

Challenging Dominant Portrayals of the Trans Sex Worker: On Gender, Violence, and Protection *

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ABSTRACT

Amidst the recent amendments to federal legislation, Bill C-16, which seeks to protect transgender Canadians from discrimination, there is a need to contextualize the violence that the trans community experiences within factors other than transphobia. Although trans victims of violence and homicide are most often sex workers, and trans people are disproportionately represented among those who sell sex, trans people remain largely invisibilized in sex work research in Canada. An analysis of transphobia must be complicated by exploring the diversity and fluidity of gender presentations, social location, and labour. Results challenge dominant and polarized representations of trans women – as either stereotypically (hyper)feminine or overtly masculine, ‘barely women’ – by describing the variability of transfeminine expressions and their relationship to transphobia. Further, the dominant ‘victim’ discourse surrounding trans sex workers is countered by outlining resistance strategies and methods of ensuring personal protection.

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Keywords: Transgender; gender; sex work; prostitution; intersectional; violence; transphobia; police; protection; victimization; resistance; oppression; stigma

I. INTRODUCTION

Transgender¹ resistance and liberation efforts have been documented in North America as early as the 1950s,² yet it is only recently that trans rights have entered mainstream debate. During the same time in which anti-transgender ‘bathroom bills’ spread across the United States,³ an interest in trans rights has been mobilized in Canada through the proposal to amend federal legislation to include anti-discrimination protections for gender diversity. On June 19th, 2017, Bill C-16 received royal assent and came into force and effect, thereby adding “gender identity” and “gender expression” as characteristics protected from discrimination in the *Human Rights Act* and *Criminal Code*. As a result, discrimination based on one’s trans status is now prohibited in the federal jurisdiction and anti-transgender crimes can now officially be conceptualized as hate crimes in the law.

While the lives of trans people have long been invisibilized in social science research,⁴ there has recently been a bolstering interest in

¹ Trans people can be defined as those who “move away from the gender they were assigned at birth, people who cross over (*trans*-) the boundaries constructed by their culture to define and contain that gender” [emphasis in original] (Susan Stryker, *Transgender History* (Berkeley: Seal Press, 2008) at 1). For the purposes of this research, the term ‘transgender woman’ includes anyone who was assigned male at birth but identifies with femininity.

² Leslie Feinberg, *Trans Liberation Beyond Pink or Blue* (Boston: Beacon Press, 2007); Sandy L Laframboise, “Finding My Place: The High Risk Project Society” in Dan Irving & Rupert Raj, eds, *Trans Activism in Canada: A Primer* (Toronto: Canadian Scholars’ Press, 2014) at 51; Jennifer Worley, “‘Street Power’ and the Claiming of Public Space: San Francisco’s ‘Vanguard’ and Pre-Stonewall Queer Radicalism” in Eric A & Nat Smith, eds, *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland: KA Press, 2011) at 41.

³ National Conferences of State Legislatures, “Bathroom Bill” *Legislative Tracking* (Washington, DC: National Conferences of State Legislatures, 2017).

⁴ Viviane Namaste discusses the way in which trans people have been subject to erasure, both institutionally and socially, by the cultural context of modern Western society (Viviane Namaste, *Invisible Lives: The Erasure of Transsexual and Transgendered People* (London, UK: The University of Chicago Press, 2000)). Trans invisibility can be

documenting the extensive experiences of victimization among the trans population; in doing so, however, victimization has largely been positioned as a result of transphobia or cisgenderism,⁵ as if trans oppression is separable from other systems of oppression.⁶ Acknowledging that violence against the trans community is overwhelmingly directed at racialized and low-income trans people, many of whom are sex workers,⁷ this article follows the call for the violence against trans people to be contextualized in relation to labour.⁸ Noticing a devastating lack of trans representation in sex work research, this article draws upon the findings of an exploratory research project in which interviews were conducted with seven trans women who sell sex. This article considers the relationship between transphobia and gender expression, social location, and labour, and complicates the issue of victimization by outlining personal safety measures engaged in by trans women who sell sex. First, I counter dominant and polarized conceptualizations of trans sex workers – as either stereotypically (hyper)feminine or overtly masculine, ‘barely women’⁹ – by exploring the diversity and fluidity of gender expressions and their relationship to transphobia. Second, by challenging the dominant ‘victim’ discourse surrounding trans sex workers, I consider

attributed to the hegemonic assumption that the gender assigned to individuals at birth is stable (Julia Serano, *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* (Emeryville, Cal: Seal Press, 2007)).

- 5 Cisgenderism is defined as “the cultural and systemic ideology that denies, denigrates, or pathologizes self-identified gender identities that do not align with assigned gender at birth as well as resulting behavior, expression, and community” (Erica Lennon & Brian J Mistler, “Cisgenderism” (2014) 1:1-2 TSQ: Transgender Studies Quarterly 63 at 63).
- 6 For a discussion of how framing anti-trans violence as exclusively a result of transphobia is problematic, see Sarah Lamb, “Retelling Racialized Violence, Remaking White Innocence: The Politics of Interlocking Oppressions in Transgender Day of Remembrance” (2008) 5:1 Sexuality Research and Social Policy 24.
- 7 Erin Fitzgerald, Sarah E Patterson & Darby Hickey, *Meaningful Work: Transgender Experiences in the Sex Trade* (Washington, DC: Harper Jean Tobin National Center for Transgender Equality, 2015); National Coalition of Anti-Violence Programs (NCAVP), *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2016* (New York: National Coalition of Anti-Violence Programs, 2016) [NCAVP 2016].
- 8 Namaste, *supra* note 4.
- 9 Julia Serano, “Skirt Chasers: Why the Media Depicts the Trans Revolution in Lipstick and Heels” in Susan Stryker & Aren Z Aizura, eds, *Transgender Studies Reader*, 2nd ed (New York and London, UK: Routledge, 2013) at 226.

the ways in which trans women who sell sex ensure their own safety by engaging in resistance strategies while working.

