



The Invisible Women: Migrant and Immigrant Sex Workers and Law Reform in Canada

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ABSTRACT *This article examines how migrant and immigrant sex workers have been rendered invisible before the courts and parliament in the reform of laws regarding sex work in Canada. A discourse analysis of the expansive legal record in the Bedford case and the transcripts of Parliamentary debates and testimony before Standing Committees confirm the lack of nuanced discussion on how criminal law reform could impact migrant and immigrant sex workers. As such, while the case of Bedford and the resulting change in the law made by Parliament have been celebrated as a win for some sex workers as an acknowledgment, recognition and judicial validation of experiences by legal institutions of sex workers, a sub-group of women – migrant and immigrant sex workers – remain in the shadows. This article examines how law excludes migrant and immigrant sex workers; it is a starting point for research on how migrant and immigrant sex workers may participate in future legal reform.*

KEYWORDS migrant; immigration; race; sex worker; prostitution; immigrant; law; Bedford

Introduction

“The Invisible Girl can do it better.” This is a famous catchphrase of one of the Fantastic Four super heroes, Sue Storm, “Invisible Girl” or now “Invisible Woman” who gained her super powers from cosmic rays on a trip to space. Portrayed as a female voice of reason, her powers to turn herself invisible were almost useless on the battlefield and she was frequently portrayed as the helpless female, constantly in need of rescue.

The Invisible Woman, while a fictional character, has parallels in our more corporeal world. Being invisible does not garner power in legal discourse. This article is about how migrant and immigrant sex workers were rendered invisible in discourse before the courts and parliament in the reform of laws

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regarding sex work and prostitution in Canada, and why their exclusion in the law reform projects is problematic.

Acknowledgment and recognition of how one experiences law by legal institutions are not benign. As one scholar writes:

...by simply acknowledging the complex, creative histories of women like Amy Leibovitch, Valerie Scott, and Terri-Jean Bedford, by judicially *seeing* and so validating the experiences of sex workers in rendering a decision, the case [of *Bedford*] signaled a first step toward undoing the pervasive invisibility of Canadian sex workers. (Sampson, 2014, p. 171)

Although this statement may be true, there is a sub-group of women who remain in the shadows – migrant and immigrant sex workers. As one scholar notes, “The erasure of marginalized voices in the public sphere is a problem of particularly grave concern, even though it can be difficult to perceive” (Bunch, 2014, p. 41). The erasure of voices is a “form of epistemic violence” which may include “subtle and socially sanctioned methods of undermining that are sometimes couched in the language of ‘helping,’ ‘protecting’ and ‘saving’” (p. 41).

In examining the journey of legal reform for sex work in Canada, this study continues the work of other scholars who examine how ethnic, migrant and immigrant women, and in particular sex workers, are considered in law (Demleitner, 2001; Fitzpatrick & Kelly, 1998; Macklin, 2003; Matsuda, 1987; Satterthwaite, 2005; Stasiulis & Bakan, 2003; Sullivan, 2003).

A discourse analysis of the documents and transcripts of the *Bedford* case and discussions leading to reform of the *Criminal Code* at parliament was undertaken. Over 26,000 pages of the legal record of *Bedford* and transcripts of the testimony of 77 people in parliament were reviewed to examine whether and how immigrant and migrant sex workers participated in the court or parliament. The aim of this examination is to contribute to scholarly conversation regarding who is represented in legal reform projects that affect sex workers, how different groups of sex workers are participating, if at all, in legal reform, and what judicial decisions and legislative changes include or omit due to the involvement of particular groups of sex workers (or lack thereof). Further, this research hopes to generate questions about whether and how to include immigrant and migrant women in future endeavours to change the law.

Setting the Scene: The Exclusion of the Migrant and Immigrant Sex Worker

Defining Terms

In setting the scene for how Canada has recently changed the laws surrounding sex work, a number of terms are used. First, I refer to both

“migrant” and “immigrant” sex workers. “Migrant” sex workers are those who may not have immigration status in Canada, or have temporary or precarious status in Canada. “Immigrant” sex workers are those who may be new citizens or those who have permanent residence status in Canada, but are also “ethnic.” I use the term “ethnic” to embody persons who are identified by their differences through race, nationality, culture, often in an intersection with other markers of social difference such as gender, class and sexuality. In referencing both migrant and immigrant sex workers, I recognize previous research that indicates that immigrant sex workers, and thus those with status, may also experience differential treatment from the law as a result of their identification as immigrant or ethnic (Ham, 2015).

Secondly, the paper acknowledges that the politics of sex work has largely focused on contestation between those who view it as legitimate work and those who view selling sex as a form of coercive sexual exploitation (Outshoorn, 2005, p. 141). Of course, politics around sex work are nuanced and complicated; these complexities are beyond of the scope of this paper. Efforts by sex workers and those working with sex workers are focused on trying to keep sex workers alive and out of harm’s way, and on advocating for legislative and policy changes to make those objectives more achievable (see Pivot Legal, n.d.; NSWP, 2016; Canadian Alliance for Sex Work Law Reform, 2019).

Those who view sex work as broadly exploitative see it as a consequence of patriarchy and capitalism that has manifested into the ultimate commodification and exploitation of female bodies (Barry, 1996; Dworkin, 1993; Farley, 2006). Women are seen as victims of their labour, with sex work being a product of lack of choice: “women in prostitution are observed to be prostituted through choices precluded, options restricted, possibilities denied” (MacKinnon, 2011, p. 274). Given that proponents of this view believe that all sex work is coerced, there is a tendency to view sex work and human trafficking as one and the same, while also identifying the sex industry as a driving force behind human trafficking (Farley et al., 2004).

In contrast, those who view sex work as legitimate work see it as a product of the agency of sex workers (Bruckert & Hannem, 2013, p. 43). Proponents of this view assert that sex work itself is not inherently dangerous nor exploitative, but that potentially harmful work conditions are manifested through law and social stigma (see Chu & Glass, 2013; Craig, 2011; Kempadoo & Doezema, 1998; Krusi, Pacey, Bird, Taylor, Chettiar & Shannon, 2014). In addition, they critique the view that equating consensual sex work with human trafficking is harmful, as it paints all sex workers as victims. This view renders invisible the anti-sex work and anti-migration laws that make it possible to deny sex workers protections and rights, thus making them vulnerable to exploitation (Jeffrey, 2005).

