Decolonizing Sex Work in Canada: Assessing the Impact of Government Regulation on the Wellbeing of Indigenous Sex Workers

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I. Introduction

The 2011 Canadian census indicated that Indigenous women make up 2.5-3% of the population as a whole (Statistics Canada). Within sex work, however, multiple studies have demonstrated that over 50% of sex-workers engaged in street-based sex work identify as Indigenous (Shannon et. al., 2007, Farley, Lynne and Cotton, 2005). A specific number is not known regarding off-street sex work, but data from both government and sex-worker groups suggest that Indigenous women are also significantly over-represented (Shannon et. al.). As such, the experience and needs of Indigenous women constitute a major concern in Canadian sex work research and policy. The academic community, however, has largely ignored this issue. For example, the most recent report on identifying research gaps in Canadian sex work (written almost 20 years ago) noted the vast over-representation Indigenous women, but proceeded to omit it as a priority research area going forward (Lowman, 2001).

Given that sex workers are at a significantly higher risk of being victims of homicide or suffering physical and/or sexual violence compared to the general population, the over-representation of Indigenous women in sex work also represents an important aspect of the crisis of violence against Indigenous women in Canada. While the Trudeau government is taking steps to address this crisis on a broader scale, they have declined to include specific considerations of Indigeneity and sex work in their main project – the National Inquiry into Murdered and Missing Aboriginal Women – despite repeated calls to do so from activists and legal groups (Hunt, 2013). Thus, Indigenous sex workers have been ignored both as an issue of sex work and of Indigenous women, further highlighting the need for policy-oriented research in this area. This paper begins to address this gap by investigating the impact of government legislation on the safety, health and overall wellbeing of Indigenous sex workers. It employs a comparative assessment of the
Nordic and New Zealand Models of government sex work regulation and their impact on Indigenous women sex workers health and wellbeing to identify and assess policy recommendations for Canada.

The Nordic model, which is also referred to as the Swedish model as it originated there in 1999, bases itself on demand-side criminalization, meaning those seeking to purchase sexual services are criminalized rather than those who provide them. The Model was renamed the Nordic model after it was also implemented in Norway and Iceland, and it has since been adopted by Northern Ireland, France, Ireland and Israel (Nordic Model Now, Nd). While proponents of the Nordic model claim that it is an explicitly feminist model, this paper presents several arguments to the contrary. In particular, the Model has consistently lacked consultation with sex workers and has positioned sex workers as inherently victimized, which ignores key tenants of feminist thinking by devaluing their status as experts and allowing for the dismissal of sex workers’ continued criticisms of the Model. Furthermore, many sex workers and sex work researchers have identified de-stigmatization as key to increasing sex workers health (Östergren 2004; Armstrong; 2010). An analysis of social services provided to sex workers under the Nordic model, for example, demonstrates that these services are entrenched in negative and often false assumptions about sex workers, such as their association with drug and childhood abuse, which make them unhelpful and even harmful or traumatizing for sex workers (Danna, 2012). These attitudes are mirrored in other countries which have adopted the Model, such as Finland, suggesting that it may actually deepen rather than alleviate stigmatization of sex workers (Kingston & Thomas, 2018). Finally, the implementation of the Nordic model in Canada did not consider the specific needs and contexts of Indigenous sex workers. It has also been found to increase the level of surveillance and policing of Indigenous communities while simultaneously
encouraging patterns of behaviour that increase the threat posed to Indigenous and other sex workers health, such as spatial switching where workers progressively move into less accessible and more dangerous locations in order to evade police (Sayers 2013b; Kingston & Thomas, 2018; Hubbard 1997).

The New Zealand model of decriminalization, in contrast, improves overall wellbeing and safety by enabling sex workers to contact authorities without fear of persecution and through key specific initiatives such as mandating and facilitating condom use, and creating an Occupational Health and Safety booklet which is present in all indoor workspaces (Armstrong, 2010). The inclusion of sex workers in policy dialogues through the New Zealand Prostitute Collective (NZPC), an explicitly pro-Māori group based in upholding the Treaty of Waitangi, New Zealand’s founding Māori-British treaty, was also paramount. The NZPC’s significant role in creating the Prostitutes Reform Act (PRA) has helped ensured that the experiences and needs of sex workers were central to the legislation and the provision of social services for sex workers. While the PRA did not go as far as it could have in recognizing the unique needs and context of Māori sex workers, the participation of the NZPC has also helped to ensure that their needs are met.

The remainder of this section will contextualize and motivate this specific research and present the background, central arguments, and methodology adopted. Section II will provide further detail on sex work in Canada and its inextricable link to colonization. After explicating and comparing the Nordic and New Zealand models in detail in Sections III and IV respectively, the paper concludes by analyzing the findings of both models in light of Canada’s unique history and challenges. From this, a list of specific policy recommendations was generated which aim to increase Indigenous women sex-worker’s health and safety in a Canadian-specific context.
Background and Relevance

In 2013, the Supreme Court of Canada found the then-existing laws prohibiting brothels, public communication for the purpose of prostitution, and living off of the profits of prostitution, unconstitutional as part of a case put forward by three sex workers known as the Canada (AG) v Bedford case (Attorney General v. Bedford, 2013). The ruling gave the Canadian parliament twelve months to develop new laws pertaining to sex-work, which resulted in a year of considerable public debate, consultations, and the tabling of legislation notably on December 6th, the Canadian National Day of Remembrance and Action on Violence Against Women (Department of Justice [DOJ], 2014). In brief, Bill C-36, the Protection of Communities and Exploited Persons Act, which is now Canadian law, reaffirms the criminality of commercial sexual services and adopts the Nordic Model approach by exempting a person selling their own sexual services from criminal liability and instead targets those purchasing sexual services, or aiding in the sale of the sexual services of others (DOJ, 2014).

Significant criticism has been levied at the Canadian government both for their handling of the consultation and policy-development phase, and the actual legislation itself by numerous sex-worker advocacy groups, health organizations such as the Canadian Public Health Association, and legal groups such as Pivot Legal (Sayers, 2017; SPOC, 2018; Maggie’s Toronto; CPHA, 2014; Kelly & Pacey, 2011). They argue that the consultation process largely ignored the recommendations and wishes of sex-workers, and that the legislation has in fact made sex work less safe, more precarious, and actually decreased police ability to stop human trafficking, thus violating their Charter-enshrined rights to life, liberty and security. To that end, many sex-work groups, and progressive activism groups more broadly, continue to advocate for more changes to Canadian law, especially after the Conservative federal government was
replaced with a Liberal federal government in 2015 (Sayers, 2017; SPOC, 2018; Maggie’s Toronto). Activism is not only limited to the sex worker sphere. Decriminalization of sex work was one of only 30 motions debated at the most recent federal Liberal convention in April 2018 (Lum, 2018). Similarly, in the wake of Bill C-36 over 60 organizations also signed a letter opposing the enforcement of the Bill and calling for full decriminalization (SPOC, 2014). These actions indicate that there is a broader ongoing movement around sex work regulation that is directed specifically towards policy change.

**Overview of Methodology**

The analysis centres around the arguments that Canadian sex work regulation has specifically targeted towards policing Indigenous women’s bodies and mobility since its inception in the 19th century and that while sex work itself may only affect a particular percentage of the population, its regulation is deeply connected to the broad historical and ongoing colonial project in Canada. As such, research on sex work is an important part of colonial studies, and improving the current Canadian sex work regulation’s impact on Indigenous sex workers should be considered as a crucial step towards reconciliation both ideologically and practically. Addressing the colonial underpinnings of Canadian sex work is particularly relevant now considering recent government and public attention towards both Indigenous reconciliation under the Trudeau government and sex work in the wake of the 2013 *Canada (AG) v Bedford* case.

It is worth noting, however, that while necessary, legislative change of any kind will not be sufficient in altering the systemic factors which create the sex industry, nor the deep-seated societal stigmatization of sex workers, which has a long and connected history to the control and erasure of women’s sexualities more broadly. However, legislative stances do have an important
role to play both from a principle perspective, as they represent the nation’s official stance on the sex work industry and by extension sex workers themselves, and from a practical standpoint due to their legal and normative potential to materially affect the safety and health of sex workers. As such, this paper adopts a bi-fold approach to addressing sex work policy by analyzing the impact of the Nordic and New Zealand Model’s from a feminist and Indigenous theoretical lens, as well as through assessing their effectiveness in increasing sex workers health and wellbeing.

The Nordic Model, which is also referred to as the Swedish Model, bases itself on demand-side criminalization and originated in Sweden in 1999. It has since been adopted by Norway and Iceland, leading to renaming as the Nordic Model, and also by Northern Ireland, France, Ireland and Israel (Nordic Model Now, Nd). Since Canada has now adopted the Model, theoretical assessment of it will occur primarily through analyzation of the arguments put forth by Bill C-36, as well as the research it cites as it’s backing. Owing to Bill C-36’s relatively recent implementation in 2014, very limited literature on the practical effects of the Model in Canada exist. Consequently, this paper’s impact analysis will be achieved primarily through assessing the Nordic Model in Sweden. As no two countries are entirely alike, this is a limitation of the paper.

Sweden and other Nordic countries do have Indigenous populations, known as the Sami, however, there has been no mention of them in any of the literature and government publications assessed for this paper. This either represents a significant oversight on the part of researchers, the Swedish government, and by extension the Nordic Model as a whole, or reflects the fact that the Sami people represent a non-significant portion of the sex industry. In either case, this is another limitation in assessing the Model’s impact on Indigenous people. As a result, a majority of the Nordic Model practical assessment in this paper will focus on sex workers in general with
the understanding that, since in Canada Indigenous sex workers are a large or even majority of
workers depending on the industry, general sex workers increased or decreased health will also
be broadly representative for Indigenous sex workers. However, this paper acknowledges the
inherently problematic nature of equating the needs and experiences of non-Indigenous and
Indigenous people, especially in the context of the specific ways sex work policy have been used
to control and subjugate Indigenous people, as will be discussed in further detail in the following
sections.

Finally, it is worth noting that this limitation can largely be attributed to Canada’s
decision to adopt a model which has little to no information relating to Indigenous sex workers,
despite their importance in the Canadian sex industry. This choice is meaningful in that in
addition to making comprehensive assessment of the policy more difficult, it is also potentially
representative of their prioritization, or lack thereof, of Indigenous sex workers, especially in the
context of their general silence on the topic even as discussion of violence against Indigenous
women grows.

The New Zealand Model is largely based on wholesale decriminalization of the sex
industry and went into effect in 2003 with the signing of the Prostitution Reform Act (PRA)
(Armstrong, 2010). To date, it is the only country to have decriminalized sex work at the national
level which, as will be discussed in the body of the paper, is an important ideological and
practical distinction from decriminalization at the municipal- or regional-scale. The New Zealand
Model is particularly relevant to Canada for a number of reasons.

First, despite vast geographical distances the histories of Canada and New Zealand share
some key similarities. Both countries were founded as British settler colonies, have remained
predominantly ethnically European, and consequently have a shared socio-cultural background.
Second, they are both involved in heavily bilateral relationships with one neighbouring country, and occupy the same position of having a population, GDP, and international importance a fraction of the size of their neighbours. Finally, and most importantly for the purposes of this paper, they are both countries in the midst of attempting to rectify historical atrocities and reconcile with their Indigenous populations who are similarly over-represented in sex work.

Māori-identifying people comprise 16% of the overall population, and make up 31.7% of all sex workers and 63.9% of street workers according to Abel, Fitzgerald & Brunton’s (2007) multi-method study across five locations, figures approximately backed up by Jordan’s (2005) comprehensive review of literature and data on sex work in New Zealand. While some Māori sex workers are transgender or male, the overwhelming majority are female making these figures even more disproportionate than they appear. The one significant difference in composition is that street sex workers are estimated to comprise roughly 20% of total sex worker population in Canada, compared to 10% in New Zealand (CPHA, 2014; Abel et. al, 2007). This is particularly notable considering the densely populated areas of Canada experience significantly harsher winter climates as compared to those of New Zealand. One possible explanation is that figures associated with New Zealand’s sex worker population stem from the four major reports done in the years following the PRA’s implementation as a means of assessing the impact of decriminalization. If this is indeed even a partial reason for the differences, it bodes extremely well for the New Zealand Model as a means of increasing workers’ health.

This paper does not address legalization, the third major approach to sex work policy. This is due both to feasibility constraints and because legalization is not supported by many sex worker-led groups in Canada and the world, including Sex Professionals of Canada (SPOC), nor does the current climate of Canadian political or social atmosphere seem amenable to
legalization (SPOC, 2018; DOJ, 2014). Thus, considering that neither the government nor sex workers are particularly favourable towards the policy its relevance in comparison to the other two Models was diminished.

While this paper acknowledges that the sex industry does not exist in a vacuum and, as with all things, has an effect on the wider socio-cultural landscape, the focus here is chiefly on government’s sex industry policies on those most directly and substantially affected, the sex workers themselves. In light of this, and especially in recognition of the lack of consideration paid towards their voices, this paper takes the stance that sex workers should at all times be the leading voices on and decision makers regarding the sex industry. However, it is important to remember that sex workers do not have a homogenous reason for entry, experience within, or intellectual perspective on the sex industry and thus, like most groups comprised of diverse identities, do not have a unanimous opinion on the best kind of legislation.

