

UNPACKING THE POWER OF LEGAL DEFINITION: CHANGING THE LEGAL NARRATIVE AROUND SEX TRAFFICKING AND SEX WORK IN CANADA

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Abstract

Human Trafficking is a growing crime worldwide, 71% of which is dominated by the crime of sex trafficking.¹ With recent Canadian legal cases such as Canada (Attorney General) v Bedford,² there is growing debate about sex trafficking and sex work. This paper will discuss legal and societal prejudice against sex trafficking and sex work in Canada using prior research and will discuss current statistics surrounding sex trafficking, human trafficking prosecutions, and police responses to sex trafficking and sex work. Using a sociolegal lens, this article will discuss how society's wide-ranging perceptions of sex work have influenced the law in recent decades, and how the law has come to shape society's current legal and moral prejudice against sex trafficking and sex work. Further, this paper will discuss how these perceptions have helped or hindered the work of law enforcement, crown attorneys and judges and will discuss how the law is not evolving at the same pace as the crime of human trafficking.

Keywords: Sex Trafficking; Sex Work; Human Trafficking; Criminal Justice.

Résumé

La traite des êtres humains est une activité criminelle croissante dans le monde entier, dont 71 % sont dominés par le trafic sexuel. Avec les récentes affaires judiciaires canadiennes telles que Canada (Procureur général) c. Bedford, le débat sur la traite des êtres humains et le travail du

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¹ Shana Conroy & Danielle Sutton. "Trafficking in persons in Canada, 2020", (9 June 2022), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00010-eng.htm>>.

² *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

sexe prend de l'ampleur. Cet article examine les préjugés juridiques et sociétaux à l'encontre du trafic sexuel et du travail du sexe au Canada en s'appuyant sur des recherches antérieures et examine les statistiques actuelles concernant le trafic sexuel, les poursuites pour trafic humain et les réponses de la police au trafic sexuel et au travail du sexe. En utilisant une optique sociojuridique, cet article examinera comment les perceptions très diverses de la société à l'égard du travail sexuel ont influencé le droit au cours des dernières décennies et comment le droit en est venu à façonner les préjugés juridiques et moraux actuels de la société à l'égard de la traite des êtres humains et du travail du sexe. En outre, cet article examinera comment ces perceptions ont aidé ou entravé le travail des forces de l'ordre, des procureurs de la Couronne et des juges, et comment le droit n'évolue pas au même rythme que le crime de traite des êtres humains.

Mots-clés : Trafic sexuel ; travail sexuel ; traite des êtres humains ; justice pénale.

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1. Introduction

While policies and legislation continue to be debated in Parliament, individuals working in the sex industry and victims of sex trafficking are at increased risk of sexual violence. However, moving forward in the fight against sex trafficking while protecting consensual sex workers and changing the legal narrative around both subjects remains under discussed. While this article does not intend to propose a solution to the issues surrounding sex trafficking and sex work, it seeks to educate readers on where Canada currently stands and what the path forward can and should look like.

2. What is Human Trafficking, by Legal Definition?

In 2005, Human Trafficking legislation was recognized in Canada. Section 279.01 (Trafficking of Persons) of the *Criminal Code of Canada* states that “[e]very person who recruits, transports,

transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence.”³

As per the Canadian Department of Justice, ‘sex trafficking is a form of human trafficking that includes profiting off the sexual services of an exploited person.’⁴ Exploitation, under Section 279.04(1) of the *Criminal Code of Canada* states that “*for the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.*”⁵”

3. Stats: Sex Trafficking in Canada

Most statistics focus solely on Human Trafficking as a whole rather than each type of trafficking individually. Measuring the scope of human trafficking in Canada is difficult, but experience from human trafficking investigations to date suggests that trafficking for sexual exploitation is more prevalent in Canada than trafficking for labour exploitation, particularly in large urban centres.⁶ As such, it is important to be critical of statistics presented below.

First, these figures represent *police-reported* cases over a specific time period and do not capture those reported by Non-Government Organizations, Service Providers, or other agencies

³ *The Criminal Code of Canada*, RSC, 1985, c. C-46, s. 279.01.

⁴ Federal/Provincial/Territorial Working Group on Trafficking in Persons, et al. *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*. 2016. Department of Justice Canada. *Open WorldCat*, <https://www.deslibris.ca/ID/248738>.

⁵ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.279.04(1)

⁶ Federal/Provincial/Territorial Working Group on Trafficking in Persons, et al. *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*. 2016. Department of Justice Canada. *Open WorldCat*, <https://www.deslibris.ca/ID/248738>.

that work with potential victims or actual victims of sex trafficking. Second, these statistics fall under the umbrella term of ‘Human Trafficking,’ which includes sex trafficking, labour trafficking, organ trafficking, debt bondage, serfdom, forced marriage, and domestic servitude. It is therefore important to recognize that while this paper discusses sex trafficking in particular, sex trafficking-specific statistics are not available even though it is the dominant form of human trafficking in Canada.

A 2020 report released by the Canadian Centre to End Human Trafficking, states the most common type of trafficking identified by the Centre in 2019-20 was sex trafficking (71%), followed by labour trafficking (7%).⁷ A 2020 police-report show[ed] that 96% of victims [were] women and girls.⁸ In 2021, police-reported incidents of human trafficking show[ed] that 24% of victims are girls under the age of 18, and 45% are women aged 18-24.⁹ However, those who work within the realm of Human Trafficking argue that the statistics released depict only a fraction of the trafficked population.¹⁰ With the increased public, legal, political, and social attention comes the increased call to prosecute and incarcerate human traffickers. Prosecution and incarceration is complex though and rushing the legal process may result in wrongful conviction, criminalization of consensual sex workers, and criminalization of sex trafficking victims/survivors.

⁷ Aziz Froutan. “Human Trafficking Trends in Canada (2019-2020)”, (26 September 2022), online: The Canadian Centre To End Human Trafficking <<https://www.canadiancentretoendhumantrafficking.ca/human-trafficking-trends-in-canada-2019-2020/>>.

⁸ Shana Conroy & Danielle Sutton. “Trafficking in persons in Canada, 2020”, (9 June 2022), online: Government of Canada, Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00010-eng.htm>>.

⁹ Shana Conroy. “Trafficking in persons in Canada, 2021”, (6 December 2022), online: Government of Canada, Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm>>.

¹⁰ National Institute of Justice, “Gaps in Reporting Human Trafficking Incidents Result in Significant Undercounting,” August 4, 2020, nij.ojp.gov: <https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting>

4. Stats: Sex Trafficking Prosecutions

One hurdle to undertaking a comparative analysis [of the types of human trafficking] is the lack of specific legislation on the [different types] of trafficking resulting in the absence of statistics including the number of police-recorded crimes, and the number of persons prosecuted and convicted.¹¹ While Canada is improving their methods of data collection, human trafficking remains an underreported crime.

