

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6 High risk refers to sexual exploitation of children/youth, gangs/organized crime, exploitation, sexual abuse, violence, and human trafficking.
2.5. Organizational Calls for Change and Competing Interest Groups

In response to the PCEPA’s enactment, more than 150 organizations have signed a statement of solidarity calling on the federal government to completely decriminalize sex work to protect the human rights of sex workers (Action Canada for Sexual Health and Rights, 2019). Based on decades of research in legalized, criminalized, and decriminalized settings, there is strong evidence demonstrating that decriminalizing the commercial sex industry would best improve the working conditions, safety, and health of sex workers by ensuring access to labour and human rights (Armstrong, 2010, 2017; Belak & Bennett, 2016; Pivot Legal Society, 2006). Regardless, to maximize sex worker rights, advocates argue that sex workers need to be included in policy development processes (Benoit et al., 2017; Johnson, 2015; O’Doherty, 2011; Pitcher & Wijers, 2014).

Countering these organizational calls for change by sex worker rights’ advocates is a politically influential, well-organized and funded abolitionist movement seeking to eradicate the commercial sex industry by targeting the demand for sex work.7 As reflected in the PCEPA by information provided in Committee proceeding its enactment (Johnson et al., 2017), advocates argue that asymmetrical criminalization will address underlying gender inequality by protecting women from male exploitation (Canadian Alliance for Sex Work Law Reform, 2017, p. 21). At the heart of these arguments are genuine societal concerns regarding the human trafficking of women and children for the purposes of sexual exploitation, exploitation of economically vulnerable women, coercion of women experiencing mental health concerns and addiction in street-based setting, and general rates of violence against women engaging in sex work.

Given high rates of violence against street-based sex workers and an increasing governmental focus to identify and prevent future victims of sex trafficking, it is understandable that the PCEPA criminalizes clients and third-parties while not prosecuting workers. Between 1991 and 2014, there were 294 known sex worker homicides in Canada (Rotenberg, 2016). Of these homicides, 57% were directly related to the victim’s occupation as a sex work (Rotenberg, 2016). Moreover, between 2009

7 See Johnson et al., 2017, pp. 947-8; 950 for a list of organizations and individuals.
and 2016, there were 1,220 police-reported incidents of human trafficking in Canada (Ibrahim, 2018), wherein the rate increased from roughly 0.1 incidents per 100,000 population to over 0.9 (Ibrahim, 2018). By implementing and enforcing criminal provisions to target the perpetrators of these serious crimes, the PCEPA embodies and responds to legitimate public concerns regarding the exploitation of minors, violence against sex workers, and human trafficking.

Before proceeding, a key distinction needs to be made regarding consent as it relates to sex work: as sex work is defined as the consensual exchange of sexual services for remuneration, individuals forced into providing sexual services (i.e., non-consensual service provision) are not considered sex workers but rather victims of sexual exploitation. Furthermore, there is a continuum of consent in sex work which O’Doherty (2015) describes as “occur[ing] in varying conditions of pressure” (p. 295). While the aforementioned concerns are undoubtedly important issues for Canada to address, it is crucial that they not become sole societal foci because it risks overshadowing the various contexts within which sex work occurs and the respective needs of the individuals operating within those contexts.

An example of this overshadowing materializes in the context of human trafficking. Recently, human trafficking has become synonymous with sex work (Smith, 2010). Notwithstanding police statistics⁸, there is little empirical evidence demonstrating that human trafficking is a growing problem in Canada (Millar & O’Doherty, 2015). By conflating these two activities, however, and by focusing solely on the concerns of human trafficking victims, enacted policies have the potential to overlook the equally legitimate needs of individuals wanting to work in the industry by basing policy decisions on a small subset of individuals. Policy makers should instead take a holistic approach by addressing sex worker concerns, and not simply the needs of those forced into providing sexual services, to understand how to best respond to their nuanced needs along the varied conditions of pressure (e.g., economic pressure). Failing to do so will only perpetuate unsafe working conditions, ultimately going toward further silencing sex worker voices in policy settings.

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⁸ Police statistics regarding human trafficking do not accurately reflect its incidence and prevalence in Canada because “trafficking-related offences” is defined differently across agencies (Millar & O’Doherty, 2015)
2.6. The Current Study

There is evidentiary consensus that only 5% to 20% of all sex work activity in Canada takes place in street-based settings (Standing Commitee on Justice and Human Rights, 2006, p. 5), yet there is an overrepresentation of street-based sex work in academic, government, and media settings. While this is partly because of its visibility, advocates of demand-side prohibition (see Farley, 2004) continue to inappropriately generalize findings from street-based sex work to the entire sex industry (Lowman, 2014a). While policy work to support this subpopulation of sex workers is critical considering the higher rates of addiction (Egger & Harcourt, 1991; Weitzer, 2009b), mental health concerns (Weitzer, 2009b), victimization (Church, Henderson, Barnard, & Hart, 2001; Harcourt & Donovan, 2005; Lowman, 2000; O’Doherty, 2011; Weitzer, 2009a), and police persecution (Oppal, 2012), to provide a better understanding of the myriad of contexts where sex work occurs, there is a need to explore the experiences of sex workers working in off-street venues, especially since they represent the largest subpopulation of sex workers.

Given the need to include more sex workers in policy development, together with the aforementioned expansion of the criminal laws into off-street sex work venues, this research aims to bridge a fundamental gap in the literature—namely, to provide an in-depth analysis of policy alternatives that take into account the advertising provision. Specifically, this project aims to find alternatives that could improve the occupational health and safety of adult sex workers working in the off-street sex industry through means other than decriminalization. Acknowledging the importance of municipal and immigration law in improving off-street sex workers’ occupational health and safety, this project focuses exclusively on criminal laws. More specifically though, this project focuses on the laws themselves and does not take into account policies aimed at altering police enforcement behaviours.
Chapter 3.

Methodology

3.1. Research Questions

The research being conducted is guided by four overarching research questions: (1) how are current criminal laws affecting off-street sex workers’ occupational health and safety in Canada; (2) how do sex work support organizations, academics, and legal experts in Canada view the PCEPA; (3) how do support organizations, academics, and legal experts in Canada view current sex work advertising laws; and (4) if the decriminalization of the sex industry is politically unfeasible, are there politically feasible alternatives that support organizations, academics, legal experts, would endorse? While the first three questions aim to contextualize the current policy state, the fourth question is used to identify and assess potential policy options for the federal government.

3.2. Methods

The criminalized, marginalized, and stigmatized nature of sex work in Canada makes it difficult to employ quantitative methods in the study of sex worker experiences and perspectives (Shaver, 2005). Since there is no way to reliably estimate the total number of individuals engaged in sex work, there is an inherent uncertainty in claims of generalizability and representativeness. Considering these limitations, this project uses qualitative interviews and case studies as primary data collection methods.

It is best practice within the sex worker community for any research about sex workers and their lived experiences to directly involve sex workers using research methodologies like participant action research (see Bowen & O’Doherty, 2014). The development of this practice stems from previous harms done by researchers in the sex worker community and other marginalized communities where outsider researchers abused their researcher status and treated participants as objects to be studied rather than individuals with their own voices (Bowen & O’Doherty, 2014). Understandably sex workers felt dehumanized and taken advantage of, leaving many with a negative view of researchers. To safeguard against such practices, sex worker support organizations
developed research practice guidelines stressing the need for collaborative processes (Canadian Alliance for Sex Work Law Reform, 2019; City of Vancouver, 2015; Global Network of Sex Work Projects, 2015).

In trying to honour these research guidelines while staying within the project timeline, the project is designed as a knowledge uptake project. Specifically, the project seeks to take knowledge generated by sex worker support organizations, academics, and legal experts and discuss their feasibility. To that end, this project sought to recruit and conduct semi-structured interviews with sex worker support organizations, legal experts, and academics (n=2). Since I would be unable to receive ethics permission to interview sex workers directly, I used purposive sampling to engage individuals and organizations with experience working alongside sex workers. This not only provides indirect insights into sex worker experiences and perspectives but also allows me to gather information from organizations that represent sex worker interests through direct engagement and advocacy. I also conducted one interview with a previous Member of Parliament to better understand the political challenges surrounding sex work law reform in Canada.

To best answer the aforementioned research questions, the inclusion criteria includes support organizations, academics, and legal experts in Canada who have worked or conducted research and/or advocacy with the sex work community after the PCEPA was introduced in 2014. In other words, participants with experience only working or conducting research and/or advocacy with the sex worker community pre-PCEPA are excluded from the study.

3.3. Data Analysis

To inform the interview guide and later policy options, the first data collection method used was case studies. The following jurisdictions were purposively sampled and analyzed because of their specific approach to regulating sex work: the Netherlands; Queensland; and Nevada.

The second data collection method used was semi-structured interviews. The participants were recruited by email using publicly available information. Once a suitable time was determined, I obtained participant consent (see 3.4 Ethical Considerations).
Participants were then asked a series of questions (see appendix A) in a semi-structured format, opening up the researcher-participant dynamic and allowing for more authentic and rich data collection. The interviews lasted between 37 and 53 minutes.

Following the interview phase, the recordings were used to make interview transcripts, whereby I conducted a qualitative content analysis using the NVivo coding software. I used open coding, which Moghaddam (2006) explains as being the process where researchers break down, analyze, compare, label, and categorize data (para. 22) to organize and analyze themes as they emerge from the data. Open coding functions as a main component of grounded theory, which can be defined as theory developed inductively from data (Moghaddam, 2006). The benefit to using this method of analysis is that it minimizes researcher bias by allowing themes to generate naturally from within data instead of forcing data into predetermined categories. After conducting a second round of coding to review the nodes, the nodes were grouped thematically wherein themes were identified and later combined into overarching themes.

