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Inspection, policing, and racism: How municipal by-laws endanger the lives of Chinese sex workers in Toronto

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Abstract

The debate on the regulation of sex work in Canada has largely focused on the criminal law, and especially, how criminalizing sex work violates the human rights of sex workers and undermines their health and safety. In comparison, research into the impact of municipal laws on sex work has been limited. This paper draws on interviews with sex workers and owners of businesses massage parlours in exploring how municipal bylaws affect the working situations and vulnerability of Chinese sex workers employed in massage parlours in Toronto.

Keywords: municipal laws; massage parlours; Chinese sex workers

Inspection, contrôle et racisme: Mettre en péril la vie des travailleuses du sexe chinoises par les lois municipales à Toronto

Résumé

Le débat à propos de la réglementation du travail du sexe au Canada est surtout axé sur la loi criminelle et, en particulier sur comment la criminalisation du travail de sexe va à l'encontre des droits humains des travailleuses-eurs du sexe et crée des conditions qui met en danger leurs santé et sécurité. Par contre, peu de recherches ont été entreprises sur l'impact que peut avoir les lois municipales sur le travail du sexe. Cet article s'appuie sur des entrevues menées auprès de travailleuses du sexe et des propriétaires de salon de massage à Toronto afin d'explorer comment les lois municipales affectent les conditions de travail et la vulnérabilité des travailleuses du sexe chinoises qui travaillent dans des salons de massage.

Mots clefs: lois municipales; salon de massage; travailleuses du sexe chinoises

Introduction

Public debate on the laws and regulations pertaining to sex work has ensued since before living memory and it continues today. Radical feminists describe sex workers' experiences in terms of sexual violence and psychological harm, which are intrinsic to prostitution (Farley & Kelly, 2000; O'Neill, 2001). They advocate criminalizing the client and third parties in the sex trade, and see the provision of sexual services as a form of gender-based violence toward women, and a sign of their oppression and exploitation (Coy, 2012; Jeal & Salisbury, 2007; Jeffreys, 2009). In Canada, the Conservative government pursued the course of abolition. In 2014 it introduced the *Protection of Communities and Exploited Persons Act*, which began the criminalization of the client in the sex trade. The Act also continued to criminalize third parties as well as most sex trade activities, even after the Supreme Court had ruled (in *Bedford v. Canada(AG)*) that the three *Criminal Code* provisions (prohibitions on keeping a bawdy-house and on living on the avails of, and communicating for the purposes, of prostitution) were unconstitutional because they violate the *Charter of Rights and Freedoms* (L. Casavant & D. Valiquet, 2014; POWER and PIVOT, 2014).

Sex workers, individually and in their alliances - such as academic, public health, and human rights organizations - challenge the assumption that work in the sex industry is inherently exploitative, and that sex workers are victims (Clamen, Gillies, & Salah, 2013). They believe, rather, that criminalizing sex work perpetuates stigma and discrimination against sex workers, violates their human rights, and increases their physical, economic, and social vulnerability (Canadian HIV/AIDS Legal Network, 2005; PIVOT Legal Society, 2009, NSWP, 2014; van der Meulen & Durisin, 2008). These advocates call for the repeal of all legislation that criminalizes sex work. They also suggest that decriminalization is “a shift from the status quo, where sex

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workers are subject to extreme levels of violence and social marginalization, to a society where sex workers are empowered to create safe and dignified working conditions” (PIVOT Legal Society, 2009, p.9), and where their labour rights can be protected (van der Meulen, 2012).

This paper will take up the concerns of mobilized sex workers by exploring the health and safety issues of sex workers working in indoor businesses. The research and discussion so far has primarily focused on the criminal aspects of sex work. Municipal regulations and bylaws, however, are seldom studied or included in policy-making discussion and debates. The research of PIVOT Legal Society (2009) shows that tens of thousands of people work in escort agencies, bawdy-houses, body-rub parlours, massage parlours, strip clubs, and dating services that are registered as legitimate business establishments across Canada. While some research studies have enquired into the impact of municipal regulations on escort companies, body rub centres, and strip clubs in Canada, there is little understanding of how sex work in businesses such as massage parlours (that are not identified as entertainment establishments) that employ migrants is impacted by municipal law.