II. LITERATURE REVIEW

In 2013, three current and former sex workers, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott, challenged the constitutionality of three provisions of the former sex work legislation before the Supreme Court of Canada in the case of *Canada (Attorney General) v Bedford*. In an unanimous decision, the Court struck down the provisions relating to communication (s. 213(1)(c)), living off the avails of prostitution (s. 212(1)(j)), and keeping a bawdy house as it pertains to prostitution (s. 210) because they were found to be in violation of sex workers' s. 7 Charter right to safety and security of the person.¹⁰ The Court ultimately determined that the harms caused by these provisions, in the way in which they interfered with the safety of sex workers, outweighed their main goal of preventing public nuisance.¹¹ Following this decision, the Court granted the Parliament of Canada one year to respond to these concerns by redrafting the provisions, otherwise they would become of no force and effect.

The following year, the Harper Government introduced Bill C-36, the *Protection of Communities and Exploited Persons Act*.¹² With the implementation of Bill C-36, sex work was made illegal for the first time in Canadian history.¹³ The new laws aim to criminalize the clients of sex workers as well as exploitative third parties. However, sex workers can be criminalized for communicating for the purposes of offering or providing

¹⁰ *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 [*Bedford*].

¹¹ For a more thorough analysis of the *Bedford* decision, see Richard Jochelson et al, *Criminal Law and Precrime: Legal Studies in Canadian Punishment and Surveillance in Anticipation of Criminal Guilt* (New York: Routledge, 2018); Richard Jochelson & Kirsten Kramar, "An Addendum on Bedford: Sex and the Supreme Court – Obscenity and Indecency Law in Canada" in *Sex and the Supreme Court: Obscenity and Indecency law in Canada* (Halifax: Fernwood Publishing, 2011), online: <https://fernwoodpublishing.ca/files/Bedford_Addendum.pdf>; Sonia Lawrence, "2013: Constitutional Cases in Review" (2013) 67:1 *The Supreme Court Law Review: Osgoode's Annual Constitutional Case Conference* 3.

¹² Bill C-36, *Protection of Communities and Exploited Persons Act*, 2nd Sess, 41st Parl, 2014.

¹³ Susana Mas, "Prostitution Bill Would Make It Illegal to Buy Sex in Public," *CBC News* (4 June 2014), online: <www.cbc.ca/news/politics/prostitution-bill-would-make-it-illegal-to-buy-sell-sex-in-public-1.2664683>.

sexual services in the public view. In any case, by criminalizing aspects of the sex industry, the working lives of sex workers are negatively impacted.¹⁴

The new laws have been subject to criticism for the way in which they are predicted to generate similar harms, or potentially exacerbate the same harms to sex workers as the previous provisions that were struck down by the Supreme Court.¹⁵ Indeed, sex work researchers have long contextualized the harms that sex workers experience within the stigmatization and criminalization of sex work.¹⁶ In fact, in the first national study on Canada's sex industry, Benoit and colleagues concluded that the risks associated with sex work were manifestations of the social and legal context in which their work takes place.¹⁷ First, the violence that sex workers experience must be read in the context of their devaluation and marginalization in society. 'Whorephobia' and stigmatic assumptions that sex workers are 'dirty' and 'diseased' work to dehumanize sex workers and promote an environment in which violence against sex workers can flourish.¹⁸

¹⁴ Sally Guy, *Prostitution Policy in Canada: Models, Ideologies, and Moving Forward* (Ottawa: Canadian Association of Social Workers, 2014).

¹⁵ British Columbia Civil Liberties Association, "Re: Public Consultation on Prostitution-Related Offences in Canada" (17 March 2014), online: <<https://bccla.org/wp-content/uploads/2014/03/BCCLA-sex-work-submission-to-Justice-Canada-March-17-2014.pdf>>; The Canadian Bar Association, *Bill C36, Protection of Communities and Exploited Persons Act* (Ottawa: National Criminal Justice Section and Municipal Law Section of the Canadian Bar Association, 2014); Frances Shaver, *Bill C-36: Entrenched in Personal Moral Values and Inaccurate Stereotypes: A Brief to the Standing Committee on Justice and Human Rights House of Commons 41st Parliament, 2nd Session* (Montreal: Concordia University, 2016).

¹⁶ Christine Bruckert & Frédérique Chabot, *Challenges: Ottawa-Area Sex Workers Speak Out* (Ottawa: POWER, 2010); Andrea Krüsi et al, "Criminalisation of Clients: Reproducing Vulnerabilities for Violence and Poor Health Among Street-Based Sex Workers in Canada - A Qualitative Study" (2014) 4:6 *British Medical J Open* 1 [Krüsi et al, "Criminalisation of Clients"]; Andrea Krüsi et al, "'They Won't Change It Back in Their Heads That We're Trash': The Intersection of Sex Work-Related Stigma and Evolving Policing Strategies" (2016) 38:7 *Sociology of Health & Illness* 1137; Maya Seshia, "Naming Systemic Violence in Winnipeg's Street Sex Trade" (2010) 19:1 *Can J Urban Research* 1.

¹⁷ Cecilia Benoit et al, "A Working Paper Prepared as Background to Building on the Evidence: An International Symposium on the Sex Industry in Canada" (2014) Canadian Institutes of Health Research Working Paper No 2014/18.

¹⁸ Bruckert & Chabot, *supra* note 16 at 80–81.

Sex work researchers have also identified the harms arising from criminalization as it interferes with sex workers' labour practices and processes.¹⁹ Of course, it should be noted that criminalization most noticeably affects those who work on the streets by virtue of the public nature of their work.²⁰ Accordingly, scholars and activists are concerned that the new sex work laws will most negatively affect those most marginalized and vulnerable who work in the sex industry.²¹ In attempts to avoid police contact while working, street-level workers are not only dislocated to more isolated and effectively more risky areas, but their negotiation process – a crucial component to screening their clients and ensuring their safety – is also limited by a fear of legal repercussions.²²

Evidence also suggests that access to health and social services is constrained by a fear of criminalization; not only do sex workers fear disclosing their sex worker status to health practitioners and social service workers, but also to police, who have been known to survey social services aimed at supporting sex workers in order to harass those who enter the building.²³ Finally, sex workers' ability to access their legal rights and protections is profoundly limited by the potential criminalization that may ensue as a result of reporting victimization.²⁴ Fundamentally linked with this

¹⁹ Krüsi et al, "Criminalisation of Clients," *supra* note 16; Seshia, *supra* note 16.

