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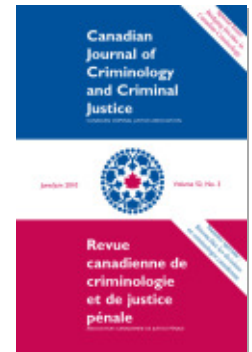
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## Shifting the Focus: Restorative Justice and Sex Work

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# Shifting the Focus: Restorative Justice and Sex Work

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*Depuis quelques années les gouvernements ont intégré le concept de la justice réparatrice (JR) et incluent maintenant ce qu'ils nomment des pratiques basées sur la justice réparatrice dans leurs principes de détermination des peines. En revanche, l'utilisation et la mise en application de ces pratiques s'éloignent souvent des idées et des buts à la base même du concept de la justice réparatrice. En Amérique du Nord, l'application de la JR aux travailleuses et travailleurs du sexe et à leurs clients prend habituellement la forme de programmes de diversion. Ces programmes de diversion ont pour but de démontrer les effets néfastes de cette industrie pour les pourvoyeurs de services et pour la communauté en général et du même coup de décourager la participation dans cette industrie. La présente étude s'intéresse à cette application de la JR et postule qu'un changement d'approche s'impose, particulièrement en ce qui a trait à la conceptualisation des victimes, du tort causé et du besoin de réparation. Cette étude démontre que c'est en fait l'existence et l'application des politiques publiques en matière de travail du sexe, particulièrement des lois criminelles, qui causent le plus de torts aux personnes qui travaillent dans cette industrie. Les étapes requises pour restaurer la justice et protéger les droits des travailleuses et travailleurs du sexe sont présentées.*

*Mots clés : travail du sexe, justice réparatrice, politiques publiques*

*In recent years, governments have taken up the concept of restorative justice (RJ) and added what they refer to as RJ practices to their sentencing arsenal. The manner in which these practices are taken up and implemented, however, typically involves a shift away from the original roots and intent of the concept of RJ and a remodelling of its basic foundations. In North America, the application of RJ to sex work typically takes the form of diversion programs aimed at street-based workers and their clients. The goal of such programs is to demonstrate the harmful nature of the industry and its negative effects on the worker and community, thereby discouraging involvement in it. This article problematizes such an application of RJ principles and argues for a shift in focus, particularly regarding the conceptualization of victim, harm,*

*and reparation needed. As our research indicates, it is the existence and application of public policies aimed at various sectors of the sex-work community, especially the criminal law, that are the primary source of harm for people working in the sex industry (PWSI). The requisite steps for restoring justice and protecting the rights of sex workers are outlined.*

*Keywords: sex work, restorative justice, public policy*

## **Introduction**

The precedents and roots of the concept of restorative justice (RJ) “are as old as human history” (Zehr 2002: 12). Traditional methods of dispute resolution practised by native groups from North America and New Zealand – particularly the practice of having elders, communities, and families work together with the parties involved in a dispute in order to resolve conflicts – provide a historical basis for the growth of the current concept (Zehr 2002). The focus of RJ is behaviour that causes harm to individuals and relationships and an attempt to repair that harm through a dialogue among the affected parties. “Its version of justice is centered on specifically nuanced concepts of harm, obligation, need, restoration, healing, reconciliation, reintegration and participation” (Pavlich 2005: 2). Requirements for resolving conflict involve not only examining what needs to be done for and by the offending party but what needs to be done for the party(ies) affected by the wrong-doing. Although public interest should be taken into consideration, it is those who experience the wrong-doing (and those in close connection with them) who guide what happens in and results from such interventions (Pavlich 2005).