Finally, there are others who see the value in the interplay of both structure and agency; that sex workers agency is necessarily tied with the structural

and relational powers that they live with, and that it is not simply a binary experience at all times (Bungay, Halpin, Atchison & Johnston, 2011). Rather, there is complex interplay of both structure and agency, and also a heterogeneity of perspectives by sex workers and multiplicities of structure-agency interrelationships (Bungay, Halpin, Atchison, & Johnston, 2011).

In this study I am not interested in resolving the dichotomy between choice or no choice that persists in many discussions of the identities of those involved in sex work. The article uses the term “sex worker” to recognize what persons *do* rather than *who* the persons are (Showden & Majic, 2014). In doing so, I recognize that migrants and immigrants involved in sex work have agency (Showden & Majic, 2014), and assume that recognition of sex workers having agency may not be synonymous with their identity and also that sex workers who may be victimized may also have agency. The “agency” of sex work is not necessarily a “free choice,” but may be a complex, knowing negotiation (Showden & Majic, 2014). I use the term “prostitution” only when quoting (e.g., from legislation) or referring to others’ statements.

Bedford: Challenging Criminal Laws Regarding Sex Work in the Courts

Prior to 2014, three provisions of the *Criminal Code* in Canada criminalized the following activities related to sex work: communicating in public for the “purposes of engaging in prostitution;” living off the “avails of prostitution;” and keeping a “bawdy-house” (*Criminal Code of Canada*, 1985, s. 213; s. 212; ss. 197 & 210). In 2009, three current and former sex workers, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott brought an application seeking declarations that these three provisions in the *Criminal Code* related to sex work were unconstitutional (*Canada (AG) v Bedford*, 2013, para. 3). These applicants argued that all three provisions infringed section 7 of the *Canadian Charter of Rights and Freedoms* (1982) by preventing them from “implementing certain safety measures – such as hiring security guards or ‘screening’ potential clients – that could protect them from violent clients” (*Canada (AG) v Bedford*, 2013, para. 6). The applicants also argued that the provision dealing with communicating in public for the purposes of engaging in prostitution also violated section 2(b) of the *Charter*.

The constitutional challenge made its way to the Supreme Court of Canada where Chief Justice McLachlin stated that the three impugned provisions were “primarily concerned with preventing public nuisance, as well as the exploitation of prostitutes” (*Canada (AG) v Bedford*, 2013, para. 4). She acknowledged that “prostitution itself is not illegal” but that Parliament had “confined lawful prostitution to two categories: street prostitution and ‘out-calls’ – where the prostitute goes out and meets the client at a designated location, such as the client’s home” (*Canada (AG) v Bedford*, 2013, para. 5). The Supreme Court held that:

The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing *dangerous* conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risks. (*Canada (AG) v Bedford*, 2013, para. 60)

In examining the constitutionality of the provisions that prohibit keeping a common bawdy-house, the Chief Justice wrote that the prohibition “prevents prostitutes from working in a fixed indoor location, which would be safer than working on the streets or meeting clients at different locations,” that it interferes with provision of health checks and preventative health measures, and prevents resort to safe houses, all of which would help reduce risks of being exposed to violence (*Canada (AG) v Bedford*, 2013, para. 63). With regard to the provision of living off the avails of prostitution, the Chief Justice stated that the law prevented prostitutes from hiring bodyguards, drivers and receptionists, all measures that would enhance safety (para. 66). Finally, with regard to communicating in a public place, the Chief Justice wrote “face-to-face communication is an ‘essential tool’ in enhancing the street prostitutes’ safety” and that the “effect of displacing prostitutes from familiar areas, where they may be supported by friends and regular customers, to more isolated areas” made them more vulnerable (para 69; para 70). In general, the Supreme Court held that the “impugned laws make this lawful activity more dangerous” and that the provisions were arbitrary, overbroad, and grossly disproportionate to the objective of the legislation (para 87; paras. 98-100; paras. 101-102; paras. 103-109; para. 123). Finally, the court held that while, “Parliament has the power to regulate against nuisances” it cannot do so “at the cost of the health, safety and lives of prostitutes” (para. 136).

In finding the provisions unconstitutional, the court declared the laws invalid, but suspended the declaration for one year to allow for Parliament to change the laws.

Parliament’s Response to Bedford

The Protection of Communities and Exploited Persons Act or Bill C-36 (2015) received royal assent on November 6, 2014. This Bill amends the *Criminal Code* and encompasses the government’s response to the *Bedford* case.

The preamble to Bill C-36 (2015) outlines the shift in legislative objective from treating prostitution as a form of nuisance toward treating it as a form of exploitation, objectification of human bodies, and commodification of sexual activity. The government sees prostitution as being harmful, both physically and psychologically, to women and children, and also to society at large, and

aims to bring an end to the practice. In particular, the amendments to the *Criminal Code* seek to denounce and prohibit “the demand for prostitution” as “[t]he purchase of sexual services creates the demand for prostitution, which maintains and furthers pre-existing power imbalances, and ensures that vulnerable persons remain subjected to it” (Bill C-36, 2015, preamble)

The *Criminal Code* now prohibits: the purchasing of sexual services or communicating for the purpose of obtaining sex for consideration (s. 286.1)¹ including in a public place or in public view or next to a school ground, playground or daycare centre (s. 213 (1.1)); receiving financial or material benefit derived from trafficking persons (s. 279.02) or activities that involve obtaining sexual services for consideration (s. 286.2); concealing, removing, withholding or destroying any travel document that belongs to another person or any document that establishes another person’s identity or immigration status (s. 279.03); procuring, recruiting, harbouring, holding, concealing, or exercising control over a person to offer or provide sexual services for consideration (s. 286.3); and knowingly advertising an offer to provide sexual services for consideration (s. 286.4). There are two immunity provisions. No person will be prosecuted if they receive material benefits derived from the provision of their own sexual services (*Criminal Code*, 1985, s. 286 (5)1). As well, a person will not be prosecuted as if the advertisement of sexual services is offered by an individual for her own offering of sexual services. Further, no person will be prosecuted for aiding, abetting, conspiring or attempting to commit a crime or being an accessory after the fact or counseling if the offence relates to the offering of their own sexual services (s. 285.5(2)).

The main difference between the laws pre-*Bedford* and the laws post-*Bedford* is the legislative objective. The recent legislation has shifted its objective from preventing nuisance to protecting communities and vulnerable people. A further difference is that the government has criminalized the act of prostitution by targeting “johns” or clients. Thus, every time someone is procuring money for sexual acts, a crime is being committed, reinforcing the governmental objective of abolishing prostitution “to the greatest extent possible” (Department of Justice, 2014).