Recent statistics in Canada showed that there were 3,541 police-reported incidents of human trafficking in Canada between 2011 and 2021.¹² In 2020, the Canadian government reported investigating a total of 515 incidents that led to 241 individuals charged with trafficking crimes (46%); this compared with 511 trafficking incidents investigated and 270 individuals charged in 2019 (52%) and 340 incidents investigated, and 236 individuals charged in 2018 (69%).¹³ In 2021, 552 incidents of Human Trafficking were reported to police.¹⁴ A 2018 Statistics Canada report found that only a few cases tried resulted in a guilty decision (29%).¹⁵ In 2020, a finding of guilt was less common for cases involving human trafficking (12%) than for those involving sex trade charges (33%) or violent charges (48%).¹⁶ Charges and/or convictions in human trafficking cases may be laid and/or prosecuted under trafficking specific or other non-trafficking-specific offences, such as kidnapping or aggravated sexual assault. In addition, the

¹¹ Kristina Kangaspunta. "Collecting Data on Human Trafficking: Availability, Reliability and Comparability of Trafficking Data." In: Savona, E.U., Stefanizzi, S. (eds) *Measuring Human Trafficking*. (Springer, New York, NY, 2007) https://doi.org/10.1007/0-387-68044-6_4

¹² Shana Conroy. "Trafficking in persons in Canada, 2021", (6 December 2022), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm>>.

¹³ "2022 Trafficking in Persons Report: Canada", online: US Department of State, Office to Monitor and Combat Trafficking in Persons. 2022 *Office to Monitor and Combat Trafficking in Persons* <<https://www.state.gov/reports/2022-trafficking-in-persons-report/canada/>>.

¹⁴ Shana Conroy. "Trafficking in persons in Canada, 2021", (6 December 2022), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm>>.

¹⁵ Adam Cotter. "Trafficking in persons in Canada, 2018", (23 June 2020), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00006-eng.htm>>.

¹⁶ Shana Conroy & Danielle Sutton. "Trafficking in persons in Canada, 2020", (9 June 2022), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00010-eng.htm>>.

number and type(s) of charges laid and reported by police may subsequently change (either at the pre-court stage or during the court process) by the time of conviction.¹⁷ Law enforcement face several barriers including evidentiary burdens and victim participation and are required to show evidence that trafficking is taking place before proceeding with a deeper investigation. These cases are slow-moving at best. According to Statistics Canada's 'Trafficking in Persons in Canada' 2021 report, between 2010/2011 and 2020/2021, the median length of time to complete a human trafficking case in adult criminal court was 382 days. This was more than twice as long as sex trade cases and other violent offence cases (147 and 181 days, respectively).¹⁸

While these statistics, at first glance, may appear to represent a 'failure' on law enforcement's end, they point to a changing legal system to be discussed in greater detail later in this article.

5. The Bedford Case: A Summary and Analysis

a. Summary

*Canada (Attorney General) v Bedford*¹⁹ (commonly referred to as simply '*Bedford*') is a Supreme Court of Canada Case from 2013. In the case, three current or 'former "prostitutes" brought an application seeking declarations that three provisions of the *Criminal Code of Canada*²⁰ criminalize various activities related to "prostitution", [and] infringe their rights under Section 7 (Everyone has the right to life, liberty and security of the person and the right not to be deprived

¹⁷ Federal/Provincial/Territorial Working Group on Trafficking in Persons, et al. *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*. 2016. Department of Justice Canada. *Open WorldCat*, <https://www.deslibris.ca/ID/248738>.

¹⁸ Shana Conroy. "Trafficking in persons in Canada, 2021", (6 December 2022), online: *Government of Canada, Statistics Canada* < <https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm> >.

¹⁹ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

²⁰ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46

thereof except in accordance with the principles of fundamental justice)²¹ of the *Canadian Charter of Rights and Freedoms* (henceforth referred to as ‘*The Charter*’).²² Specifically, Section 210 of the Criminal Code of Canada²³ made it an offence to keep or be in a bawdy-house; Section 212(1)(j)²⁴ prohibit[ed] living on the avails of “prostitution”; and Section 213(1)(c)²⁵ prohibit[ed] communicating in public for the purposes of “prostitution”.²⁶ The Complainants ‘argued that these restrictions on “prostitution” put the safety and lives of “prostitutes” at risk by preventing them from implementing certain safety measures such as hiring security guards or “screening” potential clients that could protect them from violence.’²⁷ They ‘also alleged that Section 213(1)(c) infringe[d] the freedom of expression guarantee under Section 2(b)²⁸ of *The Charter*, and that none of the provisions are saved under Section 1.²⁹ Section 2(b) of *The Charter* states that “everyone has freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication³⁰”; while section 1 states that “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a

²¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s7.

²² *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

²³ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.210 Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

²⁴ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.212(1)(j) Every one who lives wholly or in part on the avails of prostitution of another person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

²⁵ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.213(1)(c) Every person who in a public place or in any place open to public view stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

²⁶ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

²⁷ *Ibid.*

²⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s2(b)

²⁹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s1.

³⁰ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s2(b)

free and democratic society.³¹” In the end, the Supreme Court agreed with the Complainants and held that:

- 1) ‘The negative impact of the bawdy-house prohibition (Section 210) on the applicants’ security of the person is grossly disproportionate to its objective of preventing public nuisance.’ The harms to “prostitutes” identified by the courts [...], such as being prevented from working in safer fixed indoor locations and from resorting to safe houses, are grossly disproportionate to the deterrence of community disruption. Parliament has the power to regulate against nuisances, but not at the cost of the health, safety, and lives of “prostitutes.”³²
- 2) The purpose of living on the avails of “prostitution” prohibition in Section 212(1)(j) is to target pimps and the parasitic, exploitative conduct in which they engage. The law, however, punishes everyone who lives on the avails of “prostitution” without distinguishing between those who exploit “prostitutes” and those who could increase the safety and security of “prostitutes”, for example, legitimate drivers, managers, or bodyguards. It also includes anyone involved in business with a “prostitute”, such as accountants or receptionists. In these ways, the law includes some conduct that bears no relation to its purpose of preventing the exploitation of “prostitutes.” The living on the avails provision is consequently overbroad.³³
- 3) The purpose of the communicating prohibition in Section 213(1)(c) is not to eliminate street “prostitution” for its own sake, but to take “prostitution” off the streets and out of public view to prevent the nuisances that street “prostitution” can cause. The provision’s

³¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s1.