²⁰ Bruckert & Chabot, *supra* note 16 at 44.

²¹ Christine Bruckert, "Protection of Communities and Exploited Persons Act: Misogynistic Law Making in Action" (2015) 30:1 Can JL & Society 1; Lisa Steacy, *Abolition: Advancing the Frontline: A Submission to the House of Commons Standing Committee on Justice and Human Rights Regarding Bill C-36 on Behalf of the Canadian Association of Sexual Assault Centers* (Canadian Association of Sexual Assault Centres, 2014).

²² Krüsi et al, "Criminalisation of Clients," *supra* note 16 at 6; Seshia, *supra* note 16 at 10-11.

²³ Christine Bruckert & Stacey Hannem, "To Serve and Protect?: Structural Stigma, Social Profiling, and the Abuse of Police Power in Ottawa" in Emily Van der Meulen, Elya M Durisin & Victoria Love, eds, *Selling Sex: Experience, Advocacy and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013) at 297; Frances Shaver, Jacqueline Lewis & Eleanor Maticka-Tyndale, "Rising to the Challenge: Addressing the Concerns of People Working in the Sex Industry" (2011) 48:1 Can Rev Sociology 47 at 57.

²⁴ Christine Bruckert & Collette Parent, "The Incall Sex Industry: Gender, Class, and Racialized Labour in the Margins" in Gillian Balfour & Elizabeth Comack, eds, *Criminalizing Women: Gender and (In)justice in Neo-liberal Times*, 2nd ed (Black Point, NS: Fernwood Publishing, 2014); Tamara O'Doherty, "Criminalization and Off-Street Sex Work in Canada" (2011) 53:2 Can J Criminology & Criminal Justice 217; Seshia, *supra* note 16.

inability to access legal protections is the stigma associated with sex work. Evidence suggests that law enforcement sometimes draw upon stigmatic assumptions of sex workers – that they are just ‘whores’ who are ‘assuming the risks’ associated with the industry – in order to justify their inaction.²⁵ Accordingly, sex workers tend not to report violence to law enforcement because they believe police will not respond effectively.²⁶ When they do, in some cases, sex workers experience additional violence at the hands of police.²⁷

Through research and activism, the voices and needs of sex workers are increasingly being heard. Sex work activists ultimately aim to decriminalize and destigmatize the sex industry, thereby affording sex workers the same benefits, legal rights, and protections as they would receive in mainstream jobs.²⁸ At the same time, dominant discourse on sex work has largely overlooked marginalized groups who sell sex, such as trans people. In Canada, little research has focused exclusively on the experiences of trans people in sex work.²⁹ Rather, trans women are most often invisibilized in broader sex work studies.³⁰ However, in light of the pervasiveness of

²⁵ Bruckert & Hannem, *supra* note 23; Jacqueline Lewis & Frances Shaver, *Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House of Commons Subcommittee on Solicitation Laws* (Windsor: Sex Trade Advocacy and Research, 2006) at 26; Seshia, *supra* note 16.

²⁶ Bruckert & Chabot, *supra* note 16 at 23; Krüsi et al, “Criminalisation of Clients,” *supra* note 16 at 7; Shaver, Lewis & Maticka-Tyndale, *supra* note 23 at 54.

²⁷ Bruckert & Chabot, *supra* note 16 at 54.

²⁸ Maggie’s Toronto Sex Workers Action Project, Press Release, “Condemnation Grows as More Sex Workers’ Groups Speak Out Against Police Harassment, Urge Parliament to Go a Different Route” (29 January 2014); Jenn Clamen, Tara Santini & Marie-Claude Charlebois, *The Basics: Decriminalization of Sex Work 101* (Montreal: Stella, 2013) at 2.

²⁹ Namaste, *supra* note 4; Tara Lyons et al, “Negotiating Violence in the Context of Transphobia and Criminalization: The Experiences of Trans Sex Workers in Vancouver, Canada” (2017) 27:2 *Qualitative Health Research* 182; Tor Fletcher, “Trans Sex Workers: Negotiating Sex, Gender, and Non-Normative Desire” in Van der Meulen, Durisin & Love, *supra* note 23 at 65.

³⁰ Here, I am speaking to the way in which sex work research assumes a cisgender experience. When trans people are present in sex work research, their experiences are not fully accounted for – perhaps the few number of trans participants compared to cisgender participants render researchers unable to conduct an analysis on trans experiences.

employment discrimination,³¹ familial and social rejection,³² and mental health concerns³³ among the trans population, which interferes with their ability to obtain and maintain mainstream employment, some trans people find employment in the sex industry. As a result, trans women, and particularly trans women of colour, are overrepresented among those who sell sex.³⁴ As such, they are also at elevated risk of arrest and incarceration.³⁵

Due to the marginalization that they experience, trans sex workers most often work at street level and have fewer options in where to work compared to their cisgender counterparts.³⁶ While sex work research has long theorized the effects that stigma plays on the violence that sex workers experience, research on trans sex workers has spoken to the issue of transphobia and described how ‘coming out’ as trans when negotiating with clients is a means of preventing transphobic victimization.³⁷ At the same time, research has also identified the benefits of sex work for trans women, who may experience gender affirmation through their work³⁸ and who can flourish financially in the competitive, niche market.³⁹

While such research helps set the groundwork for trans inclusion into sex work research, the broad nature of these findings also risks generalizing trans experiences and expressions. To account for the diversity of gender

³¹ Greta Bauer & Ayden I Scheim, *Transgender People in Ontario, Canada: Statistics to Inform Human Rights Policy* (Toronto: Trans PULSE, 2015) at 3; Dan Irving, “Performance Anxieties: Trans Women’s Un(der)-Employment Experiences in Post-Fordist Society” (2016) 30:83 *Australian Feminist Studies* 50.