3.4. Ethical Considerations

As part of the recruitment process, prospective participants were invited to participate in the research project by email and were provided with a consent script and consent form (see appendix B and appendix C, respectively). Oral or written consent was then obtained at the time of the interview depending on whether they opted to participate in a telephone interview or an in-person interview. As part of the informed consent process, participants were asked whether they would like their identity to be kept confidential.

Special care was also taken to ensure respectful representation of participant experiences and perspectives. Particularly, awareness of community sensitivities and needs garnered through volunteering experiences within the sex worker community was employed to avoid disrespectful word choice, phrasing, and dehumanizing statements. Furthermore, I engage extensively in direct quotes during the data analysis section to ensure accurate representation of participant views. This project received ethics approval from Simon Fraser University Research Ethics Board in November 2019.
Chapter 4.

Case Studies and Interview Results

4.1. Case Studies

To better understand potential policy alternatives, the following methodology involves conducting case studies of other jurisdictions. Given the harms caused by criminalized regulatory frameworks, the select jurisdictions (i.e., the Netherlands, Queensland, and Nevada) were chosen because they employ different forms of legalization. These jurisdictions were also chosen because: (1) they shifted from criminalization to forms of legalization; and (2) they are well represented in the sex work policy literature. By examining how these legal frameworks differ, and by analyzing their effects on adult off-street sex workers’ working conditions, it becomes possible to determine their feasibility in the Canadian setting.
<table>
<thead>
<tr>
<th></th>
<th>Netherlands</th>
<th>Queensland</th>
<th>Nevada</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Brothels</strong></td>
<td>Legal. Requires licence</td>
<td>Legal. Requires licence and compliance with planning laws</td>
<td>Legal. Requires a municipal (county) licence.</td>
</tr>
<tr>
<td><strong>Street-based Sex Work</strong></td>
<td>Criminalized outside of designated zones, as dictated by local by-laws.</td>
<td>Criminalized.</td>
<td>Criminalized.</td>
</tr>
<tr>
<td><strong>Escort agencies</strong></td>
<td>Legal. Requires licence</td>
<td>Criminalized.</td>
<td>Criminalized.</td>
</tr>
<tr>
<td><strong>Independent</strong></td>
<td>Legal. Requires licence, depending on the municipality.</td>
<td>Legal. A person can work alone without a licence.</td>
<td>Criminalized.</td>
</tr>
<tr>
<td><strong>Advertising</strong></td>
<td>No rules found for sex workers.</td>
<td>Regulated by the Prostitution Licensing Authority. Cannot describe services offered, be published through radio or television or by film or video recording, state directly or indirectly that the person’s business provides or is connected to massage services, or be worded such that the advertisement might induce someone to seek employment as a sex worker. Can engage in fixed flyer advertising and brothel signage, as well as web-based advertising that complies with the regulations.</td>
<td>Criminalized in non-licensed facilities, in public areas where prostitution is prohibited, or in any public theatres, streets, or public highways where brothels are allowed. Sex workers can use brothel message boards to draw in clients and promote their work online.</td>
</tr>
<tr>
<td><strong>Third-party Support Services</strong></td>
<td>No rules found.</td>
<td>Legal. Sole operator sex workers can employ a bodyguard and a driver so long as they are licensed under the Security Providers Act. Receptionists cannot be hired as third-party help, nor can sex workers hire others to place advertisements on their behalf.</td>
<td>Criminalized.</td>
</tr>
<tr>
<td><strong>Regulatory Body</strong></td>
<td>Local municipalities issue business licences and coordinate with local authorities to monitor licence compliance.</td>
<td>Prostitution Licensing Authority. Grants licences to brothels.</td>
<td>Municipal counties.</td>
</tr>
</tbody>
</table>
4.1.1. Netherlands

Brothels were illegal in the Netherlands until 2000 when public policy direction stressed an amoral regulatory approach (Barnett & Casavant, 2011). The Netherlands’ regulatory approach to sex work is now one of legalization. As per article 273f of the Dutch Criminal Code (DCC), it is legal to operate a sex business if there is consent involving adults above the age of 18. There are four categories of sex work for which business licences can be acquired: window prostitution, private clubs, ‘private houses’ (sex clubs without a bar), and escort agencies (City of Amsterdam, 2016). Aside from the penal code provisions, municipalities are responsible for developing their own policies surrounding the sex industry (Barnett & Casavant, 2011). Local municipal regulations often include four provisions: restricting the location and number of brothels; conducting criminal background checks on prospective owners/managers; introducing health, hygiene, and safety requirements; and limiting whom brothel owners can employ (Barnett & Casavant, 2011, p. 10).

The Netherlands model has mixed effects on sex worker safety and working conditions, mainly because of the citizenship requirements to legally work in the industry. To be able to work in the Netherlands as a sex worker, one must be above the age of 18, have Dutch residency, or have European Union (EU) citizenship. For such individuals, the introduction of the licensing system has improved working conditions within brothels in that workplaces largely follow health and safety standards that are typically seen in other industries (Dekker, Tap, & Homburg, 2006).

When it comes to advertising, the DCC does not criminalize advertising websites, nor are there any rules that sex workers must follow regarding advertising online. The onus for abuse prevention is placed on the online platforms insofar as they are used as gatekeepers to identify signs of abuse such as coercion and exploitation (M. Wijers, personal communication, January 15, 2020). The four biggest online sex work platforms in the Netherlands have developed clear policies to prevent and identify abuses (e.g., screening advertisements, making clients aware that they need to report any suspicions of abuse, and that they will notify the police if there are any suspicions of abuse). Advertising platforms also form part of a coalition with the police, the public prosecution service, the ministry of justice, the National Rapporteur on Trafficking, Crime Stoppers, and a local sexual health group called Soa Aids which meets twice a year to discuss
strategies to respond to abuses and trafficking (M. Wijers, personal communication, January 15, 2020).

There are also mechanisms in place to reduce sex work stigma by protecting one’s identity as a sex worker. Workers have to register with the Netherlands Chamber of Commerce for tax purposes but do not require a licence to work in the sex industry. The tax reporting process only requires workers to list a physical address and telephone number (Weitzer, 2012), so workers do not have to reveal their name. They can further protect their identities as sex workers by using a trade name and by filing their registration under ‘personal service’ instead of sex work (Netherlands Chamber of Commerce, n.d.). Additionally, unlike some other legalized frameworks, sex workers in the Netherlands are not required by the State to undergo testing for STIs or the human immunodeficiency virus (HIV), which could otherwise reveal their identities as sex workers (Barnett & Casavant, 2011; Wijers, 2008). Instead, the State established health centres which exclusively serve sex workers by providing free STI / HIV testing and contraception.

One downside to legalized sex work in the Netherlands is that sex workers are often hired as independent contractors when working in licensed brothels. Since there is no legal employment relationship, there is less job security and workers have a tendency to work longer hours for less pay (Benoit, Smith, Jansson, Healey, & Magnuson, 2019, p. 1915; Huisman & Nelen, 2014). Workers also are not entitled to the same labour rights provided under other employment relationships such as the employer paying social security taxes and sick pay, as well as safeguarding workers against unfair workplace dismissal (Wagenaar, Altink, & Amesberger, 2013). Consequently, some sex workers have left licensed brothels and entered the escort industry, while others have left the sex industry altogether (Huisman & Nelen, 2014).

Additional consequences of legalization are related to non-EU residents. With the fear of sex trafficking occurring within the Netherlands’ legal sex work businesses, there are guidelines placed on whom sex businesses can and cannot employ (i.e., minors and illegal immigrants). Municipalities are responsible for ensuring licence compliance and establish monitoring systems with local enforcement authorities (Wagenaar et al., 2013). Under this framework, sex businesses can face criminal sanctions for allowing such individuals to work in their establishments. This means undocumented immigrants are
unable to access legal sex work businesses and are thereby forced to work in more criminalized sectors like unlicensed businesses or street-based sex work (Huisman & Nelen, 2014). Since these sectors are more isolated and out of sight, there is an increased risk of violence and victimization (Barnett & Casavant, 2011; Vanwesenbeeck, 2017).

4.1.2. Queensland

There are two forms of legal sex work in Queensland (i.e., working alone (sole operator) and working in a licensed brothel), while other forms of sex work are illegal (e.g., escort agencies, unlicensed brothels, massage parlours, street-based prostitution (public solicitation), and two or more sex workers working from a single premises) (Prostitution Licensing Authority, n.d.). There are roughly 21 brothels in Queensland, and since only eight sex workers can be rostered at each brothel at any one time, estimates place the percentage of total sex work that occurs in brothels at roughly 10% (Crime and Misconduct Commission, 2004). Sole operator sex workers cannot work with other sex workers; however, they may employ a bodyguard, hire a driver, and message another person about their current location or activities to enhance their safety. The caveats to these allowances, however, are that third-party help requires a licence issued under the Security Providers Act, receptionists are illegal forms of third-party help, and workers cannot message other sex workers to improve their safety (Prostitution Licensing Authority, n.d.).

There are no licensing or registration requirements for sex workers in Queensland; however, the Prostitution Licensing Agency is responsible for regulating prostitution advertisements. Workers can advertise legal forms of sex work by ensuring advertisements follow the approved form (Prostitution Act, section 93). Licensed brothels, sole operator sex workers, and all other prostitution service providers and their publishers must comply with these guidelines, which state that advertisements cannot describe the services offered, be published through radio or television or by film or video recording, state directly or indirectly that the person’s business provides or is connected with massage services, or be worded such that the advertisement might induce a person to seek employment as a sex worker (Prostitution Licensing Authority, n.d.). Among other forms of advertising such as fixed flyer advertising and brothel signage, sex workers can engage in web-based advertising so long as the website complies with the
above-mentioned guidelines (e.g., a website that is concerned wholly or partly with prostitution advertising).