Rendering Migrant and Immigrant Sex Workers Invisible in Law Reform

As Sonia Lawrence writes, the *Bedford* case and the passage of Bill C-36, “offer a window into the identification, mobilization, and reception of ‘experts’ in the courts, the legislative process, and the public sphere” (2015, p. 5). Lawrence questions, “how the mobilization of expertise works in legal

¹ *Criminal Code*, s. 286.1 also provides more severe penalties if a person under the age of 18 is involved. *Criminal Code of Canada, Revised Statutes of Canada* (1985, c. C-46). s. 268.1.

arguments and the relative narrowness of a test case ‘win’ suggesting that the “cause”, to decriminalize sex work, may not have been advanced. She points out that the “written word of experts rather than in-court testimony” was deployed, and that a “sizable body of experiential expertise from current and former sex trade workers on both sides of the debate” revealed “a wide range of contexts in which sex work is performed, and a wide range of reactions and conclusions based on that experience” (Lawrence, 2015, pp. 5-6). Despite this, as discussed below, much was also excluded. Lawrence writes that the narrative created in *Bedford* and in Parliament, “obscure and deny structural problems” and “ignores the role of the state in creating or failing to alleviate these problems” (2015, p. 6). As argued below, much more has been ignored in this process. Like Lawrence (2015, p. 7), in this article I ask for deeper reflection on how litigation and law reform deploy experiential voice.

Discourse and Evidence in Bedford

The material in the *Bedford* case was vast. By the time the case reached the highest court in the country, this material included a record as well as pleadings provided by a dozen interveners. At the Ontario Court of Appeal, seven interveners joined the case,² and at the Supreme Court of Canada, the number of interveners grew to 12.³ Some interveners were coalitions of multiple organizations.⁴

The record from the Ontario Superior Court of Justice provided the evidentiary basis against which the criminal provisions were scrutinized. It contained 86 volumes and 26,421 pages. These pages do not include the pleadings provided by the parties. The record includes affidavits of the parties

² At the Ontario Court of Appeal the interveners included: British Columbia Civil Liberties Association; Canadian HIV/AIDS Legal Network/BC Centre for Excellence on HIV/AIDS; Canadian Civil Liberties Association; Christian Legal Fellowship/The Catholic Civil Rights League/Real Women of Canada; Prostitutes of Ottawa/Gatineau Work Educate and Resist (POWER)/Maggie’s: The Toronto Sex Workers’ Action Project; Providing Alternatives Counselling Education (PACE) Society/The Downtown Eastside Sex Workers United Against Violence Society (SWUAV)/Pivot Legal Society; Women’s Coalition for the Abolition of Prostitution.

³ At the Supreme Court of Canada, the interveners included: Procureur General du Quebec; Aboriginal Legal Services of Toronto; David Asper Centre for Constitutional Rights; Women’s Coalition for the Abolition of Prostitution; Canadian HIV/AIDS Legal Network, British Columbia Centre for Excellence in HIV/AIDS and HIV & AIDS Legal Clinic Ontario; The Evangelical Fellowship of Canada; Asian Women Coalition Ending Prostitution; British Columbia Civil Liberties Association; Christian Legal Fellowship, Catholic Civil Rights League and Real Women of Canada; Downtown Eastside Sex Workers United Against Violence Society, PACE Society and Pivot Legal Society; Joint United Nations Programme on HIV/AIDS; and L’Institut Simone de Beauvoir.

⁴ See for example: The Women’s Coalition for the Abolition of Prostitution.

and of expert witnesses, transcripts of examinations and cross-examinations of the parties and witnesses, and their supporting documents, including academic literature and research.

The critical discourse analysis undertaken in this paper focuses on the record produced for the hearing at first instance (the trial) at the Ontario Superior Court of Justice because it provides the evidence and therefore the basis upon which the parties grounded their positions. The record is also where we directly hear the voices of sex workers, their advocates, and experts who research in this area. The aim of the analysis is to gauge whether and how migrant and immigrant sex workers engaged in this legal proceeding, and to prompt questions of what was included or missing in the legal record.

The 26,421 pages were first searched for the following terms: “migrant,” “immigrant,” “immigrate,” “immigration,” “trafficked,” “trafficker,” “trafficking,” “citizen,” “citizenship,” “status,” “refugee,” “foreign,” “foreigner,” “permanent resident,” “permanent residence,” “visa,” “ethnic,” “race,” “racial,” and “racialized.” These terms were chosen as a starting point to identify possible discussions in the transcripts on migrant and immigrant sex workers. Some terms, such as “permanent resident” and “permanent residence” seldom appear. Others were present in the record, but did not provide any valuable reference to migrant and immigrant sex workers. For example, the word “citizen” appears frequently, but mainly refers to citizens writ large such as the protection of citizens, or how “ordinary” citizens are affected (see, e.g., *Bedford Record*, 2013, Vol. 3, pp. 572, 727, 591, 706; Vol. 23 pp. 6445, 6447, 6448, 6453, 6454, 6509; Vol. 22 pp. 6445, 6447, 6448, 6453, 6454, 6509). The word “status”, similarly, garnered other meanings such as social or economic status or “Status of Women.” The word “foreign” also made many benign appearances in the record (see, e.g., *Bedford Record*, 2013, Vol. 3 pp. 310, 352, 407, 409, 433, 461, 465, 469, 484, 297, 306, 365, 544; Volume 7 at 1711; Vol. 9 pp. 2203, 2214, 2220, 2226, 2230, 2240, 2261, 2279, 2314, 2321, 2444; Vol. 3 at 403). Other terms, such as “race,” “racial,” and “ethnic” did not point to many discussions on migrant and immigrant sex workers, but to Aboriginal persons, and racial background in general.⁵

The record acknowledges the absence or lack of information regarding migrant and immigrant sex workers. Examples of such acknowledgement include statements such as: “we have limited primary empirical research on three groups engaged in the sex trade in particular, and they are minors, new immigrants, and migrant workers”; “we’re very concerned about those kinds of gaps because we do know that policymakers and others are making decisions based on some of the stereotypes of these particular individuals”; and “we also know very little about the experiences of new immigrants, or

⁵ See, e.g., *Bedford Record*, Vol. 7 in general; Vol. 8 pp. 1957, 2012, 2051, 2120; Vol. 9 pp. 2239, 2323, 2329, 2412, 2423, 2446, 2462; Vol. 24 p. 6713 where there was a discussion of demographics.

the congruence, if any, between their personal stories and those in the media concerning sex slaves” (*Bedford Record*, 2013, Vol. 25, p. 7215; p. 7216; p. 7410).⁶ Further, “There has been little focus on the role of gender, culture, ethnicity and class in understanding the experience of sex work” (*Bedford Record*, 2013, Vol. 5, p. 1086).