Another aspect of sex work that has received little focus so far is the realities for particularly vulnerable and marginalized sex workers. For example, very limited research has been done on sex workers who are racialized and migrants, and therefore, particularly vulnerable because of racism, language barriers, and social isolation (Kempadoo, 2001; Migrant Sex Workers Project, 2015). Researchers have found that migrant, especially Asian-born immigrant, women in North America face more challenges and a greater risk of violence because of their citizenship, immigration status, and social isolation, and the language barrier. They are less likely to use sexual/reproductive health services (Goldenberg, S. M., Liu, V., Nguyen, P., Chettiar, J., & Shannon, K., 2015), more frequently work with third parties, experience a high

level of workplace violence, and are the target of police harassment, abuse and raids (Brock et al., 2000; Bungay, V., Halpin, M., Halpin, P. F., Johnston, C., & Patrick, D. M., 2012; Bungay, V., Kolar, K., Thindal, S., Remple, V. P., Johnston, C. L., & Ogilvie, G., 2013; Goldenbert et al., 2015. A study in Vancouver showed that migrants there are concerned about “police harassment (17.18%) and raids at their workplace (10.4%), police abuse (including physical assault and being coerced into giving sexual favours) (3.3%)” (Goldenbert et al., 2015 p.25).

A group that is strongly represented in the sex work business but remains largely hidden and marginalized in Canadian society are Chinese people. Chinese people comprise the second largest group of immigrants (314,090 people) to have landed in Canada between 2005 and 2014 (Citizenship and Immigration, 2015), and, according to service providers and sex workers’ organizations in Toronto, the number of Chinese female sex workers working indoors has increased in recent years. A Vancouver study has also shown that Chinese people are the most numerous international migrants engaging in indoors sex work (Goldenbert, et al., 2015. This group is particularly vulnerable due to isolation, immigration status, and race (Lam, 2014).

This paper addresses these gaps in research by exploring the lived realities of migrant Chinese sex workers working in massage parlours in Toronto. The paper draws on interviews with a small number of sex workers and business owners to explore how municipal bylaws affect the working situations and vulnerability of Chinese sex workers employed in massage parlours in Toronto. Authors, van der Meulen, E. and Durisin E. M. (2008), maintain that the “current Canadian municipal and federal regulations violate sex workers’ basic labour rights and contribute to [their] physical and economic vulnerability” (p.289). The findings in this paper corroborate this view. The paper shows that municipal bylaws and regulations are significant factors in undermining the health, safety, and well-being of vulnerable sex workers.

Background: Indoors sex work and municipal regulation and by-laws

Although an estimated 80% of sex workers work indoors, most of the research to date has concentrated on street-based sex workers (Bungay et al., 2013; Hanger & Maloney, 2006). According to Bungay, Kolar, Thindal, Remple, Johnston and Ogilvie, “there is an extensive indoor sex market that operates under the licensed business category that includes massage parlours, escort agencies, and exotic dance clubs” (2013, p.264). However, research relating to indoor sex workers is very limited, and little is known about their experiences (Bungay, Halpin, Atchison, & Johnston, 2011). Often sex workers work indoors and work together as a group or with third parties, where the third parties manage, assist, or procure sex services. This work is for the most part criminalized, however, and this means that it is almost impossible for sex workers to open a business to offer direct exchange sexual services. It also means that businesses that do offer sex services have to pretend that their activities serve some other purpose (van der Meulen & Durisin, 2008; PIVOT Legal Society, 2009).

The working conditions and health and safety of sex workers are not only affected by criminal laws, but also by municipal laws and policies (Anderson et al., 2015). Licensing concerning such areas as “physical layout, safety measures, and manager-sex workers relations,” is one of the important structural determinants of the working environment of sex workers (Anderson, S., Jia, J. X., Liu, V., Chatter, J., Krüsi, A., Allan, S., ... & Shannon, K., 2015, p.836). Most of the studies on how municipal laws relate to sex work, however, have been concerned with services that are seen to fall under “adult entertainment,” such as body-rub parlours, escort agencies, and strip clubs. Sex services are also conducted in businesses such as Health Enhancement Centre, Acupuncturist, Salon, Beauty and Wellness, and Holistic Centre, which are also regulated by municipal laws.

