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# Sex Workers and the Best Interests of their Children: Issues Faced by Sex Workers Involved in Custody and Access Legal Proceedings

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### Article abstract

Sex worker parents often lose custody of their children. The purpose of this research was to study the impact of a parent's status as a past or present sex worker on judicial decision-making in custody and access disputes. Through doctrinal legal research, I explored judicial treatment of sex workers involved in custody and access disputes in Child Protection and Family Law case law from Ontario. I reviewed every reference to parental involvement in sex work from Child Protection and Family Law decisions from January 2010-March 2020. Parental involvement in sex work was often presented as an unfavourable aspect of the parent, or otherwise had a negative influence on their claim. Sex work was treated as a negative quality in a parent rather than an aspect of their life warranting further factual exploration. I argue that stigma against sex workers appears to carry more weight in custody and access disputes than evidence concerning the impact that a parent's sex work has on a child.

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## Sex Workers and the Best Interests of their Children: Issues Faced by Sex Workers Involved in Custody and Access Legal Proceedings

Julie E. DeWolf\*

*Sex worker parents often lose custody of their children. The purpose of this research was to study the impact of a parent's status as a past or present sex worker on judicial decision-making in custody and access disputes. Through doctrinal legal research, I explored judicial treatment of sex workers involved in custody and access disputes in Child Protection and Family Law case law from Ontario. I reviewed every reference to parental involvement in sex work from Child Protection and Family Law decisions from January 2010-March 2020. Parental involvement in sex work was often presented as an unfavourable aspect of the parent, or otherwise had a negative influence on their claim. Sex work was treated as a negative quality in a parent rather than an aspect of their life warranting further factual exploration. I argue that stigma against sex workers appears to carry more weight in custody and access disputes than evidence concerning the impact that a parent's sex work has on a child.*

*Les parents qui travaillent dans l'industrie du sexe perdent souvent la garde de leurs enfants. La présente recherche avait pour but d'étudier l'incidence du statut d'un parent comme ancien ou actuel travailleur du sexe sur le processus décisionnel judiciaire dans les litiges concernant la garde et le droit de visite. Dans le cadre de recherches juridiques doctrinales, j'ai étudié le traitement judiciaire des travailleurs du sexe dans les litiges relatifs à la garde et au droit de visite en parcourant la jurisprudence ontarienne en matière de protection de l'enfance et de droit de la famille. J'ai examiné chaque mention du travail d'un parent dans l'industrie du sexe dans les décisions en matière de protection de l'enfance et de droit de la famille de janvier 2010 à mars 2020. Le travail d'un parent dans l'industrie du sexe était souvent présenté comme un aspect négatif du parent, ou avait autrement une incidence défavorable sur sa demande. Le travail dans l'industrie du sexe était traité comme une qualité négative du parent, plutôt que comme un aspect de sa vie justifiant un examen plus poussé des faits. Je fais valoir que la stigmatisation des travailleurs du sexe semble avoir plus de poids dans les litiges relatifs à la garde et au droit de visite que la preuve concernant l'incidence, sur un enfant, du travail d'un parent dans l'industrie du sexe.*

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## I. INTRODUCTION

Sex worker parents are abundant<sup>1</sup> yet understudied;<sup>2</sup> encounter high rates of stigma and scrutiny;<sup>3</sup> suffer disproportionately high child apprehension rates;<sup>4</sup> and often face at least one social, economic, or health impediment that can impede parenting.<sup>5</sup>

In this work, I wanted to understand the legal impact of sex work on custody and access proceedings in Ontario. I looked at Family Law and Child Protection case law to explore the impact that parental involvement in sex work has had on judicial decision-making. I reviewed every reference to parental involvement in sex work from Child Protection and Family Law decisions from January 2010 to March 2020. In many cases, judges appeared to rely upon assumptions about sex work instead of on evidence about the parent, their work, and any impact on the child. Sex workers were often labeled as prostitutes early on in decisions, followed by seemingly adverse inferences about their parenting abilities based on their work. I argue that stigma against sex work and sex workers appears to carry more weight in custody and access disputes than evidence concerning the impact that a parent's involvement in sex work has on a child.

## II. BACKGROUND

Sex work—defined by Bromwich & DeJong as “the voluntary exchange of sexual services for money”<sup>6</sup>—and parenting is a budding field of study. In 2018, Dewey, Orchard, & Brown commented on the lack of studies exploring parenthood among sex workers, and even fewer focusing on child loss.<sup>7</sup> As the field emerges, however, so do certain trends.

First, many sex workers are mothers.<sup>8</sup> In 2004, Sloss *et al* estimated that 80-90% of sex workers in the United States had given birth.<sup>9</sup> Most embrace parenthood and want to be “good mothers”.<sup>10</sup> They “see themselves as mothers when authority figures, family members, and socioinstitutional systems do not.”<sup>11</sup>

<sup>1</sup> Juliana Piccillo, “We’re here. We’re whores. We’re parenting.” (20 February 2018) online: *Red Umbrella Babies: Sex work & Parenting, an anthology* <<https://www.redumbrellababies.com/single-post/2018/02/20/Were-here-Were-whores-Were-parenting>>.

<sup>2</sup> Rebecca Bromwich & Monique Marie Dejong, eds, *Mothers, mothering and sex work* (Brampton, ON: Demeter Press, 2015) at 14.