Many of the references to migrant and immigrant sex workers were embedded in documents, articles or presentations that were exhibits or attachments of affidavits. For example, in a presentation made to a House of Commons Subcommittee in 2005 that was attached as exhibit F of the affidavit of Frances M. Shaver, this was provided regarding migrant and immigrant sex workers:

Finally, criminalization impedes current and former sex workers’ ability to travel and cross borders. It also prevents workers from sponsoring foreign-national partners or family members for permanent residency. For people entering Canada for employment in the sex trade, the criminalization of both prostitution establishments and employer-employee relationships renders legitimate work permits impossible. This positions most migrant sex workers as non-status and grossly increases their vulnerability to exploitation, as well as their risk for arrest, detention and deportation. At the level of our most fundamental rights and freedoms, the criminalization of prostitution leads to incarceration and deprivation of liberty, and it is typically the most marginalized workers, specifically those who are migrant or street-based, who are most likely to be deprived of their freedom in this manner. (*Bedford Record*, 2013, Vol. 24, p. 6967)⁷

When migrant and immigrant sex workers were mentioned in the record, they were mainly as afterthoughts or as generalizations. For example, Valerie Scott stated that in dealing with a migrant sex worker, “As it is, we can’t get to her. She’s terrified of the police, of being deported” (*Bedford Record*, 2013, Vol. 4, pp. 592, 716). Another example is a report provided as exhibit A to the affidavit of Kara Gilles quoting a sex worker participant in a law enforcement survey:

Despite these low enforcement levels, sex-working participants overwhelmingly expressed continued anxiety about the impact of the law. Two women drew comparisons between the criminalization of prostitution and the illegalized status of undocumented workers. As one stated, “it would be like being an illegal immigrant in the country – you never know when they’re going to send you back home. It’s just that shitty, crappy, paranoid feeling that just hangs over your shoulders every day.” (*Bedford Record*, 2013, Vol. 6, p. 1370)

⁶ See also Vol. 6 p. 1471 where migrant and immigrant sex workers were excluded from a study.

⁷ See also, e.g., Vol. 5 p. 1073 and p. 1226 where exhibit B of Susan Davis’ affidavit containing a Draft Action Plan called “Living in Community: Balancing Perspectives on Vancouver’s Sex Industry” also references migrant sex workers and also Volume 6 at p. 1370 or exhibit A of the affidavit of Kara Gilles.

With regard to mentions of trafficking, most references were in supplementary material or the exhibits of affidavits that contained research, reports or other academic material. Not all references were about international trafficking of women and children. Some referred to the link between sex work and the trafficking of drugs (see, e.g., *Bedford* Record, 2013, Vol.23 p. 6786). The bulk of the discussion related to trafficking related to situations of domestic trafficking (see, e.g., *Bedford* Record, Vol. 5 p. 1146; Vol. 21 p. 6198). The discussion that did talk about international trafficking recognized the gap in knowledge. For example, “As with migration patterns, patterns of trafficking and force and the amount of violation concerned with them, still remain scarcely and very badly documented...” (*Bedford* Record, 2013, Vol. 20, p. 5655). One exhibit stated, “Though there is little accurate information on the extent of trafficking in Canada, it’s known that Canada is a country of origin, transit and destination for trafficked persons” (*Bedford* Record, 2013, Vol. 5, p. 1074). Finally, some discussion turned to the experiences other countries have with migrant and immigrant sex workers (see, e.g., *Bedford* Record, Vol. 20, pp. 5613 & 5639).

Discourse and Evidence at Parliament

Following the Supreme Court of Canada’s decision in *Bedford*, the government responded with Bill C-36, the *Protection of Communities and Exploited Persons Act*, which received Royal Assent on November 6, 2014. Bill C-36 was debated in both the House of Commons and the Senate and was reviewed in the House of Commons Standing Committee on Justice and Human Rights between July 7th and 15th, 2016. Seventy-seven people appeared before the committee as individuals or on behalf of an organization.

A critical discourse analysis was undertaken of the transcripts of the proceedings to glean how much consideration was given to how the law may impact migrant or immigrant sex workers. The transcripts were searched for the same terms used to examine the *Bedford* record, namely “migrant,” “immigrant,” “immigrate,” “immigration,” “trafficked,” “trafficker,” “trafficking,” “citizen,” “citizenship,” “status,” “refugee,” “foreign,” “foreigner,” “permanent resident,” “permanent residence,” “visa,” “ethnic,” “race,” “racial,” and “racialized,” These terms were chosen as a starting point to identify areas in the transcripts where there might be a discussion on migrant sex workers

During the House of Commons debates, the words “migrant,” “immigrant,” “immigrate,” “immigration,” “permanent resident,” and “permanent residence” did not make any appearances whatsoever. While the terms “refugee,” “racial,” “racialized,” “ethnic,” “status” and “citizen” made appearances, they were referred to in general and did not speak to the issue of racialized or immigrant sex workers particularly, but made references to

marginalized (i.e., racialized, ethnic, refugee) communities writ large (see, e.g., Easter, Dechert, Goguen, & Galipeau, 2014, September 26). The word “trafficking” made the most appearances of the terms searched. In approximately 200 instances, there are references to victims of trafficking in the sex trade, and how trafficking is linked to prostitution. Some point out in the House of Commons debates that trafficking is already criminalized and that Bill C-36 does not fully address the issue of trafficking.

The discussions at the House of Commons Standing Committee did not have the following words: “permanent residence” and “permanent resident,” indicating little discussion of new immigrants. The following words made one appearance throughout the transcripts: “refugee” (in the context of referring to the *Immigration and Refugee Protection Act*), and “visa” (in the context of a sex worker testifying she had a work visa in Australia). While other terms make an appearance in the transcript, most of them did not lead to any meaningful discussion about migrant or immigrant sex workers. For example, the term “status” did not refer to immigration status but often referred to social status or “Status of Women” (see, e.g., Beazley, 2014, July 7). The term “ethnic” was found a few times, referring to advertising listing ethnicity of workers, or referring to research that indicated that there was no “over-representation of ethnic minorities, but rather an under-representation” of “ethnic minorities” in the “sex industry” (Dechert & Phillips, 2014, July 10).