Canadian municipalities have instituted a series of bylaws to regulate the space and activities of sex work, such as zoning and licensing (van der Meulen & Valverde, 2013). The regulation and enforcement of such bylaws is influenced by local pressure and the preferences of the province and city. These entities not only control the number of licenses issued and develop the regulations and standards governing the services, they also carry out inspections for the purposes of health and safety, consumer protection, and control of nuisance. While municipalities and provinces try to control and limit the local sex industry, they are not legally entitled to do so (Hindle, Barnett & Casavant, 2003). Canadian criminal laws fall under federal jurisdiction and, therefore, provinces and cities are not allowed to prohibit sex services, as evidenced in *International Escort Services Inc. v. Vancouver (City)*, *Siemens v. Manitoba (Attorney General)*, and *Vaughan (City) v. Tsui*.

Turning to the Toronto case, massage parlours are mainly regulated by two types of licenses: the body-rub and the holistic. In 2015, although only 25 body-rub centres are allowed to operate in Toronto, 427 holistic centres operated there (City of Toronto, 2015). There are few studies of holistic licenses in Toronto. Although the municipal code does not explicitly prohibit sexual services, a report of the Toronto City Council has stated that the objective of holistic licensing is “controlling body-rub parlours without impacting on the complementary therapy disciplines...” (Toronto City Council, 1988). The Toronto study showed that the regulation and prohibition of sex services constitutes the primary focus of the municipal bylaw enforcement.

Method

Nine participants were interviewed in Toronto in 2014 over a two-month period. Interviews were conducted with four Chinese sex workers who work in massage parlours, two owners of massage parlours, and three social and public health services providers. All of the sex

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workers and owners were immigrants from China. One of the owners was male, and the other participants self-identified as female. All participants were recruited by the “snowball” method during outreach as part of a Chinese sex workers’ support project. Semi-structured interviews were conducted in Mandarin or English by the researcher at a location selected by the participant (a private room in their workplace or a quiet corner in a food court). Each interview lasted from 60 to 120 minutes, and began after the researcher had discussed the purpose and content of the research, gone over the consent form, and explained the issue of confidentiality. The migrant sex workers were invited to describe their daily practice in massage parlours. The massage parlour owners and health professionals were invited as extra-local informants, to share insights into their relationships with the Chinese sex workers that they employed. Some of the interviews were recorded in writing, and others were audio taped. The audiotapes were then transcribed, and the notes and transcriptions in Chinese were translated into English. The names of the participants have been changed to protect their identities. The notes and transcripts were then reviewed and coded. The researchers discerned a theme by grouping the data, identifying linkages between different kinds or levels of data, and analyzing the connections and relations between the actors and the institution.

Results

The hidden nature of sex services

The participants were asked about their daily practice, including their interaction between law enforcement, and what knowledge they had of municipal laws and regulations governing their activities. Both the workers and the business owners stated that because of language barriers they had only limited knowledge of municipal laws and regulations. The workers primarily learned about the regulations and rules during training by the owners. Owners told

them they could be fined, and that their license would be revoked, if the massage parlour was caught breaking the rules. They were told about the prohibition of sex services and the need to cover their client's private parts. Some participants also mentioned that they had received information verbally from police, licensing inspectors, or staff at the licensing office. For example, they learned that they were required to lock the door and were prohibited from offering sexual services. One worker, Candy, stated that erotic services aren't allowed in massage parlours, and that a \$100 fine would be charged to those who offer sexual services, and a \$500 fine would be charged to the massage parlour business, with the possibility that its massage license would not be renewed.

The participants were asked about the services they offered. All of the participants stated that the services offered in massage parlours vary. Some employees only give massages, while others provide hand jobs or full sex (intercourse). The sex services, however, had to be hidden from the owners, co-workers and even health and social services providers. Workers had to pretend that no sexual services were available. The owners had to take the initiative in preventing the workers performing sex work, such as telling the workers that they are not allowed to provide any kind of sexual services; giving them warning that they will be fired if they offer sexual services. This was done even though the owners fully understood that this activity was conducted in reality. The participants said that they are unable to discuss it, and they could not take the necessary measures to protect their health and safety.