**Clarification of Terms**

In accordance with sex work activist’s movement to destigmatize the industry and be inclusive of all genders and forms of work this paper will use the terms sex worker, brothel operator or manager, and sex industry (see for example: Stella, 2013; Lister, 2017). The exception is made when referring to other’s use of words as with the Nordic Model which specifically rejects the idea that sex work is a real form of work on account of its inherent victimization of the sex seller (Östergren 2004). Sex work is a nebulous idea and there exist many philosophical, moral, and practical debates as to what counts as ‘sex work.’ For the purposes of this paper, sex worker refers to anyone providing a physical, visual, or verbal service for the explicit sexual gratification of the recipient, who provides pre-agreed compensation primarily through monetary means.
Health in this paper’s context is assessed to include the reduction of physical, mental, and emotional violence and stress placed on sex workers from a variety of sources including their clients and managers, but also from their communities and Canadian society as a whole; as well as from state institutions including police departments, health care providers, social services, and non-state organizations involved in lobbying around the sex industry or providing services to sex workers. Health is also determined to mean a reduction of street drug dependency, alcohol abuse, STI’s and in particular HIV which sex workers are at significantly higher risk of contracting, with one Vancouver study showing that 18% of non-Indigenous female sex workers and 32% of Indigenous female sex workers had HIV, as compared to 2.8% of women overall (Shannon et. al, 2007; CATIE, 2019).

Finally, in accordance with a growing body of evidence and scholarly work on the impact of ‘social determinants’ on physical health, this paper will also consider policy’s impact on things such as housing stability, financial security, and strength of social networks and feelings of connectedness as important factors in increasing sex workers overall health (see for example Richmond et. al, 2007; Galea & Putnam, 2005; Putnam 1995). In light of this, the mere reduction of the number of workers within the industry is not considered convincing evidence of a policy’s success in making the industry safer for workers or the community.

**Positionality**

As a white settler woman in Canada, I recognize that my relation to this topic is that of a privileged outsider. Because of this privilege, I see my role as that of an ally attempting to use my access to academic resources and the opportunity to write this paper as a platform for amplifying Indigenous sex workers’ voices and lived experiences.
Sex work has been a persistent research interest of mine, but I came to be engaged in the specific topic of this paper during my time doing research on Māori women’s health while living in Wellington, New Zealand in 2018. In walking through the city, I noticed that sex workers felt comfortable taking breaks outside, interacting with passerby’s, and walking down the street and into convenience shops while wearing branded merchandise from the various sex work establishments they worked at. This comfortability with existing in the public space of a small city while openly identifying oneself as an indoor sex worker suggested to me a very different societal perception of sex work than what I have experienced in Canada. It also suggested to me that improvements to societal stigmatization of sex workers was possible, and that given New Zealand’s unique approach to sex work that some answers may lie in examining governmental regulation specifically. Given that I was already immersed in researching colonization’s impact on Indigenous women’s health it was a natural extension for me to focus this new topic specifically on Indigenous women sex workers, especially given their vast overrepresentation.

I am grateful to the Trinity Comprehensive Research Program and the Terry Gardner Scholarship for providing me the opportunity and means to explore this topic in such depth. I am also especially indebted to my supervisor Dr. Leslie Boehm for his unerring support and dedicated commentaries on earlier drafts, without which this paper would not be what it is today.

II. Sex Work in Canada

A Brief History of Sex Work in Canada

Indigenous-European sexual relations, marriages, and prostitution have been documented within what is now known as Canada since the earliest colonial expeditions (Stoler, 1997). Colonial society, including its administrators responsible for establishing laws and regulation,
regarded sexual relations between Indigenous women and white men an acceptable activity during the fur trade era. In fact, in many cases it was encouraged because it allowed white fur traders to gain greater access to and potential advantage within specific Indigenous group’s fur trading activities. Some Europeans however, sought to paint Indigenous women as overly promiscuous, and by extension Indigenous culture as fundamentally immoral and dangerous to the development of colonial settlement (Stoler, 1997). As Boyer (2009) explains, by the mid-late nineteenth century the ‘Native woman as prostitute’ was identified as “the new social problem” leading to a series of provisions criminalizing prostitution, and brothels being added to the Indian Act in 1879 (77). In 1884, the Act was extended from punishing “keepers of houses of prostitution” more generally, to specifically criminalize any Indian woman or man keeping, frequenting, or found in a “disorderly house or wigwam” (Boyer, 78).

This phrasing constructed wigwams, a traditional form of housing used by several Indigenous tribes, as spaces of inherent disorder and prostitution which allowed police to legally monitor, conduct searches of, and then detain or arrest any Indigenous person found within an Indigenous home based solely on its status as a wigwam. Thus, the historical inclusion of Canada’s anti-prostitution legislation within the Indian Act serves to specifically link the history and aims of Canadian colonization, namely, to remove pre-existing people and cultures and replace them with European settler society, with the history and aims of Canadian sex work legislation.

This had effect in more than just an ideological manner. For example, prostitution charges were used by the colonial governments during the 19th and 20th centuries as a means of eradicating Indigenous women from cities and restricting them to reserves (Boyer, 2009). As Indigenous sex worker and lawyer Naomi Sayers (2013a) points out, these legal changes
attacked the “centre of Indigenous systems of being and existence” and functioned to control Indigenous people, especially women’s, movements, freedom, and access to land (np). As such, any genuine analyzation of sex work in Canada must include and contend with the fact that its very foundations are anti-Indigenous and built to uphold colonial aims and white supremacy. By extension, policies which decrease the stigmatization around sex work and its particular associations with Indigenous women can be seen as contributing to the larger process of decolonization more generally.

While prostitution was removed from the Indian Act and incorporated into the institution of the Criminal Code in 1892, the racial targeting of sex work laws continued both in wording and in practice (Boyer, 2009). Moreover, after a collection of sensational, and sensationalized, articles on prostitution and the supposed growth of sex-trafficking for foreign buyers was published entitled The War on the White Slave Trade in 1911, there was a growing moral panic over and movement to legislate against ‘The Social Evil’ of the time (Strange & Loo, 1997). As Strange & Loo put it, “through their melodramatic stories of last-minute rescues and tragic seduction, social purity lobbyists encouraged Canadians to drop the conventional image of the hard-bitten, drink-sodden prostitute in favour of the virginal girl, forced to service men of all classes and races against her will (65).” Well-meaning white citizens viewed themselves as Christian soldiers in a battle against not simply moral depravity as a whole, but of the specific forced co-option of otherwise innocent and pure white woman into a life of sin by ‘outsiders’, i.e. non-white, men (Strange & Loo).

Thus, we see the beginnings of a dichotomization of ‘enslaved women’ in need of rescuing, and by-choice sex-workers who are portrayed as by-nature morally depraved, prone to vice, over-sexed, and in the context of the inherent racialization of prostitutes through early
Canadian prostitution law, literally sub-human on account of the fact that the *Indian Act* specifically excluded Indians from being “persons” (Indian Act 1906, S.C. c. 81, s. 2(c)). While over time the strict racial categories of this slave-whore dichotomy have become less entrenched, the overall characterization remains strikingly similar to the way sex work, and consequently the laws surrounding it, are spoken about and justified today.

Since this period, discussions of sex work in Canada have retained an outsized place in public- and police-consciousness. Sex workers have been painted as a danger to the neighbourhoods and communities where sex-work occurs and a grave threat to the well-being of society should the industry not be suppressed (DOJ, 2014; see also: Fyfe, 1991, Hubbard, 1997). These sentiments rest partially on broader assumptions that sex workers are harbingers of greater criminal activities, an idea that has been challenged by several academics (Fyfe, 1991; see also: Hubbard, 1997). In reality, sex-work represents a miniscule portion of crime. Between 2009 and 2014 for example, according to a report prepared for Statistics Canada, 0.1% of all criminal activities reported in Canada were related to sex work (Rotenberg, 2016). Yet the proportion of police budget allocated to prostitution-related offenses was drastically higher than 0.1%, even entering the top ten most costly crimes in 2011 (Rotenberg, 2016, Ellingwood, 2015).

Prior to the *Bedford* case prostitution itself in Canada was not illegal, but almost every act surrounding it was criminalized. Section 213(1) of the *Criminal Code* included criminalizing every person who, in a public place or in any place open to public view, communicated for the purpose of buying or selling sexual services (R.S.C., 1985, c. C-46). Section 210 stated that anyone found within, or knowingly keeping, owning, renting, or living in a “common bawdy-house” was guilty of an indictable offence and liable for up to two years of imprisonment.
(Criminal Code np). Thus, sex workers were prevented from working on the streets, but were also prevented from advertising their services or from working together indoors.

The ability to work indoors is particularly impactful as it has consistently been shown to be a key factor in increasing sex workers health through increasing knowledge of the industry and safe sex practices, ability to refuse clients, ability to move off-street thus reducing their likelihood of drug-involvement, and their feelings of social-inclusion and friendship (Shannon et. al, 2007, Armstrong, 2010; see also: Kinnell, 1993; Attorney General v. Bedford, 2013). Under the previous laws, landlords were incentivised to attempt to actively monitor their properties because, in addition to being liable if they were aware sex work activity was taking place in one of their properties, they were also informed by the government of any bawdy-house convictions relating to their tenants and were specifically required to terminate their tenancy or also face charges.

This also raised the likelihood that as a preventative measure, landlords would refuse to rent to anyone who was, or who they suspected to be, a sex worker (Attorney General v. Bedford, 2013). Who is suspected of being a sex worker skews disproportionately towards low-income and single Indigenous and immigrant Asian women, trans folk, and substance users, making it more difficult to secure stable housing not only for sex workers themselves but for these categories of people as a whole. Similarly, Section 212(1) prohibits anyone over the age of eighteen living “wholly or in part on the avails of prostitution of another person” was liable for up to ten years of imprisonment (Criminal Code, np). While this was ostensibly targeted at reducing the exploitation of sex workers by ‘pimps,’ the Code went on to clarify that the act of living with a prostitute, in absence of contrary evidence, was “proof that the person lives on the avails of prostitution” (np). Thus, not only were sex workers prevented from financially assisting
their partners and adult children generally, the very act of living with them put them in jeopardy of up to a decade’s worth of imprisonment significantly limiting their ability to find housing (Attorney General v. Bedford, 2013). This is especially important considering that, as Desmond (2016) illustrates in his in-depth study of eviction in Milwaukee, stable and affordable housing is the single biggest factor in breaking the cycle of poverty not just for the person in the housing, but for their entire families.

Criminalization of living off the avails of prostitution even in part also meant that sex workers were technically prohibited from actually using their earnings to pay for anything from child-minding services to rent. Most impactfully, as this law would realistically only be enforced in situations where the service-provider was aware of the sex workers vocation, this meant sex workers were unable to hire security, drivers, or therapists and other mental health professionals, all of which are important options for increasing their safety and health (Attorney General v. Bedford).

As was discussed briefly in the introduction section, in 2007 three former and current sex workers, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott, launched a case at the Ontario Superior Court level arguing that Sections 210, 212(1) and 213(1) violated their rights under Section 7 of the Canadian Charter of Rights and Freedom (Attorney General v. Bedford, 2013). On September 28, 2010, the Ontario Superior Court granted the application, declaring without suspension that all three sections were unconstitutional. This led the Attorney General to appeal the declaration to the Court of Appeal for Ontario, where the ruling was upheld, and then upon a final appeal the case to be brought before the Supreme Court of Canada (Attorney General v. Bedford). On 20 December 2013 the Supreme Court unanimously found the Sections unconstitutional, stating that the wording was “overbroad” in scope and “grossly
disproportionate” in their impact on prostitutes’ safety (Attorney General v. Bedford, 1104). A one-year suspension of the ruling was granted in order to give the Canadian parliament the option to develop new legislation which upheld that prostitution itself was not a crime and that did not come “at the cost of the health, safety and lives of prostitutes” (1106). This resulted in the drafting and implementation of the *Protection of Communities and Exploited Persons Act* or Bill C-36.

According to Bill C-36’s Technical Paper this new legislation represents a significant shift in the Canadian government and legal system’s view of prostitution, moving from treating it as a “nuisance” to recognizing it “as a form of sexual exploitation that disproportionately and negatively impacts on women and girls (DOJ, 2014, np).” In light of this, the Bill’s overall objective is to discourage entry into and deter participation in sex work. However, in recognizing that sex workers are simply victims, criminalization and law enforcement attention is directed towards individuals who purchase, or third parties who facilitate the sale of, sexual services with the view criminalizing demand will lead to “ultimately abolishing” the sex work industry (DOJ, 2014, np).

As such, Bill C-36 makes prostitution itself an illegal practice for the first time in Canada but makes liable only the person attempting to communicate or obtain sexual services, rather than the person offering them. Sections were also added to include “knowingly advertising an offer to provide sexual services” in a print or online source as an indictable offense which is intended to curb ease of access to sexual services (DOJ, 2014 np). The Bill’s overall determinations rest on a series of explicit and implicit claims, drawn primarily from two months of public and expert consultation, existing legal jurisprudence, and research pertaining to the sex industry and sex work both within Canada and internationally that ultimately concluded that the
Nordic Model was the most effective way to increase sex workers’ health and wellbeing. In the following section it is the intention of this paper to undertake a more in-depth examination of these assertions. Prior to this however, it is necessary to further examine the particular impact of sex work on Indigenous people.