<sup>3</sup> See generally, Bromwich & DeJong, *ibid.*

<sup>4</sup> Putu Duff *et al*, “Sex Work and Motherhood: Social and Structural Barriers to Health and Social Services for Pregnant and Parenting Street and Off-Street Sex Workers” (2015) 36:9 *Health Care for Women International* 1039 at 1040 [Duff *et al* (2015)].

<sup>5</sup> Susan Dewey, Treena Orchard, & Kyria Brown, “Shared Precarities and Maternal Subjectivities: Navigating Motherhood and Child Custody Loss Among North American Women in Street-Based Sex Work” (2018) 46:1 *Ethos* 27.

<sup>6</sup> Bromwich & DeJong, *supra* note 2 at 5.

<sup>7</sup> Dewey, Orchard & Brown, *supra* note 5.

<sup>8</sup> Bromwich & Dejong, *supra* note 2 at 14.

<sup>9</sup> Christine M Sloss & Gary W Harper, “When Street Sex Workers Are Mothers” (2004) 33:4 *Archives of Sexual Behavior* 329 at 329.

<sup>10</sup> Jane Dodsworth, “Sex worker and mother: Managing dual and threatened identities” 2012 19:1 *Child & Family Social Work* 99 at 1; Ambar Basu & Mohan J Dutta, “‘We are mothers first’: Localocentric articulation of sex worker identity as a key in HIV/AIDS communication” (2011) 51:2 *Women & Health* 106.

<sup>11</sup> Dewey, Orchard & Brown, *supra* note 5 at 30.

Second, sex worker mothers encounter high levels of social and state scrutiny.<sup>12</sup> According to Dewey *et al*, they are often “sociolegally and morally position[ed] ... as fundamentally risky subjects who pose a danger to their children”.<sup>13</sup> Samtani & Trejos-Castillo explain that “societal disapproval of sex work as a profession overshadows a mother’s parental role, without actually giving a sex worker mom the fair chance to be evaluated on the merits of her motherhood.”<sup>14</sup> As such, “sex work as a profession and mothering stand juxtaposed”.<sup>15</sup>

Indeed, many sex worker parents describe living in constant fear of Child Protection societies and for good cause.<sup>16</sup> A third trend is that sex worker parents experience disproportionately high levels of child apprehension.<sup>17</sup> In one 2014 study by Duff, over one third of 350 sex worker parents interviewed reported having a child apprehended.<sup>18</sup> In a study conducted by Rochelle Dalla involving the children of thirty-eight sex workers, only ten of 105 children remained with their biological mothers. Of the remaining ten children, all had been involved in multiple cases initiated by Child Protection societies.<sup>19</sup>

Fourth, while all sex workers face increased risk of child apprehension, street-based sex workers (*i.e.*, sex workers who solicit clients from outdoor locations such as street corners, alleys, and parks)<sup>20</sup> experience up to a 2.5-fold increase of child apprehension compared to indoor sex workers.<sup>21</sup> The high rates of apprehension among street-based sex workers parents appears to correlate with “multiple and intersecting marginalizations” that can contribute to the “ongoing battle[s] to keep their children”.<sup>22</sup> Across North America, nearly all street-based sex worker parents experience one or more of the following social, economic, or health-related barriers to parenting:<sup>23</sup>

<sup>12</sup> PJ Starr *et al*, “Red Umbrella Babies: By Sex Worker Parents and Their Children” in Bromwich & DeJong, *supra* note 2 at 149.

<sup>13</sup> Dewey, *supra* note 5 at 28.

<sup>14</sup> Satabdi Samtani & Elizabeth Trejos-Castillo, “Motherhood and Sex Work: A negotiation of identities” in Bromwich & DeJong, *supra* note 2 at 276.

<sup>15</sup> *Ibid* at 278.

<sup>16</sup> Anonymous, “Mama Tiger Rising” in Bromwich & Dejong, *supra* note 2 at 272.

<sup>17</sup> Kathleen S Kenny, *The Role of Child Custody Loss to Child Protective Services in Shaping Health and Wellbeing among Women Who Do Sex Work in Vancouver, Canada* (Ph.D Dissertation, The University of North Carolina at Chapel Hill, 2018) [unpublished]; Rochelle L Dalla, “When the Bough Breaks ... : Examining Intergenerational Parent-Child Relational Patterns Among Street-Level Sex Workers and Their Parents and Children” (2003) 7:4 *Applied Developmental Science* 216 at 225.

<sup>18</sup> Putu Duff *et al*, “The ‘Stolen Generations’ of Mothers and Daughters: Child Apprehension and Enhanced HIV Vulnerabilities for Sex Workers of Aboriginal Ancestry” (2014) 9:6 *PLOS ONE* e99664 at 1051 [Duff *et al* (2014)].

<sup>19</sup> Rochelle Dalla, “‘I Fell Off [the Mothering] Track’: Barriers to ‘Effective Mothering’ Among Prostituted Women” (2004) 53:2 *Family Relations* 190 at 192.

<sup>20</sup> Duff *et al* (2014), *supra* note 18.

<sup>21</sup> Duff *et al* (2014), *supra* note 18, at 3.

<sup>22</sup> *Ibid* at 1.

<sup>23</sup> Dewey *et al*, *supra* note 5.

1. Substance abuse;<sup>24</sup>
2. Domestic violence;
3. Poverty/homelessness;<sup>25</sup> and/or
4. Compromised mental health.