³² *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

³³ *Ibid.*

negative impact on the safety and lives of street “prostitutes”, who are prevented by the communicating prohibition from screening potential clients for intoxication and propensity to violence, is a grossly disproportionate response to the possibility of nuisance caused by street “prostitution”.³⁴

The court’s decision in *Bedford* does not mean that Parliament is precluded from imposing limits on where and how “prostitution” may be conducted as long as it does not infringe on the constitutional rights of “prostitutes.” The regulation of “prostitution” is a complex and delicate matter. It will be for Parliament, should it choose to do so, to devise a new approach, reflecting different elements of the existing regime.³⁵ In 2014, Sections 212³⁶ and 213(1)(c)³⁷ of the Criminal Code were repealed, and following suit shortly thereafter in 2019, Section 210³⁸ was repealed.

b. Analysis

Many sex workers wrote publicly of their support for the decision, calling it a “breakthrough” for sex workers’ rights,³⁹ and a “major victory by sex workers and their allies”.⁴⁰ However, there is great academic debate about the *Bedford* decision. Anti-human trafficking academics argue that ‘the bawdy-house and avails provisions helped facilitate Canada’s fight against sex trafficking[...],

³⁴ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

³⁵ *Ibid.*

³⁶ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.212(1)(j)

³⁷ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.213(1)(c)

³⁸ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.210

³⁹ Colin Perkel. “Sex workers now ‘real citizens’ after appeal court nixes ban on brothels”, (Global News, 26 March 2012), online: *Global News* <<https://globalnews.ca/news/226564/sex-workers-now-real-citizens-after-appeal-court-nixes-ban-on-brothels/>>.

⁴⁰ Hudson, Graham and van der Meulen, Emily. *Sex Work, Law, and Violence: Bedford v. Canada and the Human Rights of Sex Workers*, 2013 31-1 *Windsor Yearbook on Access to Justice* 115, 2013 CanLIIDocs 59, <https://canlii.ca/t/7hz>

even though the word “trafficking” itself was not included in the statutes.⁴¹ They state that as a result of the *Bedford* decision, ‘trafficking (generally) is thus effectively ignored in favor of a much more limited objective to “prevent community harms in the nature of nuisance,” or to deter “community disruption,” invoked by the Supreme Court when striking down the bawdy-house law.⁴² The Supreme Court’s disregard for trafficking is further contrasted by the Ontario Court of Appeal, that, when deciding to strike down the bawdy-house prohibition as applied to “prostitution”, implied that other laws “that deal directly with the critical issue of human trafficking” would be sufficient protection.⁴³ Despite the Human Trafficking provisions of the Criminal Code, (89%)⁴⁴ of Human Trafficking charges are stayed, withdrawn, dismissed or discharged. This begs the questions, ‘*is the Canadian criminal justice system responding accordingly?*’ and ‘*why are so few charges resulting in conviction?*’

6. Police Responses to Sex Trafficking

Police require evidence to knock down doors, and specific permissions to enter spaces such as strip clubs and massage parlours suspected of facilitating sex trafficking. Ontario’s Anti-Human Trafficking Strategy, 2020-2025 states that one of the key components of their strategy is ‘establishing a new intelligence-led joint forces investigations team from police agencies across Ontario, including the Ontario Provincial Police (OPP), municipal police services and First Nations police services.’⁴⁵ Alberta’s 9-point Action Plan to Combat Human Trafficking created a

⁴¹ Max Waltman, “*Assessing Evidence, Arguments, and Inequality in Bedford v. Canada.*” Harvard Journal of Law & Gender, Vol. 37, pp. 459-544 (2014)., Available at SSRN: <https://ssrn.com/abstract=2091216> or <http://dx.doi.org/10.2139/ssrn.2091216>

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Dyna Ibrahim. “*Trafficking in persons in Canada, 2019*”, (4 May 2021), online: *Government of Canada, Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm>>.

⁴⁵ “*Ontario’s anti-human trafficking strategy 2020-2025*”, online: *ontario.ca* <[207](https://www.ontario.ca/page/ontarios-anti-human-trafficking-strategy-2020-2025#:~:text=To%20combat%20the%20growing%20problem,supports%20and%20services%20in%20Canada.>>.</p>
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provincial Human Trafficking Task Force to share information and coordinate action on an ongoing basis.⁴⁶ British Columbia's Action Plan to Combat Human Trafficking⁴⁷ outlines monitoring of human trafficking investigations and prosecutions and increased training for frontline law enforcement and service providers, while Manitoba's Sexual Exploitation Strategy (Tracia's Trust)⁴⁸ calls for increased education for law enforcement, compassion from law enforcement, and collaboration with law enforcement. There is movement across all sectors; political, legal, economic, and social, to prevent and eradicate trafficking in Canada, but as the timeline above demonstrates, the end goals take time.

Academics who focus on Human Trafficking related work call law enforcement efforts into question. Katrin Roots argues that the police play a key role in dictating what is and is not Human Trafficking. 'The police [...] determine the strategies of application for combating trafficking, including how investigations should be conducted, what evidence is required to lay charges, and how to best obtain it.'⁴⁹ Roots argues that the mundane on-the-ground motivations of front-line police, including pressures to demonstrate effective anti-trafficking police work and competition with other police forces for arrest numbers and resources⁵⁰ can ultimately lead to the justification of troubling investigation tactics and interrogation methods.⁵¹

As a result of the changing legal and social narratives (and prejudice) around sex trafficking, sex work, and the saviour complexes associated with the trafficking narratives, there has been an increase in the amount of police-reported human trafficking, and thus, an increase in

⁴⁶ "Human trafficking action plan", online: *Alberta.ca* <<https://www.alberta.ca/human-trafficking-action-plan.aspx>>.

⁴⁷ "B.C.'s Action Plan to Combat Human Trafficking", online: *www.gov.bc.ca* <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/about-us>>

⁴⁸ "Tracia's Trust: Manitoba's Sexual Exploitation Strategy", online: *www.gov.mb.ca* <<https://www.gov.mb.ca/fs/traciastrust/>>

⁴⁹ Katrin Roots. *The Domestication of Human Trafficking: Law, Policing and Prosecution in Canada* (Toronto, ON: University of Toronto Press, 2022) at 73.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

human trafficking cases in the Canadian Criminal Justice System. The challenge is that as these cases work their way through the Criminal Justice System, police efforts may result in lesser charges. This may shed some light on why many charges are stayed, withdrawn, discharged, or dismissed. There are other points to consider, such as a lack of evidence (both hearsay and physical), and victim participation, but Roots' work provides an explanation of how law enforcement on the ground operates when investigating and attempting to secure prosecutions against traffickers.