In recent years, governments have increasingly taken up the concept of RJ and have added what they refer to as RJ practices to their sentencing arsenal.<sup>1</sup> The manner in which such practices are taken up and implemented, however, typically involves a shift away from the original roots and intent of the concept of RJ and a remodelling of its basic foundations to better fit a retributive and adversarial system of justice.<sup>2</sup> Most importantly, the conceptualization of harm, which is broadly defined in more traditional renderings of RJ, has narrowed so that harm is equated with crime and crime is equated with violations of state criminal laws.<sup>3</sup> This narrowing of the definition of *harm* to include only those acts defined as criminal by the state, however, is problematic, as it excludes many broader structural and cultural sources of harm, including certain laws and policies that can be seen

as equally or more harmful than some violations of state criminal laws (e.g., South Africa's Apartheid, North American polices regarding Aboriginal peoples). Similar to efforts that work to focus our attention on individual crime (e.g., the perpetuation of fear of crimes of violence despite the evidence which demonstrates that a person is more likely to be hurt/killed on the job<sup>4</sup>), thereby taking our focus off corporate/organization or state crime that is much more likely to negatively impact us individually and collectively, making the focus of RJ 'crime' as defined by the state, ensures state caused harm is moved to the side, out of most of our view, and the state out of the realm of possible participants (i.e., as the offending party) in RJ interventions.

Using adult sex work as an example, this article argues that the incorporation of a broader conceptualization of RJ principles into Canadian justice will encourage us to examine structural and cultural sources of harm, in particular harm resulting from the framing and/or focus of certain government policies. The aim is to rethink the application of RJ principles to sex work so as to shift the focus, particularly regarding conceptualizations of *victim*, assumptions as to the source of harm, definitions of the offending party, and an understanding of what is needed to repair the harm. Thus the article challenges the boundaries of the conceptualization of RJ as it has been taken up and offers resolutions. Research studies such as those on which this analysis is based have a broader focus than do traditional criminological studies (i.e., behaviours that are on the periphery of criminology; a more comprehensive interpretation of policy - federal, provincial and municipal - and the impact of policy on, among other things, job security, health, and well-being). Such research typically moves the researcher to the margins of the discipline. However, both this article and the research projects on which it is based illustrate the importance of pushing disciplinary boundaries and broadening the field of criminology, as much can be learned about crime and its related harms through widening our gaze. In doing so, the ideas discussed here may also serve to bridge some of the divides in criminology and bring those on the margins back into the mainstream of the discipline.

## Methodology

This article uses data from two federally funded sex-work projects on which I served as principal investigator.<sup>5</sup> Both studies involved interviews with people working in the sex industry (PWSI) and key informants who were members of sex-work advocacy groups, govern-

ment employees (e.g., public health and social service workers, city councillors, municipal employees, and police, etc.) and relevant local service providers. They also included the collection and analysis of relevant policy documents (e.g., the Criminal Code of Canada, court decisions pertaining to sex work, provincial laws applicable to sex work [e.g., victim compensation, workplace/occupational health and safety, etc.], municipal bylaws, etc.). One study focused exclusively on female escorts in a border town with a licensed escort industry.<sup>6</sup> The other explored the experiences of women, men, and transsexual/transgender workers involved in street-based and/or off-street work in two large Canadian cities.<sup>7</sup> In the former study, interviews were conducted with 18 escorts, 8 escort agency personnel, and 21 key informants. The latter involved interviews with 120 PWSI and 28 key informants. Both studies examined the impact of public policy (federal, provincial, and municipal) on the health, safety, and well-being of workers.

### **Sex work and the law in Canada**

The exchange of sex for money between two consenting adults is not illegal in Canada. However, there are laws in place that make it very difficult for adults working in the sex industry to practise their trade without running into conflict with the law,<sup>8</sup> creating a *de facto* form of prohibition. According to the Criminal Code, it is illegal to communicate in a public place for the purposes of prostitution (s. 213), be nude (s. 174), or engage in "indecent" activities (s. 173). It is illegal to "procure" a person into prostitution or live on the avails of prostitution (s. 212). It is also illegal to keep a "bawdy house"; work, live, or be found in a "bawdy house"; own or be in charge of a place where a "bawdy house" is located (s. 210); and/or offer, take, or direct someone to a "bawdy house" (s. 211). The harm that results from such policies (Canada and elsewhere) has been reported in the literature (e.g., Lewis and Maticka-Tyndale 2000; Pivot Legal Society [Pivot] 2004; 2006; Rekart 2005; Sanders 2007), including our own research, which explores the impact of public policy on the health and well-being of PWSI (see Lewis, Maticka-Tyndale, Shaver, and Schramm 2005; STAR 2006b).