I refer to the above four hurdles as “shared precarities”, a term coined by Dewey *et al.*<sup>26</sup> While social services are arguably available for sex workers, many fear the repercussions of accessing those resources.<sup>27</sup> Sex workers report “huge discrimination in both health and social services needs”.<sup>28</sup> They are concerned about outing themselves as a sex worker to service providers and losing custody of a child.<sup>29</sup>

Despite the legal nature of the subject, there do not appear to be any studies on the specific legal issues that sex workers face in courtroom proceedings regarding custody and access, or how evidence related to sex work has been considered and applied in rulings by judges. In this work, I explore the legal impact of evidence regarding parental sex work on custody and access disputes in Child Protection and Family Law proceedings in Ontario. For my research question, I asked: In reported decisions from Family Law and Child Protection proceedings involving claims for custody and access, what impact has the status of a parent as a past or present sex worker had on judicial decision-making?

### III. RESEARCH APPROACH

I answered my research question through doctrinal legal research. Using CanLii, Westlaw Canada Next, and LexisNexis QuickLaw to note up the *Child and Family Services Act*, the *Child, Youth and Family Services Act, 2017*, the *Children’s Law Reform Act*, and the *Divorce Act*, I compiled a list of all relevant Family Law and Child Protection case law from Ontario.<sup>30</sup> Relevant cases were decided between January 1, 2010 to March 2020; dealt with custody of or access to a child; and involved a sex worker parent.

I found and coded eight Family Law cases and nineteen Child Protection cases where parental involvement in sex work was either admitted by the sex worker parent or was otherwise accepted into evidence by the court. I created a list of—but did not code—cases where parental involvement in sex work

<sup>24</sup> Gabrielle Tracy McClelland & Robert Newell, “A qualitative study of the experiences of mothers involved in street-based prostitution and problematic substance use” (2008) 13:5 *Journal of Research in Nursing* 437; Alison Granger-Brown *et al.*, “The Spectrum of Motherhood” in Bromwich & DeJong *supra* note 2 at 40; Christine M Sloss, Gary W Harper, & Karen S Budd, “Street sex work and mothering” (2004) 6:2 *Journal of the Motherhood Initiative for Research and Community Involvement* 102 at 109; Aaron Murnan, *Using Qualitative Interviews to Understand the Treatment Needs and Barriers of Mothers Engaged in Prostitution and their Children*, The Ohio State University, 2019 [Dissertation]; Aaron Murnan *et al.*, “The impact of parenting on child mental health among children of prostituting mothers” (2018) 89 *Children and Youth Services Review* 212; Jennifer Beard *et al.*, “Children of female sex workers and drug users: a review of vulnerability, resilience and family-centred models of care” (2010) 13 *Journal of the International AIDS Society* S6.

<sup>25</sup> In Duff *et al.* (2015), *supra* note 4 at 1048; Kenny, *supra* note 17.

<sup>26</sup> Dewey *et al.*, *supra* note 5.

<sup>27</sup> Steven P Kurtz *et al.*, “Barriers to Health and Social Services for Street-Based Sex Workers” (2005) 16:2 *Journal of Health Care for the Poor and Underserved* 345.

<sup>28</sup> Samtani & Trejos-Castillo, *supra* note 14 at 278.

<sup>29</sup> Sloss & Harper, *supra* note 9 at 111-112.

<sup>30</sup> *Child and Family Services Act*, RSO 1990, c C.11 [CFSA]; *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, Sched 1 [CYFSA, 2017]; *Children’s Law Reform Act*, RSO 1990, c C.12 [CLRA]; *Divorce Act*, RSC, 1985, c 3 (2<sup>nd</sup> Supp) [Divorce Act].

was simply alleged by a third party, but otherwise denied or not accepted by the judge. I call these “allegation cases”. Allegation cases are evidence of the societal view that sex work is incompatible with parenting, but do not assist with my analysis of the impact of parental sex work on judicial decision-making. Twelve of the twenty Family Law cases were allegation cases, and fourteen of the thirty-two Child Protection decisions were allegation cases.

To be clear, for the purpose of identifying stigma against sex workers, I refer only to excerpts of the decisions that shed light on how custody and access proceedings appear to be influenced by a parent’s involvement in sex work in this piece. Courts often considered multiple factors—at least one shared precarity was noted in each case—and the weight afforded to all factors of any given case is not reflected in my analysis. Custody and access proceedings are factually dense and critiquing each decision on its merits based on judicial consideration of the full factual matrix of each case is beyond the scope of this research.

#### IV. CHILD PROTECTION CASE LAW

I reviewed case law dealing with the following elements of Child Protection proceedings:

- triggering proceedings;
- temporary care hearings during an adjournment;
- finding that a child is in need of protection (a “finding”); and
- determining that an order of the court, which must be made in the best interests of the child, is required to protect the child in the future (a “protection order”).

I also noted when a judge referred to sex work when describing a parent or their lifestyle, but then did not otherwise connect the sex work to their legal analysis.

I found nineteen Child Protection decisions. Eleven of the nineteen parents were former sex workers and eight were sex workers at the time of trial. Only one regained custody of her child. Former sex worker parents were significantly more likely to regain a relationship with their child than sex workers at the time of trial. Five of eleven (45.5%) former sex workers were granted custody or access. Only one of the eight (12.5%) current sex workers was granted access. For the children of the eleven former sex workers:

- five orders were made for crown wardship, without access for the purpose of adoption;
- one order was made for crown wardship, with access (adoption was not an option);
- one order placed the children in temporary society care, without access;
- one order placed the children in temporary society care, with access;
- two orders placed the child(ren) in the care and custody of another parent, with access to the former sex worker; and
- one order granted custody to the former sex worker following a temporary care hearing.