A study released by the Royal Canadian Mounted Police ('RCMP) in 2010, found that owner-operators are well-versed in the loopholes of municipal by-laws and licensing that regulate therapeutic establishments where sex trafficking may occur⁵² and even when traffickers use fronts such as "massage parlours," though they "offer illicit services," they are usually found with valid business licenses, offering services like 'acupuncture' or 'aromatherapy' performed by licensed masseuses.⁵³ With the COVID-19 pandemic, there has been a shift in the ways in which Human Traffickers operate. According to Cybertip Canada, since the pandemic, there has been an 88% increase in sextortion⁵⁴. Technology affords traffickers the ability to recruit victims without face-to-face interaction, thereby reducing the risk of being detected by law enforcement agencies.⁵⁵ Coupled with stiff competition for funding and resources, there is an increased need to have an

⁵² Waltman, Max. "Assessing Evidence, Arguments, and Inequality in *Bedford v. Canada*." Harvard Journal of Law & Gender, Vol. 37, pp. 459-544 (2014)., Available at SSRN: <https://ssrn.com/abstract=2091216> or <http://dx.doi.org/10.2139/ssrn.2091216>

⁵³ *Ibid.*

⁵⁴ Cybertip Canada "National tipline sees rise in reports of sextortion"(2021) online: <https://www.cybertip.ca/en/campaigns-and-media/news-releases/2021/safer-internet-day-2021/>

⁵⁵ Europol Operations Directorate. "The challenges of countering human trafficking in the digital era", Europol, (October 2020) online: <https://www.europol.europa.eu/media-press/newsroom/news/challenges-of-countering-human-trafficking-in-digital-era>

airtight case before proceeding to trial. If this is not an attainable objective, plea deals are struck for lesser charges, such as mischief or harassment.

Traffickers may force or require a victim to commit other crimes such as theft, drug related offenses and even recruitment. This may deter some survivors from reporting to police due to a fear of being charged criminally.⁵⁶ Combined with the above and being manipulated, coerced, not having access to resources, and being abandoned by their families, many victims may not trust law enforcement.

7. Police Responses to Sex Work

The institution of policing has faced criticism in recent decades. For sex workers, *‘the current legislative context leads them to mistrust police officers, further isolate themselves, and practice their trade under conditions in which the risks of abuse increase, as to which the number of murders of sex workers unfortunately attests.’*⁵⁷ Sex workers have faced mounting public scrutiny and prejudice, despite efforts to recognize that it is ‘the oldest profession in the books.’⁵⁸ Reports of sex workers being assaulted, intimidated, threatened, harassed, experiencing unwarranted searches of their workplaces and belongings, destruction, or theft of property, arbitrary or disproportionate application of the law, retaliated against and extorted⁵⁹ are plentiful.

⁵⁶ The Canadian Centre to End Human Trafficking, *‘Why Victims and Survivors of Human Trafficking May Choose not to Report’*, (18 November 2020), online: <https://www.canadiancentretoendhumantrafficking.ca/why-victims-and-survivors-of-human-trafficking-may-choose-not-to-report/#:~:text=Victims%20and%20survivors%20of%20human%20trafficking%20may%20not%20trust%20law,again%20a%20report%20to%20police.report/#:~:text=Victims%20and%20survivors%20of%20human%20trafficking%20may%20not%20trust%20law,again%20a%20report%20to%20police>.

⁵⁷ Colette Parent, Chris Bruckert, Patrice Corriveau, Maria Nengeh Mensah and Louise Toupin, *‘Sex Work: Rethinking the Job, Respecting the Workers’* (Vancouver, BC: UBC Press, 2013) at 36.

⁵⁸ Robinson, William J. (William Josephus), 1929. *The Oldest Profession in the World; Prostitution; Its Underlying Causes, Its Treatment and Its Future*.

⁵⁹ Canadian HIV/AIDS Legal Network. *‘The Perils of “Protection”: Sex Workers Experience of Law Enforcement in Ontario’*, www.actioncanadashr.org/sites/default/files/2019-04/2807_HIVLegalNetwork_SexWorkerDocumentation_Report_English_Final.pdf

This mistrust creates barriers for sex workers. Officials can be bought off, laws against trafficking are weak, and attitudes toward violence against women are indifferent at best,⁶⁰ leading to unreported crimes out of fear of being criminally charged with “prostitution” or other related offences. In a five city Canadian study and subsequent 2021 report of sex workers who had experienced violence or confinement at work in the past 12 months, only 16.5% reported the incident to police. Of these, less than a third had a positive experience.⁶¹ Many sex workers report feeling discriminated against and unfairly charged by law enforcement because of their work in the sex industry. This creates a dangerous space for sex workers and trafficking victims. If charges are laid and result in a finding of guilt, a sex worker may end up with a criminal record. This can force them further underground, increasing risks to health and safety and preventing safe exit from the sex industry due to the handicap of a criminal record.⁶²

8. The Criminal Justice System vs Sex Trafficking

The Canadian Criminal Justice has seen a vast increase in the amount of Human Trafficking cases since 2005. Authors Chris Bruckert, Katrin Roots, and Jo Doezma argue that with increased political, legal, and social attention to the issue of sex trafficking in Canada, there is increased *moral panic* about who is and who is not being exploited. With this increased moral panic and prejudice, comes an increase in the laying of human trafficking charges, which ultimately results in increased pressure for Judges and Crown Attorneys to prosecute and imprison human traffickers.

⁶⁰ Cheryl O'Brien. “*An Analysis of Global Sex Trafficking.*” Indiana Journal of Political Science, 2008-09.

⁶¹ Anna-Louise Crago, Chris Bruckert, Melissa Braschel, Kate Shannon. 2021. “*Sex Workers’ Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an ‘End Demand’ Criminalization Model: A Five City Study in Canada.*” Social Sciences 10:13. <https://doi.org/10.3390/socsci10010013>

⁶² Colette Parent, Chris Bruckert, Patrice Corriveau, Maria Nengeh Mensah and Louise Toupin, “*Sex Work: Rethinking the Job, Respecting the Workers*” (Vancouver, BC: UBC Press, 2013) at 39.

When human trafficking cases enter a courtroom, there are four main issues that Judges and Crowns face: 1) a Criminal Justice System that moves at glacial speed, 2) overbroad Criminal Code definitions and provisions, 3) a lack of trauma-informed and survivor-informed training and 4) increased pressure to prosecute sex traffickers.

a. (Not) Full Speed Ahead: A Criminal Justice System that Moves at Glacial Speed

Human Trafficking cases in adult Criminal Court take an average of 382 days to conclude.⁶³ Crown Attorneys face issues identifying perpetrators, gathering sufficient evidence, and getting ‘victims [to agree] to act as witnesses and then being available for the trial.’⁶⁴ These issues cause long adjournments, so a trial moves along slowly. Without the above requirements, a case will not proceed to trial, resulting in no convictions. This comes at great emotional and psychological cost for survivors and victims of Human Trafficking.

b. A Defence Attorney’s Playground: Overbroad Criminal Code Definitions and Provisions

The Criminal Code definitions relating to Human Trafficking are often deemed ‘open to interpretation.’ While there is much debate around the words ‘recruits’, ‘transports’, ‘transfers’, ‘receives’, ‘holds’, ‘conceals’, ‘harbours’ and ‘exercises control’, the real issue is the term exploitation. Establishing exploitation requires that the accused trafficker engaged in conduct that “in all the circumstances, could reasonably be expected to cause the other person to fear for their

⁶³ Shana Conroy. “*Trafficking in persons in Canada, 2021*”, (6 December 2022), online: *Government of Canada, Statistics Canada* < <https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm> >.