**Sex Work and Indigenous Peoples in Canada**

Despite Indigenous people’s vast over-representation in sex work, they have been almost entirely overlooked by both government policy and sex work researchers. In 2001, for example, lifelong sex work researcher John Lowman wrote a report for the Canadian Department of Justice entitled “Identifying Research Gaps in the Prostitution Literature” where, despite noting that Indigenous people are vastly overrepresented in prostitution, he failed to list that as a research priority going forward. This report also remains the most recent research overview report commissioned by the Department of Justice. This demonstrates one way that Indigenous sex workers have faced an erasure within research and policy that likely has substantial impacts on their health and safety.

In addition, there are noteworthy similarities between some of the narratives surrounding sex work and those around Indigenous people, and Indigenous women specifically, which highlight the deep-seated connections between Indigenous women and sexualization, and by extension prostitution. In general, sex workers are constructed as ‘Others’ who exist largely outside the public realm and are thus the responsibility of the police to control and segregate from the larger population. In order to achieve this control and segregation, violence becomes normalized, expected, and blamed on their choice of occupation, connection to drugs, and general criminality (Fyfe, 1991). In turn, this results in what some scholars have referred to as a
“discourse of disposability” around sex workers (Armstrong, 2010, 48; see also Lowman, 2000; Wright, 2006).

Similarly, in relation to the vastly disproportionate rates of violence against Indigenous people and women especially, Hunt (2013) argues that while the violence itself has become hyper-visible, it does not count as real violence because Indigenous people are seen as less than human as unworthy of response. In agreement, Pratt (2005) states that owing to conceptions of Indigeneity and urbanity being incompatible, Indigenous women are frequently rendered as outside the public life of cities and consequently outside the realm of law and rights. Boyer’s (2009) discussion of the 1892 enactment of the Criminal Code of Canada makes clear that these perceptions have been prevalent throughout Canadian history. In the Criminal Code, Indigenous women were to be banished from urban areas and forced to return to reserves after being arrested for prostitution-related offences. The punishment for sex work as an Indigenous woman then was literally to be removed from white society, as if to suggest that Indigenous sex work, and by extension the violence and other problems they experienced, were exterior and unreflective of the city and white society in general. Following this logic, sex work and violence more generally were therefore by default understood to be a part of or belonging within Indigenous spaces. In this way, society as a whole is absolved of its responsibility in perpetuating violence to Indigenous women and especially Indigenous sex workers,

The police response to the disappearance of over 70 women, mainly Indigenous women, from Vancouver’s Downtown East Side (DTES) between the late 1980’s and 2000’s makes clear that this discourse of disposability and exteriorization of responsibility continues. Police and government officials refused to take an interest in reports of missing women until the late 1990’s (Hamilton, 2014). Noted sex work and trans rights activist Jamie Lee Hamilton stated that Mayor
Phillip Owen went so far as to explain the inaction by stating “we will not fund a location service for hookers” after 69 reported disappearances (31, 2014). Robert Pickton, the man eventually identified as the serial killer largely responsible for the disappearances, was not apprehended until 2002. Wally Oppal, the Commissioner for the Missing Women Commission of Inquiry created in 2010 to examine the investigations of both the Vancouver Police Department and the RCMP concluded that there had been “blatant failure” from police to initiate investigations when Indigenous women were reported missing, insufficient effort and unexplained gaps when conducting investigations, and a failure to alert the public to ongoing danger which resulted in additional loss of life (Oppal, 2012, 26).

Indigenous women and sex workers, particularly street sex workers, can also face similarly elevated public risk factors, such as harassment. Armstrong (2010) notes that the dangers for street sex workers come not just from the work itself, but also from the perception of street sex work as the lowest and most derided form of sex work. Compounding those issues street sex workers can also be publicly identified while on the job leading to increased verbal and physical harassment, such as the not uncommon occurrence of having objects thrown at them from passing cars. The 2004 General Social Survey on Victimization in Canada meanwhile reported that Aboriginal people are more than three times as likely to be victims of a violent crime, have a mortality rate due to violence three times higher than the general population, and that Aboriginal women are more than three times as likely to be victims of violence than non-Aboriginal women (Statistics Canada).

In Thunder Bay, an Indigenous woman died while walking along a main road with her sister after having a trailer hitch thrown at her from a passing car (McMahon, 2018). Broader interviewing reveals that throwing objects from cars while yelling insults at Indigenous people is
not only relatively a common occurrence, but potentially considered a social activity for predominantly young, white men (McMahon, 2018). Crucially, the comments made during these acts often refer to these women as drug addicts, prostitutes and whores, thus supposedly justifying their violent actions.

The Indigenous woman who died, along with presumably many other assaulted Indigenous woman, was not a sex worker. These actions, alongside their persistent nature and the reticence of the Thunder Bay police department and community to acknowledge and deal with the issue serves to normalize violence towards sex workers and Indigenous people (McMahon, 2018). In addition, it also actively intertwines sex work and Indigeneity, seemingly making it impossible to exist in the public realm as an Indigenous woman without being associated with and harassed for sex work, regardless of their actual involvement in the industry. This demonstrates that, at least in some settings, there is a clear through-line between 19th century narratives and present-day perceptions of Indigenous women and sex work, therefore reinforcing the colonial nature of government regulation and public attitude.

This example demonstrates that the conditions and treatment of sex workers are in many ways intrinsically interwoven with that of Indigenous woman and by extension all Indigenous peoples such that the degradation or improvement of sex work circumstances, and especially societal opinions on sex workers, becomes also the degradation or improvement of Indigenous lives. Meanwhile for those Indigenous people who are sex workers, they become double-marginalized, occupying an even more precarious position than non-Indigenous sex workers and non-sex-worker Indigenous peoples. Consequently, producing government sex regulation that treats sex workers as people, reduces stigmatization, increase agency, and specifically addresses the needs of Indigenous sex workers is an important step in Canadian reconciliation.
III. The Nordic Model

Are Sex Workers Victims?

As was briefly outlined in the introduction, the Nordic Model originated in Sweden in 1999. The Model explicitly purports itself to be a feminist Model of sex work regulation, and the basic legal framework is demand-side criminalization, meaning that sex work is illegal but it is the client or ‘john’ who is criminally liable rather than the sex worker themselves, as is the case with traditional criminalization (Kingston & Thomas, 2018). This shift in liability is due to the core ideological foundation of the Nordic Model, which asserts that sex work is an inherently exploitative activity and sex workers are therefore victims of the clients (Kingston & Thomas, 2018).

This reasoning can be seen throughout the documents and publications of countries which adhere to the Nordic Model. In Canada, Bill C-36 argues that the existence of sex work reinforces gender inequality by normalizing the purchase of predominantly women’s bodies for use and sexual gratification by primarily male clientele, thereby “demeaning and degrading the human dignity of all women and girls” (DOJ, 2014, np). Taking an even more forceful approach, the Swedish government stated that “if men did not regard it as their self-evident right to buy and sexually exploit women and children, prostitution and trafficking in human beings for sexual purposes would not exist” (Swedish Ministry of Industry, Employment and Communications 2005, 1-2 as cited in Danna, 2012). This understanding of sex work is problematic for several reasons, as will be outlined in the remainder of this section.

First, neither the process for creating Bill C-36, nor the process for developing the Nordic Model upon which much of the Bill’s argument rests, included serious input from sex workers
themselves (Kingston & Thomas, 2018). In fact, significant numbers of sex worker individuals and organizations objected to these policies both during their creation and after their institution on account of their belief that it would decrease sex workers’ agency and increase their risk levels (SPOC, 2015; Maggie’s Toronto, 2018). However, their input and opinions were resoundingly ignored and according to SPOC (2015), the Attorney General chose not to even meet with sex workers or their allies while she was reviewing the new law. The importance of community-led research is being increasingly recognized especially when working with historically marginalized groups (see for example: Rosenberg, 2014; Radcliffe, 2015; Dyck, 2003). It is also considered an essential part of feminist and most Indigenous methodologies (Mane, 2003; Radcliffe, 2015). As such, it is problematic from a methodological and theoretical standpoint that policies which specifically purport to be based on feminism have chosen to neglect the substantial inclusion of the lived experiences of sex workers.

This decision is also problematic from a results standpoint. As Dyck (2003) demonstrates through assessments of feminist-based health work done in Papua New Guinea and India, centering the experiences of women who were actually using health services leads to new understandings of both health and the problems in health care delivery. This, she argues, ultimately leads to significantly different and more effective solutions than had previously been utilized. Considering this, the problems within Bill C-36, as with the Nordic Model more broadly, may not actually represent the most negative aspects of the industry, nor their remedies the most salient solutions.

The potential inaccuracy stemming from a failure to consult sex workers is an especially pertinent concern on account of the general lack of actual research and understanding of the mostly hidden sex work industry, in conjunction with the unusually large amount of public
attention and misconception on the issue. One example which supports this argument is the results of an Australian study conducted by Roberta Perkins (1991) wherein she compared the answers of sex workers on their primary reasons for entry into sex work with the answers of what health workers and health students thought the reasons would be. The health workers and students expected drug-taking, economic imperatives, controlled actions by ‘pimps’ and a background of juvenile delinquency to be the most significant factors. However, while the sex workers themselves did attribute economics to be a primary factor they portrayed it as more of a choice based on lifestyle desires rather than an absolute necessity, while none of the other assumptions featured highly in their reasoning.

Second, the assertion that all sex workers are victims regardless of their reason for entry into or remaining within the industry is problematic because it reduces their right to choose how to use their own body. Even further, it also suggests that any sex worker arguing against the abolition of sex work is in fact upholding a patriarchal system that, as Bill C-36 puts it, makes victims of communities, especially children, and of society itself (DOJ, 2014). In turn, this increases public negative opinions of the sex industry, and leads to a devaluing and potential vilification of the input of sex workers and also serves to implicitly justify the State’s ignorance of them during policy creation. Finally, painting the purchase of a specific sexual service from an adult offering that service as equivalent to the purchase of a body for unfettered use, rests on the implicit assumption that the sex worker, usually a woman, becomes something of an inanimate object incapable of resisting male exploitation during both the negotiation period and the sexual encounter. This image of helplessness is not only demeaning and sexist, but also actively untrue as qualitative interviews from around the world emphasize sex workers active and varying
decisions about what services to perform and when (see for example: Jordan, 2005, Danna, 2012).

As illustrated by previous discussions of the beginning of anti-prostitution advocates in 19th century Canada, the intertwining of sex work and conceptions of sex workers as damaged victims has a long history that has made this view systemic to how we discuss and come to decisions regarding sex work. In line with this, the second reasoning listed within Bill C-36’s assessment of the nature of sex work, and consequently their justifications for the Bill’s solutions, states that both entry into and remaining in prostitution are influenced by economic factors, but also highlights that social factors such as child sexual abuse and other forms of child abuse, and drug addiction are significant determinants to entry (DOJ, 2014). As Danna (2012) illustrates in her qualitative study of sex workers and service providers, this association is in line with the Swedish interpretation and the Nordic Model generally.

The conception of sex workers as victims of sexual abuse is widespread. Perkins (1991) previously discussed study revealed that health professionals thought it was a key reason for entry, while one of the Crown’s expert witnesses in the development of Bill C-36, Melissa Farley, co-authored a paper alleging extremely high rates of childhood abuse, 82% for sexual abuse and 72% for physical abuse (Farley et. al, 2005). Perkin’s paper, as was noted earlier, actually concluded that sexual abuse as a major factor was actually an un-factual but popular misconception based on the reporting’s of actual sex workers. Lowman (2013) meanwhile states that there is significant disagreement over childhood sexual abuse rates among prostitutes in Canada, with data collected varying from 10% to 90% depending on the study and its methodologies, suggesting that its relevance as either a predictor to entry into or a major problem within sex work is not known.
Even if sex workers have experienced childhood abuse at disproportionately high rates, which is possible, simply shifting criminalization from the supply- to the demand-side does very little to substantively assist sex workers in receiving help for working through their trauma. However, the previous analysis demonstrates that Bill C-36’s decision to identify childhood and adult sexual abuse as a key factor leading to entry into sex work is not a clear-cut assertion. Therefore, a deeper exploration into why the creators of the Bill chose to make this connection is necessary.

Due to its lack of consultations with sex workers, Bill C-36 is based primarily on academic literature. Throughout research on sex work there is a disproportionate amount of attention paid towards reasons for entry in comparison to work on exiting the industry (Jordan 2005). By linking entry into sex work to a foundational traumatic experience, sex workers become pathologized as intrinsically damaged individuals who are doing things they otherwise would not be doing. As a consequence, state intervention becomes justified as a protective act of ‘saving’ sex workers from their self-destructive entrance into the sex industry, while their own opinions, experiences, and opposition to State involvement are subsequently viewed as unreliable. This is exemplified in the work of Swedish sociologists Hedin and Månsson (2003), supporters of the Nordic Model who in discussing sex work policy have suggested that the process of exiting prostitution is similar to that of stopping a drug addiction in that there is a need to break the psychological dependency a person has developed, and that consequently and despite its harms, relapses are to be expected.

In addition, this general preoccupation with examining entry into sex work rather than focusing on way to facilitate exiting the industry is somewhat ironic considering the purported aim of abolishing sex work in order to protect women. In conjunction with the persistent
tendency to attribute entry to women’s ‘damage’ resulting from trauma it seems that, deliberately or not, policies like the Nordic Model which are based on this types of research may actually be more focused on reaffirming patriarchal notions of women’s sexuality rather than empowering women as autonomous individuals free to make their own choices. Thus, despite its explicitly ‘feminist’ stance, the Nordic Model can be seen as working to further objectify sex workers by framing them as people in need of protection, while also creating an avenue for the vilification of sex workers as anti-feminist, or dismissing them as too damaged to be reliable, should they speak out against the Model.