³² Sandy E James et al, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016).

³³ Nooshin Khobzi Rotondi et al, “Depression in Male-to-Female Transgender Ontarians: Results from the Trans Pulse Project” (2011) 30:2 *Can J of Community Mental Health* 113; Sue Scruton, *Trans Needs Assessment Report* (Ottawa: Canadian AIDS Society, 2014) at 29.

³⁴ James et al, *supra* note 32; Fitzgerald, Patterson & Hickey, *supra* note 7.

³⁵ Rebecca L Stotzer, “Law Enforcement and Criminal Justice Personnel Interactions with Transgender People in the United States: A Literature Review” (2014) 19:3 *Aggression and Violent Behavior* 263 at 273.

³⁶ James et al, *supra* note 32; Jacqueline Lewis et al, “Managing Risk and Safety on the Job: The Experiences of Canadian Sex Workers” (2005) 17:1-2 *Journal of Psychology & Human Sexuality* 147.

³⁷ Lyons et al, *supra* note 29 at 185.

³⁸ *Ibid.*

³⁹ Fletcher, *supra* note 29.

expressions among trans women, the issue of ‘passing’⁴⁰ must be examined in relation to transphobia. Transphobia does not affect all trans people in the same manners or intensities. First, everyone has different access to the resources that would allow for medical transition.⁴¹ Indeed, ‘passing’ is inextricably linked with economic privilege – that is, who can or cannot afford to transition and purchase new clothing, makeup, and wigs.⁴² Moreover, transitioning is a process. While gender transition can be described as a shift away from the gender category that one was assigned at birth,⁴³ this crossover is not necessarily neat or linear. That is, ‘passing’, if one desires to achieve it, can take time. Second, trans expressions are diverse and trans people will inevitably want different outcomes from their transition; some may wish to achieve a normative gender presentation and effectively ‘pass’ as cisgender, while others prefer to resist hegemonic gender norms and not identify within the gender binary.⁴⁴ It is only with this understanding of the multiplicity and fluidity of gender expression that the complexity of transphobic experiences amongst trans sex workers can be understood.

As a result of this devastating lack of consideration for trans women’s experiences in the sex industry, this article explores the experiences unique to trans women who sell sex. Following Rev and Maeve Geist’s warning to not frame trans sex workers as agentless victims,⁴⁵ this article contextualizes the violence experienced by these women while working as a result of social and legal factors. Moreover, this article explores the resistance strategies engaged in by trans sex workers and how they are practiced within the

⁴⁰ ‘Passing’ can be defined as being ‘read’ as a normative gender, or cisgender. To some, passing means hiding one’s trans status to achieve invisibility (Leslie Feinberg, “Transgender Liberation: A Movement Whose Time Has Come” in Susan Stryker & Stephen Whittle, eds, *The Transgender Studies Reader* (New York: Routledge, 2006) at 205.

⁴¹ Medical transition means transitioning one’s gender through the assistance of hormones and/or gender-affirming surgeries. For a discussion on the complexity of defining transition, see Julian Carter, “Transition” 1:1-2 TSQ: Transgender Studies Quarterly 235.

⁴² Talia-Mae Bettcher, “Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion” (2007) 22:3 *Hypatia* 43 at 52.

⁴³ Stryker, *supra* note 1.

⁴⁴ Carter, *supra* note 41.

⁴⁵ Nihils Rev & Fiona Maeve Geist, “Staging the Trans Sex Worker” (2017) 4:1 TSQ: Transgender Studies Quarterly 112.

broader context in which access to formal legal protections is limited. Considering the recent changes to the law that now officially protects trans Canadians via Bill C-16, and the increasing need to include the experiences of trans people in sex work research, I undertake an intersectional approach to consider how the harms of criminalization and stigma have particular implications for trans women who sell sex.

III. METHODS

This exploratory research project sought to investigate transgender women's experiences working in the sex industry relating to their: 1) labour practices and processes; 2) engagement with the criminal justice system; and 3) physical, sexual and emotional wellbeing, including access to health resources. This research was affiliated with the community-based research project, *After Bedford: The Impact to the Protection of Communities and Exploited Persons Act on Ottawa Area Sex Workers*, conducted by sex worker rights group, POWER (Prostitutes of Ottawa/Gatineau Work, Educate, and Resist). Whereas POWER sought to investigate the effects of the recent changes to the federal sex work laws on Ottawa-area sex workers, this study investigated the unique experiences of trans women who sell sex. Both studies relied on the use of one-on-one, in-depth, qualitative interviews. Because our research projects were conducted during the same time frame, the studies engaged in joint-recruitment methods. Participants were invited to participate in the study through the use of a recruitment poster distributed in person in social service agencies and health clinics, through online platforms frequently used by sex workers, and through social media. For this article, I draw upon my own research interviews as well as POWER's interviews with trans women. Recruitment occurred in Ottawa, Ontario over the months of late July to December of 2016.

Prior to obtaining oral consent, participants were explained the purpose, methods, and ethical procedures of the study. Participants also chose a pseudonym by which they would be referred to in the research and were given a monetary honorarium to compensate for any costs associated with their participation (such as child care or travel expenses). Interviews were audio-recorded, then transcribed and anonymized. In total, there were seven participants.

In-depth, qualitative interviews are a useful method in exploratory research as they aim to uncover broad themes and topics significant in the

lives of participants.⁴⁶ Indeed, the purpose of these findings is to “indicate rather than conclude.”⁴⁷ As such, the fact that this study relies on a relatively small sample of participants does not detract from the significance of the findings. In fact, qualitative studies with smaller sample sizes are increasingly common in social science research, and evidence suggests that this does not affect the value and rich quality of the data itself.⁴⁸ Accordingly, the results shared here from the interviews with seven trans women who sell sex are broad in nature, and are intended to help construct the foundation of research on the experiences of trans sex workers in Canada.