Negotiating service provision and pricing prior to meeting clients adds an extra level of safety for sex workers; yet, provisions in the Queensland context, like the inability to describe services offered, and the accompanying language that workers cannot use in advertising, appear to compromise sex worker safety. For instance, advertisements cannot describe or refer to bodily fluids, describe genitalia or reference nationality unless they refer to the sex worker's nationality, or, among other things, include imagery of genitalia in any capacity (Prostitution Licensing Authority, n.d.). Some workers have resorted to advertising their services on websites hosted outside of Queensland, but recent changes to laws in the U.S. (i.e. Fight Online Sex Trafficking Act / Stop Enabling Sex Traffickers Act) have shut down major advertising platforms like Backpage.com. This forces sex workers in Queensland to advertise on channels where they are more likely to encounter police entrapment, like dating applications (Brook, 2018).

There have been improvements to sex workers’ occupational health and safety through the legalization of sex work in Queensland; however, some legal provisions in Queensland appear harmful to sex workers. For instance, there are positive benefits to sex workers employed at brothels insofar as brothel owners and operators have a legal obligation to maximize worker occupational health and safety (e.g., providing lighting, prophylactic equipment and rest areas) (Sullivan, 2010). Moreover, sex workers are protected by anti-discrimination laws in that people cannot discriminate on the grounds of lawful sexual activity (Sullivan, 2008). That said, the provisions surrounding hiring third-party help, not being able to work with other sex workers, and the confusing advertising provisions isolate sex workers and prevent them from utilizing safety strategies to improve their working conditions while working independently (Smee, 2019). Also, sex workers must present a sexual health certificate every three months verifying that they have undergone STI testing if they want to work in a licensed brothel (Prostitution Licensing Authority, 2018).

Other problems with the Queensland model of legalization are that there is no guarantee of access to employment rights, barriers to unionization, and no sex worker involvement in policy development. Most workers in licensed brothels are paid as
independent sub-contractors and not as employees; they are unable to unionize and do not have access to employment rights such as sick leave or company pension plans (Jeffrey & Sullivan, 2009). Moreover, the ‘sub-contractor’ designation means sex workers must pay their own taxes, which would otherwise be paid by an employer, by applying for an Australian Business Number and conforming to accounting requirements (Sullivan, 2008, p. 80). Lastly, sex workers were removed from the policy development process in 2003 when the Prostitution Advisory Council was dissolved, silencing their voices in the regulatory regime (Jeffrey & Sullivan, 2009, p. 66).

Initially meant to be cost-neutral, licensing brothels has cost the government a significant amount of money. Since 1999, the government has spent roughly $10 million subsidizing their brothel licensing operations. A portion of the Prostitution Licensing Agency’s cost is recuperated through brothel licensing fees as well as user charges, yet in 2017-18, the government subsidized 45% of the Prostitution Licensing Agency, paying $724,000 (Prostitution Licensing Authority, 2018). An underlying cause could be the decreasing number of licensed brothels (Prostitution Licensing Authority, 2018).

4.1.3. Nevada

Nevada’s approach to regulating sex work effectively criminalizes the sale and solicitation of sexual services outside of designated licensed facilities. It is up to counties to decide whether they want to license such facilities, and section 201.354(1) of the Nevada Revised Statutes (NRS) states that it is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution. While licensed facilities are only legal in counties with fewer than 700,000 residents (s.244.345), there appears to be a majority support for their legalization, with 64% of Nevadans supporting them (Jensen, 2012).

Perhaps because sex work is only legal in licensed brothels, Nevada appears to focus more heavily on the laws surrounding safe sex practices through the Nevada Administrative Code (NAC). Workers in licensed brothels must be tested for STIs prior to working in these facilities (NAC 441A.800(1,2)). Once employed, patrons and workers are required to engage in safe sex practices (e.g., use condoms, etc.) (NAC441A.805(1)(2)) and workers must be tested each month for HIV and syphilis, and every week for gonorrhea and chlamydia (NAC 441A.800(3)). If any tests come back
positive, they have to stop working as a sex worker (NAC441A.800(4)). Anyone engaging in prostitution or solicitation after testing positive for HIV risks between two to ten years in prison or a fine of $10,000, or both (NRS 201.358). They also have to provide their names when submitting samples for these tests (NAC441A.800(5)).

The Nevada model of legalization introduces multiple benefits, primarily in terms of sex worker occupational health and safety, as well as advertising. Since licensed venues have more client screening and payment negotiation, workers experience less violence and typically have more confidence in police protection due to the legitimacy of the work (Brents & Hausbeck, 2005). There are also added safety mechanisms in place such as call buttons, audio room monitoring, and limits on out-call services (Brents & Hausbeck, 2005, p. 277). In terms of advertising, it is illegal to permit the advertising of prostitution in non-licensed facilities or for brothels to advertise in any area where there is a prohibition on prostitution, or in any public theatre, or public streets where brothels are legal (NRS 201.430; 201.440). While sex workers in these establishments can advertise their services on brothel message boards, allowing them to draw in clients and promote their work online, they cannot discuss prices over state lines.

Perhaps the two most contentious issues in Nevada are their treatment of sex workers as independent contractors and their surveillance policies. As in Queensland, sex workers in licensed Nevada brothels are often independent contractors instead of employees. This means they are not guaranteed minimum wage and overtime pay (Joseph, 2019). Additionally, some brothels require sex workers to sign a contract stating that they will not leave the premises while they are on contract. Citing safety reasons, some brothels lay out specific days when women can leave the premises, others require workers to log their specific locations at all times (Brents & Hausbeck, 2005). While there is evidence showing sex worker support for these provisions, there is also concern that these rules are paternalistic and have no legal backing (Brents & Hausbeck, 2005, pp. 284–285).

The cost of regulating licensed brothels, as well as their economic benefits, differ based on the county. While there are no public figures about the individual county costs, it is fair to assume that they incur costs by screening applicants, issuing work cards, and monitoring brothels for compliance (Rindels & Lovato, 2018). In terms of profits, of the
20 brothels that existed in Nevada in 2018, Nye County brought in $141,779 while Lyon County brought in $384,000 (Rindels, 2018). This is a considerable amount given that 10% of the sex work that occurs in Nevada is legal (Chase, 2009). Overall, the brothel industry represents between $35 to $50 million in profits annually (Heineman, MacFarlane, & Brents, 2012).

4.2. Interview Results

Looking to better understand the above-mentioned research questions, and to inform potential policy alternatives, I conducted several interviews with support organizations and legal experts/academics. The following list of individuals were interviewed:

- Dr. Tamara O’Doherty, J.D. – Lecturer at Simon Fraser University
- Kerry Porth, B.A. – Sex work policy consultant at Pivot Legal Society

To better understand the Canadian policy context, I also interviewed:

- Libby Davies – Previous Member of Parliament for the New Democratic Party

4.2.1. Key Findings

Participants identified a number of concerns with current criminal laws and provided insights into potential legal reforms that could improve sex worker safety. The findings focus on the following areas: (1) the PCEPA; (2) challenges to legal reform and (3) potential policy options.

**The Protection of Communities and Exploited Persons Act (PCEPA)**

When asked how sex workers were feeling about the PCEPA, participants were quick to describe feelings of depression and betrayal. They expressed frustration at how end-demand style legislation reintroduced and went beyond the harms of the previous laws despite the Bedford ruling. This was related to a larger loss of faith in the justice system from sex workers’ lack of civic inclusion and access to justice. As Tamara describes:
This is deeply personal for people because it's not just their lives and their safety, it's all the people they see killed, hurt. You know, it's really hard to have that kind of evidence, of just how many people are harmed so much by the system, and then know people don't care.

Participants further linked these ideas to an overall disengagement by sex workers and activists. They point out how hard it is to engage with a system that is inherently oppressive and where solutions are unlikely for sex workers.

Participants identified the advertising and material benefit provisions as being particularly problematic. Not only does it expand criminalization into the off-street side of the business by preventing workers from organizing and working collaboratively, it also affects sex workers' safety by preventing them from employing safety enhancing strategies. As Kerry summarizes:

"The prohibition on advertising has made...screening clients on online spaces...much more difficult. Clients are worried they are communicating with a police officer...making it much more difficult for sex workers to screen out bad clients."

This idea of being less able to screen clients was related to overarching power dynamics in client-worker relationships. Being unable to advertise services and pricing means that conversation must occur elsewhere, and because workers cannot rely on state protection, it heightens the risk of violence and exploitation. To safeguard their health, participants pointed to a “closing” in the communities, where some workers will never see new clients or will only accept new clients through other sex worker referrals.

**Challenges to Legal Reform**

One of the main challenges to legal reform is the interconnectedness of the laws. Participants expressed that the laws work together to criminalize the industry outright, making it difficult to single out any one law as a potential fix. Tamara describes just how harmful this ‘togetherness’ is:

"I think [the laws working together] creates the whole issue of people not feeling they can turn to police for protection, which...puts you in a very vulnerable position...The laws work together to exclude sex workers from any kind of equality in Canada."

While participants mentioned a lack of concern regarding the advertising provisions from a police perspective, mainly because of the difficulties regarding
investigation and prosecution, they expressed that the advertising provision has a greater impact because off-street workers are more numerous than street-based workers.