The Nordic Model and Safety

The explicitly mandated goal as laid out in the Supreme Court of Canada’s Bedford ruling was for new sex industry regulations to increase sex workers’ safety (Attorney General v. Bedford, 2013.) Advocates for the Nordic Model argue that it makes sex workers safer by removing their personal vulnerability to criminal charges (Danna, 2013; Nordic Model Now). However, Kingston & Thomas (2018) have shown through qualitative interviewing and quantitative police statistics that criminalization of any kind means that sex workers are going to spend less time negotiating for fear of either them or their client being caught, consequently allowing them less time to assess whether they think the potential client is a threat. In particular, Kinnel (2006) notes that having less negotiation time leads to a client-pool who are more self-confident and firmer in what they want, leading to higher likelihood that they will become pushy with sex workers and verbally or physically disregard their boundaries. Echoing this, the Swedish sex workers’ association, Rosea, stated that the new laws scared away normal clients but not violent ones, leading to an increase in violence both on the streets and elsewhere (Danna, 2012). Finally, criminalization encourages “spatial switching,” where, rather than eliminating
prostitution, it simply moves to less visible spaces which are more dangerous as they are likely to be difficult to access, farther away from populated areas and help (Kingston & Thomas, 8; Canadian Alliance for Sex Work Law Reform, nd).

While these factors are concerns in both supply-side and demand-side criminalization, demand-side exacerbates these problems for several reasons. In a supply-side criminalization system, sex workers are the ones weighing the potential risks and increased safety of negotiating time. Because they are the ones most likely to face physical or verbal abuse they are consequently more likely to risk being caught in order to increase their safety by negotiating with the client. In demand-side criminalization however, it is the client who has the incentive to forgo negotiation in case of being caught, alongside significantly less concern over the potential consequences of misjudging the character and intent of the sex worker. As such, negotiation time is reduced under the Nordic Model, ultimately making women less safe (Canadian Alliance for Sex Work Law Reform, nd).

Similarly, since clients are typically the party who owns and drives the car, which is the primary location sexual services from on-street sex work take place, they have both the incentive and means to exaggerate spatial switching. Kingston and Thomas (2018) note that this often results in sex activities moving to outskirts of the city, rural or nature-filled areas where the sex worker has limited to no options for quickly receiving help and is completely dependent on the client for safe transportation afterwards. As such, the sex workers ability both to negotiate and to assert boundaries during the encounter are severely reduced. This is of particular concern within the Canadian sex work context owing to the fact that sex work is on average, reported in higher rates within small urban areas where driving out of town to unpopulated rural areas is fast and easy compared to major metropolises (DOJ, 2016). This raises questions as to the efficacy of the
Nordic Model in increasing sex worker safety, and suggests that a policy which increases sex workers ability to conduct and hold positions of power within client negotiations would be more beneficial to this goal.

The process of spatial switching also encourages sex workers to move or locate themselves in areas of marginalization and increased criminal activity, which Hubbard (1997) refers to as “toleration zones” (138). Toleration zones are areas of a city where illegal, but typically not dangerous, activity occurs which police and social forces would normally attempt to root out and legally persecute, but within that neighbourhood are understood to be an accepted, if undesirable, part of the social landscape. This phenomenon can be seen in the reputation neighbourhoods can attain for being unsafe, ‘crime-ridden’ gang hotspots, or unofficial red-light districts such as the Downtown East Side of Vancouver (Siebert, 2017; Gee, 2018). By concentrating sex work in these neighbourhoods, it encourages a perception of sex workers as criminals and of the sex work industry’s connection to other, often more dangerous, forms of crime such as drugs, gang activity, and trafficking. The impact of this is evidenced by the many arguments on sex work policy, including Bill C-36, where recommendations are based partially on the notion that wherever sex workers are must also include or encourage other criminal activities, and thus the presence of sex workers makes communities less safe (DOJ, 2014).

It is important to note that spatial switching occurs as a result of any kind of criminalization and is also encouraged by stigmatization regardless of actual legality, and consequently, its negative impacts are not a unique problem of the Nordic Model. However, several researchers have noted that out of the necessity of finite time and resources, all police departments must make prioritizations regarding which illegal activities to target (Smith & Morgan, 1989; Smith, 1987; Fyfe 1991). As such, the emphasis on addressing ‘softer crimes’
that are billed as ‘victimless’, such as personal drug use and sex work are particularly subject to change. Fyfe reminds us that police and police institutions do not sit outside of society or politics, and that political culture and prioritization have a significant effect on which activities to prioritize. In the Canadian context, if one considers the significantly increased political and social attention given to the issue of sex work in the wake of Bill C-36, it is reasonable to conclude that sex work would become a higher prioritization for police across Canada than it previously had been. Thus, the implementation of the Nordic Model has likely caused an increase in spatial switching and along with it, an increase in worker’s vulnerability to violence and exploitation.

In addition, Punch (1979) demonstrated in an ethnographic study of Amsterdam’s red-light district that when police transitioned from monitoring but generally allowing deviant behaviour to actively targeting it, they lost the level of open-ness and trust they had previously enjoyed within the community. To compensate, they became more aggressive “asphalt cowboys” insistent on employing harsher police methods and being quick to arrest people (197). In light of the fact that existing toleration zones for sex work in Canada are likely to become target areas for new police priorities, it is also probable that a similar transition in police attitudes will occur. With regards to sex work, this is likely to manifest itself in increased targeting of clients, thereby increasing their fear of prosecution and thus their desire to find other, less visible and targeted areas. Thus, the implementation of the Nordic Model creates an increasingly negative feedback loop as it redirects police prioritization, which begets harsher police attitudes in toleration zones, which begets spatial switching, which begets harsher police attitudes within that new zone, and so on. This is of particular concern for racialized and especially Indigenous sex workers considering that Indigenous women are overrepresented in police custody at a rate of 12 times
higher than their proportion of the population, and are by extension also at higher risks of police harassment and brutality (DOJ, 2017).

Another key aspect of the Nordic Model are bans on advertisements for sexual services with the assumption that reduced ability to market will result in a diminishment of the industry as a whole. (DOJ, 2014; Government of Sweden, 2010). Through making companies, and even potentially internet servers, criminally liable for receiving material benefit from sex workers’ advertising or hosting advertisements off-street sex workers’ ability to attract clients is severely limited. While this might result in a reduction of practicing sex workers, thus seemingly achieving the Nordic Model’s aim of reducing the sex industry, it also comes at a significant cost to the health and safety of sex workers. Sex workers face significant barriers to exiting the industry for a variety of reasons including societal stigma, lack of support and services, criminal records and long gaps in their working histories, all of which mean that leaving the industry in an unplanned manner often has detrimental consequences to their financial stability and their health (Benoit & Millar, 2001; Grant, 2018).

Furthermore, while specific numbers vary from study to study, the overwhelming majority of sex workers enter sex work in large part due to economic reasons (Jordan, 2005, Perkins, 1991). Thus, the financial pressure of the advertisement ban decreases worker’s ability to attract clients, reduces their ability to screen and refuse potential clients, and to say no to performing services they are uncomfortable with. However, the economic necessity of continuing working should not be conflated with workers being forced to choose sex work involuntarily. This is illustrated by the fact that over 85% of female sex workers report other reasons for entering such as curiosity (46.6%), having a friend who did it (28.2%), thinking it looked exciting or glamorous (22%), and exploring sexuality (18.4%) (Abel et. al, 2007).
workers also reported numerous benefits to being a sex worker besides monetary gain such as flexible working hours (83.3%), sex workers being fun to be around (42.2%), and enjoying the sex (39%) (Abel et. al, 2007). In fact, 23.5% of workers reported that even given the opportunity they didn’t want to do anything else (Abel et. al, 2007). As such, the advertising ban’s impact on sex workers performing services they aren’t comfortable with is not an indication of economic entrapment in the industry in general. Instead, it simply reflects that, as with most professions, very few people are able to maintain the same ability to live when their salary is significantly threatened thereby leading them to accept less desirable working conditions.

Consequently, the removal of Backpage in 2014, the primary online site for advertising sexual services, caused significant upheaval to the sex industry worldwide and according to a large number of sex workers has made their lives notably more precarious, stressful and dangerous (SPOC, 2017; Maggie’s Toronto, 2018). Some sex workers have described how a portion of clients will deliberately wait until the end of the month to approach workers and then will try and haggle with them for reduced costs because they think workers might be scrambling to make rent or pay bills and are thus more desperate and willing to say yes (Grant, 2018). One sex worker illustrated this directly in relation to Backpage when she described how just a few hours after the site was taken down a client who she had stopped seeing because he assaulted her started texting her “just really trying to … I don’t know, capitalize on the fact that people are going to be in panic mode” (Grant, 2018, np). Thus, the advertisement ban is also likely to actually increase client’s predatory behaviour and decrease worker’s safety.

As a result of the decreased ability to conduct indoor work, it is likely that Canada will see a movement of workers outdoors. While the investigation and conclusion process for Bill C-36 attempted to suggest that all forms of sex work were equally dangerous, there is a wealth of
evidence to show that significant differences exist between on-street and off-street work (DOJ, 2014). On-street workers are significantly more likely to have no other source of income, are more likely to be pressured to not use condoms thereby increasing the risk of HIV or other STI’s, and are at far greater risk of experiencing physical and sexual violence including death, as compared to off-street workers (Jordan 2005; Abel et. al, 2007). This is of particular concern when addressing the needs of Indigenous female sex workers, who are majority of the Canadian sex work population and are twice as likely as non-Indigenous sex workers to test HIV positive (Shannon et. al. 2007). Considering these realities, a state policy’s effect on the safety of on-street sex workers as well as its impact on the movement of workers between on-street and off-street is an especially important aspect of its overall success in making sex work safer.

Overall then, without providing support for or addressing any of the myriad of issues discussed, the advertisement bans deprivation of clients means that anyone who leaves the industry as a result of the ban is likely in a more precarious position than they were as a sex worker. Therefore, the fact that the success of the Model has been measured primarily through whether the mere number of sex workers has been reduced, suggests a critical lack of understanding of the potential harms of this approach (Government of Sweden, 2010). By extension, the entire aim of Bill C-36 and the Nordic Model, which is specifically to create legislation to deter sex workers, actually makes these people’s lives, primarily women, less safe and healthy when it is not also implemented in conjunction with significant social programs and a change in societal attitude.

**Institutional Treatment and Societal Stigmatization**

Östergren (2004), a former Swedish sex worker who has spent over a decade researching and writing on sex work, suggests that the societal stigmatization and resulting institutional
treatment that sex workers face is frequently considered the most damaging part of the job. Therefore, the impact of government regulation on these factors must be closely examined. In addition, societal stigmatization and institutional treatment may also have important consequences on some of the most significant negative aspects of sex work which the Nordic Model highlights, such as drug use.

As has been illustrated throughout this paper, there is significant association of sex workers with drug and alcohol use as well as general criminality. A press release by the Swedish government summed this sentiment up by stating that “prostitution brings serious damage to the individual and to society, and that around prostitution an extensive criminality exists, as for example pimping, drug commerce and abuse (Kommittédirektiv 2008 as cited in Danna, 2012).” This implies a causality between sex work and drug-use that has been explicitly used to justify negative portrayals of sex workers and as a basis for the authoritative nature of the Nordic Model.

It is true that drug-use amongst sex workers is significantly higher than the general population (Abel et. al, 2007; Rotenberg, 2016). However, a qualitative study of sex workers suggests that drug-use, rather than being a determinant to entry, may actually be more a coping mechanism used to manage life as a sex worker (Jordan, 2005). Östergren’s (2004) findings support this conclusion while also suggesting that drug use is not primarily about managing the performance of the sexual activities itself but is actually more closely related to managing the psychological impacts of society’s attitudes towards sex workers. In light of this, the most effective means of reducing drug-use would seem to be an alleviation of the negative aspects of the sex industry, most substantially its stigmatization.
Unfortunately, there has been a distinct lack of prioritization for social programs within countries implementing the Nordic Model, as well as significant problems within the attitudes and delivery of those few programs which do exist (Danna, 2012). In Sweden, despite the rhetoric that the Nordic Model understood sex workers were in precarious vulnerable positions and sought to create legislation which aimed to alleviate this, there was no additional money allocated to social services to support any programming that might help sex workers exit the industry. By contrast, an additional 7,000,000 krona (approximately $1,010,294 CAD) per year with an increased 30,000,000 krona (approximately $4,328,948 million CAD) between 2004-2006 were given to police departments for sex work related purposes (Danna, 2012). Thus, social services for sex workers are largely confined to therapy and administrative assistance in applying for income support from town administration which is often unavailable but is vital to making the transition out of sex work economically possible.

The therapy services offered are also problematic in their explicit basis that sex workers are victims of violence and in need of help. “A great deal of them have traumas which they need to elaborate” one social services official openly declared (Danna, 2012, 85). In discussing her experience with using sexual social services when considering leaving the industry, one sex worker was offered psychotherapy which she found was aimed at uncovering sexual violence she had supposedly suffered as a child. She had not in fact suffered childhood abuse, but therapy continued along this official narrative to the point that she “felt very confused, I started to doubt what I knew” and after several sessions ultimately stopped going (Danna, 2012, 85).