⁶⁴ National Audit Office, “*Reducing Modern Slavery*” (HC 630, 2017) para. 4.9. online: <https://www.nao.org.uk/reports/reducing-modern-slavery/>

safety.’⁶⁵ Arguably, this puts an unfair burden on the Crown (and the Victim) to prove a state of fear existed that made the victim unable to exit. From what research and survivor experiences show, most trafficking survivors were in love with their trafficker - a key impediment to advancing criminal charges.⁶⁶ Defence Attorneys use the Criminal Code provisions against victims of Trafficking by making it seem as though they willingly and consensually participated in sexual acts for the ‘love of their trafficker’ or for personal financial gain. Judges must read legal language to the letter. While they can exercise some discretion in their decision-making, Judges must come to a fair verdict and if a Defence Attorney can prove that the acts in question fall outside of the scope of the Human Trafficking provisions, the Judge will have to conclude accordingly. As discussed in the statistical analysis section of this paper, we cannot take current statistics around Human Trafficking prosecutions at face value as they do not represent the challenges that Judges and Crown Attorneys face when dealing with these cases in court.

c. For the Sake of Survivors: Training Legal Bodies on a Complex Crime

In recent years, jurisdictions across Canada have increased and rewritten training programs specific to the crime of Human Trafficking. The Canadian Judicial Council offers a (small) variety of human trafficking-related judicial training for Federally Appointed judges.⁶⁷ Many provinces, such as Alberta⁶⁸, Ontario⁶⁹ and British Columbia’s⁷⁰ Action Plans place emphasis on training and

⁶⁵ Julie Kaye and Bethany Hastie. “*The Canadian Criminal Code Offence of Trafficking in Persons: Challenges from the Field and within the Law*” at 94. *Social Inclusion Journal* Vol 3, No 1(2015): Perspectives on Human Trafficking and Modern Forms of Slavery. Available at Doi: 10.17645/si.v3i1.178

⁶⁶ *Ibid.*

⁶⁷ Canadian Judicial Council, Professional Development. Available online: <https://cjc-ccm.ca/en/search?keywords=human%20trafficking&page=1>

⁶⁸ “*Human trafficking action plan*”, online: *Alberta.ca* <<https://www.alberta.ca/human-trafficking-action-plan.aspx>>.

⁶⁹ “*Ontario’s anti-human trafficking strategy 2020-2025*”, online: *ontario.ca* <<https://www.ontario.ca/page/ontarios-anti-human-trafficking-strategy-2020>

2025#:~:text=To%20combat%20the%20growing%20problem,supports%20and%20services%20in%20Canada.>.

⁷⁰ “*B.C.’s Action Plan to Combat Human Trafficking*”, online: *www.gov.bc.ca*

<<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/about-us>>

education for judicial bodies who deal with human trafficking cases. Educators, non-profits and service providers stress the importance of trauma-informed and survivor-led training. While important, there remains a gap in judicial training that focuses on consensual sex work and how to avoid criminally charging consensual sex workers and sex trafficking victims who may have become involved in a Human Trafficking operation while being trafficked. Without increased training for Criminal Justice actors, prejudice against sex work and sex trafficking remains a possibility.

d. “It’s a Legal System, not a Justice System”: Dealing with Social Pressures

For survivors, the court process is a gruelling one, but there are signs of improvement. Canada’s broad legal framework includes a variety of provisions to assist a victim or witness to testify in a criminal proceeding against a trafficker. Research demonstrates that when victims are supported through the criminal justice process, there is an increased likelihood that they will support the prosecution.⁷¹ Social prejudice around ‘who is a victim’ puts burdens and stress on victims of sex trafficking and on consensual sex workers. It can deter victims from pursuing legal action. It is crucial to quash social prejudices, allowing victims to pursue justice without fear of judgment, stigmatization or re-traumatization. In the following sections, this paper will discuss moral and social debates on sex trafficking and how we can eliminate social prejudice to make justice more accessible and attainable for victims.

⁷¹ Federal/Provincial/Territorial Working Group on Trafficking in Persons, et al. “*A Handbook for Criminal Justice Practitioners on Trafficking in Persons*.” 2016. Department of Justice Canada. *Open WorldCat*, <https://www.deslibris.ca/ID/248738>.

9. Sex Trafficking vs Sex Work: Current Moral & Social Debates

There are two prominent social positions on sex work: those against it and those for it. This paper will only discuss these two positions in detail.

Anti-sex work activists see sex work as inherently exploitative. They believe that the buying of sexual services from a person working in the sex industry should *not* be legal. Authors argue that anti-sex work groups operate within the victim paradigm, giving women nothing but victimhood and hopelessness and blaming men, traffickers, and the political economy for the plight of these women.⁷² This narrative suggests that traditionally and historically, sex work was largely governed by conceptions of this work as immoral and was reflective of religious beliefs and commitments.⁷³ Many anti-trafficking groups argue that no individual grows up wanting to work in the sex industry. This is a simple concept to understand when you consider that most children grow up wanting to be an astronaut or a doctor, but discourses have changed in the past 30 years or so due to various factors, including women's rights movements,⁷⁴ shifts in the geography and forms of "prostitution",⁷⁵ increased awareness of the links between "prostitution", laws, and violence,⁷⁶ and the advent of *the Charter*. We must approach this topic with empathy and understanding, and work to amplify both consensual sex workers and sex trafficking victims' voices to understand why an individual may engage in sex work, and in many instances, how they may have become trafficked as a result of working in the sex industry.

⁷² Annie George., Vindhya Undurti, Sawmya Ray, "Sex trafficking and sex work: Definitions, debates and dynamics - A review of literature." *Economic and Political Weekly* (2010). 45. 64-73.

⁷³ Amin R. Yacoub, "Consensual sex work: An overview of sex-workers' human dignity in law, philosophy, and Abrahamic religions", *Women's Studies International Forum*, Volume 76, 2019. DOI: <https://doi.org/10.1016/j.wsif.2019.102274>

⁷⁴ Carol Vance, ed, "Pleasure and Danger: Exploring Female Sexuality" (Boston: Routledge, 1984); Varda Burstyn, ed, *Women Against Censorship*" (Toronto: Harper Collins, 1985); Laurie Bell ed, *Good Girls/Bad Girls: Feminists and Sex Trade Workers Face to Face* (Toronto: Seal Press, 1987).