Participants also identified political motivation as being a potential barrier to legal reform. While all participants saw decriminalization as being a necessary step to ensuring sex workers’ rights, they described it as being either politically unfeasible or very difficult to achieve because politicians continue to see sex work as a moral issue instead of a labour or rights issue. Participants expressed that standing up for sex workers does not garner votes, especially with the ongoing conflation of sex work with human trafficking. Participants related these ideas to having a conservative Canadian population and to previous government inaction regarding sex workers’ rights. Participants specifically pointed to the Liberal’s previous denouncement of the PCEPA and their subsequent failure to make change. As Tamara explains:

This isn’t just one government, this is several governments, and it speaks to a very core reality of the politicized processes at hand here: that sex workers are not a politically beneficial group to stand up for.

Despite these beliefs, participants maintain their hope for improvement, pledging to continue working for and alongside sex workers in their resistance against state oppression.

**Potential Policy Options**

In this third theme, participants provided insight into potential policy directions that could improve sex worker safety. While decriminalization was touted as being the best reform possible, participants also weighed in on other policy options. They include broad and specific legal reforms which aim to address problems emanating from the advertising components of the PCEPA.

There were differing views regarding legalized contexts like the Netherlands, Nevada, and Queensland. Participants expressed categorical rejection of legalized frameworks because they involve, among other things, government control. More than increased surveillance, participants prophesized the administrative complexity that would result from legalizing the commercial sex industry in Canada. As Kerry describes:
We’ve seen the mess they made with marijuana legalization, so I can only imagine the restrictions and the regulations that would be brought to bear if it was the legalization of sex work.

Participants expressed that, in a highly regulated society like Canada, it might be more acceptable for the general public to legalize rather than decriminalize the commercial sex industry. Indeed, when asked whether a legalized framework would be more politically feasible than a decriminalized approach, Libby provides that: “on the surface, yes. Canadians like the word ‘legalization’ because it implies a greater level of state control.” Nevertheless, Libby supports decriminalization and asserts that “no laws [about sex workers] should be written without involvement of the sex worker community.”

There was also concern about who would be able to participate in the legal industry. Participants described access to legalized spaces, and the accompanying ability to better determine working conditions, as being a contentious issue. Among other things, participants linked access to race, privilege, health status, and citizenship. As Tamara describes further:

[Legalization] is still setting up that same kind of system where you are dealing with criminalization of those people who are unable to follow the legalized schemes, which are...the people who are currently criminalized to a greater degree—anybody who doesn't have an address...the physical looks...anybody who is dealing with any kind of mental health issue, addiction issue, trauma.

These ideas were related to wider concerns about the fairness of the industry. Participants said that legalization creates a two-tiered system wherein the more privileged workers can comply with licensing requirements while the workers that cannot are subject to more violence and exploitation by working in street-based, unregulated environments.

When discussing the current advertising provisions, participants expressed different views about which considerations to include going forward. Participants, in reference to adult stores in Vancouver, expressed a need for advertising regulations on the condition that they not be overly prescriptive. For instance, regulations could develop advertising guidelines setting out permissible messaging that could appear in windows of businesses and general messaging visible to the public. These views appear to be related to overarching power dynamics between sex workers and government bodies, as well as practical expectations for sex work businesses.
Participants also discussed power dynamics between sex workers and those hosting advertisements on their websites (i.e., advertising agencies). They contend that policy initiatives should place the onus on the website owners and operators, not the workers themselves, to implement and carry out strategies to fight abuses like human trafficking, fraud, and advertising youth. Acknowledging that there will always be some individuals engaging in fraud, participants hold that advertising agencies can increase the security of the sex industry by monitoring and screening out fraudulent advertisements and abuses. As Tamara relates:

I had a worker once say... 'why don’t people who accept advertisements just require people...to send in a photo of themselves with like a newspaper from that day...to verify their age...that this is in fact the person in the photo and put that requirement on the advertising agency.

The need for advertising agencies to bear such requirements appears to relate back, again, to power. Participants expressed that if the aim is to target organized crime, the owners of sex work businesses and advertising agencies should be responsible for undergoing criminal record checks because they are the parties that can exert power over sex workers. Put simply, policies should target businesses not workers.
Chapter 5.

Evaluation Framework

This section of the report delineates key criteria and measures used to evaluate potential policy options. Criteria, measures, and policy options were identified by reviewing relevant literature, conducting a case study analysis, and talking with experts in the field.

Table 2: Summary of key criteria and measures

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Measure</th>
<th>Benchmark</th>
<th>Measure</th>
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</thead>
<tbody>
<tr>
<td>Safety and Security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk of victimization</td>
<td>Extent to which policy reduces violent and non-violent victimization against sex workers</td>
<td>Little to no reduction</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Some reduction</td>
<td>MED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High reduction</td>
<td>HIGH</td>
</tr>
<tr>
<td>Political Feasibility</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political feasibility</td>
<td>Extent to which policy is politically feasible</td>
<td>Not politically feasible</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Somewhat feasible</td>
<td>MED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Very feasible</td>
<td>HIGH</td>
</tr>
<tr>
<td>Stakeholder Acceptance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Academics</td>
<td>Extent to which relevant stakeholders support the policy</td>
<td>Will oppose</td>
<td>LOW</td>
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<tr>
<td>Legal experts</td>
<td></td>
<td>Some support</td>
<td>MED</td>
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<tr>
<td>Advocacy organizations</td>
<td></td>
<td>Full support</td>
<td>HIGH</td>
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<tr>
<td>Equity</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Equal opportunity to access labour rights</td>
<td>Extent to which policy increases the number of protections available to sex workers under labour laws</td>
<td>Little to no increase</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Some increase</td>
<td>MED</td>
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<td></td>
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<td>High increase</td>
<td>HIGH</td>
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<tr>
<td>Cost</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost to government</td>
<td>Extent to which each policy reduces cost to government</td>
<td>Little to no reduction</td>
<td>LOW</td>
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<tr>
<td></td>
<td></td>
<td>Some reduction</td>
<td>MED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High reduction</td>
<td>HIGH</td>
</tr>
<tr>
<td>Freedom</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom to choose working conditions</td>
<td>Extent to which policy increases level of freedom sex workers have to choose where they can engage in sex work without being prosecuted</td>
<td>Little to no increase</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Some increase</td>
<td>MED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High increase</td>
<td>HIGH</td>
</tr>
<tr>
<td>Freedom to remain anonymous</td>
<td>Extent to which policy option increases level of control sex workers have over keeping their identities anonymous</td>
<td>Little to no increase</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Some increase</td>
<td>MED</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High increase</td>
<td>HIGH</td>
</tr>
</tbody>
</table>
In addition to using a scale of low, medium, and high to measure the effectiveness of each policy according to the criteria, I use a heat map as a summary for each option.

<table>
<thead>
<tr>
<th>Measure</th>
<th>Colour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Red</td>
</tr>
<tr>
<td>Low-Med</td>
<td>Orange</td>
</tr>
<tr>
<td>Med</td>
<td>Yellow</td>
</tr>
<tr>
<td>Med-High</td>
<td>Green</td>
</tr>
<tr>
<td>High</td>
<td>Green</td>
</tr>
</tbody>
</table>

### Table 3: Heat map legend

#### 5.1. Safety and Security

This criterion measures the risk of victimization to sex workers from clients, managers, and police associated with each policy option. Victimization here includes but is not limited to violent victimization (e.g., threats of violence, physical assault, sexual assault, kidnapping/forcible confinement, trafficking for the purpose of sexual exploitation) and non-violent victimization (e.g., theft, harassment, condom refusal, pressure to participate in sexual activities). There is some data available regarding reported incidents of victimization experienced by sex workers; however, accurate rates are dwarfed by, among other things, non-reporting because of sex workers’ systemic distrust in the police/justice system.

#### 5.2. Political Feasibility

This criterion measures the political feasibility of enacting each of the policy options in the current political climate. As political feasibility is affected by public opinion, this criterion acts as a measure for both public and policy actors’ (e.g., members of parliament and of the legislative assembly) acceptance of the policy.

#### 5.3. Stakeholder Acceptance

This criterion measures the acceptance of each policy option from the following stakeholders: sex worker support/advocacy organizations, academics, and legal experts.
Given the importance of sex worker involvement in policy making, and later policy buy-in, stakeholder acceptance is double-weighted when comparing options.

5.4. Equity

This criterion measures the increase in access to labour rights for off-street sex workers under each policy option. It focuses on the presumed protections that would be accessible to off-street sex workers under current labour laws.

5.5. Cost to Government

This criterion measures the extent to which each policy reduces the cost to government, in dollars. Since it is difficult to accurately gauge capital costs, as well as operation and maintenance costs, this criterion estimates cost for each policy option by comparing them to available data found in the literature and case studies.

5.6. Freedom

5.6.1. Freedom to choose working conditions

This criterion measures sex workers' freedom to choose their working conditions under each policy option. It involves looking at the environments where sex work is either not criminalized or not prosecutable, as well as potential barriers to accessing such working locations, to assess sex worker autonomy under each policy option.

5.6.2. Freedom to remain anonymous

Given the potential negative effects of being "outed" as a sex worker (Johnson, 2015; Lewis & Maticka-Tyndale, 2000; O'Doherty, 2015; Pitcher & Wijers, 2014), this criterion involves estimating each policy option’s effect on sex workers’ freedom to remain anonymous. By looking at the resulting licensing requirements, this criterion assesses the level of control sex workers’ have over keeping their identities anonymous.
Chapter 6.