As was explained by our research team (and other researchers) in a presentation to the House of Commons Subcommittee on Solicitation Laws (SSLR),<sup>9</sup> the location and orientation of sex work affects workers' ability to secure and maintain control over their work environment,

and this, in turn, affects safety and security on the job and overall health and well-being (see Lewis, Maticka-Tyndale, Shaver, and Gillies 2005; Lewis, Maticka-Tyndale, Shaver, and Schramm 2005; STAR 2006b). Laws jeopardize health and well-being when actions that can be taken by workers to enhance safety and security contravene the law, as workers may decide not to take such actions in order to avoid/minimize the risk of being apprehended and charged. For example, in order to avoid detection and arrest for violating s. 213, street-based workers may “jump into” potential clients’ cars without taking the time to adequately screen them. Escorts may choose to provide *out-call*<sup>10</sup> services to avoid being charged under s. 210, especially in municipalities where escorting is licensed,<sup>11</sup> despite the evidence that points to *in-call* services offering them a safer work environment.<sup>12</sup> And workers may avoid sharing good/safe clients for fear of violating s. 212, despite this being a good safety measure.

### **Sex work and restorative justice**

According to Wahab (2005: 204),<sup>13</sup> “diversion programs are an increasingly popular form of restorative justice in contemporary criminal justice.” The focus of such programs “is on healing and rehabilitation, rather than strictly on punishment” (Wahab 2005: 204). Increasingly, we see supposed RJ-based sentencing options being used for PWSI and their clients. However, such sentencing options are framed by policy (i.e., criminal law), which in this case, it can be argued, is responsible for an overwhelming amount of the harm experienced by workers. The focus on harm reparation and the conceptualization of harm and the victim are oriented in such a way as to perpetuate the marginalization and stigmatization of workers and their clients and the harm PWSI experience in their daily lives. In order to further explore the harm caused by prostitution laws, it is necessary to examine how the concept of RJ has been applied to sex work and the impact of such an application. It is also important to look at how the current application of RJ, and the laws it is based on, meshes with the concept of justice.

### ***The application of restorative justice to sex work***

The application of RJ principles to sex work typically takes the form of diversion programs aimed at street-based workers and their clients. The goal of such restorative-justice diversion (RJ-D) programs is to reduce dramatically “recidivism among first-time arrested customers . . .

and help ... women ... escape prostitution and ... step away from the criminal justice system's revolving door once and for all" (Veronica's Voice [2010]). These programs "use the authority of the courts to reduce prostitution crimes by providing 'treatment' instead of punishment to offenders – both sex workers and clients" (Wahab 2006: 137). They are designed to demonstrate to the client and worker the harmful nature of the industry and the negative effects it has on the worker and the community, in theory discouraging future involvement in it.<sup>14</sup> As sex work-related RJ-D programs have a community-as-victim orientation, the community is often involved in some way in these programs, typically through a form of *community conferencing*. This component of the programs provides members of the community with a forum for publicly airing or venting their feelings about what they perceive to be the negative effect(s) of the industry (including those who work in and use it) on the surrounding community. The public moralizing/shaming/condemning aspect of prostitution RJ-D programs, resulting in part from such community conferencing, is meant to help clients and workers see the error of their ways, thereby reducing the demand-and-supply side of the industry and the harm to the community. However, due to the orientation of these programs – the lack of conferencing among workers, customers, and the community, on the one hand, and the blaming, shaming and moralizing that takes place within the conferences that do take place, on the other – it is difficult to see how they can bring about reparation and the reintegration of participants into the community, an essential component of RJ, or be anything more than an alternative form of punishment for violating the law (Fischer, Wortley, Webster, and Kirst 2002).