Two witnesses before the Standing Committee spoke specifically about migrant and immigrant sex workers: Alice Lee and Suzanne Jay of the Asian Women Coalition Ending Prostitution. They expressed support for Bill C-36 on the basis that those who exploit Asian women for prostitution use various methods to control them including confiscating immigration documents or passports, and threatening women who do not have regularized status with deportation and arrest. Alice Lee also stated that they appreciated that the bill recognized that trafficking and prostitution are intimately connected.

Other than these two witnesses, migrant and immigrant women were referred to as an afterthought. For example, one witness noted that criminalization of clients under Bill C-36 will disproportionately affect Aboriginal women who rely on proceeds from prostitution to survive and that her testimony applies as well to migrant women (Sayers, 2014, July 7). Another example came from a witness who spoke about how Bill C-36 will affect her ability to post ads online, forcing her to use more dangerous methods to find clients. She noted that the “situation will likely affect migrants with precarious status especially gravely” (Laliberté, 2014, July 7). In another example, one witness discussed the difficulty some sex workers have in rebuilding their lives after criminal records are imposed on them. She stated, “This likely has a disproportionately devastating impact on migrant sex workers” (Redsky, 2014, July 7).

Bill C-36 was also debated in the Senate. The terms “migrant,” “immigrant,” “immigration,” “status,” “refugee,” “foreign,” “foreigner,” “permanent resident,” “permanent residence,” “visa,” “ethnic,” “race,” “racialized” and “racial” were not used in the Senate debates. While the words “citizen” and “citizenship” appear a few times, they refer solely to the idea of protecting citizens, and to citizens in general such as “hard working citizens” and “vulnerable citizens” (Batters & Jaffer, 2014, Oct. 21). “Trafficking” and “trafficked” made a number of appearances. For example, Senator Mobina Jaffer stated:

But this bill has been masquerading as something it is not. It is not there to protect the victims of the sex trade. We already have legislation in place for that. This is not an anti-trafficking bill or sexual assault bill... we need to allocate more resources to protecting these vulnerable members of our society. This bill will not achieve this, because that is not its purpose and those groups are not its primary focus. That is another conversation for another day... (2014, Oct. 21).

Bill C-36 was also the subject of the Senate’s Standing Committee on Legal and Constitutional Affairs on September 9th, 10th, 11th, 17th, 29th and 30th, 2014. The terms “permanent resident,” “permanent residence,” and “visa” were non-existent. Some terms, such as “foreign,” “foreigner,” “ethnic,” “race,” “racial,” “racialized” and “status” were used in general ways and did not point to any discussions with regards to migrant or immigrant sex workers. The terms “migrant,” “immigrant,” “immigrate” and “immigration” were almost non-existent and where they did appear, it is alongside the term “trafficked” or “trafficking,” which appeared most frequently amongst all the terms searched. For example, Suzanne Jay (who also testified in the House of Commons Standing Committee) noted that women working in Asian massage parlours are abused and exploited due to their precarious immigration status. She stated, “the bill does not change the balance of power that organized crime and human trafficking operations rely on because current immigration law supports the exploiter” (Jay, 2014, Sept. 9). Ms. Jay recommended granting status to women who arrive in Canada under exploitative circumstances. Valerie Scott, one of the litigants in *Bedford*, testified,

The debate about Bill C-36 has been hijacked by individuals and groups who have focused on the evils of human trafficking and child exploitation. However, none of those laws were challenged and none were affected by the Supreme Court decision. This deliberate misdirection has taken the focus off what we should be discussing, which is how the proposed law will affect consensual adult sex work. (Scott, 2014, Sept. 10)

The few comments related to migrant and immigrant sex workers, exploitation, abuse and trafficking should have raised red flags for those studying the Bill. The provisions amending the *Criminal Code* should not be looked at in isolation. It is not just the application or impact of these provisions on sex workers that is important to examine, but how these laws

also interact with other laws in the *Criminal Code* and the *Immigration and Refugee Protection Act*, and also how these laws may be experienced differently by racialized persons who may or may not have precarious immigration status. If migrant and immigrant sex workers were not willing to testify, organizations like SWAN or Butterfly, for example, should have been asked to participate or provide submissions on their research.

The Invisibility of Migrant and Immigrant Sex Workers

Scholars have examined how women are rendered invisible in a number of different contexts including women in prisons or in conflict with criminal law, women who make allegations of sexual harassment or assault, Indigenous women, and racialized women, among others (see Belknap, 2014; Bullock & Jafri, 2000; Covington, 1998; Dobrowolsky, 2008; Gilchrist, 2010; Jiwani & Young, 2006; Randall, 2010; Taylor, 1993; Worrall, 1990).

Rendering ethnic, racialized, migrant and newly immigrant women invisible in law is not a new phenomenon. In examining whether the *Charter of Rights and Freedoms* extends protections to non-citizens, for example, Catherine Dauvergne states:

Aside from the *Refugee Convention* cases, the Supreme Court of Canada has not made a single ruling in the *Charter* era that directly applies an international human rights norm to a non-citizen in Canada...All of these shifts mean that non-citizens in Canada are more vulnerable to rights abuses than at any point in the previous thirty years. (2013, pp. 724, 728)

Tanya Basok and Emily Carasco question the availability of protections available to non-citizens in Canada:

Migrants admitted as residents are automatically protected by most laws that apply to citizens, although in practice, of course, visible minority immigrants in Canada, particularly women, often experience discriminatory and abusive treatment. Due to the precariousness of their status, temporary migrants, who are also often visible minorities, are even more likely than resident immigrants to experience various forms of exclusion and abuse. When non-citizens experience such abuses, what legal protections are available to them?" (2010, p. 344).

They surmise that relative to citizens, "non-citizens are a group lacking in political power and as such vulnerable to having their interests overlooked" (Basok & Carasco, 2010, p. 342).

In the context of immigration or migration, scholarship has looked at the absence of attention paid to the abuse of migrant workers (Hennebry, 2012; Sharma, 2000; Sharma 2002), migrant domestic or health care workers (Coloma, McElhinny Tungohan, Catungal & Davidson, 2012; Stasiulis &

Bakan, 2003), and persons in immigration detention (Brane & Wang, 2013; Gros, 2017; Kronick & Rosseau, 2015), among other topics. Scholars have pointed to the invisibility of the migrant sex worker in discussions about sex work in Canada (Brock, Gillies, Oliver & Sutdhibhasilp, 2000; Jeffrey, 2005; MacIntosh, 2006; Oxman-Martinez, Martinez & Hanley, 2001).