In contrast, for the eight parents who were sex workers at the time of hearing, *every* child was made a crown ward. The following orders were made for these children:

- seven orders for crown wardship, without access for the purpose of adoption; and

- one order for crown wardship, with access to the sex worker. The society did not submit a plan for adoption and so access could not impair the child's prospects for adoption.

### A. Triggering Proceedings

Child Protection investigations are often triggered by third party reports. Third parties may be well-intentioned individuals who believe they are complying with their duty to report a suspicion that a child is at risk.<sup>31</sup> However, many sex workers describe being reported to societies by vindictive former partners and disapproving family members.<sup>32</sup> I found that, for eight Child Protection cases, at least one of the concerns leading to society investigation involved allegations of sex work. Not all decisions outlined the reasons for initial society involvement.

For the fourteen allegation cases, a society received a report that a parent was a sex worker and the report led to an investigation.<sup>33</sup> For example, in *CCAS v. BLS, GKJ, GJ SD*<sup>34</sup> the society investigated the family due to concerns that the mother was “involved in prostitution.”<sup>35</sup> Later, when the child was made a society ward, the society raised concerns with the mother’s “ongoing involvement with prostitution.”<sup>36</sup> Justice Pazaratz did not analyse the mother’s alleged involvement in sex work, nor did he explain what led to the society’s concerns with her sex work.

### B. Temporary Care Hearing

Adjournments are common in child protection proceedings. If one is granted, the Court will make a temporary order for care and custody of the child during the adjournment period.<sup>37</sup> The *only* Child Protection case where a sex worker received custody of her child involved a temporary care hearing. In *Children’s Aid Society of Algoma v RS*, the mother was a former stripper and escort.<sup>38</sup> She successfully opposed a society motion to place her child in temporary society care. Her success appears partially attributable to leaving sex work. Justice Kukurin began the decision by describing the mother’s life as “anything but stable”,<sup>39</sup> referring to the mother’s past involvement in sex work and other unfavourable factors:

[The mother] has used both marijuana and cocaine in the past. She has been involved in domestic violence, as a perpetrator in the case of [a partner] of whom she was convicted of assault. She has been employed as a stripper and as an escort.<sup>40</sup>

<sup>31</sup> Section 72(1) of the *CFSA*, *ibid*.

<sup>32</sup> Mary Emily O’Hara, “Sex workers want to talk to you about parenting” (14 August 2015), online: *The Daily Dot* <<https://www.dailydot.com/irl/sex-worker-parenting/>>.

<sup>33</sup> *Native Child and Family Services of Toronto v DC*, 2010 ONSC 1038; *Children’s Aid Society of Ottawa v RP*, 2010 ONSC 7106; *The Catholic Children’s Aid Society of Hamilton v CF*, 2011 ONSC 3335; *Children’s Aid Society of Ottawa v CN*, 2013 ONSC 402; *Children’s Aid Society of Ottawa v C-D*, 2014 ONSC 6954; *Children’s Aid Society of Toronto v KS*, 2015 ONCJ 63; *Children’s Aid Society v NJ-L*, 2016 ONSC 5889; *CAS of London and Middlesex v TY*, 2017 ONSC 3460; *Children’s Aid Society of Ottawa v CN*, 2018 ONSC 3988; *Catholic Children’s Aid Society of Toronto v TTL*, 2018 ONCJ 403; *Catholic Children’s Aid Society of Toronto v TTL and SS*, 2019 ONCJ 530; *Children’s Aid Society of (Ottawa) v JR*, 2019 ONSC 3012; *CAS v TS and MOU and CS*, 2020 ONSC 879.

<sup>34</sup> 2014 ONSC 5513 [*BLS*].

<sup>35</sup> *Ibid* at para 10.

<sup>36</sup> *Ibid* at para 12.

<sup>37</sup> *CFSA*, *supra* note 30, s 52(1).

<sup>38</sup> 2013 ONCJ 688 [*RS*].

<sup>39</sup> *Ibid* at paras 3-4.

<sup>40</sup> *Ibid* at para 4.

Justice Kukurin then described how the “pejorative introduction [of the mother] must, in fairness, be juxtaposed to information ... that is more current.” In reviewing the mother’s current lifestyle, he praised her for having “given up her job as a ‘dancer’ and ... attending school to upgrade herself to a high school diploma.”<sup>41</sup> At no point did Justice Kukurin connect the mother’s sex work to an impact on the child.

### C. Finding that a Child Was in Need of Protection

In most of the cases where a court ruled that a child needed protection, the presiding judge found that the child was at risk of physical or emotional harm due to neglect. None of the cases linked sex work to the allegations of neglect.