This refusal to consider alternative experiences that do not fit within or even contradict the official narrative of sex work is extremely troubling. From an outcome perspective, if sex workers feel unheard or accommodated, they are likely to stop utilizing social services and
remain in the industry, as happened with this worker (Danna). In addition, these policies display a lack of respect for, and erasure of the actual lives of sex workers, which insinuates that the ‘experts’ who have created State policy have a better understanding of sex workers lives and problems then the workers themselves. This refusal to listen to sex workers was echoed in several other aspects Danna investigated, including cases of Prostitutionenhaten (prostitution social services division) gynaecological services implanting permanent contraceptives over the women’s doubts and objections, and dismissal of a sex workers complaint that Prostitutionenhaten services put up publicly-viewable signage declaring the buildings Proscentrum (Prostitution Centre).

All of these factors demonstrate a deeply negative view of sex workers which actually contributes to their continued stigmatization, one of the most significant factors in sex workers lives not only while they remain within the industry but potentially staying with them for the remainder of their lives (Abel et. al, 2007). Östergren (2004) reports that sex workers feel they need to constantly “hide, lie and keep double identities” for fear of harassment and ostracism not just for themselves, but also their families (4). As a result, they experience significant mental, physical and emotional health effects not from the actual work, but from societal stigmatization and treatment. The fact that the most damaging aspect of the sex industry could be something other than the ‘selling of one’s body’ is a possibility entirely overlooked by the arguments of the Nordic Model (Danna, 2012). This further demonstrates the necessity of sex workers involvement in understanding and creating policy on the industry.

In addition, the staunch rhetoric and resulting rigid policies displayed by social services suggest it is more than a mere oversight, but an active erasure of experiences counter to the overall ethos of the Nordic Model. This argument is supported by the fact that sex workers have
also reported significant backlash both from the public, and from the government, for expressing disagreement regarding the Nordic Model, or even simply mentioning non-negative experiences they have had in the industry (Danna, 2012; see also: Östergren, 2004, Thomas & Kingston, 2018). Like the individual level dismissal sex workers have experienced using social services, this broader societal and political rejection serves to demean their lived knowledge and alienate them from society. Accordingly, sex workers in Sweden stated that they feel a greater powerlessness and resignation under the new legislation, and an overall increase in their stress leading to more anxiety, sleeping problems, increased eating disorder and use of alcohol and drugs (Östergren, 2004).

In government statements, the Swedish government has acknowledged that the sex industry is unlikely to ever be completely eradicated, and that even its reduction will likely be a long multi-year or decade process (Ministry of Industry, Employment and Communications as cited in Danna, 2012). In spite of this, sex work related social services stridently refuse to include any form of harm-reduction approach to their services. Danna (2012) illustrates how sex workers with no desire to leave the industry find themselves unwelcome and derided at social services, leaving them less likely to seek essential medical treatments such as gynaecological check-ups or STI testing. Condom distribution, which has proven to be an effective means of increasing their use and sex workers levels of knowledge, is opposed by all social services because, as one social worker described it, it would make them accomplices in prostitution (CATIE, 2018; Danna, 2012).

Similarly, programs aimed at targeting sex workers’ drug addictions have explicit goals of absolute discontinuation of any forms of drugs. While the ‘all or nothing’ approach to social services and addictions was popular during the ‘war on drugs’ period, it is now generally
considered a less effective method as compared to harm-reduction approaches (Urban Health Initiative, 2013; see also: Marlatt & Witkiewitz, 2010). However, sex workers resistance to using social services or their failure to achieve complete abstinence further their image as unwilling or incapable of ‘helping themselves’, thus further justifying State prescription of sex work policy. Overall then, the rigidity of the Nordic Model’s approach is simply less effective in encouraging exit from the industry, less effective at increasing health and safety within it, and contributes to negative understandings of sex workers by the public.

Contrasting social services treatment of sex workers police, government institutions generally and general society have been reticent to treat ‘johns’ as violent criminals. Police departments have in fact gone out of their way to protect clients by sending summonses and fines to their workplaces instead of their homes so as not to alert these men’s families or social communities of their prostitution-related charges (Danna, 2012). An intrinsic part of the Nordic Model ideology is the position that those seeking paid sexual services are committing gender-based violence which reinforces a patriarchal society. Thus, differences in government institutional treatment of predominantly male clients versus predominantly female sex workers makes clear that institutions are more willing to aid men’s ability to hide charges of gender-based violence than they are to accommodate the victims of that violence’s desire to not be publicly branded by entering a building with a sign saying Prostitute Center (Danna, 2012).

These examples suggest that the actions of social services and police departments serve to deepen rather than alleviate overall stigmatization of the sex industry, alongside specific disregard, negativity towards and even contempt for the workers themselves. Furthermore, they also demonstrate that regardless of the text of the law, without substantive shifts in public perception of sex work the pre-existing sexist and patriarchal conceptions which justify men
seeking sex while vilifying women offering it will continue to guide the actual implementation of that law. As such, the fact that the Nordic Model makes no attempt to change perceptions of sex work, and in fact, specifically reinforces the idea that sex work is a social ill, calls into question whether or not this form of sex work regulation will ever be able to achieve the aim of making sex workers safer.

Consideration for the impact of institutional and individual bias is of particular importance regarding Indigenous sex workers, who, as was discussed in-depth in previous sections, face double-marginalization on account of their intersecting identities. Thus, the fact that Indigenous sex workers were ignored during consultations, and Bill C-36 makes no attempt to even address this potential issue, is particularly worrisome for the health and safety of Indigenous sex workers (DOJ, 2014; Sayers, 2017; SPOC, 2018; Maggie’s Toronto, 2018).

Targeting sex workers rather than clients has also not been limited to smaller, potentially individual level actions, but has in fact been an explicit part of police procedure at the institutional level. For example, the increased money allotted to police departments for the purpose of increasing sex worker safety went almost exclusively to purchasing infrared video cameras to place in locations where sex work is known to occur, along with other remote surveillance devices to find and monitor internet advertisements (Danna, 2012). These programs heavily focused on monitoring sex workers or areas sex workers were known to frequent, with the justification that identifying them and then waiting for clients to approach them is significantly easier than generally attempting to determine who is a client. Consequently, despite the fact that sex workers are no longer criminalized, they have been subjected to increased surveillance of their lives and increased likelihood of their identification to police and other entities, all within a society which this paper has demonstrated is deeply prejudiced towards sex
workers (Danna; Östergren, 2004). As will be discussed in more depth in the following section, the surveillance consequence of the Nordic Model is once again likely to be particularly impactful on Indigenous peoples in Canada due to their higher levels of criminalization and the historic connection of sex work and colonial aims.

The outcome of these myriad forms of institutional stigmatization is a degradation of sex workers’ mental health, greater incentive to relocate to more dangerous, farther out, and less monitored locations, and increased pressure on their ability to make money which in turn makes them more vulnerable and actually reduces their ability to say no to dangerous work or services that are outside their comfort level (Kingston & Thomas, 2018; Östergren, 2004). In this way, despite purported attempts to have the opposite effect, the Nordic Model actually increases the likelihood and frequency of situations where men are in effect buying women with whom they can do whatever they please, rather than buying a specific service from a person who maintains a degree of control throughout the process.

**Sexual Trafficking as Justification for the Nordic Model**

Earlier in this paper an examination of the history of sex work in Canada revealed that considerations around sexual trafficking have been a foundational aspect of sex work laws and in anti-sex work campaigns. In line with this, Bill C-36 references human trafficking 37 times, echoing both concern for curbing sexual trafficking and explicitly stating its apparent connection to sex work by positing that the commercial enterprises of prostitution “create opportunities for human trafficking for sexual exploitation to flourish” (DOJ, 2014, np). A connection between human trafficking and sex work has been a primary concern of governments and international bodies since the early 1990’s in large part due to the impacts of globalization on migration (Sharma, 2005; see also: Danna, 2012; Hunt, 2010).
The Nordic Model was in fact developed as a result of an increase in foreign sex workers during the 1990’s after the fall of the Iron Curtain (Danna, 2012). These women were typically labelled as victims of human trafficking, and consequently, the Nordic Model was developed with the specific aim of reducing sexual trafficking and its effectiveness in doing so remains one of proponents of the Model’s primary goals. For example, the Council of Europe referred to the criminalization of purchasing sexual services as “the most effective tool for preventing and combatting human trafficking,” something which Bill C-36 quotes as part of the international context which justifies Canada’s adoption of the Nordic Model (DOJ, 2014).

However, this claim is far from unanimous and there is emerging evidence that in fact suggest the opposite. The Global Alliance Against Traffic in Women (2014), a network of over 120 international Non-Governmental Organizations (NGO’s), for example, state that “there is no evidence that criminalising or otherwise penalising sex workers’ clients has reduced either trafficking in persons or sex work” (np). Some law enforcement officers in Finland meanwhile, have actually reported that the criminalization of clients has in fact made finding and ending human trafficking more difficult (Kingston & Thomas, 2018). Under supply-side criminalization, clients who suspected there might be coercion or trafficking happening felt comfortable contacting police. Within demand-side criminalization, the possibility of persecution for having purchased sexual services deters clients from approaching the police, which Detective Chief Sergeant Kenneth Erikkson says has caused a reduction in the number of reports Finnish Police have received since they adopted the Nordic Model in 2003 (Kingston and Thomas, 2018). Similarly, Gripenlöv (2003) also notes a reduction in clients testifying in trafficking cases in Sweden since their implementation of demand-side criminalization in 1999, suggesting that their reluctance likely stems from concerns that something they say may result in their own
prosecution (as cited in Danna, 2013). Thus, once again, the efficacy of the Nordic Model in achieving its aims is called into question.

Furthermore, the focus on human trafficking and the suggestion that sex work and human trafficking are inherently connected has several problematic bases which ultimately work to uphold nation-state borders and racial marginalization. Transnational migration scholar Sharma (2005) notes that over the past two decades there has been increasing migration worldwide in response to economic crises and war, while most developed countries have created increasingly restricted immigration policies. Since this does nothing to alleviate the reasons why people are attempting to migrate, there has been a significant increase in the number of people attempting to migrate illegally, which due to technological advancements and increased security is almost impossible to do without help. This places illegal migrants, the majority of whom are women, in extremely vulnerable positions where they are at significant risk of being trafficked or exploited (Sharma). It also raises the cost of migration, which is particularly burdensome on women who are far more likely than male immigrants to also be bringing children or other family members, thus making it more likely that women will engage in sex work either before or after arriving in order to pay for their or their loved ones passage (Sharma).

These phenomena have coincided with a global push for anti-trafficking legislation in general, such as the United Nations (UN) Trafficking Protocol drafted in 2000 and effective from 2003 onwards, as well as the rise of the Nordic Model first implemented in Sweden in 1999, followed by Finland in 2003, and Norway and Iceland in 2009 (UN, 2000; Kingston & Thomas, 2018). However, the exploitative aspects which can occur through illegal migration, such as kidnapping people, withholding their documents, not paying wages, or physically harming them, are by-in-large already illegal. As such, Sharma (2005) argues that the increased concern with
trafficking allows governments and people to focus the blame for migrant’s vulnerability on those facilitating their movement across borders, rather than on the increasingly restricted immigration policies of developed nations that force people into conditions of illegality in the first place. In this way, anti-trafficking legislation and sex work legislation like the Nordic Model which are based on ideas of anti-trafficking strengthen border policing and ideological justifications for keeping people out, while simultaneously making migrants more vulnerable to exploitation and abuse by traffickers and others due to their desperation and illegal status.

A focus on anti-trafficking also has harmful impacts within Canadian borders, especially for Indigenous people. Drawing on her lived experience and advocacy work as a former sex worker, lawyer, and Indigenous person, Sayers (2017) argues that the continual connection made between sex-work and trafficking, both within policy and public debate, contributes to the idea that sex-workers are inherently exploited. This narrative, she says, becomes the basis for the strengthening of policing and monitoring not just sex-workers and sex-work areas, but whole populations who are deemed ‘high-risk’ and ‘vulnerable,’ such as Indigenous people. The fact that the Swedish police force allocated their increased budget from Nordic Model sex work implementation towards surveillance certainly lands credence to this claim and also establishes precedence for Canadian police forces to do the same (Danna, 2012).

This increase would be particularly harmful for Indigenous women considering the already greater-than-average surveillance of racialized populations and their vastly disproportionate criminal statistics. Thus, Sayrs suggests that the justification of continued criminalization based on the connection between sex-work and trafficking is ultimately quite harmful to Indigenous women and girls. In addition, it is also worth noting that assertions of trafficking have prompted and been used to justify the surveillance and imprisonment of
Indigenous people since the first institution of sex work laws in the 19th century (Strange & Loo, 2010). As such, sex work policies which continue to assert their validity based on anti-trafficking rhetoric, such as the Nordic Model, also function to maintain and increase the colonially based subjugation of Indigenous bodies, lives, and land.