All of the owners and workers said that they were not allowed to keep condoms at the massage parlours, even for personal use. As such, they rejected condoms as well as any and all information about sex services that might be provided by community health workers. According to the health workers interviewed, the owners were not able to develop and implement measures

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(such as the use of condoms) to protect their workers. One worker, Dora, said that she could not accept the condoms because her boss did not allow her to do so. If she were caught, she could lose her license and be fined.

“In addressing HIV/Aids prevention, the barrier -- which is very strong -- is the criminalization of condoms. ...If condoms are found by the police or the municipal bylaw enforcement officer, as evidence of sex work, it means that only condoms in massage parlours are criminalized... So, outside the massage parlours, condoms are perfectly legal; inside the massage parlours, they are illegal... That is shocking to everybody...” (Mary, Health Services Provider)

As addressed by the participants, the workers in massage parlours offer a variety of services, including massage, oral sex, hand jobs, and full sex. Different workers offer different services depending on their own practice and the practice of work place. The hidden nature of sexual services, however, interferes with their ability to negotiate with clients. Dora, a worker, said that she was unable to discuss openly with her clients at the beginning of her sessions the variety of sexual services that she offered because of the fear of entrapment by the police. At one point, she was sexually assaulted by one of her customers.

“The hiddenness of the massage parlours, the hiddenness of sexual activities, is doing a lot of harm... We can't teach, we can't educate. People are less likely to come out to some kind of health event or accept information from us. People are isolated.” (Mary, Health Services Provider)

Inspection and enforcement

All the participants recognized that the massage centre needed to be registered and licensed and massage practitioners needed to be licensed in order to work in a massage parlour. As indicated earlier, however, the owners and practitioners had limited skills in English. None had read the municipal code on licensing and the sex workers mainly learned about the municipal laws and regulations from their trainers (the business owners), co-workers, or those doing law enforcement (licensing officers or police).

Municipal by-law enforcement officers enforce the municipal code that applies to holistic centres - the workers and owners called them the “license” - and the Toronto Police Service (TPS). These officers carry out inspections and other forms of investigation, such as entrapment. All of the workers and owners interviewed were convinced that beyond the inspection of the operation and facilities of the holistic centre, the main purpose of inspections by enforcement officers and police was to control and prohibit sexual services. Those interviewed found that law enforcement had a double standard when it comes to violations of the bylaws. When officers visit, they concentrate on sexual services and related activities, such as searching for condoms, and trying to uncover erotic activities through entrapment or by opening the door of the massage room. The health services providers also said that investigation of sexual services in the holistic massage centre also increases the risk to the workers' personal health and safety because it forces the sex services underground. The workers, therefore, could not share information with other workers, and it became difficult for them to negotiate their services with clients. Bonnie (a worker) stated that “the license” walked around to see if there were lockers and if massage beds were in good condition, etc. They gave the owner a warning and wrote it down when they found that a massage bed was broken. They said it should be changed and that they would return to check on it.

“They target more the shop [holistic centre], which offers other [sexual] services. They seldom come to this place, as we only offer regular massage services.” (Gary, Owner)

The participants were concerned about inspections by bylaw enforcement officers, where, for instance, they would open the door of a massage room and search for a condom. Workers said that they had experience of municipal bylaw enforcement and the TPS seeking to discover sexual activities and violations of the regulations regarding touching and not covering of specific

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body parts. Both the owners and the practitioners felt that both their rights to privacy, and those of their clients, were breached. Such inspections also undermined their own sense of safety because they could not protect themselves by being able to lock the door. They felt obliged to obey the instructions of the law enforcement staff. None of the respondents, however, were shown a search warrant, nor did they know whether they had a right under the municipal bylaw governing holistic licenses to lock the door when they work. One worker, Annie, said that it was very dangerous when they could not lock the door because a robber could come into the massage centre and threaten them. Another worker, Dora, reported that when an inspection officer came through the door without warning, she could not do anything, and was ordered to stand by. She said that the police could do whatever they wanted to in conducting the search.