Sex work was only directly referred to by a court when justifying a finding that a child needed protection in one case. In *Children's Aid Society of the Regional Municipality of Waterloo v CT*, the mother’s involvement in sex work was included in a list of factors, including multiple shared precarities, provided in the opening paragraphs of the decision to show that the child was at risk of physical harm.<sup>42</sup> First, Justice Benotto noted that the father claimed that the mother was prostituting herself after describing the mother’s history with substance abuse:

[5] In 2006 the [Children’s Aid Society] received a referral from a public health nurse who learned that the mother was pregnant again. Shortly after the child’s birth, the mother tested positive for marijuana. A nurse observed the mother’s speech to be slurred. Although the child remained in her mother’s care, there were incidents of police involvement as a result of domestic violence reports. There were also ongoing reports to the Society about the mother’s alleged use of drugs in the presence of the child. A series of hair screens completed on the child in 2010 and 2011 showed positive results for cocaine and marijuana. In January 2012 the father told the Society that the mother was “prostituting herself.”<sup>43</sup>

Second, Justice Benotto noted that the mother’s sex work was included in a Statement of Agreed Facts that the parties signed when agreeing that the child needed protection:

[6] In May 2012 the parents and the Society agreed that the child should be found in need of protection. The parents signed a Statement of Agreed Facts. The Statement outlined and summarized the background including the following:

- i. From 2002 to 2012 there were ongoing issues regarding the parents’ drug usage;
- ii. The mother was involved in the sex trade industry;
- iii. There were incidents of domestic violence between the parents;
- iv. The mother had mental health issues including bipolar disorder and personality disorder;
- v. The father was diagnosed with chronic pain, dysrhythmias, and panic disorder;
- vi. Since February 2012, the father has had only supervised visits with the child and further access would be at the discretion of the Society; and
- vii. The child is not an Indian or native person.<sup>44</sup>

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<sup>41</sup> *Ibid* at para 9.

<sup>42</sup> 2017 ONCA 931 [CT].

<sup>43</sup> *Ibid*.

<sup>44</sup> *Ibid*.



These passages highlight the society's position that the mother's sex work, as a stand-alone factor, placed the child at risk of harm. However, Justice Benotto *did not explain* how the society concluded that the mother's sex work affected the child.

#### **D. Protection Orders: Sex Work and the Best Interests of the Child**

Courts referred to sex work when explaining what protection order was in the best interests of the child in seven cases. Courts in four cases suggested that involvement in sex work affected the parent's ability to provide stability, permanency, and/or structure for the child. In one case, the Court considered the importance of continuity in the care of the child with the non-sex worker parent. In two cases, courts found that the child would be at risk of physical harm if returned to the sex worker parent.

For six of these seven cases, courts appeared to treat involvement in sex work as an adverse factor when considering what is in the best interests of the child *without* considering the evidence regarding the sex worker parent and any impact of same on the child. I argue that in those six cases, the Courts' conclusions about the parent insofar as they related to sex work were informed by stigma, not facts. In the seventh case, the Court directly connected the particular facts regarding the parent's sex work to an adverse impact on the child. The child was sexually abused by a client that the parent had brought into the home.

##### **1. The Child's Need for Stability, Permanence, and Structure**

Sex work contributed to a finding that the parent could not provide the child with stability, permanency, and/or structure for the child in four cases.

When ruling that the mother could not provide a permanent and nurturing environment in *CCAS v LM*, Justice Maddalena appeared to rely upon the mother's involvement in prostitution noted in an expert report as evidence that the children would be at a serious risk of maltreatment if returned to their mother.<sup>45</sup> A portion of a report from expert witness Dr. Harris stated that “[p]erhaps the most concerning problem area has been LM’s pervasive problems with self-regulation over the years. She has engaged in numerous maladaptive methods for emotion regulation and self-soothing including drug and alcohol use, self-harm (suicide attempts), and high risk behaviour (prostitution)”.<sup>46</sup> Justice Maddalena appeared to accept Dr. Harris’ opinion that prostitution constitutes high risk behaviour in the absence of any evidence regarding the nature of the mother’s sex work, further coloured by listing sex work alongside substance abuse and suicide attempts. She relied on Dr. Harris’ report to conclude that “it could take decades for LM to resolve the issues or indeed they may never actually resolve. This is concerning for the Court since it leads to the inevitable conclusion that children placed in her care would remain again at serious risk of maltreatment.”<sup>47</sup> Crown wardship would provide “permanency and a nurturing parent environment” that the children required and the mother could not provide.<sup>48</sup>

Justice Curtis referred to a sex worker mother's prior involvement in prostitution to determine that she was unable to provide stability in *Catholic Children's Aid Society of Toronto v JB*.<sup>49</sup> In the opening paragraphs, Justice Curtis summarized the mother's pre-*Bedford* “history of criminal behaviour, prostitution and drug use, prior to her pregnancy.”<sup>50</sup> She noted that the mother “worked as a prostitute and

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<sup>45</sup> 2012 ONSC 1778 [*LM*].

<sup>46</sup> *Ibid* at para 126.

<sup>47</sup> *Ibid* at para 128.

<sup>48</sup> *Ibid* at para 176.

<sup>49</sup> 2013 ONCJ 583 [*JB*].

<sup>50</sup> *Ibid* at para 7.

used drugs from the age of 15” and had a “substantial criminal record, with convictions for prostitution, the sale of drugs, assault, vehicle theft and fraud. ... She had 45 charges regarding prostitution, and 15 convictions, including jail time for these convictions.”<sup>51</sup> Justice Curtis accepted expert evidence that the mother has “good insight into her past difficulties” and has “overcome a lot in her life”, yet still relied upon the mother’s past convictions as evidence of *ongoing* poor judgment that rendered her unable to provide a stable home environment.<sup>52</sup> The mother was deemed not able to “provide the child with ... stability and consistency” and, if returned to her care, the child would not have the “certainty, finality, and [the ability to] grow up in a safe and stable family, where he is valued and protected from harm.”<sup>53</sup> Justice Curtis ordered crown wardship without access.