Furthermore, Hunt (2010), a community-based Indigenous researcher, suggests that a lack of data and evolving definitions of trafficking within Canada have led to a “muddling of trafficking with other forms of violence and abuse” (27). Due to the lack of opportunities, services, and often dismal living conditions of Indigenous reservations in Canada, many Indigenous people leave their communities for larger cities at very young ages. In Ontario for example, a lack of high schools in Northern Ontario means that Indigenous youth typically move to Thunder Bay, statistically the most dangerous place for Indigenous people in the world, at age thirteen or fourteen for secondary education (McMahon, 2018). A combination of a lack of supervision from foster families, sparse public transportation, inexperience with urban living, and a lack of meaningful activities leaves these young people at significantly higher risk of drinking, drug-use, gang-involvement, and recruitment into street-level sex trade (McMahon; Hunt). Similarly, for young Indigenous people who move to larger cities after high school or outside of a government-operated program often arrive without having contacts, jobs, or a place to stay and so end up living on the streets where, especially for young women, they are targeted by recruiters and pimps (Hunt).

This sheds light on some of the systemic factors which push Indigenous people into sex work at vastly higher rates than the wider population. As well, the lack of options and opportunities within their own communities is a direct result of colonization and the government’s subsequent dearth of attention and resources. Consequently, the overrepresentation
of Indigenous people in sex work and their resulting higher risk of HIV, sexual assault, violence and death too, becomes a function of colonial systems. Until recently, sexual exploitation has been considered a form of sexual abuse but, in line with international trends, is now being “reframed in the language of trafficking” (Hunt, 2010, 28). As such, the experiences and changing understandings of Indigenous youth within sex work support Sharma and Sayers respective arguments that a focus on trafficking is being used to redirect governmental responsibility and continue the marginalization of Indigenous people. As a result, Canada’s adoption of the Nordic Model through Bill C-36 specifically continues the legacy of bodily, emotional, and mental harm that this country has historically inflicted on Indigenous people.

IV. The New Zealand Model

The Prostitution Reform Act: An Overview

In 2003, the Prostitution Reform Act (PRA) was passed by the New Zealand government, repealing a supply-side criminalization Model and becoming the first country to decriminalize sex work at a national scale (Mossman & Mayhew, 2007). The New Zealand Prostitutes’ Collective (NZPC), a grassroots sex worker run national organization which operates community centres throughout the country where sex workers can receive information and supplies on everything from sexual health to taxes, is credited with spearheading and creating momentum for a change in law (NZPC, nd-a; Abel et. al, 2007). This occurred through the NZPC’s “relentless work” asserting the importance of the process being spearheaded by sex workers and the resulting legislation being created specifically based on their experiences and needs (Armstrong, 2010, 40). Consequently, the PRA was developed in direct collaboration with the NZPC and
other sex workers, a distinct contrast from the creation of the Nordic Model and its implementation in Canada. According to the text of the Prostitution Reform Act 2003:

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

(a) safeguards the human rights of sex workers and protects them from exploitation:

(b) promotes the welfare and occupational health and safety of sex workers:

(c) is conducive to public health:

(d) prohibits the use in prostitution of persons under 18 years of age:

(e) implements certain other related reforms

Owing to its specific aim of empowering sex workers, decriminalization was chosen for the development of the PRA. This occurred in part because the increased regulatory measures of implementing legalization brought forth the concern that an underground sex industry would simply rise up, while the essential endorsement of the sex industry was seen as unnecessary and potentially alienating to sex workers who felt exploited (Armstrong, 2010).

The Act received high levels of support from sex workers, brothel operators, NGO’s involved in providing services to sex workers, and the general population both prior to its implementation and afterwards. On an approval scale from 1-5 where five was the highest, 84% rated themselves as a four or five prior to implementation and 77% did so four years afterwards, 4% and 6% respectively rated themselves three indicating neutrality, while only 12% and then 18% marked one or two indicated low levels of support (Mossman & Mayhew, 2008). The fact that approval rates have not dropped significantly in the several years following the Acts passing is a significant sign that, contrary to many opponent’s predictions, communities have not seen a marked increase in visible sex work, drug use, or other criminality.
Addressing Canada’s Rejection of Decriminalization

In justifying Bill C-36’s adoption of the Nordic Model, Bill C-36 specifically discounts decriminalization or legalization as viable Models by stating that they have caused an expansion of the sex industry, done nothing to alleviate workers vulnerability to violence or exploitation, and have not decreased societal stigma (DOJ, 2014). However, both their judgements and the research it is based on seem to erroneously conflate decriminalization and legalization as the same thing (DOJ, 2014). While they do share many similarities, they also exhibit key differences. Legalization amounts to an official acceptance of an activity, while decriminalization merely removes legal punitive measures associated with committing the activity in question. Although this can result in little functional difference it represents an important ideological distinction. In addition, legalization necessarily involves government control of an activity through regulation, whereas decriminalization does not (Armstrong, 2010).

Mossman & Mayhew (2008) note that with regards to sex work, due to overarching concerns of social order, legalization actually produces far stricter regulations than criminalization generally. In practice, decriminalization of sex work has almost always included some regulatory aspects to it, such New Zealand’s mandating condom use; however, there is typically considerably less government involvement than with legalization (Kelly, Coy & Davenport, 2012). Thus, basing a determination of decriminalization off of research into legalization will lead to erroneous understandings of its actual strengths and weaknesses.

For example, Raymond (2004), which is cited by Bill C-36, examines increases in the voluntary sex industry in cases where prostitution and other sexual services have been legalized, yet the author explicitly extends her findings and argument to include decriminalization by labeling the section “legalization/decriminalization of prostitution does not control the sex
industry: it expands it” (318). Regarding Amsterdam, she uses the fact that sex work has grown to account for 5% of the Netherlands economy since the creation of the legalized red-light district as proof that the industry has expanded under legalization. However, one of the goals of the red-light district was to market the district as a unique international tourist destination. As such, the neighbourhood was specifically designed to openly display sexual services through sex clubs, the now-infamous windows which women dance behind, and even cultural attractions such as a Sex Museum (I Amsterdam [City of Amsterdam Tourism Board], 2019). Thus, while Raymond (2004) was correct in her assessment that legalization has increased sex work in the Netherlands, she ignores the fact that this was actually part of Netherlands goal.

The only other evidence Raymond (2004) provides for an increase to the voluntary portion of the sex industry post-decriminalization or legalization is in the State of Victoria, Australia. She suggests that legalization has resulted in a “massive expansion” of the industry which has been an “integral part of the tourism and casino boom in Victoria” with government-sponsored casinos allowing casino chips to be redeemed at local brothels (319). Again, she seems to overlook the fact that Victoria has actively chosen to encourage sex work which makes it utterly unremarkable that the industry has grown. In addition, the paper fails to consider or acknowledge the fact that actively encouraging the sex industry is a governmental choice and not inherent to decriminalization or legalization. New Zealand, for example, chose decriminalization specifically in order to achieve the most neutral stance of neither condoning nor condemning sex work possible (Prostitution Law Reform Act, 2003). Consequently, making claims on the effect of decriminalization or legalization on the size of the sex industry generally by only examining Amsterdam’s red-light district is disingenuous and ineffective.
Another fault in the research Bill C-36 bases itself on is that it almost exclusively examines countries where decriminalization or legalization of sex work has occurred within specific parts of urban areas, or where a specific region/province/state/territory has chosen to legalize or decriminalize without any attention to the differences between municipal-, regional- and national-level legalization and decriminalization (see for example: Kelly, Coy & Davenport, 2012 Raymond et. al 2002; Raymond, 2004). This is highly problematic if sex work becomes legal or decriminalized in only one part of the country than logically, that area is likely to attract those seeking to purchase or sell sexual services from surrounding areas where it remains illegal. This phenomenon is part of the logic of government’s encouraging sex work as part of tourist attraction, but the movement is likely to happen even without government intervention. Thus, without also knowing the impact on the sex industries in neighbouring areas, information neither Raymond (2004) nor other articles cited by Bill C-36 supply, it is impossible to determine if the sex industry of the country has actually increased under decriminalization or legalization as Bill C-36 claims, or if it has merely changed locations giving the surface appearance of an increase (for other relevant works cited by Bill C-36 see: Kelly et. al, 2012; Raymond 2002).

Overall then, Bill C-36’s criticisms of decriminalization largely do not apply to national-scale decriminalization on account of their failure to differentiate between legalization and decriminalization and a lack of consideration for the significant differences between municipal- and regional-level decriminalization as compared to national-scale. Furthermore, there are several reasons, both practical and ideological, that de As such, the very basis for Bill C-36’s assessment that decriminalization is not effective, and by extension its determination of the Nordic Model as most effective, must be called into question.
Does Decriminalization Expand the Sex Industry?

The idea that decriminalization increases the number of sex workers is a persistent narrative for opponents of decriminalization and a justification for why criminalization is necessary (Raymond, 2004; DOJ, 2014). However, in drawing on a number of large studies conducted by the NZPC estimating the number of sex-workers prior to, at the time of, and after decriminalisation occurred, Abel et. al (2007) conclude that the number of sex workers in New Zealand has stayed the same.

There was also the prediction that decriminalization would increase on-street sex work in particular, and there have been a few media reports since the PRA was enacted which suggest this to be the case (Espiner, 2005; see also: Manukau City Council, 2009). However, multiple sources, including the independent reports made in assessing decriminalization and information from NZPC, do not suggest on-street sex work has increased (Abel et. al, 2007; Mossman & Mayhew, 2008; NZPC, nd-a). While it may seem disappointing that there is little evidence that decriminalization has decreased sex workers in the industry, as was demonstrated in Section III, if one’s goal is focused on ensuring the health and empowerment of sex workers, the assessment of policy’s efficacy based purely on numbers is simplistic and likely to lead to false conclusions.

One possible explanation, and one borne out by qualitative interviewing, could also be that workers don’t feel like they need to hide anymore (Armstrong, 2010). This suggests that the New Zealand Model could actually encourage positive spatial switching, whereby due to the fact that police have no legal grounds to harass or detain either the sex workers or their clients, the need to exist within a toleration zone has disappeared and workers are consequently moving out of more marginalized areas with higher incidences of criminality into safer areas. These areas are also more visible, thus leading to the increased perception from outsiders that sex work has increased rather than simply changed locations. This has positive implications not only for sex
workers physical health, but also their emotional and mental wellbeing because it suggests that
sex workers feel more comfortable being increasingly visible which could potentially risk
harassment and exposure of identity.

Another possible explanation for the apparent increase in on-street sex workers is that
since the law changed demand has actually decreased and thus there are more sex workers
standing on the street at one time waiting for clients, thereby creating a false impression of an
increased sex worker population (Armstrong, 2010). While this might be initially surprising and
contradicts the notion that decriminalization normalizes and increases supply, therefore
increasing demand, a significant number of sex workers from various locations in New Zealand
have noted it in both on-street and off-street contexts. In interviews conducted by Armstrong sex
worker Lisa Lou explained “actually, it has changed since they’ve done that
(decriminalization)… the clientele’s just gone dead …look at how many parlous have closed
down even … It’s amazing” (44). A different worker who expressed the same sentiment offered
the possible explanation that clients who would previously have behaved in violent or harassing
manners towards the sex worker were now fearful of legal repercussions, stating “I think now
that it’s legal they’re more scared of picking us up than back in the days when I first started out”
(Armstrong, 45).

Therefore, the seeming appearance of a greater number of sex workers may actually be a
positive indicator of increased safety, comfortability and wellbeing. This has very positive
implications for the New Zealand’s Model ability to decrease violence against sex workers in
general, which is a key issue within increasing their overall health. It also contrasts positively
with the Nordic Model which, as was discussed in great depth in Section III, increases the
potential for and number of aggressive and disrespectful clients through negative spatial switching, decreased negotiation time, and advertisement bans.

A final reason sex workers have suggested is that decriminalization had taken the illicit thrill out of paying for sexual services. Consequently, men were now less interested because, as one worker put it, “it’s not taboo anymore, it’s not a ‘oooh’ sort of thing” (Armstrong, 2010, 45). The psychological phenomenon of being attracted to subversive and potentially dangerous actions is well documented, and Armstrong also notes that there has even been some research on this specifically in relation to sex work (McKegany and Barnard 1996; Sanders 2008). Since the taboo nature of sex work is not solely related to its legality, but also to the wider culture of unacceptability and scandalization it elicits, a decrease in interest for this reason would suggest that decriminalization is also having a substantial enough impact on societal stigma to actively change client’s behavior.

This would seem to suggest that the kind of demand the New Zealand Model is reducing is predominantly those clients who are uncomfortable with the fact that sex workers have the ability to report and persecute a verbally or physically abusive client. While the results of the advertisement ban in Section III illustrated that without addressing the underlying issues reductions of the sex industry is not always positive, the decrease in demand caused by New Zealand’s implementation of the PRA does seem to, on the whole, represent a positive increase in sex workers health.

**Institutional Treatment and Societal Stigma**

The New Zealand Model’s effect on stigma represents perhaps the most mixed element of its outcomes. On the one hand, sex workers are increasingly more comfortable moving into safer but less tolerant of ‘deviant’ behavior neighborhoods. Alongside the potential normalization of
the sex industry and subsequent decrease in client interest, this suggests that sex workers are becoming less of an ‘Other’ separated physically and socially from wider communities. In support of this, many on-street worker’s report feeling more capable of fighting back against the frequent verbal harassment they face from passerby’s, while both outdoor and indoor workers report standing up more firmly to client’s degradation or unsupportive communities (Abel et. al, 2007). At the same time however, while they may feel more able to combat verbal harassment, many also suggest that they don’t feel decriminalization has led to its reduction.