In some municipalities, clients of PWSI arrested for a first offence are increasingly provided with the option of participating in john school diversion programs. In these programs, clients are educated about the "impact of prostitution on local communities, health-related issues, and social issues that affect individuals and their families" (Streetlight n.d.-b), while being portrayed "as immoral or 'villains' in need of rehabilitation" (STAR 2006b: 13). For PWSI, when such programs exist, they offer employment and life-skills training, support, counselling, and so on, with the overall goal of getting participants out of the industry (see Streetlight n.d.-a).

In addition to the question of how truly RJ these programs are, there are several fundamental issues underlying these programs for workers. The first issue is tied to the nature and availability of sex-work RJ-D programs, both of which affect participants' rights. Most participants

in such programs are compelled to take part in them, as prison and a criminal record are the alternative. As noted by Fischer et al. (2002), this is problematic because the admission of guilt implicit in choosing a diversion program results in an erosion of the due process rights of the participants. Despite this criticism, such programs do provide people involved in sex-work activities with a means by which to avoid criminalization. However, since there are many more programs for clients (mostly men) than there are programs for PWSI (mostly women), service providers have fewer opportunities to avoid charges and a criminal record.

The second issue underlying sex-work RJ-D programs is the tendency of these programs to treat PWSI as victims who need to be rescued from the industry.<sup>15</sup> When it comes to sex work, I would argue, the conceptualizations of victim and offender are not as clear-cut as the framing of current programs/policies would suggest. Within this framing, the victims are the community and the worker, with community concerns given priority. Such a conceptualization of victim, however, fails to speak to the broader structural and cultural harms workers experience, such as those resulting from state policies, stigmatization, and marginalization. In this sense, while workers may still be seen as victims, the sources of victimization are structural and cultural in nature. In this conceptualization, the offender is the state, not the client.<sup>16</sup> RJ-D programs that use the more traditional rendering of victim and offender are less likely to address the needs of the many program participants who do not feel they are victims of the industry or of their clients, are only in the program to avoid a criminal conviction and prison with no desire to exit the business, or the needs of those who want out of the business but do not see themselves as victims of sexual exploitation.

The third issue with RJ-D programs (and the laws they are based on) for PWSI (and their clients) is the conceptualizations of harm and who has been harmed that are the basis of the programs. Harm is conceptualized as those aspects of the industry that first and foremost negatively impact *the community*, with the negative effects of the industry on the worker often given secondary consideration. Harm to the community focuses on visibility, public nuisance, and the safety issues associated with the street-based trade, which includes having “johns” cruising for prostitutes and PWSI strolling neighbourhoods (e.g., used condoms and needles, visible sexual activity, concerns for safety of children, etc). For PWSI it is conceptualized as abusive and disrespectful treatment by “johns” and “pimps” and the self-harm



resulting from a person (typically a woman) “selling herself.” This very narrow and biased view of harm fails to consider the structural and cultural sources of harm, including harm stemming from the existence and framing of laws related to prostitution and the public stigmatization associated with such labelling. In this regard, one only needs to look at the work of many of the people (i.e., researchers, workers, representatives from sex worker advocacy groups) appearing before the SSLR to see the breadth of research and experience that speaks to this issue. In particular, our findings identify “the numerous ways in which legislation ... reduce[s] the ability of sex workers to manage their own safety, security and well-being, reinforce[s] and maintain[s] the stigma and marginalization of sex workers, and undermine[s] the recognition of sex work as a business” (see STAR 2006a: 34). With these harms in mind, the current application of RJ principles to sex work comes up lacking.

### ***Harms of current RJ application***

To date, efforts to apply RJ principles to sex work have only minimally focused on workers’ experiences and what they need/want. If these efforts place any emphasis on ways to improve the lives of PWSI, through law and policy, they typically involve using the *parens patriae* doctrine, which grants the state the power to intervene to protect individuals who cannot protect themselves (c.f. Criminal Code s. 212). The application of this doctrine to PWSI is disrespectful of an adult’s right to sexual self-determination and autonomy. Simply because representatives of the state do not approve of some citizens’ choices should not give the state the right to intervene in people’s lives. Application of the doctrine also involves the imposition of a paternalistic interpretation by an outside party as to what is needed to make a person’s life better—as opposed to asking the person what they need.