I do not suggest that Justice Curtis was wrong to consider the mother’s criminal history. Under s. 50 (1) (b) the *CFSA*, evidence of a parent’s past criminal history was admissible.<sup>54</sup> I argue that the stigma against sex workers perpetuated by the pre-*Bedford* criminal scheme contributed to the uphill battle that the mother in *JB* faced during her proceedings. Perhaps the mother’s criminality in *JB* would have been considered in a different light if a large portion of her record was the result of unconstitutional laws.

In *Children’s Aid Society of Hamilton v CH*,<sup>55</sup> the applicant society brought a motion for crown wardship on summary judgment after learning that the mother would not be attending trial. The evidence of the society included multiple references to the mother’s sex work:

[21] The mother has serious lifestyle problems including significant involvement with prostitution:

- a. She has a history of working as a prostitute since age 13.
- b. In early 2012 the Society discovered advertisements the mother had placed through on-line escort services. The mother admitted she placed the ads on the website, but claimed she had never followed through with the service.
- c. The mother recently advised a society worker that she had a better life when she was involved in prostitution.<sup>56</sup>

Neither the society nor Justice Pazaratz, the presiding judge, explained how the mother’s history of sex work, advertisement of sex work, or her assertion that sex work provided a better life impacted the best interests of the child. Nevertheless, Justice Pazaratz relied on the society’s “thorough and unchallenged” evidence to conclude that the mother “lacks the skills, motivation and stability to be an appropriate caregiver for this young child”<sup>57</sup> and ordered crown wardship without access.<sup>58</sup>

For the fourth case where a court implied that sex work impacted the child’s need for permanency, Justice Duchesneau-McLachlan connected the location of the mother’s sex work and to her ability to provide permanency for the child.<sup>59</sup> The mother in *B(J)* was an exotic dancer with a history of substance abuse, which Justice Duchesneau-McLachlan discussed in detail throughout her decision. She did not refer to the mother’s exotic dancing until the concluding paragraphs, when she noted that the mother was

<sup>51</sup> *Ibid* at paras 25, 26

<sup>52</sup> *Ibid* at paras 33, 59, 76.

<sup>53</sup> *Ibid* at paras 79, 81.

<sup>54</sup> *CFSA*, *supra* note 30 at s. 50(1)(b).

<sup>55</sup> 2014 ONSC 3731 [*CH*].

<sup>56</sup> *Ibid* at para 21.

<sup>57</sup> *Ibid* at para 24.

<sup>58</sup> *Ibid* at para 34.

<sup>59</sup> *Children’s Aid Society of Nipissing and Parry Sound v. B(J)*, 2010 ONCJ 34 [B(J)].

“vulnerable to drug abuse and finds herself in a work environment where the temptations *might* be too great” (emphasis added).<sup>60</sup> She stated that the mother was “courting disaster”<sup>61</sup> by continuing to work as an exotic dancer at a location “well known” for drug use. Justice Duchesneau-McLachlan concluded that the child needed structured caregivers who can avoid drug use, and “cannot wait any longer for his parents to straighten out. His best interests dictate that he get a chance for a permanent home and committed parents”<sup>62</sup> and ordered crown wardship without access.

I agree that courts should be concerned about a parent who is an addict working in an area where drugs are readily available, as substance abuse by a parent can certainly lead to adverse impacts on a child.<sup>63</sup> I suggest, however, that Justice Duchesneau-McLachlan ought to have incorporated in further fact-finding when ruling that the mother’s drug use prevented her from providing permanency and stability. Instead, she relied upon a presumption that the temptations “might” be too great. Further, she does not explain what evidence he relied upon to find that the mother’s place of work is “well known” for drug use.

## 2. Continuity of the Child’s Care

Continuity of the child’s care with the non-sex worker parent was preferred in one case. *Children’s Aid Society of Toronto v SAP et al* involved an appeal by a former sex worker of a final order granting custody to the father.<sup>64</sup> The child had been in the father’s care while the mother took several society-required steps, including exiting sex work. During that time, the child developed a stable home with the father. Justice Shore acknowledged that the mother made “significant progress since her first involvement with society, ... overcome[ing] her involvement with drugs, escorting, and abusive partners”,<sup>65</sup> yet held that it was in the best interests of the child to remain with the father. It is not apparent from either decision what, if any, tangible impact the mother’s work had on the children.

The *SAP* decision suggests that the society required that mother refrain from drug use, escorting, and associating with abusive partners, and that she complied. The time it took for the mother to comply with the society’s terms—including exiting sex work—was the primary reason that the children were not returned to her care. Despite praising the mother’s progress, Justice Pawagi ordered (and Justice Shore upheld) that the most “significant factor” regarding the children’s best interests was “continuity of care.”<sup>66</sup> The father obtained custody because “during the time that [the mother’s progress] has taken, the children settled into their placement with their father. It would be in their best interests have that [*sic*] placement be permitted.”<sup>67</sup>

## 3. Ongoing Risk of Physical Harm

For two cases, parental engagement in sex work contributed to a determination that the child was at ongoing risk of physical harm. First, in *CCAS v. JF-G and NS*, the sex worker mother sought custody and access but could not attend trial as she was incarcerated.<sup>68</sup> The father also sought custody. When reviewing the evidence against the mother, Justice Mazza noted that the society worker who apprehended the children had learned that, prior to apprehension, the mother “had been smoking crack and prostituting

<sup>60</sup> *Ibid* at paras 89.

<sup>61</sup> *Ibid* at para 91.