In terms of demographic information, participants ranged from 23 to 54 years old. Four out of the seven participants identified as transgender, two as women/female, and one participant identified as two-spirit. In terms of racial identity, one participant identified as white, two as racialized minorities, two as mixed-race, and two identified as Indigenous. Five out of the seven participants were currently working part-time in the sex industry. The two former workers had worked full-time. All participants worked independently, and the length of work experience varied between two and a half months to 31 years. On average, participants had worked 19 years. In terms of sector, Belle de Jour and Cleopatra worked exclusively as escorts and Roadie worked exclusively on the streets. Others floated between sectors of the industry: Tammy worked as both an escort and on the streets; three participants worked out of bars and clubs, of which two worked at street level and one as an escort. Finally, it is worth noting that participants were at different stages of their transition and wanted different outcomes from their transition; while four participants had socially transitioned and were living full-time as women, three participants had not transitioned and were living their lives outside of sex work as men, but presented as women while working.

⁴⁶ Timothy J Rapley, “The Art(fulness) of Open-Ended Interviewing: Some Considerations on Analysing Interviews” in Paul Atkinson & Sara Delamont, eds, *SAGE Qualitative Research Methods* (Thousand Oaks, CA: SAGE Publications, 2010) at 304.

⁴⁷ Mira Crouch & Heather McKenzie, “The Logic of Small Samples in Interview-Based Qualitative Research” (2006) 45:4 *Social Science Information* 483 at 492.

⁴⁸ *Ibid* at 484.

IV. RESULTS AND DISCUSSION

All participants spoke to the fear of violence associated with their work. In line with other sex work research,⁴⁹ participants described experiencing violence from clients, the public, and police. Here, however, rather than being attributed solely to stigma, violence was largely discussed in relation to transphobia. Because of the way in which trans identities are denigrated in society, when one's trans identity is discovered, violence can be imminent. "Sometimes you get the odd person that's drunk that doesn't realize that I'm a male and I'm actually dressed as a woman [sic]. It can get violent. It can get very violent fast" (Wanda, not-transitioned, escort/bars). Here, violence manifests from the cisgenderist perception of trans women as not 'real' or 'authentic' women.⁵⁰ At the same time, because trans women are commonly miscategorised as men, transphobic violence is often mobilized through homophobia.

Alongside client-perpetrated violence, sex work research outlines the risk of harassment and violence from the public among those who work on the streets.⁵¹ Participants described being subject to verbal harassment and name-calling, cat-calling, and having objects thrown at them. At the same time, while out of the public's eye, escorts are not immune to verbal harassment. Belle de Jour, a transitioned trans woman who does out-calls, shares her experiences:

Over the phone you get a lot of disrespect. I get crank calls from kids trying to think they're funny. What child goes [online] to the trans section, crank calls this girl, calling her 'tranny'? Like, you know, okay! Okay child! Hopefully your refrigerator is running and you can go catch it!

Whereas sex workers are devalued and denigrated by virtue of the stigma associated with their work, in this instance, the verbal assault that Belle de Jour experienced was not just because she was a sex worker, but because she was a trans woman who sells sex. Similarly, transphobic harassment from the public was not uncommon to Margaret (not-

⁴⁹ Bruckert & Chabot, *supra* note 16; Elizabeth Comack & Maya Seshia, "Bad Dates and Street Hassles: Violence in the Winnipeg Street Sex Trade" (2010) 52:2 Can J Criminology and Criminal Justice 203; Lewis et al, *supra* note 36.

⁵⁰ Alexandre Baril & Kathryn Trevenen, "Exploring Ableism and Cisnormativity in the Conceptualization of Identity and Sexuality 'Disorders'" (2014) 11 Annual Review of Critical Psychology 389.

⁵¹ Comack & Seshia, *supra* note 49 at 210.

transitioned, street-level/bars): “Getting called names or, ‘Look at the fag over there! Hey, where’s your fucking skirt!’ Just people trying to show their ignorance.” While abusers again preyed on the individual’s trans identity, they were reinforcing stereotypes of transfemininity – that all trans women should don a form of ‘lipstick and heels’.⁵² Trans scholar Julia Serano discussed the dominant portrayals of trans women; either trans women are depicted as highly sexualized, stereotypically feminine subjects (who are thus perceived as inherently ‘deceptive’ for not being identifiable as trans) or they are portrayed as ‘pathetic’, masculine subjects who are ‘barely’ women.⁵³ In either characterization, trans women are not conceptualized as ‘real’ women. However, their gender expressions are policed in accordance with stereotypical and conventional notions of cis femininity. Accordingly, trans women are subject to a heightened risk of transphobic victimization when they fail to live up to this norm. Yet, recall that three of the seven participants in this study had not socially transitioned, but were living as men outside of their work, and two out of the three were unsure if they would ever transition. Because of the diversity of trans expressions, the polarized depiction of trans women as either hyperfeminine or barely feminine must also be challenged.

While research has addressed the issue of transphobic violence, transphobia must be complicated by exploring how differential gender expressions shape experience. While Lewis et al. claimed that trans women had sometimes previously worked as men in the sex industry,⁵⁴ what remains unaccounted for are the differences in social treatment that result from transitioning. Roadie, a two-spirit person who worked on the streets, had particular insights into the industry considering that she had previously sold sex as a man:

Now when I did it as a male, it’s a lot more hostile because of the stigma with, you know, gay people and all that stuff. So that was a lot rougher doing it as a male compared to when I did it as a female. You might get your odd person yelling at you, but when you’re on the dude-side going out and doing it you got gay-bashers, you got people throwing shit at you, you got people from religious groups coming saying you’re an abomination of God.

⁵² Serano, *supra* note 9.

⁵³ *Ibid.*

⁵⁴ Lewis et al, *supra* note 36 at 155.