In Canada, paternalism is evident in the existence of specific sections of the Criminal Code designed to “protect” PWSI from harm and exploitation, despite their redundancy with other sections of the Criminal Code that apply to all Canadians.<sup>17</sup> It also takes the form of measures to “rescue” workers from the “victimization inherent in the sex work industry”<sup>18</sup> with little consideration of the workers’ perceptions of their work or of their desires regarding their continued involvement in it. As the work of Sanghera (2005) illustrates, this type of strategy often does little to improve the situation of those who are being “saved” or “rescued.” Without consideration of what workers

want or need or of the broader structural and cultural factors that affect their lives,<sup>19</sup> little can actually be done to reduce harm and change lives. In fact, without such consideration, harm may be exacerbated.<sup>20</sup>

Although some workers want to leave the industry and welcome assistance exiting, most of the workers we spoke with wished to continue their work. What they wanted, however, was to be free to do their work without the daily fear of violating the law and of being detected and harassed by police. This included not just street-based workers at risk of “communicating” charges (s. 212) but off-street workers at risk of being charged with keeping or being found in a bawdy house (s. 210). As our findings indicate, many of the other concerns Canadian workers face (e.g., assault, harassment, threats, robbery, violence, stigmatization, marginalization, and lack of access to necessary services (health, social assistance, housing, police, etc.) can be minimized through changes in policy, such as (1) the elimination of sex work-specific sections from the Criminal Code; (2) the uniform application of laws (see note 17) to all Canadians (including PWSI); (3) the recognition of sex work as a legitimate job; and (4) the application of occupational health and safety standards to the industry (see STAR 2006a). Resulting enforcement savings could be used to focus on the part of the industry most prone to violence, victimization, and exploitation (i.e., the part involving under-age workers or undocumented migrant workers) and on the provision of services to PWSI (e.g., services that make their work easier and safer and/or help them exit the industry if they so desire).

### ***Sex work and Canadian justice***

The basic principles of justice that exist in Canada can be found in the Canadian Charter of Rights and Freedoms (1982). As previously outlined, although the selling of sexual services is legal in Canada, the Criminal Code (1985) makes it extremely difficult for PWSI to do their job and pursue a livelihood without running into conflict with the law. The consequences of these laws extend beyond the costs of criminal conviction and risks to health and well-being; the stigma that comes with such convictions affects a variety of aspects of workers’ lives, including employability, parental status, and access to housing. Recently, several legal challenges have been launched that argue that the sections of the Criminal Code of Canada that apply to sex work violate the Charter rights of workers. According to Hainsworth (2008), these cases are “about how the law marginalizes sex workers.” The group

behind the BC court challenge, Downtown Eastside Sex Workers United against Violence (SWUAV), makes the claim “that Canada’s prostitution laws put them at risk of injury, kidnapping and death” (Sex workers are right 2009). Specifically, it is argued that s. 210 (keeping a bawdy house), s. 212(1)(j) (living on the avails of prostitution), and s. 213 (communicating for the purposes of prostitution) of the Criminal Code violate s. 7 (the right to life, liberty, and security of the person), s. 2(b) (freedom of thought, belief, opinion, and expression), and s. 15(1) (equality before and under the law; equal right of protection) of the Charter (Hainsworth 2008; Sex workers are right 2009; Shugarman 2009). It can also be argued that they violate s. 6(2)(b) (the right to pursue the gaining of a livelihood).

The application of RJ to sex work in Canada via the currently used sex-work RJ-D programs is problematic, as it reinforces discriminatory laws and their associated harms. Based on the recent Charter challenges, the problem or offence that RJ initiatives should be focusing on are state laws and policies that put PWSI in harm’s way and reinforce stereotyping and marginalization. As Nellie Spicer notes, when an offence has occurred, the “community is broken and there is pain for its members . . . There is a sense of separation, of being disconnected from the rest of the community” (qtd. in Sharpe 1998: 10). The job of RJ programs is to help “knit these groups back together. Its goal is to reintegrate ‘us’ with ‘them’ into a larger society” (Sharpe 1998: 10). Doing otherwise makes these supposedly RJ programs complicit in this harm and therefore equally problematic as the identified sections of the Criminal Code, as they are doing little to heal those harmed and restore workers to their rightful place in the community.