<sup>62</sup> *Ibid* at paras 84, 92.

<sup>63</sup> Murnan (2018), *supra* note 24.

<sup>64</sup> 2019 ONSC 3482 [*SAP*].

<sup>65</sup> *SAP*, *supra* note 64 at para 34.

<sup>66</sup> *Ibid* at para 30, reference to para 29 of the reasons of Justice Pawagi

<sup>67</sup> *Ibid* at para 34, reference to para 31 of the reasons of Justice Pawagi.

<sup>68</sup> 2013 ONSC 6434 [*JF-G*].

herself.”<sup>69</sup> The father gave evidence that he separated from the mother after learning that she was “involved in prostitution and was consuming crack cocaine”.<sup>70</sup> Mazza concluded that the mother’s life “was one that included prostitution, alcoholism, drug addiction, a criminal record, alarming tendency to violence and that she is currently facing a charge of procuring young children for the purposes of prostitution. ... [T]o return the children to her care would clearly place them risk of both physical and emotional harm”.<sup>71</sup>

I query why Justice Mazza only mentioned, without analysis, the procurement charges once at end of the lengthy decision. Procurement of children is a serious offence. A conviction would be compelling evidence that the children were at risk of harm with the mother. However, Justice Mazza does not provide any details of the procurement charge. Further, for the purpose of this research, it is relevant that Justice Mazza listed the mother’s involvement in “prostitution” separately from the procurement charge, implying that prostitution in itself is a negative factor.

A mother’s sex work also had a negative impact on a father’s claim for custody in *JF-G*. Counsel for the society submitted that the father demonstrated poor judgment by becoming involved with the mother. The father’s choice of a partner who was “involve[d] with prostitution, drug consumption and ... [was] prone to violence” did “not speak to the success of the future family’s constellation.”<sup>72</sup> The society further submitted that the father was untrustworthy, in part due to “having not advised the society of [the mother’s] inappropriate behaviour, her tendency to violence, her involvement with prostitution, and her addiction to drugs. He was forthcoming on none of these very concerning circumstances.”<sup>73</sup> Justice Mazza accepted the society’s submission that the father’s failure to report the mother’s “involvement in prostitution and her consumption of illicit drugs and alcohol while the children were in her care” demonstrated that he “clearly ... did not appreciate the importance of protecting [the children] in such a precarious environment.”<sup>74</sup> The three children were made crown wards without access to either parent.

Courts referred to an ongoing risk of physical harm in two appeal decisions from the *DD v Children’s Aid Society of Toronto* proceeding.<sup>75</sup> This is one of the few fact patterns where the parent’s involvement in sex work was clearly linked to an adverse impact on the child. In both *DD* decisions, the mother is introduced as a “sex trade worker”. Justice Horkins and Justice Pardu both noted that the mother arrived in Canada from Romania in 1995 and “worked in the adult entertainment business and as a sex trade worker.”<sup>76</sup> The father was a client and had no further contact with the mother or the child.<sup>77</sup> The mother’s sex work is later raised by Justice Pardu when she upheld a decision of the trial judge (which does not appear to have been reported) to admit and rely upon disturbing hearsay evidence from the child. The child described being sexually abused by one of the mother’s clients in the home.<sup>78</sup> Justice Pardu did not comment on the weight given to or impact of the child’s evidence at trial, or otherwise substantively consider the evidence in upholding the trial judge’s order for crown wardship without access. She only

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<sup>69</sup> *Ibid* at para 11.

<sup>70</sup> *Ibid* at para 77.

<sup>71</sup> *Ibid* at paras 120-121.

<sup>72</sup> *Ibid* at para 101.

<sup>73</sup> *Ibid* at para 102.

<sup>74</sup> *Ibid* at para 128.

<sup>75</sup> 2015 ONSC 4197 [*DD* ONSC] and 2015 ONCA 903 [*DD* ONCA].

<sup>76</sup> *DD* ONSC, *ibid* at para 2; *DD* ONCA *ibid* at para 3.

<sup>77</sup> *Ibid*.

<sup>78</sup> *DD* ONCA, *ibid* at para 21.

noted that the mother could not point to any trial unfairness arising from the admission of the hearsay evidence.<sup>79</sup>

As noted, *DD ONCA* is one of the few decisions where a particular aspect of the parent's sex work (bringing a client into the home) is connected to the harm (the client sexually abused the child). Unfortunately, neither judge unpacked the connection between the child's hearsay evidence and the orders rendered—for example, by considering whether an order that the mother refrain from bringing clients home could adequately protect the child in the future in their written reasons.

### E. Sex Work as Part of a Negative Description of a Parent

For nine of the nineteen sex workers, judges did not appear to apply sex work to any particular element of their legal analyses. Instead, sex work was part of a negative description of the parent. For former sex workers, judges referred to the parent's past sex work without considering the limitations on adducing evidence regarding a parent's past conduct provided in both Child Protection Acts.<sup>80</sup>

Prior involvement in sex work appeared in a list of negative qualities of a father noted in default in *Catholic Children's Aid Society of Toronto v. LDE*.<sup>81</sup> The father's involvement in sex work appeared in an excerpt from a parenting capacity assessment. The assessment listed the father's past behavioural issues, including "... sexualized behaviours, prostituting himself, drug usage, theft from his parents, staying out late, refusing to take his medication for his social disorders and acts of violence (emphasis in original)."<sup>82</sup>

Similarly, in *Children's Aid Society of Toronto v. DB-S*, Justice Murray referred to the mother's sex work when describing her past issues with substance abuse:

D.B.-S.'s cocaine use continued, on and off, for over 25 years. Her cocaine use was accompanied by binge drinking of hard liquor. She sold drugs periodically, and eventually sold herself, working as a prostitute.<sup>83</sup>

While the Court made no further references to sex work, Justice Murray later applauded the mother for her efforts to overcome her addictions and maintain a positive relationship with the child. Justice Murray refused the society's request for crown wardship without access and placed the child in the custody of the father—who resided with the mother—with access to the mother.