In her testimony at the Standing Committee, Legal Counsel for the Asian Women Coalition Ending Prostitution discussed intervening in the *Bedford* case:

Our biggest challenge was the fact that among the many volumes of evidence that was before the court, there was a sum total of one line regarding Asian women in prostitution, and that one line was contained in the affidavit of a police officer, not an Asian woman, but a police officer, who deposed that women in bawdy houses were often illegal immigrants and residential brothels contained mainly Asian women. (Allison, 2014, July 10)

NDP MP Francoise Boivin stated at the Standing Committee of Justice and Human Rights in relation to the intersection of human trafficking and sex workers, “There has not been much focus on the concept of human trafficking in Bill C-36” and, “...with such a quick process, not all the provinces were necessarily available or prepared to come speak within such a short timeframe on issues as profoundly complex as human trafficking, sexual exploitation and prostitution” (2014, July 15).

Any meaningful discussion on migrant and immigrant sex workers did not include the voices of these women. For example, exhibit 3 of the affidavit of Deborah Brock is an article that recreates a dialogue that sex worker advocates and researchers have about migrant and immigrant sex workers, rather than including testimony of this neglected group of workers (*Bedford Record*, 2013, Vol. 9, pp. 2328-2336). Despite this, some witnesses at the Standing Committee testified that there was an inseparable link between trafficking and prostitution.⁸ In making this link, there was very little discussion of how the law may treat them differently because of their immigration status.

In addition to excluding the active participation of migrant sex workers, the record also excluded other kinds of written work that would illuminate their lived experiences. There was a stark absence of reports and other written work by NGOs and migrant sex workers from the record despite the fact that there are migrant sex worker organizations that actively provide information on the experiences of migrant sex workers online for example (see, e.g., SWAN Vancouver Society; Butterfly: Asian and Migrant Sex Workers

⁸ Some examples include (a) Tímea E Nagy, who at the Standing Committee on Justice and Human Rights on July 7, 2014 said, “There isn’t a difference between prostitution and human trafficking in our organization’s view”; (b) Brian McConaghy’s comments at the Standing Committee on Justice and Human Rights on July 10, 2014; and (c) Joy Smith at the Standing Committee on Justice and Human Rights, who on July 9, 2014 stated that legalization of prostitution leads to an explosion of human trafficking.

Network). The record for *Bedford* and the material submitted to Parliament demonstrates a dearth of migrant sex worker voices and an absence of research or reports provided by civil society on the subject. The inclusion of some “experts” in the judicial and legislative processes raises questions of who experts are and what kind of expert work is deployed in legal reform.

Inviting Immigrant and Migrant Sex Workers to Litigation and Law Reform

As with the dichotomous debates about whether there is agency in sex work, and whether prostitution involves exploitation and trafficking, there is a debate about whether migrant or immigrant sex workers are victims of trafficking or if they can hold agency as sex workers. Such debate, however may discount the multiplicity of roles or identities migrant and immigration sex workers may have (see, e.g., Crenshaw, 1991; Harris, 1990; King & Willis, 1999). For example, legislation, policy and legal rhetoric simultaneously treat migrant and immigrant sex workers as both exploited victims and agents in control of their own destiny (an irregular migrant who chose to thwart immigration law and is subject to removal from Canada). Further, it is the precarious immigration status that needs to be understood in order to appreciate how such status can render persons both vulnerable and resilient, thereby affecting the decisions racialized sex workers make – decisions about managing and surviving the precarity of their situation to avoid harm and deportation. In helping to prevent categorization or how a “specific social identity becomes the salient basis” for normative perceptions, this paper proposes more work needs to be done to include voices from the margins (Hogg, Terry & White, 1995, p. 260).⁹

Future legal reform involving sex work should turn to, “the actual experience, history, culture, and intellectual tradition” of migrant and immigrant sex workers themselves. Mary Bunch writes that the voices also have to be heard in a meaningful way:

Full participation in a democratized public sphere depends on more than the right to speak; it depends on being heard. Even in civic discourses aimed at realizing the human rights of a population at risk, stigma and dehumanization can undermine the voices of marginalized groups...sex workers cannot presume that their knowledge will be granted the same credibility in discursive processes as people coming from more socially sanctioned speaking positions. Indeed, as we

⁹ As Mari Matsuda wrote, “[t]he central problem facing critical legal scholars, and indeed all thoughtful legal scholars, is the search for a normative source,” and she advocates that “Looking to the bottom – adopting the perspective of those who have seen and felt the falsity of the liberal promise – can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice” (1978, p. 324).

see in *Bedford*, sex workers are sometimes not even heard by the very allies who would seek to protect them from harm... (2014, p. 41)

As Lesley Anne Jeffrey and Gayle MacDonald also find, “It is the silencing, of their critical consciousness that lies at the base of their greatest oppression. This silencing has denied sex workers full citizenship and full humanity” (Jeffrey & MacDonald, 2006, p. 1).

Unlike other sex workers, however, migrant and immigrant sex workers did not have a chance to provide their voices to the reform project of *Bedford* and Bill C-36. Instead, others filled the void by invoking language such as trafficked, trafficking, exploitation, abuse, victims, and massage parlours. While some may argue that there were advocates participating that illuminated what migrant and immigrant sex workers may have provided themselves, Nicole Gonzales cautions against delegating such important work to people who sincerely believe they are doing the right thing. In her book, *Crook County* (Gonzales, 2016, pp. 72-73), she details how prosecutors justify their actions by stating the myth that they are doing the right thing by punishing extreme criminals when such a myth does not match the reality of “the trenches of justice” where prosecutors are “getting in the way of real cases” and “undermining the heart of what it is to be a prosecutor” as “their presence in the system literally obstructs ‘real justice’.” I am not suggesting that advocates of sex workers are not doing good work to help sex workers, but rather that importance should be placed on acquiring information directly from those affected by the laws subject to reform.

In looking at the material before the court and parliament, it is unclear how the *Criminal Code* provisions dealing with sex work would impact migrant and immigrant sex workers. In particular, it is unclear what potential protections or harms may come from that intersection, and how this intersection may differ from the experiences of sex workers with more permanent status in Canada. There are two narratives that migrant and immigrant sex workers are subject to when discussing their experience with law. The first is that migrant and immigrant sex workers are subject to exploitation and abuse through the trafficking of their labour. The second is that they are subject to harms and exclusion through Canada’s immigration system. The following section turns to scholarly work to investigate the potential differences.

A Trafficking Discussion

Many of the references to migrant and immigrant sex workers in *Bedford* and the discussions at Parliament refer to the problem of international trafficking of women and children. The discussion, while scant, is revealing.