### **Conclusion: Restoring justice for sex workers**

The way to judge the justness of a state and its policies is by looking at how the most marginalized members of the society are treated. If the Charter rights of PWSI are being violated, the question we have to ask ourselves is, How can this be resolved? How can justice for Canadian sex workers be restored? The process can begin by protecting workers’ constitutional rights. As noted by Pivot (2009b), this begins with

striking down the laws that infringe on these rights. The next step is to ensure sex workers’ human rights and freedoms through current legislation that recognizes sex workers as persons worthy of respect and dignity and accords them protection against all forms of discrimination and exploitation.<sup>21</sup>

The way to judge RJ policies and programs is by looking at what they do for the most marginalized members of a community (Sharpe 1998). According to Sharpe (1998: 12), “[T]ruly restorative justice changes the distribution of power, and encourages people to work together to solve problems related to all aspects” of offences. For this to occur, we first need to modify the way RJ is framed and incorporated into policy, which involves rethinking the way victim and offender are conceptualized so they better reflect the experiences of PWSI, some of the most marginalized members of our community. This also involves broadening the concept of harm so that it is inclusive of a range of factors beyond those outlined by state laws. Second, if we are going to attain true RJ, we need to work to (re)frame RJ initiatives to assist this process in order to reduce the harm experienced by sex workers, and bring about a (re)integration of PWSI (and their clients) into the community.

Amending the Criminal Code and ending the practices of shunning, shaming, and stigmatization that serve to keep people on the margins of society are necessary for a truly reparative and inclusive system of justice. This can be only be achieved by recognizing structural and cultural sources of harm and allotting silenced members of our community, in this case PWSI, their rightful place as full participants in the process and at the discussion table.<sup>22</sup> As criminologists, we can play a role in this process by challenging taken-for-granted notions of victim, offender, harm, and crime and through incorporating a broader conceptualization of RJ principles into a discussion of Canadian (criminal) justice. In so doing, we can both better our understanding of the complexities involved in issues of justice in Canada and bridge some of the divides in the field, especially between those in the mainstream and those on the margins of the discipline.

## Notes

- 1 Section 718 of the Criminal Code states that the “purpose of sentencing is to contribute . . . to the maintenance of a just, peaceful and safe society by imposing just sanctions” with the following objectives: “(e) to provide reparations for harm done to victims or to the community and (f) to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community” (R.S.C., 1985, c. C-46, s. 718; R.S.C. 1985, c. 27 [1st Supp.], s. 155; 1995, c. 22, s. 6).
- 2 Retributive and restorative justice systems are antithetical systems of justice – one is adversarial and the other is meant to rebuild relationships

and bring people and communities together. To try to institute RJ principles within or alongside the existing retributive system of justice is problematic and results in RJ being relegated to “a diminutive role” (Buffam and Egan 2003: 2) It also misses “the opportunity for a true reformation of greater social justice issues, and inequalities magnified by our current system” (Buffam and Egan 2003: 2).