⁷⁵ *R v Hutt* (1978) 38 CCC (2d) 418, [1978] 2 SCR 476

⁷⁶ John Lowman, "Violence and the Outlaw Status of (Street) Prostitution in Canada." *Violence Against Women*, 6(9), 987-1011. <https://doi.org/10.1177/10778010022182245>

Governmental bodies should focus on the difference between sex trafficking and sex work, and should focus on making resources available and accessible for consensual sex workers, while passing legislation that punishes traffickers and protects victims of sex trafficking.

Pro-sex work activists argue that sex work is always consensual and believe if the sex work in question does not have consent, then it is exploitation. They argue that workers in the sex industry should be afforded the same protective rights as every other occupation and call for legislation and policy accordingly.

Prior to *Bedford*,⁷⁷ work in the sex industry was legal, but the laws made almost every activity related to “prostitution” illegal. This meant that, in practice, “prostitution” was prejudicially treated as criminal activity.⁷⁸ Society views consensual sex work as a ‘dirty job,’ which marginalizes consensual sex workers and allows people to get away with exploiting, humiliating, harassing, and physically abusing them.⁷⁹

a. So, What is the Difference?

There is no consensus on where the line between sex work and sex trafficking is drawn. Most pro-sex work activists believe that trafficking and sex work are different. They view trafficking as forced “prostitution” involving coercion, deceit, and exploitation; and they contend that sex work is legitimate labour - based on women's use of their bodies as sources of income involving their own decision and consent.⁸⁰ I argue that emphasis should be placed on the following elements: coercion versus consent, and employment versus exploitation. Was coercion a driving factor

⁷⁷ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

⁷⁸ Ontario Women's Justice Network, “*Sex Work Laws Unconstitutional: Canada (Attorney General) v. Bedford*, Supreme Court of Canada 2013”, (15 December 2022), online: *Ontario Women's Justice Network* <<https://owjn.org/2015/10/01/sex-work-laws-unconstitutional-canada-attorney-general-v-bedford-supreme-court-of-canada-2013/>>.

⁷⁹ *Ibid.*

⁸⁰ Annie George, Vindhya Undurti, Sawmya Ray, “*Sex trafficking and sex work: Definitions, debates and dynamics - A review of literature.*” *Economic and Political Weekly* (2010). 45. 64-73.

behind the sexual act in question, or was there informed and ongoing consent? Was this individual being exploited or trafficked, or were they engaging in sexual activity for personal financial gain? Although consent is thought to be irrelevant in trafficking cases since one cannot consent to being trafficked, the distinction between sex work and trafficking established by the Trafficking Protocol (2000) revived its relevance.⁸¹ In 2000, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁸² (henceforth known as ‘The Palermo Protocol’) was the first international legal document that recognized the crime of Human Trafficking and established an internationally accepted definition of Human Trafficking. However, since Canada ratified it in 2002, there is extensive literature on whether or not the Palermo Protocol is consistent in its attempt to specifically define the term exploitation.⁸³

We must do away with social prejudices and labels, because victimisation labels deny women's agency.⁸⁴ Thus, pro sex work activists and consensual sex workers call for their empowerment by approaching the issue from the women's perspective, particularly human rights, and health perspectives.⁸⁵ Our initiatives to end sex trafficking should focus on providing increased resources, quashing social prejudices around victimhood and work in the sex industry, and should ensure that sex workers and sex trafficking victims’ voices are front and centre as we charge ahead in this research and subsequent legislation and/or policy.

⁸¹ Katrin Roots. *The Domestication of Human Trafficking: Law, Policing and Prosecution in Canada* (Toronto, ON: University of Toronto Press, 2022) at 105.

⁸² UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <https://www.refworld.org/docid/4720706c0.html>

⁸³ Shoaps, L. (2013). Room for improvement: Palermo protocol and the trafficking victims protection act. *Lewis and Clark Law Review*, 13(3), 931–972. Retrieved from <https://law.lclark.edu/live/files/15325-lcb173art6shoaps.pdf>

⁸⁴ Smarajit Jana, Nandinee Bandyopadhyay, Mrinal Kanti Dutta, Mrinal, Amitrajit Saha, “*A tale of two cities: Shifting the paradigm of anti-trafficking programmes*”, *Journal of Gender and Development*, Vol. 10 (2002). DOI:10.1080/13552070215887

⁸⁵ *Ibid.*

None of this solves the greater issue of why there is such a demand for sex. Discourse highlights that the internet is easily accessible to most Western men, and the sex industry has created a greater demand for sex trafficking by advertising women on pornographic websites, thereby normalizing the buying of sexual services for more men.⁸⁶ I suggest increased research to determine why boys and men are the dominant buyers of sex, and how/why some people become traffickers. This may help us understand the sexual needs of Canadian society and provide adequate measures and actionable items to make consensual sex work safer, and the eradication of sex trafficking attainable.

There is debate as to whether making sex work safer through legalization and decriminalization will help eliminate sex trafficking, which I turn to next.

10. Sex Trafficking vs Sex Work: Current Legal Debates

The legalities around sex work and sex trafficking are complex. The following section will analyze positions on sex work such as legalization, decriminalization, partial decriminalization, and *Bill C-36: the Protection of Communities and Exploited Persons Act*.⁸⁷

a. Legalization

The legalization of sex work in Canada would include regulating and controlling “prostitution” by means of licensing brothels [or other establishments where sex work takes place], which are to abide by various health and safety regulations.⁸⁸ This is an approach that the Netherlands has sought to achieve, but this initiative saw the flourishing of illegal “prostitution” outside of the

⁸⁶ Cheryl O'Brien. “*An Analysis of Global Sex Trafficking*.” *Indiana Journal of Political Science*, 2008-09.

⁸⁷ *Protection of Communities and Exploited Persons Act*, SC 2014, c 25, <<https://canlii.ca/t/52m3r>>

⁸⁸ Benjamin Perrin. “*Oldest Profession or Oldest Oppression? Addressing Prostitution After the Supreme Court of Canada Decisions in Canada v Bedford*” at 10. MacDonald-Laurier Institute (2014) Retrieved from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2387042

legalized sector.⁸⁹ This indicates that regardless of regulation, a black market for sex still exists, and where there is a black market for sex, there is sex trafficking. While sex workers argue that regulation/legalization would make it safer for them to engage in the work they do, anti-trafficking movements argue that it does nothing to end human trafficking.