Analysis of Policy Options

This analysis starts from the perspective that decriminalization is not politically feasible in the contemporary political climate. Such a perspective, ideologically speaking, may risk harming sex workers by justifying the presentation of alternatives which compromise potential gains to sex worker rights; however, it is my belief that if there are other methods to ameliorating sex worker safety, such options are worth exploring.

Based on the case studies and expert interviews, four potential policy options were identified: (1) repeal the advertising provision and amend the material benefit provision; (2) legalize sex work after the Queensland model and establish a sex work licensing authority; (3) legalize sex work after the Netherlands model; and (4) decriminalize the commercial sex industry.

6.1. Repeal the Advertising Provision and Amend the Material Benefit Provision

The first policy option involves keeping the current system of asymmetrical criminalization but amending the *Criminal Code* to allow sex workers to advertise their services on third-party websites. Specifically, this policy option would see s.286.4 repealed and s.286.2 of the *Criminal Code* amended to exempt third-party websites from criminal liability for receiving a financial or other material benefit knowing that it is obtained by or derived directly or indirectly from the [purchase of sexual services].

6.1.1. Safety and Security:

This policy option would reduce the number of incidents of victimization against sex workers. While there has not been much enforcement of the advertisement-related provisions to date, removing the criminalized element to advertising would permit sex workers to more effectively screen clients by removing the fear of prosecution. By affording them more power to screen clients, off-street sex workers would be able to better safeguard their health and safety through price and service negotiation prior to
meeting clients. Nevertheless, the foreseeable reduction in victimization is relatively low given the continuing criminalization of other areas of the commercial sex industry.

6.1.2. Political Feasibility:

The political feasibility of repealing and amending parts of the PCEPA is relatively high. The Liberals made a campaign promise in 2015 to re-evaluate the laws surrounding sex work (Browne, 2019), and since there were no advertising laws prior to the PCEPA, they could easily benefit from this policy option, politically. In its enactment, the Liberals would be seen as denouncing the CPC’s policy stance while starting to improve, albeit minimally, the health and safety of sex workers.

6.1.3. Stakeholder Acceptance:

This policy option is contentious in terms of stakeholder acceptance. During the interviews, participants acknowledged that making such amendments would help remove the criminal element from sex worker advertising, thereby allowing sex workers to more safely engage in client screening. They also noted that this policy option falls short in making significant change to sex workers’ right to safety because the remaining Criminal Code provisions would continue to work together to criminalize and harm sex workers.

6.1.4. Equity:

This policy option would not improve access to labour rights for off-street sex workers since there would be no change to the legal status of sex work. The Criminal Code will continue to criminalize sex work businesses and other shared workspaces, resulting in no improvements in the number of labour protections provided under the law.

6.1.5. Cost:

While there would be some administrative costs associated with repealing and amending the Criminal Code, overall it would not be costly. There may be some cost savings insofar as policing agencies would no longer have to investigate and prosecute
advertising-related cases; however, these cases have not been a priority for law enforcement agencies, making the cost savings negligible.

6.1.6. Freedom:

*Freedom to choose working conditions:*

This policy option would increase freedom to choose working conditions. Off-street sex workers currently face criminalization for advertising online, resulting in client screening and negotiation taking place in unsafe spaces such as outdoors in less visible areas. Allowing sex workers to advertise in online spaces would afford sex workers more control over the physical locations where they carry out their work.

*Freedom to remain anonymous:*

This policy option would not directly affect sex workers’ freedom to remain anonymous because it does not involve collection of personal information from sex workers. That said, removing criminalized elements within the current framework could reduce sex workers’ anxiety about police surveillance and enforcement, and the corresponding risks to having their identities known to government.

**Table 4:** Analysis for repealing the advertising provision and amending the material benefit provision

<table>
<thead>
<tr>
<th></th>
<th>Safety/Security</th>
<th>Political Feasibility</th>
<th>Stakeholder Acceptance</th>
<th>Equity</th>
<th>Cost</th>
<th>Freedom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk of Victimization</td>
<td>Political feasibility</td>
<td>Willingness to accept</td>
<td>Access labour laws</td>
<td>Reduce government cost</td>
<td>Choose working conditions</td>
<td>Remain anon.</td>
</tr>
<tr>
<td>Repeal &amp; Amend</td>
<td>Low-Med</td>
<td>Med-High</td>
<td>Med</td>
<td>Low</td>
<td>High</td>
<td>Low-Med</td>
</tr>
</tbody>
</table>

6.2. Legalize Sex Work After the Queensland Model and Establish a Sex Work Licensing Authority

The second policy option involves legalizing sex work and modelling it after Queensland’s legislative framework. This policy option requires repealing the *PCEPA* and creating a new legislative framework allowing for brothels to operate legally with a
business licence, and for sex workers to work independently without a licence. It would also involve the creation of a sex work licensing authority wherein a collaborative effort with sex workers would be undertaken to develop advertising guidelines to ensure they are not overly restrictive.

6.2.1. Safety and Security:

This policy option would reduce victimization by allowing off-street sex workers to work in legal workspaces (e.g., as sole operators in their own homes, in licensed brothels). With established occupational health and safety guidelines, and better access to police protection, legalized workspaces can provide workers with more power and autonomy to engage in service negotiation, pricing, and client screening (Brents & Hausbeck, 2005; Dekker et al., 2006). While legislation restricting the range of hireable third-party services and working in collectives may compromise sole operator safety, allowing legal workspaces would reduce victimization by affording sex workers more control and autonomy over the clients they see. On an individual level, gains to safety would likely be higher for those working in brothels; however, there would be greater gains overall to safety for individuals working as sole operators because only 10% of sex work occurs in licensed brothels (Crime and Misconduct Commission, 2004).

A source of increasing safety would be the change to sex worker advertising. With this policy option, sex workers can advertise their services on third-party websites and better employ safety strategies. Potential gains to security can be maximized by ensuring the sex worker advertising guidelines set by the licensing authority are not overly prescriptive, as is currently the case in Queensland. The advertising guidelines in Queensland restrict sex workers’ language use in advertisements to the extent that they do not allow sex workers to adequately advertise their services through language and imagery restrictions (Scarlet Alliance, 2014; Sullivan, 2010). Developing non-prescriptive advertising guidelines in collaboration with sex workers would further improve their ability to advertise and work safely.

6.2.2. Political Feasibility:

This policy option is contentious in the current political climate. With the CPC winning the popular vote in the 2019 federal election (Zimonjic, 2019), voters may be
against endorsing a legalized sex work framework. Nevertheless, with the Liberals having promised to reassess the laws surrounding sex work (Pablo, 2015), and with recent marijuana legalization, the public may be more accepting of sex work in a legalized form as opposed to full decriminalization. Additionally, the involvement of a dedicated sex work licensing authority could improve feasibility by further assuring the public that sex work advertisements are regulated.

6.2.3. Stakeholder Acceptance:

Stakeholder acceptance is mixed for this policy option. Some participants categorically reject legalization because it relies on government surveillance and control through criminalization. Others expressed that legalized settings could be beneficial to the more privileged sex workers (i.e., Caucasian, citizen status, and able to follow licensing requirements). Regardless, stakeholders may find it easier to support this policy option because sole operator sex workers do not require a licence and the licensing authority’s guidelines would involve and be informed by sex workers.

6.2.4. Equity:

While legalizing parts of the industry, the management of brothels and the restrictions on sole operators would not significantly improve sex workers’ access to labour laws. While there are requirements placed on brothel owners to maximize worker occupational health and safety (e.g., providing lighting, condoms, and rest areas), most sex workers in these establishments are hired as sub-contractors. Consequently, they cannot unionize, nor can they access, among other things, sick leave and company pension plans (Jeffrey & Sullivan, 2009). Moreover, they must pay their own taxes, which would otherwise be paid by an employer (Sullivan, 2008, p. 80).

6.2.5. Cost:

This policy option would increase the cost to government. Establishing a licensing authority would not only require capital costs to secure a workspace and develop a licensing framework, it would also require ongoing operating costs in terms of worker salaries. While brothel licensing fees may partially offset the overall cost, as in
the Queensland model, the government would likely have to subsidize brothel licensing operations (Prostitution Licensing Authority, 2018).

6.2.6. Freedom:

**Freedom to choose working conditions:**

Legalizing sex work after the Queensland model would increase freedom to choose working conditions. As sex workers currently navigate a criminalized framework, opening the legislation to allow sole operators to work without a licence, or in a licensed brothel, would increase sex workers’ ability to choose their workspace without facing criminal prosecutions. That said, there are currently 21 brothels in Queensland, and each brothel has a max capacity of eight workers, thereby limiting sex workers’ freedom to choose where they work (Prostitution Licensing Authority, 2018). Allowing sex worker advertising would also provide sex workers with more power to decide where they work.

**Freedom to remain anonymous:**

This policy option would increase sex workers’ freedom to remain anonymous. There are no licensing requirements for sex workers, meaning sole operator workers are able to work while remaining anonymous. While those working in brothels also do not require a licence, brothels are audited to ensure compliance with state laws, regulations, and individual licence conditions (Prostitution Licensing Authority, 2018). Consequently, brothel sex workers disproportionately risk having their identities revealed.