Although Roadie's words initially suggest that trans women may be afforded better treatment than men who sell sex, she also thought she 'passed' as a cisgender woman and "kind of blended in" by working in areas that were known for cis women to be working. In other words, Roadie's experience illustrates the material implications of 'passing privilege'.⁵⁵ Considering that those who 'pass' as cisgender are afforded better treatment in society,⁵⁶ Roadie may have had more positive experiences while working as a woman only because she could successfully 'pass' as cis woman and did not disclose her trans identity to clients. However, if she was an 'out' trans woman, or did not 'pass' as cis, her experiences may have been different.

'Passing' implies appearing to be cisgender. In the case of trans women, they are expected to enact stereotypical forms of femininity – to further oneself from masculinity.⁵⁷ Participants in this study knew that their gendered appearance correlated with their social treatment. "If I had short hair and still walked down the street, I'm pretty sure I'd get teased" (Tammy, transitioned, escort/street-level). Indeed, Tammy felt as though she had to enact femininity in order to hide any signs that may ultimately reveal her trans status. Many participants spoke to how they performed femininity while getting ready for work. "I get cleaned up and make myself look as pretty as I can and I head out" (Margaret, not-transitioned, street-level/bars). While gender expression is tied to an inner sense of self, it can also be interpreted not only in the context of safety, but also employability and desirability. Because of the way in which trans women are often denied their status as 'real' women, and how "lookism" is so prevalent within the sex industry,⁵⁸ trans women may feel compelled to enact stereotypical forms of femininity in order to feel desirable or marketable. "When I dress up as a woman its more easier because look-wise and stuff like that – it's a lot more easier to get picked up" (Roadie, not-transitioned, street-level).

At the same time that 'passing' may afford some better treatment, all participants aside from Roadie and Tammy consistently 'outed' themselves to clients during the negotiation process. "I'm never putting myself in a

⁵⁵ Bettcher, *supra* note 42.

⁵⁶ Namaste, *supra* note 4.

⁵⁷ Serano, *supra* note 9.

⁵⁸ Bruckert & Parent, *supra* note 24 at 103. Bruckert and Parent explain that lookism disadvantages sex workers who do not conform to narrow and conventional notions of attractiveness, such that they may find it harder to find work.

situation where they don't know I'm trans" (Belle de Jour, transitioned, escort). Others have noted that 'coming out' as trans while working in the sex industry is a means of preventing transphobic violence.⁵⁹ Belle de Jour explains her reasoning for disclosing her trans identity:

So hiding my identity in one way could be beneficial because I could be along the lines of any cis girl, but then I put myself at a much greater risk of 'what if they see the Adam's apple'? What if they figure it out somehow? That puts me at a really big risk.

Just like Belle de Jour disclosed her trans identity as a means of ensuring her safety, Margaret (not-transitioned, street-level/bars) remarked: "If they get a surprise, you might too." While those working in public places identified themselves as trans during the negotiation process, those who advertised online to attract clients, like Belle de Jour and Cleopatra, listed their trans status in their ads. Belle de Jour (transitioned, escort) also noted that showing her face in her online advertisements was a means of preventing refusal and violence from clients: "When you're a trans woman, I feel like posting your face might actually do more for your safety than not posting your face. Cause you go in, you have these insecure men, you could be turned away, you could be subject to verbal harassment."

Scholars have spoken to the way in which violence most intensely occurs against trans women who 'pass' as cisgender; trans women who are not easily recognizable as trans are often framed as 'sexual deceivers' who attempt to 'prey' on innocent men.⁶⁰ In other words, when a cis man is attracted to a trans woman, or if they engage in sexual relations, and he later finds out that she is transgender, he may claim that he has been 'tricked' and this accusation of deception is used to justify the violence directed towards her. Indeed, Margaret (not-transitioned, street-level/bars) speaks to the violent implications associated with being 'found out' as trans: "Some of them were fooled by the look and kind of really get upset and want to hurt you." Thus, by 'outing' themselves as trans prior to the interaction, participants were, in fact, screening their clients in attempts to avoid transphobic responses and thereby maintain their personal safety.

Finally, at the same time that violence was attributed to transphobia, or sometimes homophobia, violence against trans people cannot be separated

⁵⁹ Lyons et al, *supra* note 29 at 185.

⁶⁰ Bettcher, *supra* note 42.

from the issue of violence against sex workers.⁶¹ That is, trans people do not experience violence in the same manners or to the same extent. Rather, violence is contextual – and labour matters. Indeed, it is almost always racialized trans women, many of whom are sex workers, who are the victims of violence and homicide.⁶² In this way, transphobia alone cannot account for the experiences of victimization. Rather, transphobia and stigma interact to position trans women at a particular risk of violence.

While victimization has been an integral point of investigation among sex work researchers and has been contextualized within stigma, the law, and structural oppressions, we must also refrain from positioning sex workers as agentless victims of these forces.⁶³ Despite the risks that selling sex as a trans woman may involve, Rev and Maeve Geist have noted that being a victim is a “temporary condition” and reifying this as an identity works to remove the agency of trans sex workers.⁶⁴ Tammy’s (transitioned, escort/street-level) story of a close encounter with a client illustrates the way in which trans sex workers combat victimization:

[The bad date] wanted to laugh at someone...Just to go in the river halfway and just laugh at you like a fuckin’ idiot [...] I didn’t want to do it. I put one foot in the water and my boot started to fill up and I said, ‘Fuck this’. So I just got out – tried to get out. The guy pushed me in the water, tried to drag me. I was trying to grab like twigs and just to pull myself up and I did and I pepper sprayed him.

Sex workers gain insight into their work through experience. One of the valuable insights is knowing how to protect yourself. Like Tammy, as a result of the pervasive risk of violence, Wanda (not-transitioned, escort/bars) “learned how to fight real fast.” Roadie (not-transitioned, street-level) explained: “Guys who are bigger than me think they can take advantage and I’ve had that happen a few times where hairspray always comes out.”

Learning to fight was a means of protecting themselves against violence. At the same time, it must also be read in the context of a lack of formal legal protections for sex workers as well as within the lengthy history of criminalization of their community. Research has determined that most trans sex workers are uncomfortable seeking police assistance.⁶⁵ Of course,

⁶¹ Namaste, *supra* note 4.