b. Decriminalization

Decriminalization of sex work includes removing criminal penalties for the buying and selling of sex. New Zealand decriminalized adult sex work in 2003 and implemented a licensing regime for brothels. Licensing is not required for “small” brothels that have four or fewer “prostitutes.”⁹⁰ According to analysis from *Bedford*,⁹¹ post-decriminalization, New Zealand reported an increased likelihood of “prostitutes” reporting violence to police and brothels possessing “safer sex” items. It also reported seeing no distinct increase in human trafficking. Unlike the Netherlands, New Zealand aimed to stop the sex industry from going underground by trying to create safer and healthier environments for persons selling sexual services through its decriminalization.⁹² However, while this approach has been praised as a positive outcome in some regards, Justice Himel of the Supreme Court of Canada found that despite decriminalization, “prostitutes” continue to suffer “incidents of violence, threats, forcible confinement, theft, and refusal to pay for services”, particularly among street-based “prostitutes.”⁹³ As such, there is debate as to whether decriminalization in Canada would make work in the sex industry safer, and whether full

⁸⁹ Benjamin Perrin. “*Oldest Profession or Oldest Oppression? Addressing Prostitution After the Supreme Court of Canada Decisions in Canada v Bedford*” at 11. MacDonald-Laurier Institute (2014) Retrieved from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2387042

⁹⁰ *Ibid.*

⁹¹ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

⁹² Lara Coleman, “Prostitution: A Review of Legislation in Selected Countries.” *Library of Parliament Hill Studies: Legal and Social Affairs Division* (Ottawa, Ontario, Canada, 2022) at 9. Online at: https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202221E

⁹³ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

decriminalization would end sex trafficking.. Those against decriminalization oppose legalization because they believe the disappearance of legal barriers will remove the social and ethical barriers of treating women as sexual commodities and serve as a magnet for increased sex trafficking. To put an end to sex trafficking, they insist on legal reforms and strict laws as well as job training, and assistance and rehabilitation for women who have been “prostituted.”⁹⁴

c. Partial Decriminalization

Canada’s current laws allow for partial decriminalization. This, as seen in the 1999 Swedish Sex Purchase Act⁹⁵ [...] makes it illegal to obtain a casual sexual relation in return for payment, [therefore] criminalizing the buyers (presumed to be men) but not the sellers (presumed to be women) of sexual services.⁹⁶ Following the *Bedford* decision in 2013,⁹⁷ a new bill was introduced one year later in 2014, *Bill C-36: Protection of Communities and Exploited Persons Act* (“PCEPA”). This model of partial decriminalization has received its fair share of criticism, as explained below.

d. Bill C-36: Protection of Communities and Exploited Persons Act

Assented to in November 2014 and still in force today, *Bill C-36: Protection of Communities and Exploited Persons Act*⁹⁸ (“PCEPA”) makes the selling of sex legal, but the purchasing of sex

⁹⁴ Annie George., Vindhya Undurti, Sawmya Ray, “*Sex trafficking and sex work: Definitions, debates and dynamics - A review of literature.*” Economic and Political Weekly (2010). 45. 64-73.

⁹⁵ Government of Sweden, “*Kännedom om prostitution*” 1998–1999.

⁹⁶ Chris Bruckert, Stacey Hannem, “*Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work.*” *Canadian Journal of Law and Society / La Revue Canadienne Droit Et Société*, 28(1), 43-63. (2013) doi:10.1017/cls.2012.2

⁹⁷ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

⁹⁸ Protection of Communities and Exploited Persons Act, SC 2014, c 25, <<https://canlii.ca/t/52m3r>>

illegal in Canada. However, some activities related to sex work remain illegal, as reflected in the following sections of the *Criminal Code of Canada*:

- **286.1** – Obtaining sexual services for consideration⁹⁹
- **286.1(2)** – Obtaining sexual services for consideration from person under 18 years¹⁰⁰
- **286.2 (1)**– Material benefit from sexual services¹⁰¹
- **286.2 (2)** – Material benefit from sexual services provided by person under 18 years¹⁰²
- **286.3 (1)** – Procuring¹⁰³
- **286.3 (2)** – Procuring — person under 18 years¹⁰⁴
- **286.4** – Advertising sexual services¹⁰⁵
- **213(1.1)** – Communicating to provide sexual services for consideration¹⁰⁶

For consensual sex workers, this has become another barrier to engaging in their work safely, as it drives buyers underground and can cause dangerous situations, such as violence during the initial purchasing phase. Pro-sex work activists argue that legalization of sex work [...] helps sex workers protect their rights and helps as well in combating trafficking.¹⁰⁷ Anti-sex work and anti-human trafficking advocates argue that PCEPA’s new objectives [...] to protect communities, to reduce demand for sexual services, to recognize the social harm caused by the objectification of the human body and the commodification of sexual activity, and to protect individuals selling sex, who are

⁹⁹ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.1

¹⁰⁰ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.1(2)

¹⁰¹ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.2 (1)

¹⁰² *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.2 (2)

¹⁰³ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.3 (1)

¹⁰⁴ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.3 (2)

¹⁰⁵ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.286.4

¹⁰⁶ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46, s.213(1.1)

¹⁰⁷ Annie George., Vindhya Undurti, Sawmya Ray, “*Sex trafficking and sex work: Definitions, debates and dynamics - A review of literature.*” *Economic and Political Weekly* (2010). 45. 64-73.

considered to be victims of sexual exploitation¹⁰⁸ is the best available model, especially as it relates to the protection of women, children, and youth,¹⁰⁹ in the fight against sex trafficking.

Sex work is a controversial topic, one that provokes heated and heartfelt debate about morality, equality, personal autonomy, and public safety.¹¹⁰ This article highlights how we can create change in legal and social frameworks when discussing sex trafficking and sex work in Canada but does not seek to answer to one side or the other of this debate. Most importantly, it brings attention to the existing social and legal prejudice against consensual sex workers and, victims and survivors of sex trafficking.

11. How the Law Shapes Society's Perceptions of an Issue

The law has an impact on how society views an issue and outlines what is right and wrong. *The Criminal Code of Canada*¹¹¹ identifies criminal activity, what the limitations of an act are, and what the penalties are for breaking it.

In terms of sex work, the law currently tells us that while it is illegal to buy sex, it is not illegal to sell it. After decades of women's rights and pro-sex work movements, past laws shaped perspectives on sex work but the stigmatization has been passed down by generations. Despite the changes in the *Criminal Code* since *Bedford*,¹¹² many Canadians still feel contempt and prejudice for the sex trade. Society and culture make sex workers invisible and therefore, by disdain, these

¹⁰⁸ The House of Commons Standing Committee on Justice and Human Rights, "Preventing Harm in the Canadian Sex Industry: A Review of The Protection of Communities and Exploited Persons Act" online: <https://www.ourcommons.ca/DocumentViewer/en/44-1/JUST/report-4/page-33#4>

¹⁰⁹ Paul Brandt, "A Brief Submitted to The House of Commons Standing Committee on Justice and Human Rights for Deliberation on the Review of The Protection of Communities and Exploited Persons Act (PCEPA)". online: <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11602471/br-external/BrandtPaul-e.pdf>

¹¹⁰ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101 at para. 9.