“They left our place a mess. Because they can't speak English, and they can't explain. They have to do what they say to avoid any trouble.” Dora (Worker)

Apart from opening the massage room door, both the sex workers and the owners said that the municipal bylaw enforcement people and police sometimes searched for condoms, and if they found any, they would give them a ticket. An owner, Gary, stated that they do not keep any condoms although law enforcement officers had searched everywhere: each room, the toilet, the drawers, and bags. He said that the business would have a big problem if the officers had found one. The owners and workers also recognized that the police sometimes used entrapment to collect evidence with which to charge them, although only a few of them have had that experience. Dora and Annie said they were afraid of the police and had to be careful for that reason. Annie shared her experience of a police officer pretending to be a client and asking her if she gave hand jobs. Although she did not answer him, the policeman still issued her a ticket (offence notice) that required her to attend a court hearing.

Most of the sex workers and owners reported having had a range of bad experiences involving the police, including racial discrimination, violence and, even, sexual assault. The workers felt that some of the municipal bylaw enforcement people and police officers were racist and did not respect them. For example, Gary (an owner) stated that they were being discriminated against because they could not speak English and were not white. He felt that the law enforcement officers were racist. The workers expressed high levels of anxiety and distress because of their experiences and fear of inspection, entrapment, and being charged. According to two workers (Annie and Dora) and two owners (Helen and Gary), law enforcement visited their workplace frequently, and sometimes issued tickets if they did not co-operate or challenged them.

All the sex workers and owners stated that they would not seek help if ever they were in danger or experienced violence. They felt that not only would they not be protected - they would be the ones arrested. Based on their past experiences, they did not trust the police. They also felt that reporting crimes would simply draw more police attention and, thus, harm their business. Annie (a worker) said that she had the experience of a client refusing to pay after having received sexual services and of becoming violent. She was unable to seek help from her employer or the police because she did not want to be caught offering sexual services. One worker, Candy, had sought help from her boss on a number of occasions. The employer had taught her about the work and safety regulations and told her she could seek help from him when she had a problem with a client. The increased frequency of police inspections, however, meant that she could no longer offer sexual services or even discuss them with her employer.

Discussion

According to Bungay, Halpin, Atchison, and Johnston (2011) and Anderson (2015), laws and regulations are important socio-structural factors that affect the health and safety of sex workers. Although the Toronto City Council policy paper on holistic licensing (Toronto City Council, 1998) states that one of the main purposes of the licensing of holistic centres is to protect the health and safety of workers, the punitive approach to regulating and prohibiting sex work in massage parlours has created hardships for sex workers, and undermines their health and safety. Holistic massage parlours are regulated differently than other businesses, and are more often targets of inspection and investigation. Language barriers mean that the workers and owners have limited knowledge of municipal laws and regulations, and most workers get their information from the business owners and their co-workers. Sex services are hidden in massage parlours because the municipal laws are designed to regulate and prohibit them. In order to avoid being charged with an offence, sex workers not only hide their activities from law enforcement, but also from their owners, co-workers, community health and social services organizations, and other services providers. They are forced to pretend that no sexual services are available, and are not able to discuss them. The owners are forced to become “willfully blind” to sexual services, and thus are unable to provide workers with information, protection, or safe working conditions. The pretense and imposed silence increase the workers' isolation, leaving them unable to share information. This undermines their ability to protect themselves or to get help from other workers. Migrant sex workers are more likely to seek work with a third party (i.e. manager or owner) who offers some information and protection for the safety and health of the workers (Anderson et al., 2015; Burkert & Law, 2012; Goldenberg et al., 2015). The hidden nature of sexual services increases the workers' risk to violence by clients because they cannot negotiate

their services or condom use. It also, therefore, increases the risk of conflict between workers and clients. This finding is similar to the findings of other research (Handlovsky, Bungay & Kolar, 2012). Municipal by-law enforcement officers and the Toronto Police Service enforce the municipal code that pertains to holistic centres, and inspections of sexual services are the main purpose of their enforcement. Neither can they communicate well with law enforcement. Attempting to do so may increase the likelihood of their experiencing racism, abuses, or human rights violations at their hands.