⁶² Fitzgerald, Patterson & Hickey, *supra* note 7 at 4; NCAVP 2016, *supra* note 7 at 9.

⁶³ Rev & Maeve Geist, *supra* note 45.

⁶⁴ *Ibid* at 120.

⁶⁵ Fitzgerald, Patterson & Hickey, *supra* note 7 at 5.

this is a common stance among sex workers generally, especially those who work in public places.⁶⁶ The results from this study were no different. Here, five out of seven participants stated that they could not rely on police for assistance. In fact, it was only the two indoor workers who stated that they would access police services if necessary – one of which said that she would have a friend call police on her behalf, if needed. This finding should not be surprising considering that escorts often times have more positive relations with police than those who work on the streets.⁶⁷

Participants' reluctance to report victimization or seek assistance during times of need must be contextualized within other findings that describe police's failure to assist street-level sex workers, as well as the ways in which police sometimes re-victimize sex workers.⁶⁸ Past negative experiences with police also have the potential to deter sex workers from seeking redress. Trans sex workers must not only fight against sex work stigma, but also transphobia by police. Indeed, transphobic violence at the hands of police is not uncommon.⁶⁹ In fact, the largest US national survey of transgender people conducted by James et al., surveying 27,715 trans people across 50 states, found that 65% of trans sex workers who have engaged with police reported being subject to verbal harassment.⁷⁰ Here, four out of the five participants who worked in public places spoke of police harassment. "When you're working on the street they [police] harass you constantly. Constantly. Or take your money. That happened to me so many times" (Wanda, not-transitioned, escort/bars). Wanda also described experiencing physical abuse at the hands of police. Pointing to the police-perpetrated

⁶⁶ Bruckert & Chabot, *supra* note 16; O'Doherty, *supra* note 24; Seshia, *supra* note 16.

⁶⁷ Andrea Krüsi et al, "Negotiating Safety and Sexual Risk Reduction with Clients in Unsanctioned Safer Indoor Sex Work Environments: A Qualitative Study" (2012) 102:6 *American J Public Health* 1154 at 1158.

⁶⁸ Bruckert & Chabot, *supra* note 16; Bruckert and Hannem, *supra* note 23; Lewis et al, *supra* note 36; Seshia, *supra* note 16.

⁶⁹ Jamie M Grant et al, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011); National Coalition of Anti-Violence Programs (NCAVP), *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2014* (New York: National Coalition of Anti-Violence Programs, 2015) [NCAVP 2015]; Stotzer, *supra* note 35.

⁷⁰ James et al, *supra* note 32 at 163.

sexual coercion and violence directed towards sex workers,⁷¹ Kara (transitioned, bars/street-level) explains that officers “look down on me. And they tease you a lot. But some of them flirt, you know. Maybe just to laugh at you, they do it.”

The fear of criminalization is yet another impediment to accessing formal legal protections. Trans sex workers, however, are in a particularly precarious position as a result of the cisgenderism embedded in the criminal justice system. Belle de Jour (transitioned, escort) felt like she had to self-regulate her behaviour to ensure that she would not be swept into the system:

I'm definitely afraid of the criminal justice system right now and the way I conduct myself is indicative of that. I try my best not to break any fucking laws while I'm doing this because, well, I still have my penis. I could very well go to a male correctional facility, which scares the shit out of me.

Indeed, trans people are in a particularly vulnerable position when incarcerated – risking violence from both prisoners and staff.⁷² While Correctional Service Canada has recently changed their housing policy to allow for trans people to be housed in federal institutions on the basis of gender identity, not genitalia, decisions are ultimately made on an individual basis.⁷³ That is, federal transgender prisoners are not guaranteed gender-appropriate housing placements. Further, provincial and territorial policies are not consistent across Canada; for instance, in 2015, Ontario and British Columbia were the first provinces to change their housing policies to accommodate provincial trans prisoners, pending individual assessments,⁷⁴ yet at this point, other provincial/territorial policies are not publicly known. In this way, the fear of being incarcerated in the wrong

⁷¹ Bruckert & Hannem, *supra* note 23; Lewis et al, *supra* note 36 at 158.

⁷² Gabriel Arkles, “Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention” (2009) 18:2 Temple Political & Civil Rights L Rev 515; Allen J Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmate* (Washington, DC: US Department of Justice, 2014); George Brown, “Qualitative Analysis of Transgender Inmates’ Correspondence: Implications for Departments of Correction” (2014) 20:4 Journal of Correctional Health Care 334.

⁷³ Correctional Service Canada, *Gender Dysphoria* (Canada: CSC, 2017), online: <<http://www.csc-scc.gc.ca/politiques-et-lois/800-5-gl-eng.shtml>>.

⁷⁴ Kyle Kirukp, “How Ontario’s Prisons Pioneered Sensitivity to Transgender Inmates” TVO (26 January 2016).

institution can act as a unique barrier for trans sex workers to report violence.

While street-level sex workers are particularly burdened by the effects of criminalization, stereotypes about trans sex workers as inherently suspicious may impact levels of police surveillance. The depiction of trans women, especially racialized trans women, as ‘deceptive’ fuels police profiling of them as criminals and sex workers.⁷⁵ In this way, systemic racism which allows for the over-policing and profiling of racialized individuals⁷⁶ and transphobia, interact to justify the surveillance of trans sex workers. While trans people have been invisibilized in sex work research, research on trans people’s engagement with the Canadian criminal justice system is virtually nonexistent in research. Looking to the US, the National Transgender Discrimination Survey found overwhelming police contact among trans sex workers, in that four-fifths (79.1%) have interacted with police.⁷⁷ In this study, participants spoke to the high police presence in areas that they worked. “Well they’re targeting me. They’re letting you know they’re in the area” (Margaret, not-transitioned, street-level/bars). Roadie (not-transitioned, street-level) describes a conversation she had with a cop: “You pulled over, told me to come to the window. I’m out here just sitting here smoking my cigarette. You got no proof.” Others have referred to the profiling of trans woman on the streets, regardless of their involvement in the sex industry, as the charge of ‘walking while trans’.⁷⁸ The trans community has a lengthy history of fighting against criminalization and police oppression⁷⁹ which has resulted in a deep distrust of law enforcement to this day.⁸⁰ As we have seen in the ways in which participants enacted

⁷⁵ Elias W Vitulli, “The Prison-Industrial Complex in the United States” (2014) 1:1-2 TSQ: Transgender Studies Quarterly 162 at 209.