First, as discussed above, the material I analysed acknowledges the problem with defining and understanding the scope of the problem of

“trafficking.” For example, the Report of the Standing Committee on Justice and Human Rights and Subcommittee on Solicitation Laws titled, “The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws” in exhibit F of the affidavit of Libby Davies states, “Although Canada does not yet have the information needed to assess the scope of this problem nationally, there is no doubt that trafficking in persons is at play in prostitution activities, and that trafficked persons are among the most vulnerable in prostitution” (2006).

Second, the trafficking discussions in the *Bedford* case and before Parliament mirror discussions about sex work in general – about whether it is abusive, harmful itself, or whether sex workers have agency and whether it should be considered a form of labour. For example, during the cross examination of Dr. John Lowman in the *Bedford* case, he states, “We know that in certain circumstances, debt bondage occurs in trafficking situations where a woman might be imprisoned in an off-street location” (*Bedford* Record, 2013, Vol. 21, p. 6198). However, in an article that was an exhibit of the Affidavit of Dr. John Lowman, one finds, “Trafficking legislation does not distinguish between those who have been coerced into sex work and those who are essentially working in the sex industry as economic migrants” (*Bedford* Record, 2013, Vol. 20, p. 5696). Similarly, Deborah Brock under examination during the *Bedford* case, stated:

I assert that we should use [the term migrant sex worker as opposed to trafficking] because the concept of migrant sex workers allows for one to then specify the conditions in which this form of migration takes place, whether it be through agency or lack of agency. So whereas the concept of trafficking already from the outset seems that this is involuntary, that women are moved across borders against their will, that they do not know what they are moving for, and this certainly does not describe all of the movement across borders within the shifting global economy for these women, and so I think it is much more appropriate to not already overlay your assumptions of your way of framing the phenomenon, this particular social phenomenon, with the concept that dates back to the 19th century, that is trafficking. (*Bedford* Record, 2013, Vol. 9, p. 2274)

On the other hand, at the Standing Committee on Justice and Human Rights, the Asian Women Coalition Ending Prostitution stated, “We praise Bill C-36 because it recognizes that human trafficking and prostitution are closely linked and related. Human trafficking is intrinsic to the Asian woman’s experience of prostitution, regardless of what country she comes from” (2014).

This mirrors the debate in academic literature. For example, Kristina Day finds there is a link between trafficking and prostitution and writes that the Swedish model of prohibiting the purchase of sex has been effective in reducing the number of street prostitutes and the rate of trafficking (Day, 2012, p. 149). Nandita Sharma, on the other hand, writes:

...far from helping migrants...anti-trafficking and/or anti-smuggling campaigns exacerbate the conditions that cause harm to migrants. They do so because one of the key underlying motives of these campaigns is to restrict the mobility of migrants, particularly undocumented movements of people. Indeed, deeply embedded within the anti-trafficking and anti-smuggling discourse and practice are anti-immigrant sentiments expressed best in the idea that migrants are almost (if not) always better off at “home.”...Rather than calling for an end to trafficking or smuggling, taking the standpoint of migrants compels us to deal with the reality that such illicit movements are the only ones available to the majority of the world’s displaced people... (2003, p. 54)¹⁰

A nuanced and deep discussion of what exactly is trafficking, and the scope of the trafficking problem was missing in *Bedford* and the debates about Bill C-36 in Parliament. While some mention of it was made haphazardly by witnesses and litigants, and in some secondary literature attached to various witness affidavits, there was no genuine examination of how the criminal law should be informed by the issue of trafficking, and what impact this may have on migrant and immigrant sex workers.

For migrant and immigrant sex workers, two questions may be asked of the *Bedford* case. First, why were migrant and immigrant sex workers not included as the group of litigants to launch the constitutional challenge on criminal laws relating to sex work, and second, why were the provisions dealing with trafficking not included in the challenge. One simple answer is that the issue of trafficking is beyond the scope of the focus of the legal action. In the situation of migrant or immigrant sex workers, the fear of losing immigration status and being deported requires necessary invisibility in order to continue to work and there are specific reasons why some people may not want to be included in a legal challenge or testify before Parliament (Canadian Council for Refugees, 2013; Lam, 2018, April; Lam, 2018, May; MacIntosh, 2006).

¹⁰ Dina Francesca Haynes (2009, pp. 50, 52, 69) said,

The line between human trafficking and other types of labor exploitation is often so fine that it took many legal experts many years to pin down exactly what legally differentiates trafficking from other types of exploitative relationships... governments fail to acknowledge that all trafficking is a byproduct of labor and migration. Victims of human trafficking are people who determined to improved their lives but had that desire exploited. Only the very rare few have been literally snatched or kidnapped by traffickers. Migrants suffer more easily and endure more severe forms of exploitation when their immigration status rests in the hands of their employers, regardless of whether the possibility of deportation is real or only feared. The uncertainty about status and deportation works to the advantage of users and exploiters. The more the user has the potential to wield personal control over the worker, and the less access the worker has to a support system, the higher the potential for and degree of exploitation. It is clear that employers understand that migrant and undocumented employees are cheaper, easier to control, and more exploitable, specifically due to their lack of immigrant status. Expanding opportunities to immigrate and obtain status, ones that do not tie victims’ statuses to their “employers,” could reduce the propensity of potential users to exploit migrants for domestic or sex work.

As acknowledged by the Supreme Court of Canada in 2012 in *Canada v Downtown Eastside Sex Workers United Against Violence Society*, there are several reasons why persons may not want to bring a legal challenge forward:

[71]...However, being a witness and a party are two very different things. In this case, the record shows that there were no sex workers in the Downtown Eastside neighbourhood of Vancouver willing to bring a comprehensive challenge forward. They feared loss of privacy and safety and increased violence by clients. Also, their spouses, friends, family members and/or members of their community may not know that they are or were involved in sex work or that they are or were drug users. They have children that they fear will be removed by child protection authorities. Finally, bringing such challenge, they fear, may limit their current or future education or employment opportunities (Affidavit of Jill Chettiar, September 26, 2008, at paras. 16-18 (A.R., vol. IV, at pp. 184-85)). As I see it, the willingness of many of these same persons to swear affidavits or to appear to testify does not undercut their evidence to the effect that they would not be willing or able to bring a challenge of this nature in their own names. There are also the practical aspects of running a major constitutional law suit. Counsel needs to be able to communicate with his or her clients and the clients must be able to provide timely and appropriate instructions. Many difficulties might arise in the context of individual challenges given the evidence about the circumstances of many of the individuals most directly affected by the challenged provisions.