Enforcement of municipal laws and related policing practices not only increases the risk to health and safety of sex workers and exacerbates their physical and economic vulnerability. They also make sex workers reluctant to report abuse to police. The participants, concerned about inspections, especially entrapment, such as opening the door of a massage room, are forced to go underground. Although several participants had the experience of law enforcement opening the door of the massage room while they were rendering services, none of them understood that their rights had been violated. Searching for condoms is still a major focus of searches in massage parlours and is seen as evidence of sexual activity. But the inability of sex workers to access condoms from the public health services providers, or to keep condoms on the premises, even for their personal use, effectively endangers their health and well-being. This situation not only discriminates against workers and violates their human rights; it also puts them at greater risk of disease and harm. The UNFPA, WHO, UNAIDS, and other health organizations have stated that condoms are essential for preventing HIV transmission and other sexually transmitted infections (STI), and are effective for preventing unintended pregnancies. They have urged governments to stop using condoms as evidence in the cause of harassing sex workers and proving involvement in sex work (Open Society Foundations, 2012; UNAIDS, 2015).

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By both creating the legal mechanism and conferring the necessary power on municipal law enforcement agencies, the licensing regulations makes possible the harassment and abuse of sex workers and leaves workers unable to seek the protection from the police. According to the Migrant Sex Workers Project, the municipal law is being used as the tool of racism and racial profiling (2015). Racism is a common experience for sex workers who are racialized migrants and do not speak English. Even when the worker does realize that law enforcement is being racially abusive and violating their human rights - for example, through verbal and sexual assault - they are unable to stop it or even challenge it. When one of the participants in the study took steps to defend her case in court, the police responded by giving her more “tickets.”

Conclusions

This study has explored how the lived experiences of Chinese sex workers are affected by municipal policies. It found that the municipal bylaws governing holistic centres and their practitioners are being used to prohibit and regulate sexual services in massage parlours, even though it is something the municipality is not legally entitled to do. As with other adult industries, licensing massage parlours cannot improve the health and safety of the workers. The control, regulation, and prohibition of sexual services by municipal law not only decreases the autonomy of sex workers and their ability to control their working environment, it also increases the surveillance of sex workers, threatens their health and safety, and infringes their human rights. The negative interaction that sex workers have with the police obstructs them from seeking help from police when they face the violence (Anderson et al., 2015; Bungay et al., 2011; Craig, 2011; Lewis, Maticka-Tynadle, Shaver, & Schramm, 2005; van der Meulen & Durisin, 2008). Chinese sex workers, like other non-Canadian-born sex workers, are particularly prone to being affected in this way because of racism, their immigration status, and language barriers. The findings in

this study are similar to those found in other research (e.g. Anderson, et al., 2015; Bungay, et al., 2012; van der Meulen & Durisin, 2008).

While this study offers important information on how the health and safety practices of one group of racially marginalized Chinese sex workers are being affected by municipal laws and practices, more research is needed to fully explore the relationships among the law, race, immigration status, and health and safety. This study was also conducted before the new criminal laws (*Protection of Communities and Exploited Persons Act*) were introduced. Recent reports show, that, currently, the municipal bylaws are being enforced, along with the new criminal laws (laws relating to sex work, and anti-trafficking laws) and immigration laws (Ottawa Sun, 2015; Lam, 2015). Essentially, the ability of the municipal police, the Canada Border Services Agency, and the Royal Canadian Mounted Police, to work together amounts to increased power to law enforcement to investigate and arrest those who work in the sex industry. The sex workers' rights movement and others understand that decriminalization is a very important means to improve their working conditions of sex workers and to ensure that their human rights are respected (Canadian HIV/AIDS Legal Network, 2005; PIVOT Legal Society, 2009, NSWP, 2014; van der Meulen & Durisin, 2008). It is essential that more attention be given to understanding the impact that enforcing the full range of laws will have on sex workers.

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