Table 5: Analysis of legalizing sex work after the Queensland model and establishing a sex work licensing authority

<table>
<thead>
<tr>
<th></th>
<th>Safety/Security</th>
<th>Political Feasibility</th>
<th>Stakeholder Acceptance</th>
<th>Equity</th>
<th>Cost</th>
<th>Freedom</th>
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<tbody>
<tr>
<td></td>
<td>Risk of</td>
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<td></td>
<td>Reduce government</td>
<td>Choose working conditions</td>
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<td></td>
<td>Victimization</td>
<td></td>
<td></td>
<td></td>
<td>cost</td>
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<td></td>
<td>Political</td>
<td>Willingness</td>
<td>Access labour laws</td>
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<td>Model</td>
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</table>
6.3. Legalize Sex Work After the Netherlands Model

This policy option involves legalizing sex work and modelling it after the Netherlands’ legislative framework, which means repealing the PCEPA and creating a new legislative framework allowing sex businesses to legally operate. The Netherlands does not criminalize advertising sexual services and instead places the responsibilities of preventing abuses on third-party advertising platforms. This policy option would also involve establishing a coalition with relevant stakeholders to implement strategies to respond to abuses and trafficking on sex worker advertising platforms.

6.3.1. Safety and Security:

Legalizing sex work after the Netherlands model would decrease the risk of both violent and non-violent victimization. Not only would it mandate employers to institute occupational health and safety requirements (Dekker et al., 2006), sex workers in these establishments would have more power, and therefore control, over service provision, leading to lower rates of victimization (Lewis, Maticka-Tyndale, Shaver, & Schramm, 2005; McCarthy et al., 2014). Additionally, the ability to advertise their services on sex work platforms without being criminalized enables sex workers to exert more control over the conditions of their transactions by allowing screening, pricing, and service negotiation.

There could be some negative consequences to establishing a licensing system in terms of safety. Some critics note that licensing sex work businesses facilitates policing efforts by making sex workers and their spaces available to police, thereby making police harassment and persecution more likely (Lewis & Maticka-Tyndale, 2000). It also excludes non-Dutch and non-EU citizens, relegating them to unlicensed businesses and out-of-sight areas where they are at a higher risk of experiencing violent and non-violent victimization (Barnett & Casavant, 2011; Vanwesenbeeck, 2017).

6.3.2. Political Feasibility:

Under the current political climate, this policy option is contentious in terms of political feasibility. Voters may not endorse this legalized framework because it is not as visibly regulated as the Queensland model (i.e., does not have a licensing authority).
unique aspect of this model is its popularity and the presumed economic benefits to government. If this policy is presented to the public in economic terms and implemented in a way which ensures the collection of taxes, it could garner more political support.

6.3.3. Stakeholder Acceptance:

Stakeholder acceptance is relatively high for this policy option. While some participants reject legalization because it relies on government surveillance and control, others expressed that it could be beneficial to the more privileged sex workers (i.e., Caucasian, citizen status, and able to follow licensing requirements). Beyond these general issues, the Netherlands’ approach to advertising increases stakeholder acceptance by placing the onus on the advertising platforms to implement and carry out monitoring for potential abuses. This enables sex workers to better control their advertising while simultaneously holding business owners responsible for investigative efforts and regulatory compliance, ultimately providing a less restrictive framework.

6.3.4. Equity:

This policy would increase access to labour rights for sex workers that can access legal workspaces. In the Netherlands’ context, individuals with Dutch residency or EU citizenship gain access to labour rights because sex work is considered a legitimate form of labour. In addition to businesses having to follow health and safety standards that are typically seen in other industries (Dekker et al., 2006), sex workers employed by sex businesses are entitled to the other labour rights such as sick pay, disability pay, and unemployment benefits (Seals, 2015). Despite these benefits, most sex business owners hire sex workers as independent contractors, effectively barring them from claiming these benefits (Wagenaar et al., 2013). Moreover, sex workers without residency status or citizenship would be disproportionately affected by this policy option because they cannot be employed in legal sex businesses in any capacity. While repealing s.183(1)(b.1) of the Immigration and Refugee Protection Regulations could address these issues, incorporating immigration law reform in this analysis is beyond the scope of the project.
6.3.5. Cost:

Moving to a legalized framework would increase the cost to government. Developing the appropriate business licences and implementing the legalized framework would require a significant amount of time and financial resources. Once implemented, it would take further financial resources to regulate the legal sex businesses. Depending on the division of responsibilities for regulatory monitoring and enforcement, cost could either be fully borne by the federal government, the provinces, or split by municipalities (like the Netherlands model). While licensing revenues would partially offset these costs, legalizing sex work does not guarantee a substantial increase in tax revenues because of collection complications (Beer, 2012).

6.3.6. Freedom:

*Freedom to choose working conditions:*

Establishing a framework that permits a multitude of legal workspaces would increase sex workers freedom to choose where they work, and the accompanying working conditions, without risking criminal prosecution. One aspect to keep in mind is that these benefits would be limited to individuals that can legally be employed in sex businesses. In other words, migrants that do not have Dutch residency or EU citizenship would be unable to work in legal sex work businesses (Huisman & Nelen, 2014). This could result in a relegation of these individuals to unlicensed sex businesses and street-based sex work where they are more likely to encounter violent and non-violent victimization (Barnett & Casavant, 2011; Vanwesenbeeck, 2017).

*Freedom to remain anonymous:*

Establishing this framework would increase sex workers’ freedom to remain anonymous. When it comes to freedom from being identified, the requirements set by the Dutch government, or lack thereof, allow sex workers to protect their identities as sex workers. For instance, workers do not require a licence to work in the sex industry. They are required to report taxes but that process only requires workers to list a physical address and telephone number (Weitzer, 2012). Consequently, sex workers do not have to reveal their name. They can also protect their identities by using a pseudonym and by filing their registration under ‘personal service’ instead of sex work (Netherlands
Chamber of Commerce, n.d.). Additionally, the Dutch government does not require mandatory STI/HIV testing, which further helps sex workers protect their identities.

<table>
<thead>
<tr>
<th></th>
<th>Safety/Security</th>
<th>Political Feasibility</th>
<th>Stakeholder Acceptance</th>
<th>Equity</th>
<th>Cost</th>
<th>Freedom</th>
</tr>
</thead>
</table>

6.4. Decriminalization

The last policy option is decriminalizing the commercial sex industry. This involves removing the penal code provisions criminalizing the activities surrounding the management, purchase, and sale of sexual services (McCarthy et al., 2012). This option is modeled after New Zealand which nearly decriminalized its entire commercial sex industry in 2003.9 While the following analysis focuses specifically on criminal laws, additional changes can be made to immigration and municipal laws to maximize the positive externalities of decriminalization. One consideration is that the Government of New Zealand regulates sex work through health. Since health is within provincial jurisdiction in Canada, mimicking the New Zealand model outright would be complicated, thereby presenting the opportunity to develop a “Made in Canada” approach (Bruckert & Law, 2013, p. 89).

6.4.1. Safety and Security:

Decriminalizing the sex industry would decrease victimization against off-street sex workers. By decriminalizing the purchase of sexual services, as well as the activities surrounding the provision of sexual services such as communicating, advertising, material benefitting from the provision of another’s sexual services, sex workers are better able to engage in safety enhancing strategies such as client screening and

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9 Section 9 of the Prostitution Reform Act criminalizes clients and sex workers who do not adopt safer sex practices.
service negotiation, resulting in lower rates of victimization and better access to police reporting (Abel, 2014; Abel et al., 2009; Belak & Bennett, 2016; Canadian Alliance for Sex Work Law Reform, 2017; McCarthy et al., 2012; Mossman, 2010; Scarlet Alliance, 2014). More generally, decriminalizing the industry would provide significant benefits to individuals working in all sectors of the industry, including street-based workers, by providing protections under the law which safeguard their human rights (e.g., better access to legal systems, police protection, minimizing risk of acquiring an STI) (Abel, 2014).

6.4.2. Political Feasibility:

Political feasibility is low for decriminalization. Despite a recent Ipsos poll (n=1,000) which found that 55% of Canadians support the decriminalization of sex work in Canada (Simpson, 2020), interview participants saw the recent federal election as a indicator of decriminalization’s low political feasibility. Given that the CPC won the popular vote (Zimonjic, 2019), participants expressed that supporting the decriminalization of the sex industry is politically unfeasible in the current political climate because it would create another wedge issue, thereby leading centrist voters to swing to the right.

6.4.3. Stakeholder Acceptance:

Decriminalization ranks high in terms of stakeholder acceptance. With the recent signing of a call for decriminalization by more than 150 academics and support/advocacy organizations (Action Canada for Sexual Health and Rights, 2019), stakeholders would highly support this policy option.

6.4.4. Equity:

In terms of equity, decriminalizing the commercial sex industry would increase the number of protections available to off-street sex workers under labour laws. Since sex work would be considered a form of legitimate labour, workers would be able to draw on labour laws to negotiate working conditions with employers (Able, 2010). The Health and Safety in Employment Act also establishes occupational health and safety standards and guidelines for sex works, resulting in safer working conditions such as the
right to take breaks between clients, the presence of fire extinguishers and building in good repair, and the availability of non-allergenic lubricants and oils (New Zealand Prostitutes’ Collective, 2015; van der Meulen & Durisin, 2008, p. 308). Since this policy analysis does not address changes to immigration status, s.183(1)(b.1) of the Immigration and Refugee Protection Regulations would limit these gains to Canadian citizens.

6.4.5. Cost:

Decriminalizing the sex industry would reduce the costs to government in the long term. Removing the criminalized elements of sex work can reduce the amount of resources allocated for policing and prosecuting sex work related cases. While there would likely still be upfront capital costs to developing and implementing a decriminalized framework, as well as some policing-related costs dedicated to investigative tasks, overall costs would be lower in the long term.