¹¹¹ *The Criminal Code of Canada*, R.S.C., 1985, c. C-46

¹¹² *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

workers are not subject to the assumed rights and protection that other workers in Canada are. The very nature of their work makes them prone to criminal repercussions and social backlash.

We need to better define the sex work sector by removing the negative connotations associated with words like “prostitution.” “Prostitution” may be the oldest trade in history but it is excluded from mainstream society, casting sex workers into marginalized sectors, excluding them from basic human rights, and exposing them to exploitation. If politicians were to change the narrative around the term “prostitution”, they might influence society’s antiquated stigmas, while addressing the basic human rights and labour standards (i.e. regulated working conditions).

There is no question that the sex trafficking of individuals is inherently wrong. However, it is important to analyze statistics released by Government agencies and to understand the complex and personal nature of the crime. Sex trafficking is not sex work, and the conflation between the two can do more harm than good. To protect consensual sex workers and make justice accessible for sex trafficking victims, we must be willing to do away with the biases that our laws are riddled with. We must look to the law for guidance, but not certainty until all voices are heard.

12. How Social Perceptions Shape the Law

Social perceptions influence dress codes, music, and our beliefs, which shape our core values and behaviours. As subjects in mainstream society become more accepted by citizens, the laws have a habit of being reformed to fit new societal standards.

We talk about sex work and sex trafficking, which are prejudicial in nature, but while many sex workers perform their jobs based on consent, sex trafficking victims do not. This is incredibly misunderstood. Existing laws offer no differentiation between consent and non-consent. When the

“prostitution”- related offences were introduced into the *Criminal Code* In 1892¹¹³ - 131 years ago - they were formed to support society’s moral beliefs that “prostitution” was gaudy, atrocious and did not support our moral high ground. Today, perceptions are changing. Sex workers want changes that reflect their rights to sell their bodies while being afforded basic human rights.

We cannot ignore these different stages. Citizens must vote for a government that understands the issues and is looking to redefine the antiquated laws that exist while clearly outlining what needs to be done for sex workers and the appropriate steps that can be taken against those that choose to traffic.

13. Changing a Legal Narrative and Changing a Social Narrative Around Sex

The only way to do this is by rewriting existing laws to support sex workers' basic human rights and to form new laws that do not support traffickers. This work must include the voices of sex workers and sex trafficking survivors. The negative labelling and narratives around victimhood cannot exist if we are going to change a legal narrative. If the laws are changed, the antiquated use of terms like “prostitution” and ‘hookers,’ among others, should also change.

So, how does one change a legal narrative? By changing a social narrative around sex, sex work, and sex trafficking, for starters. Changing the legal narrative in Canada will require the deconstruction and reconstruction of the social narratives and prejudices around sex trafficking and sex work. Canadians must get comfortable with conversations around topics such as: 'sex trafficking', and 'sexualization in the media'. I offer the following suggestions:

¹¹³ James Robertson, “Prostitution” (2003) online: <https://publications.gc.ca/Collection-R/LoPBdP/CIR/822-e.htm>

a. Get Involved/Stay Educated

Join a local coalition or action group; go to parades and (peaceful) protests; attend meetings where sex trafficking survivors and active or inactive sex workers speak about their experiences. Listen intently and be open to changing your perspective.

Read the news, stream court decisions, and stay up to date on legislation, policies, and perspectives. Educate those around you. Many people do not know what sex trafficking looks like or how complex the realities of sex trafficking and sex work are. It is of vital importance to educate youth in our communities on the signs and dangers of sexual exploitation, while also including cross-sectoral education for employees who work in industries where they may knowingly or unknowingly come in contact with someone who is at risk of or actively being trafficked. Staying silent on sensitive subjects can be detrimental to those in our communities. If you learn something about sex trafficking or sex work, or if you have a strong opinion on either matter – voice it.

b. Submit briefs to Parliament

There are many standing committees and working groups in the Canadian Parliament that conduct studies on sensitive subjects such as sex trafficking and sex work. These committees often seek public opinion on an issue before the committee through parliamentary briefs. Parliamentary briefs open the floor to organizations and individuals to have a voice. I invite readers to conduct research on the standing committees that the Canadian Parliament has in place. Some examples may include: The Status of Women Committee, The Standing Committee on Access to Information, Privacy and Ethics, or the Standing Committee on Justice and Human Rights.¹¹⁴

¹¹⁴ For a more thorough list, readers can visit the House of Commons committee list at <https://www.ourcommons.ca/Committees/en/Home>.

c. Keep an Open Mind

Keeping an open mind when learning about or discussing sensitive subjects is paramount to creating change socially and legally. Be prepared to have your own perspective challenged or changed, and be open to criticism. It is only through being questioned and constructively criticized that those perspectives (and subsequently, the laws) may change.

d. Be informed and Vote Accordingly

When election season rolls around, vote accordingly. Read party platforms thoroughly, researching what all parties have done in response to a topic in the past, and assess the application and sustainability of party platform points. Many politicians release lengthy platform points for policy and legislative change – some of which is feasible in a four-year term, and some of which is not. Understand the popularity of a party and that particular party's relationship with other parties (ie the Liberal and NDP relationship), and evaluate whether or not each party would have enough support in Federal or Provincial parliament to actually create the change they seek.

e. Change your language

Perhaps the most important point that this paper seeks to highlight is the need to change our collective language. In the past, antiquated language was derogatory. For instance, terms like “prostitution” can be replaced with terms like ‘work in the sex industry’, or ‘vulnerable’ can be replaced with ‘targeted.’ The language we use can not only change the way in which we see an issue but also the way in which we respond to it on a social and legal front. By reinforcing our beliefs with positive, modern language, we can change social and legal narratives around sensitive topics.

14. Conclusion and Areas for Further Research

This article does not offer a solution to the sex trafficking and sex work debate, but does highlight the prominent angles of debate that currently exist. If we are to reconstruct social and legal narratives around sex work and sex trafficking, I argue that there is a need for further research in several areas. First, I propose research on the effects of current laws under PCEPA and the negative effects this has on sex workers, especially pertaining to the continuance of an underground market for sex. I note that this research and review of PCEPA was supposed to occur in 2019 and has not yet taken place. Second, I suggest that research be conducted on why boys and men become the dominant buyers of sex and even more importantly, why they are more likely to become traffickers. I recommend that further research be conducted on how to make consensual sex work safer for workers in the sex industry, and I recommend that politicians consider revisiting dated language around sex work.

Finally, I suggest that all Canadians listen, learn and be open to changing their perspectives around work in the sex industry and be even more willing to seek education on the crime of sex trafficking so that average citizens can identify, report, and prevent sex trafficking in their communities. None of this work can be done without being trauma and survivor-informed, survivor-led, and without having *all* voices at the table when amending old laws and enacting new ones.