Decriminalization opponents have used these mixed effects to suggest that the Model is ineffective as a whole. Kelly et. al (2012) for example, who are a key citing in the Canadian government’s justification of Bill C-36, claim that the fact that many sex workers still felt uncomfortable telling their family doctor about their profession was proof of that supposition. While these are certainly important considerations, the fact that a majority (53.9%) of sex workers as a whole have informed their doctor is notable, especially when considering the fact that for street workers, who are typically the most stigmatized group, a full 69.2% have notified their regular doctor (Abel et. al, 2007). At the same time, some of those same sex workers who said they felt uncomfortable disclosing their vocation to their doctors also stated that this sentiment had more to do with themselves than with health professionals, and they were certain if they did tell them they would not be treated any differently. Joan, a street sex worker from Christchurch said that:

> I find him a really good doctor, and I mean and I think if I was to be truthful to him about working, I mean I’m sure he’d be fine with it. ...I just, yeah, there’s just some things your doctor doesn’t need to know... (sic) (Abel, 115).
Furthermore, for some their reasoning for choosing not to disclose or receive work-related care from their doctors had little to do with the doctors or stigma and far more with worker’s desire to maintain social connections within the sex work community. Sheila, a managed indoor sex worker from Auckland stated that:

*um my doctor knows that I work, but I tend to do my STD and blood tests at the NZPC just cause I like catching up with the people and coming in to see, you know, the nurse and saying “hi.”* (Abel, 115)

Even for those who thought their doctor’s might treat them differently, this did not mean they did not receive the healthcare they needed in relation to their profession. Only 3.7% of sex workers reported that they did not go for sexual health check-ups, with the vast majority of respondents who did not see their doctor going either to sexual health centres, family planning, and a full 15.5% utilizing NZPC services (Abel et. al, 2007). “Well at the PC [NZPC], I mean you can tell them anything” remarked Brenda, a private indoor sex worker from Wellington (89). Overall then, while there is certainly room for improvement with regards to doctor’s open-ness to sex worker patients, sex workers do not feel they have a lack of options for receiving fully supportive care and are utilizing these services at extremely high rates.

Kelly et. al (2012) suggest that decriminalization has been ineffective because the majority of incidents of violence are still not reported to police out of concerns about stigma. Hubbard (1997) reminds us however, that given the history of punitive regulation of prostitution, legal changes without changing the underlying social and economic conditions cannot be expected to make substantial impact on the existence of sex work, and only serve to change its spatial distribution. Furthermore, what Kelly et. al do not take into consideration is that social stigmatization and attempted control surrounding women and their sexual practices is deeply
embedded in Western social culture, and in medical, police and judicial institutions. This is evidenced by historical (and sometimes present) obsessions with women’s pre-marital virginity, the prevalence of Victorian ideals, and the Virgin-Whore dichotomy (Strange & Loo, 1997). It is thus questionable whether a legislative change could reasonably be expected to reduce a culture of stigmatization and shame built over centuries of discrimination to such an extent that a majority of sex workers would feel comfortable approaching medical or police institutions, especially after only having been in effect for four years at the time the four separate reviews were published.

Echoing Hubbards (1997), Marge, a managed indoor sex worker from Auckland who supported decriminalization but noted its limitations, stated:

*Um I really don’t think that there’s anything a law change would bring about to reduce the stigma and the attitudes that people in general have about the industry, um because most attitudes and opinions about us hookers is based on ignorance, bigotry, intolerance, and jealousy. And until those things change, there really isn’t a whole lot more. I mean you can’t really pass an amendment to the act to say that they’re not allowed to treat us (?) any more - they have to say ‘hello’ – you can’t, you know, that’s um that’s not going to happen. (sic) (Abel et. al, 96).*

Supporting this view, 57.3% of sex workers in general and a full 65.8% of street workers, who are the most likely to encounter police, the most stigmatized, and the most legally persecuted sex work demographic, indicated that they believed police attitudes had changed for the better following the PRA (Abel et. al, 2007). This indicates that the PRA has had a positive and well-acknowledged impact on sex worker-police relations. Crucially, this also suggests that legislative changes are capable of changing institutional stigma, which has positive implications
for its ability to change wider cultural stigma given more time. Here again, the NZPC established its importance to the lives and health of sex workers, as 62.8% of sex workers reported that the NZPC would be a place they would seek help for work-related injuries (Abel et. al).

Furthermore, sex workers positive opinions and high usage rates of NZPC services demonstrated here highlights the importance of having workers involved not only in the creation of the overall direction of the industry, but also in the specific delivery of services. This ‘by-the-community, for-the-community’ Model has also proven to be very promising within Indigenous health contexts. In Alaska for example, the Nuka System of Care has been developed based primarily on the idea of relationships to oneself, other people, and one’s community. It seeks to provide care that is completely driven by the needs and wants of the patients and the providers, who are all considered “customer-owners” of a vital resource for their community (Gottlieb, 2013, 1). In doing so, the Nuka System is able to incorporate existing Western medicine, traditional healing techniques, and experiment with innovative and new possibilities, in order to create the most effective and most comfortable care for the unique needs of their community. The implementation of Nuka has seen a 36% reduction in days patients spend in hospitals, 42% reduction in emergency and urgent care usage, and 58% reduction in speciality clinic visits all of which have been sustained for 10 years or longer (Gottlieb). More than 95% now have an integrated primary care team, up from 35% in 1996, and 94% of customers report feeling the system respects their cultures and traditions (Gottlieb).

Thus, the Nuka System has been recognized as not only an exemplary Model of community-based care and Indigenous-positive practice, but also as a particularly effective means of improving health care delivery and health outcomes. Considering this in conjunction with the efficacy and positive attitudes towards NZPC-led care, it would seem that one of the
most impactful ways to increase Indigenous sex workers health in Canada would be to provide funding and a relative degree of freedom to innovate for Indigenous sex worker-led health teams and services.

**Decriminalization and Safety**

While the previous section demonstrated that there is much to be done around improving sex workers’ willingness to report negative incidences to the police, sex workers do appear overall to be more willing to contact police than prior to the PRA, which is an important safety indicator. One street sex worker from Christchurch described the change as:

> Yeah, confident, I’ve got a lot more confidence, and I know that I can ring them to say, “Oh this has happened, and blah blah blah.” I haven’t had to do that, but I just know that I can. Cause that’s the law, that’s the law change. That it’s legal now to be able to work, prostitution, and to do, you know. And so I was like, yeah, I just know that it’s legal now. Whereas before it was all hush hush, you couldn’t go to the Police, cause what would you say? (Abel et. al, 2007, 166)

However, some sex workers also suggested that their willingness to report was less about how the police would respond, and more about the potential disbelief and stigmatization they could face within the judicial system or from public opinion, especially regarding rape. Dee, a Managed indoor worker from Wellington said:

> I think now it’s more easier to actually go to the Police, but I don’t think I would. …would it be in the newspapers for start, you know. Would I have name suppression? If my name’s in the newspaper, I’d feel so stink... Because, you know, people might think, “Oh, I know her. I know that name,” you know, and
then like I said, not a lot of people know what I do, and then the others might say, “See, I knew, I heard right, see, I knew she was a hooker. (Abel et. al, 121)

Dee’s feelings further demonstrate how important changing societal stigmatization and understandings of sex work are to worker’s safety. Her comments also suggest that there may be knowledge gaps around court processes that exist within the sex work community which might be preventing worker’s from pursuing legal recourse. As such, one way the worker’s health and safety could be improved would be to make legal information more easily accessible and transparent.

Condom usage is considered to be one of the most important factors in creating safer sexual activity as they provide a physical barrier which, aside from lambskin condoms, are made of materials that are impenetrable to HIV and other sexually transmitted infections (STIs) (CATIE, 2018). The vast majority of sex workers in New Zealand reported being adamant about condom usage at all times but also stated that clients frequently requested they not be used (Abel et. al, 2007). As such, the key to increasing condom usage seems to lie foremost in increasing client’s desire to use them, and secondly in increasing sex workers ability to insist on their usage. Since the implementation of the New Zealand Model, which included mandating condom usage, a majority of participants in Abel et. al’s study reported that they used the fact that condom usage was now a legal requirement as a way of encouraging clients to use them, and as justification for their refusal to continue sexual services if they did not.

This is important not only in that it points to physically safer sex, but also suggests the New Zealand Model has made a positive impact on worker’s ability to negotiate and stand up for their rights. The fact that 90% of participants felt they had increased employment, occupational safety and health (OSH), and legal rights under the PRA support this (Abel et. al, 2007). In
addition, the creation of government OSH booklets on the legal parameters of sex work which must be easily accessible within an indoor workspace meant workers are also not left in situations where they have to argue with clients. This has not only been beneficial for increased condom usage and general safety, but also reduced the mental and emotional burden on them to insist on safe and consensual sex.

Karen, a managed worker from Christchurch described this by saying:

...you can sort of point out things to the clients when they, you know, ‘I don’t want to use a condom,’ and it’s sort of like well you don’t have to stand there and sort of argue any more. You can sort of go, ‘Look, mate, look, read this.’ (Abel et. al, 159)

These factors directly contrast to information on the Nordic Model, which decrease safety, encourage ‘bad dates’, and as Östergren (2004) points out, result in noticeably reduced physical, mental, and emotional health in sex workers due to the increased strain the Model places on sex workers financially and socially.

Finally, the fact that decriminalization removed concerns of sex workers being prosecuted has resulted in sex workers reporting that decriminalization had removed a key leveraging point for clients by eliminating their ability to threaten calling the police. This is particularly interesting in comparison to arguments for the Nordic Model which posit that it is the criminalization of clients that creates a safer environment for the sex worker. This may hold true on a theoretical basis; however, it is only likely to cause a favourable change in client’s behaviour if police assistance is readily available in that situation and the threat of actually following through in contacting them is taken seriously by the client. As Danna (2012) describes in Section III, in practice the actions of police departments and social services have worked to
uphold leniency for clients while continuing dismissive and even punitive attitudes towards sex workers. Simultaneously, spatial switching as a result of the law functions to make help less accessible and economic need to take every client who comes along greater (Kingston & Thomas, 2018). As such, despite their legally increased position of power relative to clients, the Nordic Model does not appear to change systems which make worker’s reticent to contact authorities and may actually make them less likely to do so.

**New Zealand and Human Trafficking**

Arguments about decriminalization’s impact on the reduction of human trafficking have consistently been used as talking points both by those in favour and those against the New Zealand Model (Laurie, 2010). Bill C-36 rejected decriminalization and legalization on the basis that they have caused “coerced prostitution and human trafficking to flourish” (DOJ, 2014). This conflates decriminalization and legalization as being equivalent and having equivalent effects, which, as was discussed previously, they do not. There is some evidence that countries where sex work is legal, either nation-wide or in specific areas, do have higher rates of trafficking (Kingston & Thomas, 2018). However, with regards to human trafficking and decriminalization, Abel & Fitzgerald (2010) note that while it is among the ‘hottest topics’ in sex work policy generally and specifically during the PRA debates, it actually appears to be an extremely small issue in New Zealand. There had been only a handful of reported sexual trafficking’s prior to the PRA and despite “proactive investigations” immigration authorities have yet to uncover any instances of sexual trafficking since its implementation (261).

The lack of a substantial trafficking industry in New Zealand is likely due to its geographic isolation as an island several thousand kilometres away even from Australia, which is a factor Canada certainly does not experience and is indeed in general somewhat unique. As
such, while the data from New Zealand does not indicate that decriminalization has had any negative effect on trafficking and does provide some preliminary suggestion that it may be beneficial, its applicability as evidence in wider discussions is dubious. Since New Zealand is the only country to have implemented national-scale decriminalization so far, and as we have already illustrated that municipal- or regional-level decriminalization is a faulty means of assessment, it will be impossible to generate more substantial information unless other countries decriminalize sex work. Considering this, information on the connection between decriminalization and sexual trafficking is simply too insufficient to make a claim in either a positive or negative direction. However, with respect to Indigenous sex workers it is important to bear in mind that narratives which focus on trafficking as justification for criminalized sex work policies contribute to the continued surveillance and disproportionate incarceration of Indigenous people (Hunt, 2010; Sayers, 2013b).

**The New Zealand Model: More than Just Decriminalization**

Overall, decriminalization in New Zealand has proven to be an incredibly promising means of increasing sex workers’ health and safety. However, legal decriminalization is not the only factor which has contributed to the New Zealand Model’s success. Lack of information or awareness can be a significant barrier to the effectiveness of legal changes, even when the actual substance is shown to be helpful (Ravaghi et. al, 2014). Reaching ‘hidden’ populations, such as sex workers, is generally considered to be difficult and only partially successful, especially for the most marginalized of a group, who in both Canada and New Zealand’s sex industries are disproportionately Indigenous (Shannon et. al, 2007; Farley et. al, 2005; Abel et. al 2007). As such, the extremely high awareness reported by sex workers in New Zealand, over 95% of whom say they understand they have rights under the PRA, is significant (Abel et. al 2007).
One likely reason for this has been the presence of sex workers at all levels of policy creation and service dissemination, most notably through the NZPC. The importance of the NZPC to the positive results of the New Zealand Model are substantial, therefore highlighting how community-led practices are crucial not only from a theoretical perspective but also to the efficacy and impact of the initiative. In addition to being a collaborator and driving force behind the PRA, the NZPC is also supported by the Human Rights Commission, the New Zealand Law Society, the New Zealand AIDS Foundation, The New Zealand Federation of Business and Professional Women, various health institutes, and many other smaller organizations (NZPC, nd-b). In being publicly and prominently recognized, the message is sent that sex workers are people worthy of respect and whose opinions should be taken seriously. This directly contrasts with much of the basis for the Nordic Model, which is predicated on the idea that sex workers are agency-less victims and subscribes to tropes of alcoholism, drug-abuse, and damaged childhoods.