6.4.6. Freedom:

Freedom to choose working conditions:

Decriminalizing the commercial sex industry would increase sex workers’ level of freedom to choose where they can engage in sex work without risking prosecution. The current system of criminalization limits off-street sex workers’ ability to choose their working conditions by criminalizing shared workspaces, brothels, and independent work through the material benefit provision. The ban on advertising further limits their ability to choose their work locations by forcing them onto the streets where they risk criminalization from the communication provision. Decriminalizing the activities surrounding sex work would thereby not only allow off-street sex workers to choose whether they advertise their services but also allow them to work in different spaces without risking criminalization or prosecution.

Freedom to remain anonymous:

Decriminalizing the commercial sex industry would increase the level of control sex workers have over keeping their identities anonymous. The current system of criminalization risks identifying sex workers through increased police surveillance and
criminal prosecutions, particularly in the case of im/migrant sex workers (Machat et al., 2019; Mcbride et al., 2019). Allowing sex work businesses to operate without fear of criminalization insulates off-street sex workers from police surveillance, thereby reducing the likelihood that their identities would become known to police. Moreover, workers do not require a licence to engage in sex work unless they are operating a business of more than four sex workers (Prostitution Reform Act, 2003). As such, off-street sex workers can remain anonymous and protect their identities.

Table 7: Decriminalization

<table>
<thead>
<tr>
<th></th>
<th>Safety/ Security</th>
<th>Political Feasibility</th>
<th>Stakeholder Acceptance</th>
<th>Equity</th>
<th>Cost</th>
<th>Freedom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk of Victimization</td>
<td>High</td>
<td>Low</td>
<td>High</td>
<td>High</td>
<td>Med</td>
<td>High</td>
</tr>
<tr>
<td></td>
<td>Decrim.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table 8: Summary of policy analysis

<table>
<thead>
<tr>
<th>Policy Option</th>
<th>Policy 1: Repeal the Advertising Provision and Amend the Material Benefit Provision</th>
<th>Policy 2: Legalize Sex Work after the Queensland Model and Establish a Sex Work Licensing Authority</th>
<th>Policy 3: Legalize Sex Work after the Netherlands Model</th>
<th>Policy 4: Decriminalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce risk of victimization</td>
<td>Low-Med</td>
<td>Med</td>
<td>Med-High</td>
<td>High</td>
</tr>
<tr>
<td>Political feasibility</td>
<td>Med-High</td>
<td>Med</td>
<td>Low-Med</td>
<td>Low</td>
</tr>
<tr>
<td>Stakeholder acceptance (2x weight)</td>
<td>Med</td>
<td>Med-High</td>
<td>Med-High</td>
<td>High</td>
</tr>
<tr>
<td>Increase access to labour rights for off-street sex workers</td>
<td>Low</td>
<td>Low-Med</td>
<td>Med</td>
<td>High</td>
</tr>
<tr>
<td>Reduce cost to government</td>
<td>High</td>
<td>Low</td>
<td>Med</td>
<td>Med</td>
</tr>
<tr>
<td>Increase freedom to choose working conditions</td>
<td>Low-Med</td>
<td>Med</td>
<td>Med-High</td>
<td>High</td>
</tr>
<tr>
<td>Increase freedom to remain anonymous</td>
<td>Low</td>
<td>Med</td>
<td>Med-High</td>
<td>High</td>
</tr>
</tbody>
</table>
Chapter 7.

Recommendations

Before presenting the policy recommendations, it is important to discuss an inherent limitation of this policy analysis: namely, how the overall framework constrains the weighing of criteria and minimizes sex worker voices. While starting from the perspective that decriminalization is not politically feasible in the current political climate justifies the presentation of alternative policies, it is critical to listen and respond to sex workers’ needs because they are the target population affected by this analysis. The above analysis attempts to centre sex worker voices by double-weighting the stakeholder acceptance criterion; however, stakeholder acceptance is measured according to the performance of the other identified criteria. As such, stakeholder acceptance only accounts for sex worker voices to the extent that the policy options are abstract conceptions. This is problematic because sex workers may accept the discussed policies on paper, when they are assessed according to the identified criteria, but not in a real-life setting. Considering this point, the recommendations look to fully centre sex worker voices and needs.

My main recommendations, therefore, are two-fold: (1) repeal the current advertising provision and amend the material benefit provision (option 1); and use information regarding the benefits and shortcomings of legalized frameworks to (2) create a “Made in Canada” model of decriminalization (option 4).

7.1. Policy Recommendation 1: Repeal the Advertising Provision and Amend the Material Benefit Provision

The first component of this policy package is a short-term actionable item that can be completed quickly because of its high political feasibility. Repealing the advertising provision and amending the material benefit provision would address some off-street sex worker needs by allowing them to advertise their services without being criminalized, ultimately reducing the number of incidents of violent and non-violent victimization. The remaining Criminal Code provisions criminalizing communication, procurement, buyers, and third-parties however would continue to actively prevent off-
street sex workers from maximizing their occupational health and safety. It is worth mentioning that this policy option alone would not reduce victimization in all sectors of the commercial sex industry. Specifically, it would primarily benefit off-street sex workers because they are better positioned to advertise their services in spaces which are typically harder for street-based workers to access (e.g., online, in print media, etc.). Moreover, within the off-street sector, independent workers would likely benefit more than individuals working in quasi-legal workspaces such as massage parlours due to intersecting privileging factors, for example, race and im/migrant status.

7.2. Policy Recommendation 2: Create a “Made in Canada” Model for Decriminalizing the Commercial Sex Industry

To ensure a more equitable policy framework in the long term which benefits individuals working in all areas of the sex industry, the second policy option is to decriminalize the commercial sex industry. Notwithstanding the perspective that decriminalization is not politically feasible in the contemporary political climate, the second policy recommendation involves creating a model of decriminalization for the Canadian setting that responds to all sex workers’ needs. While legalized settings in the case study analysis would provide some gains in terms of sex worker rights (e.g., reduce risk of victimization for those who can enter legal workspaces; protections under labour laws), and perhaps be more politically feasible in Canada, the accompanying consequences (e.g., increased government surveillance and control; ongoing criminalization) are not acceptable to many with lived experiences working in the commercial sex industry (Belak & Bennett, 2016; Canadian Alliance for Sex Work Law Reform, 2017; Pivot Legal Society, 2006). Indeed, an overwhelming number of advocacy and support organizations, as well as academics, call for the decriminalization of the sex industry as a means of establishing and guaranteeing sex worker rights (Action Canada for Sexual Health and Rights, 2019; Canadian Alliance for Sex Work Law Reform, 2017). As such, many stakeholders are hard-pressed to accept any form of legalization in the Canadian context, even as a stop-gap measure.

Decriminalizing sex work is politically charged, but with a recent poll reporting that 55% of Canadians support the decriminalization of sex work in Canada (Simpson, 2020), politically supporting decriminalization may be more political feasible than previously thought. Going forward, policy makers should consult and actively include sex
workers in policy development, implementation, and refinement. In addition to determining the criminal features, if any, within the “Made in Canada” model, policy makers should consider immigration law, municipal law, and the role of police to maximize sex worker rights.
Chapter 8.

Limitations and Final Comments

There are some limitations to acknowledge in concluding this project. First, the research could have directly involved sex workers, thereby allowing for more robust policy options and analyses. Similarly, the scope of the project was limited to two Criminal Code provisions. With more time, the scope of the proposed policy options could have included inquiries into additional Criminal Code provisions, as well as changes to immigration law, municipal law, and police enforcement.

Second, the project would benefit from more stakeholder engagement. While the goal of the research was to act as a knowledge uptake process whereby advocacy organizations could help identify sex workers’ views on current and proposed policies, and to bring those identified views to policy makers in government, the low number of participants means the project presents a limited range of views. More input from other relevant stakeholders (e.g., the public) would present a stronger process and analysis.

There are also several considerations worth mentioning regarding future work in this area. This research only looks at potential implications of legal reforms to off-street sex workers and their working conditions. Off-street sex workers represent some of the most privileged sex workers due to differential police enforcement patterns (Standing Committee on Justice and Human Rights, 2006). As this affords them more control over their working conditions, it stands to reason that the proposed policy options would lead to differential benefits for more marginalized sex workers (i.e., street-based, racialized, Indigenous, and im/migrant workers). More research is needed to better understand how the most marginalized view the role of advertising and its implications on their health and safety.

Lastly, this research does not take into account how gender affects experiences selling sex in the off-street sex industry. While male and transgender sex workers represent between 20-25 percent of the sex industry (Benoit et al., 2014; Sanders, Scoular, Campbell, Pitcher, & Cunningham, 2018), most literature focuses on women’s experiences selling sex (Dennis, 2008). Research has begun to look explicitly at how gender and privilege help insulate off-street male sex workers from victimization.
(O'Doherty & Waters, 2019), but more specific research is needed to better understand how gender affects advertising sexual services online in the Canadian context.
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Appendix A.

Interview Schedule

1. Could you please describe your current role and the work you do to within the sex work community?
   • PROBE: How did you get into this role?

2. Generally speaking and in your experience, how are sex workers feeling about the current laws?
   • Anticipated answers: Angry, hurt, oppressed, ambivalent, happy, sad

3. What are the most challenging aspects of the new laws?
   • Anticipated answers: advertising provision; communication; material benefit; criminalizing clients
   • PROBE, if necessary: Which specific laws are problematic? Why or why not?
   • Follow up: which of these aspects is the most harmful? Why do you think that?
     Are there any aspects that are not really a problem?