⁷⁶ Wendy Chan & Dorothy E Chunn, *Racialization, Crime and Criminal Justice in Canada* (Toronto: University of Toronto Press, 2014); Elizabeth Comack, *Racialized Policing: Aboriginal People’s Encounters with the Police* (Black Point, NS: Fernwood Publishing, 2012).

⁷⁷ Fitzgerald, Patterson & Hickey, *supra* note 7 at 17.

⁷⁸ Chris Daley, Elly Kugler & Jo Hirschman, “Walking While Transgender”: *Law Enforcement Harassment of San Francisco’s Transgender/Transsexual Community* (Oakland: Ella Baker Center for Human Rights and TransAction, 2000); Vitulli, *supra* note 76 at 163.

⁷⁹ Namaste, *supra* note 4; Eric A Stanley, “Gender Self-Determination, Queer Abolition, and Trans Resistance” in Eric A Stanley & Nat Smith, *supra* note 2 at 1.

⁸⁰ James et al, *supra* note 32 at 185.

individual resistance strategies rather than relying on formal protections, we can conclude that if the law will not protect them, they will protect themselves.

V. CONCLUSION

While transgender Canadians have now received formal protections by the state following the recent passing of Bill C-16, we have seen the ways in which transgender sex workers ensure their own protection rather than relying on state assistance. Not only does the criminalization of aspects of the sex industry limit sex workers' ability to access legal protections, but it also limits trans sex worker's access to their rights guaranteed under Bill C-16. Thus, trans sex workers experience the same burdens as sex workers – who adamantly avoid police contact while working and fear relying on police assistance due to the constant threat of legal repercussions – but are further limited in their access to hate-crime and anti-discrimination protections afforded to trans people generally.

Although trans people continue to be largely erased in social science research and official criminal justice statistics in Canada, empirical evidence deriving from the United States speaks to the prevalence of transphobia-motivated hate crimes; the National Coalition of Anti-Violence Programs (NCAVP) analyzed 1,036 incidents of hate violence reported to them from 12 anti-violence programs across the United States.⁸¹ Although reports estimate that transgender people represent 0.6% of the general US population,⁸² they composed 32% of those subject to hate-motivated violence.⁸³ Further, of the 28 homicides reported to the NCAVP in 2016, two-thirds (19) of the victims were transgender individuals – 17 out of the 19 identified as a trans woman, and all but one was a member of a racialized minority.⁸⁴ Acknowledging that violence against trans people varies significantly in prevalence, forms, and intensities, this article sought to contextualize the violence that participants experienced in relation to labour, social location, and gender expression.

⁸¹ NCAVP 2016, *supra* note 7 at 9.

⁸² Andrew R Flores et al, *How Many Adults Identify as Transgender in the United States?* (Los Angeles: The Williams Institute, 2016) at 2.

⁸³ NCAVP 2016, *supra* note 7 at 42.

⁸⁴ *Ibid* at 9.

Despite the violence that participants experienced, the criminalization of sex work and the systemic cisgenderism within the criminal justice system fostered an atmosphere in which reporting violence or seeking redress was limited. Criminalization, police violence, and a lengthy history of police oppression render trans sex workers more likely to protect themselves than rely on state assistance. Today, trans women are nearly 6 times more likely to experience police violence than any other LGBTQ* group.⁸⁵

While there has been a lengthy history of oppression and criminalization of transgender people, there has been an equally “rich history of trans sex work as a site of agency and resistance integral to the formation of trans cultures and social networks.”⁸⁶ Indeed, trans women have been integral to the history of the sex worker rights movement – from helping to develop the first national sex workers rights march in Canada to founding sex worker-specific programs that are inclusive of trans people.⁸⁷ Here, we have seen the means of self-defence, resistance, and control that trans women who sell sex adopt in order to ensure their own safety in a criminalized and devalued industry. There is a continued need for the voices and experiences of trans sex workers to be central in discussions of sex work.

While there has been a recent shift to consider the unique experiences of trans people who sell sex,⁸⁸ trans expressions and experiences are vast. This article sought to challenge the dominant portrayals of trans women, as either stereotypically (hyper)feminine or overtly masculine, ‘barely women’, by considering the variability of gender expression, how it is inextricably tied to social location, and its relationship to transphobia. Not only is gender expression dependent on an individual’s sense of self, but the stressors of economic marginalization limit access to the means of transition and transphobia fosters an environment in which trans people may feel compelled to hide their identities in order to ensure their safety.

Alongside advocating for the decriminalization of sex work to help ensure sex workers’ access to legal rights and protections, we must also be conscious of the needs of those most marginalized in sex worker

⁸⁵ NCAVP 2015, *supra* note 69 at 9.

⁸⁶ Rev & Maeve Geist, *supra* note 45 at 118.

⁸⁷ Joyce Arthur, Susan Davis & Esther Shannon, “Vancouver’s Sex Worker Movement” in Van der Meulen, Durisin & Love, *supra* note 23 at 13; Anna-Louise Crago & Jenn Clamen, “Ne Dans le Redlight: The Sex Workers’ Movement in Montreal” in Van der Meulen, Durisin & Love, *supra* note 23 at 147.

⁸⁸ Fletcher, *supra* note 29; Lyons et al, *supra* note 29.

communities, such as trans people. Doing so, we become aware that the fight for decriminalization and destigmatization of sex work is incomplete without a commitment to destigmatize and depathologize trans identity. Future sex work researchers are urged to be cognizant of the disproportionate numbers of trans people working in the sex industry, make greater efforts at community outreach to ensure trans representation in their research, and engage in an intersectional analysis that accounts for the diverse experiences of trans sex workers.