The NZPC and other organizations, such as the Māori Women’s Welfare League, have taken an explicitly pro-Māori stance and have been working to create a culture around decriminalization that centres not just sex worker-led knowledge and initiatives but also in particular Māori sex worker-led experiences and work (NZPC, nd-a; NZPC, nd-b). As the NZPC has a significant impact both on the sex work community and on institutional and public understandings, it seems likely then that their pro-Māori stance has pushed the New Zealand Model as a whole to be more mindful, and thus effective, surrounding Indigenous sex work.

However, it is important to recognize that the PRA itself does little beyond acknowledge that Māori are particularly affected and state that the increased empowerment of sex workers will by default also result in the empowerment of Māori sex workers (PRA, 2003). While bettering
the conditions of all sex workers is positive for Māori, a more actively anti-colonial and Indigenous-positive stance, including acknowledgements of the importance and plans for the incorporation of Māori traditional health practices, would be beneficial.

One of the key values NZPC espouses is a recognition of “the centrality of the principles of Te Tiriti o Waitangi,” which is the treaty signed in 1840 between the Māori people and colonial settlers that resulted in British declaration of sovereignty over New Zealand (NZPC, nd-b, np). They are also specifically supported by Māori organizations, including the Te Puawai Tapu health organization. Both the Māori Women’s Welfare League which is the largest Indigenous women’s organization in the world and Te Puawai Tapu supported the PRA and provided submissions during the debate to that effect. Te Puawai Tapu stated they believe it could “provide opportunity for rejecting ‘victim-blaming’ and ‘deficit thinking’ approaches to addressing the sexual and reproductive needs of Māori” (Laurie, 2010, 96). Thus, even if the PRA is not explicit in its effect on Māori workers specifically, it’s implementation could improve Māori sex workers health by improving societal and medical understandings which are a result not only of their vocation as sex workers, but also from their status as Māori people who, through colonization, have historically been considered generally inferior and less able to take care of themselves (Mikaere, 1994). Overall then, within the New Zealand Model there is a focus on improving the lives and health of Indigenous sex workers specifically, which appear to be producing positive effects.

In contrast, the Nordic Model makes no mention or special consideration of Indigenous people, even though there are Sami Indigenous populations in Sweden and other Nordic countries. This could be a result of Sami people not making up a significant portion of the sex industry. However, Canada’s adoption of the Nordic Model, where Indigenous sex work is
overwhelmingly disproportionate, does not seem to make any particular considerations or attempts to address this issue beyond including Aboriginal people in a list of those affected (DOJ, 2014).

For Canada, a vastly larger country both in population size, diversity, and geographical body, a singular driving sex work body like that of the NZPC may not be the best solution for representing the diverse, and at times divergent, needs of the Canadian sex work population. In any case, there does not currently appear to be such an organization and any creation of one would by default have to come from the community itself and cannot be artificially introduced by political or academic spheres. What could be done however, as is what happened in New Zealand, is that government and other institutional bodies begin respecting sex workers’ by ending their history of erasure and dismissal and extending both consideration and willingness to collaborate with them on policy and service creation.

This would likely also have a positive effect on pushing for Indigenous specific policy as Canadian sex work groups, like the NZPC, appear to be far ahead of their government in recognizing and acting on this issue. Maggie’s Toronto Sex Workers Action Project for example, has partnered with the Native Youth Sexual Health Network to create the Aboriginal Sex Work Education and Outreach Project (ASWEOP) which is run by and for Indigenous people engaged in street-based sex work (Maggie’s Toronto, 2012). Sex Workers United Against Violence (SWUAV) meanwhile, an organization located in the Downtown Eastside of Vancouver, which is a marginalized area known for high rates of sex work and Indigenous residence, launched a 30-month project in 2017 to engage with Indigenous women sex workers and address “gaps in policies and programming which create barriers to services and to engagement in public and political discourse for Indigenous women who do sex work” (SWUAV, 2017, np). In light of
this, the New Zealand Model provides a template for sex work legislation and action that has actively considered, and produced positive results, for Indigenous sex workers.

V. Analysis and Conclusion

This paper has aimed to provide an assessment of the Nordic and New Zealand model’s respective impacts on Indigenous sex workers’ health, in the hopes of developing a more positive model of sex work policy in Canada. An overview of the history of sex work in Canada has demonstrated its long intertwinement with forces of racism and colonization, alongside its use as a tool for removing Indigenous people from urban areas, and as a way to justify characterizing Indigenous people as inferior and immoral (Boyer, 2009). This, in conjunction with the epidemic of violence against Indigenous women and their vast over-representation in sex work, has evidenced the importance of this topic not only to the small percentage of the population who engage in sex work, but for society as a whole (Strange & Loo, 1997).

The paper found that the Nordic model proclaims itself to be based on feminism but ignores a key tenant of feminist work: listening to and respecting the voices of sex workers by acknowledging that the true experts on a subject are those actually affected by it (Kingston & Thomas, 2018; Östergren, 2004). Even if one personally believes that the sex industry is exploitative, the Nordic model adheres to the fundamentally problematic idea that it is the state and society’s position to dictate to individual women what they can or cannot do with their own bodies. Thus, rather than empowering women it further objectifies and subjugates them by assuming that sex workers are inherently victimized and consequently incapable of making free choices (Östergren, 2004; Danna, 2012).
Similarly, from the perspective of the Nordic model’s impact on the everyday lives of sex workers, this paper has also identified several ways in which the Model does not benefit, and at times is even detrimental to, their health. Numerous scholars and sex workers have demonstrated that the Model decreases negotiation time and encourages spatial switching to less safe and visible areas (Östergren, 2004; Danna, 2012, Kingston & Thomas, 2018). Both of these factors increase the likelihood of aggressive clients and decreasing sex workers’ ability to assert their rights and wishes or remove themselves from dangerous situations. Compounding this problem, the ban on advertisements places significant financial stress on sex workers and as a result, encourages exploitative clients to try and take advantage of their decreased position to refuse clients (Grant, 2018).

Despite the Nordic model’s goal of reducing the number of sex workers, Danna (2012) and the sex workers she interviews describe how social services are ineffective at creating programs and environments which actually increase workers ability to exit the industry. This is due to the service’s rigid framework that erases worker’s experiences which do not fit into the state narrative of prostitution, and their generally contemptuous and dismissive attitudes towards workers. Simultaneously, the police department’s tolerance towards and consideration for not negatively impacting the lives of clients demonstrates how the Nordic model’s engendering of current attitudes towards sex work allows for the continuation of institutional actions which are deeply gendered and, contrary to the basic aim of the Model, serve to further harm sex workers while protecting clients.

Finally, the assertion that large numbers of sex workers are trafficked, alongside deeply vague definitions of what trafficking actually constitutes, serve to conflate actual instances of people, overwhelmingly women, being forced into sex work, with people who knowingly chose
sex work as what they viewed as the best means for them to reach their goals of financial
stability, migration to a safer country, etc. (Sharma, 2005). While there is certainly the argument
that this ‘survival sex work’ is not a truly free choice, it is still an entirely different phenomenon
than being forced against one’s will. Furthermore, the forces which push someone to choose sex
work when they otherwise wouldn’t have nothing to do with sex work itself, and everything to
do with wider social and economic imperatives (Hubbard, 1997). As such, not only does the
Nordic model’s focus on trafficking serve to create an inaccurate and damaging perception of the
sex industry, it also shifts the blame for survival sex work off of institutions which could actually
alleviate it, such as the government. This can be seen not only in international trafficking as
Sharma argues, but also within domestic trafficking and the lack of recognition paid to
colonization’s impact as Hunt (2010) illustrates. Thus, while true instances of forced trafficking
should be condemned and eradicated, the Nordic model’s over-emphasis on the subject serves
only to harm majority of sex workers’ health by creating more hostile social environments
towards them while perpetuating the factors which lead some people to engage in survival sex
work

This paper has also found that the overall Nordic model lacks specific consideration
towards or mention of Indigenous people. The Canadian government’s failure to address that
issue when adopting the Model, despite Indigenous sex workers importance within its sex
industry, serves to continue the dismissal and erasure of Indigenous people, especially women
(DOJ, 2014; Hunt, 2013). As the serial killer Robert Pickton demonstrates, this lack of attention
and seeming refusal to actually address the issue of violence against Indigenous people, both in
general and especially towards Indigenous sex workers, contributes to an ongoing epidemic of
violence. Overall then, the Nordic model has proven to be ideologically problematic, counter-
productive in bettering sex workers’ health, safety and place in society, and particularly lacking in consideration towards Indigenous sex workers.

An assessment of the New Zealand model has, on the whole, been significantly more positive. Due to its creation in collaboration with the NZPC, the Model actively takes into consideration the needs and wants of sex workers (Laurie, 2010; Armstrong, 2010). Thus, rather than telling women (and men) what they can and cannot do with their bodies, the policy instead works to create the most supportive and safe environment within which women (and men) are able to choose for themselves. From the perspective of the New Zealand model’s impact on the industry, this paper has demonstrated that it has not in fact expanded the number of sex workers and may actually have decreased their numbers (Armstrong, 2010; Abel et. al, 2007). In addition, sex workers report a greater ability to negotiate with clients and fewer aggressive clients, alongside a greater degree of comfort in standing up to them as well as to general verbal harassment during street work. As well, the PRA’s mandating of condom usage in combination with government creation of health and safety pamphlets and posters have resulted in an increased legitimization of the industry. Sex workers reported feeling that this change decreases the emotional and mental burden placed on them to argue with clients and stand up for their rights, thus having a positive impact on their health (Abel et. al, 2007).

The New Zealand model’s effect on changing societal stigma has been less substantial than one would hope for, suggesting, somewhat unsurprisingly, that additional initiatives beyond legal changes will need to be made. Here too, however, positive improvement seems to be occurring as workers do feel that relations with police have gotten better and are more likely to report incidents to them, while positive spatial switching suggests they feel more accepted in less marginalized areas (Abel et. al, 2007; Armstrong, 2010, Mossman & Mayhew, 2008). Due to
New Zealand’s isolated geographic location and small size, it was found to be an insufficient pool of evidence from which to draw conclusions about national-scale decriminalization’s effect on human trafficking (Abel & Fitzgerald, 2010).

With respect to Indigenous workers, the PRA itself could certainly be more explicit in their considerations. However, the NZPC and other organizations in New Zealand have proven to be quite proactive in creating an atmosphere that is specifically Māori-conscious and positive (NZPC, nd-a; NZPC, nd-b; Laurie, 2010). Considering that Canadian sex work organizations seem to be similarly pro-Indigenous, this suggests that the Canadian environment has the necessary elements conducive to an implementation of the New Zealand model in a manner that would increase the safety, physical and social health of Indigenous sex workers, and by extension all Indigenous people (Maggie’s Toronto, 2012; SWUAV, 2017).

Overall then, it is the position of this paper that the New Zealand model, while by no means perfect, represents a far preferable policy for the health of Indigenous sex workers and all sex workers as compared to the Nordic model. Finally, in light of the evidence and problems outlined throughout this paper with regards to both the Nordic and New Zealand models, a series of specific recommendations are made below.

**Recommendations**

- Recognize that sex workers are the primary experts in sex work and the sex industry and, in accordance with that:
  - actively respect and collaborate with them to create legislation around sex work
  - respecting the fact that over 60 sex work, Indigenous, health, legal, and social organizations in Canada have called for decriminalization
- Consult and collaborate with sex workers on any police, health and social initiatives
- Create funding initiatives for sex worker groups themselves to be able to create social and health initiatives

- Recognize that colonization and continuing racist and anti-Indigenous structures have contributed to Indigenous over-representation in sex work and working to address that by:
  - Specifically including sex workers in discussions and action regarding violence against Indigenous people
  - Ensuring that Indigenous sex work voices are a substantially represented in policy creation and implementation
  - Creating transitional programs for Indigenous youth leaving reserves and rural areas for urban centres to reduce their vulnerability
  - Clarifying the parameters of domestic trafficking and creating programs to address the root of the issue which largely stem from Indigenous poverty, generational trauma leading to higher abuse, alcohol and drug rates, and lack of economic and educational opportunity
  - Developing initiatives which incorporate culturally relevant materials and approaches into health and social services
  - Allotting funding for the implementation of Indigenous-led health and social initiatives
Understanding that Indigenous measurements of success may differ from Western ones and, where appropriate, incorporating or basing evaluation off of those indicators

- Remove the ban on advertising paid sexual services
- Increase sex workers’ ability to exit the industry should they wish to by:
  - providing non-judgemental transitional social assistance, including monetary aid, for those looking to exit the industry
  - removing prior offenses, such as bawdy-house and solicitation convictions, from sex workers records to increase their ability to find good-paying employment
- Improve mental health services
- Create media campaign dispelling myths about sex workers as a means of increasing societal awareness and reducing stigma
- Develop additional training for police and social service departments relating to sex work, and especially Indigenous sex work
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