4. The advertising and material benefit provisions are of particular interest given the larger role technology plays in finding clients and negotiating services. Have you noticed any changes to how sex workers are advertising their services (i.e., different websites, platforms, language, services offered, etc.)? If so, has it affected their ability to do their work?
   • Anticipated answers: using different websites not hosted in Canada; using twitter/switter instead of craigslist, backpage, etc.; being vaguer with their language use; offering the same services; offering less safe sexual practices
   • Follow up: has anything specifically changed for sex workers working in the off-street sex industry (e.g., massage parlours, in-call, phone workers?)

5. Are the current laws more or less harmful than pre-PCEPA laws? Why do you say that?
   • Anticipated answers: more harmful; less harmful
   • Probe, if necessary: do you think the current laws allow sex workers to better safeguard their occupational health and safety?

6. Who is affected most by these changes in law? What factors would you say intersect most closely with adverse experiences under the PCEPA?
   • Anticipated answers: street-based sex workers; off-street sex workers; im/migrant sex workers of colour; independent sex workers.

7. Sex work organizing has resulted in a significant literature calling for the decriminalization of the sex industry as a first step to improving the rights of sex workers. Do you think decriminalization is the best way to improve sex workers’ rights? Why or why not?
• Probe, if necessary: How, under a decriminalized framework, are sex workers able to improve their occupational health and safety?

8. Are there any limitations to decriminalization?

9. How optimistic are you, perhaps on a scale of 1 to 5, 5 being very optimistic, that sex work will be decriminalized in the next 5 years? What makes you say that?

10. If decriminalization is not politically feasible, do you think sex worker OH&S could be improved through amendments to the PCEPA?
   • Probe, if necessary: Are there any changes that could be made to the PCEPA to improve sex worker OH&S (i.e., can we make the current system work or do we need to move to something else)?

11. Do you know of any policies that could be enacted on a municipal or provincial level that could support sex workers under the current model?

12. Do you know of any other jurisdictions that Canada could be looking to for guidance in this area? What policies / legal provisions make their framework better?

13. What are the limitations, if there are any, to these frameworks?

Thank you so much for taking the time to speak with me today. Is there anything else you’d like to bring up that we did not get a chance to talk about?

IF TIME

14. What factors could improve implementation feasibility in this policy area?
Appendix B.

Consent Script

Hello, my name is Ian Waters and I am a student at Simon Fraser University’s School of Public Policy. I am conducting a research project exploring how the criminal laws surrounding sex work are sex worker occupational health and safety and how occupational health and safety could be improved through legislative reform. Preceding this phone call, I sent you a consent form for your reference. Have you had the opportunity to review the details? If yes, I would like to go over a few key details with you prior to beginning the interview.

This research, and the interview I am about to conduct, is completely voluntary. You may refrain from answering any of my questions and withdraw your participation at any time, up until the submission of the finalized capstone on April 1st, 2020, without any reason and without any negative consequences. The interview should take between 30-60 minutes. In the case of phone interviews, I will pay for any incurred call charges.

If you agree to participate, you have the choice of whether or not you would like your identity to be kept confidential. If you would like your identity to remain confidential, I will not identify you or use any information that would make it possible for anyone to identify you in any presentation or written reports about this study without your consent. If it is okay with you, I might want to use direct quotes from you, but these would only be cited as being from a person with your title. It should be noted that phone interviews and emails are not considered secure means of communication, therefore confidentiality cannot be guaranteed. Additionally, given the fairly small size of the sex worker support and research communities in Canada, there is a chance that your identity may be revealed by your responses.

You have up to 48 hours after the interview to make changes to any of the information you provided. Should you wish to do so, you can email me at [...]. Additionally, you have the choice to read through the transcript to ensure it is accurate before the project is finalized, as well as the choice to receive a copy of the study results.
I do not foresee any risks to you nor direct benefits to participating in this study. However, in the future, information gleaned from this study may benefit others by bringing awareness to the lived experiences of sex workers and the sex industry in general.

Do you consent to participating in this research (to be interviewed)?

Do you consent to being audio-recorded?

Do you consent to being identified in the final report and in future publications?

Would you like to verify the accuracy of your quotes before the project is finalized?

Would you like to be informed about the use of your quotes in all study presentations and publications?

Would you like to receive a copy of the final report?

Thank you. I will now begin the interview questions, and please feel free to stop or ask questions at any time.
Appendix C.

Consent Form

STUDY TEAM:

Principal Investigator: Ian Waters, [ … ]
Faculty Supervisor: Maureen Maloney, [ … ]

Please note: this research is being conducted for the fulfillment of requirements for a Master of Public Policy degree and will be made public on the SFU Research Repository upon completion.

Dear Participant,

We invite you to take part in a research study supervised by SFU’s School of Public Policy entitled Policy Alternatives: Improving Sex Worker Occupational Health and Safety through Legislative Reform. Through this letter, we are providing you with information about the search and inviting you to participate. Before deciding to participate, you may direct questions to anyone on the study team with whom you feel comfortable. Please keep this consent form for your reference should you agree to participate; the study team will obtain your verbal consent at the time of the interview.

What is the purpose of the research?
The research project aims to better understand how sex worker occupational health and safety could be improved through legislative reform. Specifically, we are asking support organizations, academics, and legal experts in Canada who have worked or conducted research and/or advocacy with the sex worker community to talk about their experiences after the Protection of Communities and Exploited Persons Act was introduced in 2014. Insights will inform recommendations for policies that governments can adopt to improve sex worker occupational health and safety.

Why were you invited?
You are being invited to take part in this research because we feel that your experience and expertise in the field of sex work research and advocacy can contribute to our understanding of how the criminal laws affect sex worker occupational health and safety.
in Canada. We hope that, with your assistance, we can contribute toward building a policy framework that will improve sex worker occupational health and safety.

*What is your role?*
This study will involve your participation in a semi-structured interview that focuses on the challenges and opportunities surrounding criminal laws and sex worker occupational health and safety. The study team will conduct each interview in-person or over the phone and seek to learn the perspectives of experts in the field. In the case of phone interviews, the principal investigator will pay for any call charges. As a participant, you will help to inform how sex worker occupational health and safety can be improved through legislative reform in Canada.

*What information will be collected?*
As an expert in the field, we hope that you may choose to share your ideas, experiences and personal opinions during the interview. Each interviewee will be asked a similar set of questions that can be previewed ahead of time upon request. During the interview, your comments will be recorded. All information will be kept confidential, unless you choose to share your personal details. You will have 48 hours after the interview to make changes to any of the information you gave me. You can contact me via email at [...] should you wish to do so.

*How will the data be stored?*
Each interview will be audio-recorded, and the recordings will be stored on a password-protected audio-recording device. Only the study team will have access to your audio recordings, transcripts, and personal information for data analysis. Nothing about you will be shared beyond the study team without your consent. Once the study report is finalized, the transcripts will be stripped of all identifying information and the recordings deleted. The de-identified transcripts will be kept for 2 years on the data repository, SFU Radar.

Further, all the information you supply during the interview will be held in confidence and your name or identifying information will not appear in any report or publication without your consent.
Confidentiality
The study team will keep your information confidential throughout the project, only using it according to the terms you agree to. It should be noted that phone interviews and emails are not considered secure means of communication, therefore confidentiality cannot be guaranteed. Additionally, given the fairly small size of the sex worker support and research communities in Canada, there is a chance that your identity may be revealed by your responses.

How will your information be used?
The information you provide during the interview will give insight into how criminal laws are affecting sex worker occupational health and safety. Your assessment of short and long-term policy options, as well as policy barriers, will provide the study team with information intended to inform policy development. Beyond the Capstone and its publication to SFU’s Research Repository, there are no known future uses of the personal information/research data.

What are the risks and benefits to participation?
There are no foreseeable risks to you and no direct benefits to participating in this study. However, in the future, information gleaned from this study may benefit others by bringing awareness to the lived experiences of sex workers and the sex industry in general.

Participation is voluntary.
Your participation is voluntary. You have the right to refuse to participate in this study. If you decide to participate, you may still choose to withdraw from the study at any time, up until the submission of the finalized capstone on April 1st, 2020, without giving reasons and without any negative consequences up until the submission of the Capstone. There is no honorarium for participating in the interview, however the study team is flexible in meeting participants at their preferred time and location.

Study results
The study team will try to publish the results of this project more widely in journal articles, books, and other media in order to contribute to the existing literature about the commercial sex industry in Canada. If you would like to receive the study results, we will
email you copy of the final report or provide you with the website details for where the study will be made available online (i.e., SFU’s Research Repository).

Concerns or complaints?
If you have any concerns about your rights as a research participant and/or your experiences while participating in this study, you may contact Dr. Jeffrey Toward, Director, Office of Research Ethics [ … ]
Please read the next section carefully and keep this consent form for your reference once read. The interviewers will go through the consent process in more depth with all participants if needed and will obtain oral or written consent at the time of the interview depending on whether it is a phone interview or in-person interview. Your consent can be withdrawn at any time before or after the interview, until the report is published.

Consent to Participate

Taking part in this study is entirely up to you. You have the right to refuse to participate in this study. If you decide to take part, you may choose to withdraw from the study at any time without giving a reason and without any negative impact on your [examples should be relevant to the participant and could include references to employment, class standing, access to further services, etc.].

- Your signature below indicates that you have received a copy of this consent form for your own records.
- Your signature indicates that you consent to participate in this study.
- You do not waive any of your legal rights by participating in this study.

For the purposes of this study, I provide permission:

- To be interviewed
- To be audio-recorded
- To be identified in the final report and in future publications

I would like:

- To verify the accuracy of my quotes before the project is finalized.
- To be informed of the use of my quotes in all study presentations and publications
- To receive a copy of the final report

Signature: ____________________________ Date: _______________________