In responding to *Bedford*, Parliament missed an opportunity to examine reform in a way that includes an examination of how criminal laws regarding sex work may be experienced differently by migrant and immigrant sex workers. For example, Katrin Roots writes that there is “an unmistakable parallel” between provisions in the *Criminal Code* prohibiting human trafficking and procurement for the purpose of sexual exploitation (2013, p. 40). In missing this “unmistakable parallel,” the legal reform that took place rendered migrant and immigrant sex workers invisible.

Further, discussions in court and at the legislature did not explore the myriad of intersections where immigration and criminal law meet. One example is how criminal charges and convictions can result in the finding of inadmissible for immigration, leading to the eventual removal of a person from Canada. The way in which immigration law may be implicated requires different discussions than how to deal with the issue of trafficking. While it is beyond the scope of this article to examine all of the potential issues that criminal law raise for migrant and immigrant sex workers, the foregoing suggests that changes to the law regarding sex work did not contemplate these matters. The next section briefly provides an overview of what was missed in these legal debates.

What the Legal Reform Project was Missing

How specifically the changes in the *Criminal Code* affect migrant sex workers is beyond the scope of this paper. This section of the article, however, provides a glimpse of the differential impacts the changes in law have on migrant sex workers and a sense of what kinds of evidence were missing in the legal reform processes that took place in *Bedford* and Parliament.

A glaring omission from the material, discussions and transcripts in both the courts and legislatures is that migrant and immigrant sex workers are subject to a legal regime that other citizen sex workers may not be: immigration law. When it comes to migrant and immigrant sex workers, power imbalances, exploitation, abuse and fear are intertwined and exacerbated by the precarious immigration status some have (Daway, 2010). Like many migrant workers, “Paid work is a primary axis of life for precarious migrants, and a venue through which they become socially and economically connected to Canada” and “non-permanent status influences [migrant workers’] decisions in a way that results not only in differential access to legal protections, but also in deskilling, job insecurity and decreased labour mobility” (Marsden, 2014, p. 33).

It is not just the lack or temporariness of status that is important, but the social identity and the legal consequences attached to that lack of status. Indeed, Sarah Marsden explains that, “Framing undocumented migrants as ‘illegal’” allows the government to allocate rights and entitlements differently between persons carrying different kinds of immigration status (Marsden, 2012, p. 209). Migrant and immigrant sex workers are no strangers to being treated as “illegal” not just because of the work they engage in but also because of their status (CBC News, 2015, May 11; McIntyre, 2015, May 13; Cheung, 2007). Fay Faraday (2012) writes, migrant workers’ insecurity is “an entirely foreseeable outcome” of choices made by legislators and governments.

At a minimum, legal reform should investigate, interrogate and critique proposed changes to law by looking at the intersection many migrant and immigrant sex workers find themselves in: where criminal law and immigration law meet and where racialized persons or persons with precarious status intersect with criminal law. Discussions during *Bedford* and in Parliament did not delve deeply into how *Criminal Code* provisions aimed at preventing, deterring and punishing for trafficking of persons would work with the amendments to the *Criminal Code* on sex work.¹¹ There was also no discussion on how the amendments work with various provisions in the

¹¹ There was a lack of discussion relating to the following *Criminal Code* provisions: s. 279.01 (trafficking of persons); s. 297.011 (trafficking of a person under the age of eighteen years); s. 279.02 (receiving a financial or other material benefit for the purpose of committing or facilitating trafficking in persons); s. 279.03 (withholding or destroying a person’s identity documents); s. 279.04 (definition of exploitation for trafficking offences).

Immigration and Refugee Protection Act. For example, how do the amendments interact with: (a) provisions that prohibit knowingly organizing the coming into Canada of one or more persons by means of abduction, fraud, deception, or use or threat of force or coercion; (b) section 196.1(a) which states that a “foreign national must not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages?”; (c) provisions that point to criminal charges and convictions to make findings that a person is inadmissible and therefore removable from Canada; (d) provisions that render children of migrant or immigrant sex workers subject to the same criminal or immigration legal consequences? There is existing literature that looks at these intersections (see, e.g., Bellissimo, 2011; Butterfly, n.d.; Canadian Council for Refugees, n.d.; Citizenship Canada 2016.; Gallagher & Pearson, 2010; Haynes, 2009; Lam, 2018, April; Lam, 2018, May; Legal Aid Ontario, n.d.; MacIntosh, 2006; Oxman-Martinez & Hanley, 2001; Sharma, 2003; SWAN, 2015; Thobani, 2001; UNHCR, 2001). When legal reform is undertaken a more concerted effort should be made to provide an intersectional approach and analysis of law’s impact with persons who are racialized and have precarious immigration status.

Conclusion: Building Inclusionary Evidence

This paper points out the invisibility of migrant and immigrant sex workers in the most recent legal reform project in Canada involving sex workers.

Graham Hudson and Emily van der Meulen argue that in looking at the formative questions before *Bedford*, the Supreme Court of Canada “rest[s] on the empirical claim that substantive law as well as processes of law-enforcement contribute to increased risk of violence and exploitation, as well as on the principle that any attempt to regulate sex work must consist with the maxim: “do not harm” (2013, p. 117). Further, Hudson and van der Meulen find that *Bedford* has enhanced the quality of the debates surrounding sex work by making them more inclusive of the perspectives of sex workers (2013, p. 115). If this is the case, it is important to consider whether the increased risk of violence and exploitation manifests in different ways for migrant and immigrant sex workers, and whether it can contribute to the future framing of criminal, immigration and other Canadian laws.

The discourse analysis conducted shows that not all perspectives of sex workers were included in the record for the litigation in *Bedford* and legislative debates leading to the amendments to the *Criminal Code*. The findings pose questions about what is missing from the legal considerations in the courts and in parliament, and how the law regarding sex work potentially poses harms not contemplated that violate the *Charter of Rights*

and Freedoms. This study provides fruit for discussion about including the differential experiences of sex workers that are racialized and have immigrant or precarious immigration status. Further, the paper contributes to wider discussions in a variety of contexts about whether and how legal reform is considering all those in the margins.

Knowing that the law may be challenged again in the future, what can be done to ensure migrant and immigrant sex worker voices are included? Is there a way to give migrant and immigrant sex workers recognition of their multiple identities as members of our communities (whether as citizens or non-citizens), workers, victims, mothers and sisters? This paper encourages future research to think about participant inclusive or subject-to-subject research and legal advocacy. The discussion here points out potential differential experiences that may merit inclusion.

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