- 3 Crime, however, “is understood as a violation of people and relationships and a disruption of the peace of the community,” not just as a crime against the state (Canada, Department of Justice n.d.).
- 4 Kappeler and Potter (2005) report that annually approximately 55,000 deaths result from injuries and illnesses occurring at work, while 16,000 are the result of homicides.
- 5 The escort study was funded by Health Canada. The Sex Trade Advocacy and Research (STAR) study was funded by the Social Science and Humanities Research Council of Canada and the National Network on Environments and Women’s Health (NNEWH).
- 6 Eleanor Maticka-Tyndale was the co-investigator on the escort project.
- 7 Frances M. Shaver and Eleanor Maticka-Tyndale were the co-investigators on the STAR Project. Our collaborators included two sex worker organizations (Maggie’s of Toronto, Stella of Montreal), two dancers’ associations (Exotic Dancers’ Alliance of Ontario, Exotic Dancers’ Association of Canada [EDAC]), and the Region of Peel Health Unit.
- 8 This is especially the case for street-based workers, who are much more visible when working and therefore more likely to be the subject of police attention.
- 9 The SSLR mandate was (1) to review the solicitation laws in order to improve the safety of PWSI and communities and (2) to recommend changes in order to reduce the exploitation of/violence against PWSI.
- 10 *In-call* activities involve the client coming to the worker’s place of business (e.g., brothel, sex-work establishment). *Out-call* activities involve the worker going to the client (e.g., hotel room, home, office).
- 11 “Since the 1970s, some Canadian municipalities (e.g., Calgary, Edmonton, Winnipeg, Windsor, Sault Ste. Marie) have introduced bylaws that require escorts and escort agencies to be licensed, similar to other service providers within the city” (Lewis and Maticka-Tyndale 2000: 437).

- 12 Additional examples can be found in our SSLR presentation; see Lewis, Jacqueline, Eleanor Maticka-Tyndale, Frances M. Shaver, and Kara Gillies, 2005.
- 13 Wahab's (2005; 2006) work is based on a study of a prostitution diversion program.
- 14 Although some positive effects of john schools have been noted (e.g., encouraging participants to take responsibility for their actions, increasing participants' awareness of the potential dangers of purchasing sex and providing sexual services, changing participants' attitudes toward prostitution, etc.), program participants are unlikely to be deterred from involvement in future prostitution-related activities; see Wortley, Fischer, and Webster 2002.
- 15 For a discussion of other problems tied to the victim classification, see Wahab 2006.
- 16 In a retributive adversarial system of justice, the state is the victim. Hence the framing of criminal cases as the Crown versus the offender.
- 17 Criminal harassment (s. 264); uttering threats (s. 264.1); assault (s. 265); assault with a weapon or causing bodily harm (s. 267); aggravated assault (s. 268); sexual assault (s. 271); sexual assault with a weapon, threats to a third party, or causing bodily harm (s. 272); aggravated sexual assault (s. 273); forcible confinement (s. 279(2)); kidnapping (s. 279); theft (s. 322(1)); robbery (s. 343); extortion (s. 346(1)); intimidation (s. 423(1)).
- 18 "Public assumptions about sex work and sex workers are most often grounded in impressions of street-based prostitution, the most visible but smallest sector of the industry ... These impressions are ... stereotypical images of the women working the low stroll, engaging in survival sex or selling sexual services to support a drug habit ... [Such] assumptions tend to reinforce a homogeneous stereotype of sex workers as victims. Sex work venues and sex workers are much more diverse than the street portrait indicates ... with victimization varying by the location of work" (STAR 2006a: 5-6).
- 19 For a detailed list of structural and cultural factors, see items 1(a)-(i) of the Amended Statement of Claim filed in *Downtown Eastside Sex Workers United Against Violence (SWUAV) v. Canada (A.G.)* 2008 BCSC 1726; qtd. in Pivot, Sex Work Law Reform: 2.
- 20 As Sanghera (2005) notes, when foreign "rescuers" come in to "rescue" migrant workers who have been "trafficked" into sex work in different

parts of the world, little consideration is given to what will happen to them when they are returned to their countries of origin. Due to the work they were involved in and/or their HIV status, reintegration into families and communities can be a slow, difficult, complex process. And given "the relationship between the sexual abuse of girls and their commercial sexual exploitation" (Sanghera 2005: 18), in some cases reintegration is actually an undesirable goal.

- 21 Pivot Legal Society is a non-profit legal advocacy organization located in Downtown Eastside Vancouver. Its mandate is "to take a strategic approach to social change, using the law to address the root causes that undermine the quality of life of those most on the margins" (Pivot 2009b).
- 22 For a more detailed outline of the essential role of PWSI in policy reformation, see Lewis et al. 2005.

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