Judges condemned a parent's choice of choosing a sex worker as a romantic partner in two cases. First, in *The Ottawa Children's Aid Society v. CS* the mother had three children with two different fathers, RP and PS.<sup>84</sup> Both fathers were former sex workers. Justice McKinnon referred to the fathers' involvement with sex work when describing their "tragic" and "hard" lives.<sup>85</sup> Regarding RP, Justice McKinnon noted at the onset of the decision that he was "seriously mentally ill and has had what can only be described as a tragic life as a result of his illness. He has been seriously addicted to both alcohol and drugs from a very early age and in the past engaged in male prostitution in order to feed his addiction".<sup>86</sup> RP's children were

<sup>79</sup> *Ibid* at para 40.

<sup>80</sup> *CFSA*, *supra* note 30, s 50(1)(a); *CYFSA*, 2017, *supra* note 30, s 93(1)(a).

<sup>81</sup> 2012 ONCJ 530 [*LDE*].

<sup>82</sup> *Ibid* at para 7.

<sup>83</sup> *Children's Aid Society of Toronto v DB-S*, 2013 ONCJ 405 [*DB-S*] at para 28.

<sup>84</sup> 2016 ONSC 3828 [*CS*].

<sup>85</sup> *Ibid* at paras 4, 135.

<sup>86</sup> *Ibid* at para 4.

made crown wards, partly due to the mother's refusal to end her relationship with RP and parent the children on her own. Justice McKinnon described PS as a former prostitute and pimp. PS "engaged in prostitution in order to get drugs and trafficked in drugs for a period of time."<sup>87</sup> In response to accusations of pimping, PS "stated he did not feel he was a pimp but realized that he was benefitting from her prostitution and would encourage her to do it."<sup>88</sup> Justice McKinnon ordered crown wardship for PS' daughter, explaining that that "PS's lifestyle choices and highly unstable background make him incapable of providing a secure, predictable and stable environment for [his daughter], to ensure her healthy upbringing."<sup>89</sup>

Second, Justice Zisman criticized a parent for choosing a sex worker as a partner in *Children's Aid Society of Toronto v. RB-H*.<sup>90</sup> The Court questioned the father's judgment partly due to his "belief that the mother was a good parent to the children",<sup>91</sup> despite (among other issues) her involvement with "prostitution" and "the sex trade".<sup>92</sup> Justice Zisman relied upon adverse evidence from a society witness about the mother, including how she "admitted to ... working in the sex trade"<sup>93</sup> during an interview. I suggest that the use of term "admitted" insinuates that sex work was not helpful to the mother's case. The Court ordered crown wardship without access.

The mother in *Children's Aid Society of Hamilton v. AS et al* was an escort and did not attend trial.<sup>94</sup> When summarizing the evidence, Justice Pazaratz referred to the society's concerns with the mother's escort work:

[26] g. ... in July 2016 the Society received information the mother was working as an escort. Although the mother initially denied this, she eventually admitted to escorting. She said the partner she had been living with had introduced her to this. She later admitted to the Society that her work as an escort is one of the reasons she hasn't been able to attend for access regularly.<sup>95</sup>

The impact to the child appears to arise from the mother's failure to attend access, not escorting. I question whether the society's response would have been different if the mother missed access for an acceptable type of work.

When discussing harm to the children, Justice Pazaratz referred to the mother's decision to escort in the same paragraph as severe domestic violence:

[26] j. [The mother] has shown no insight into the impact of exposing her children to domestic violence. She has failed to protect them from real and foreseeable dangers which resulted in A.S-P. not only witnessing but also suffering horrible abuse. ... She continues to pursue a dangerous and unstable lifestyle, unaware or unconcerned about the danger her decision to escort presents to her own safety and any child placed in her care.<sup>96</sup>

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<sup>87</sup> *Ibid* at para 135.

<sup>88</sup> *Ibid* at para 135.

<sup>89</sup> *Ibid* at paras 179, 186.

<sup>90</sup> 2015 ONCJ 389 [*RB-H*].

<sup>91</sup> *Ibid* at para 184.

<sup>92</sup> *Ibid* at paras 50, 59.

<sup>93</sup> *Ibid* at para 80.

<sup>94</sup> 2017 ONSC 2226 [*AS*]

<sup>95</sup> *Ibid* at para 26 g.

<sup>96</sup> *Ibid* at para 26 j.

Justice Pazaratz did not explain what evidence he relied upon to conclude that the mother's escort work endangered her children, particularly when the domestic violence referred to at the beginning of the paragraph was inflicted upon the mother by intimate partners, not by clients.<sup>97</sup>

In two cases, sex work was used to describe a parent's problematic history and the fact that a parent left sex work received favourable treatment by the Court. First, in *Catholic Children's Aid Society of Toronto v. CM*, Justice Murray noted the mother's sex work when describing her "difficult life".<sup>98</sup> At a young age, the mother had been "steered her into prostitution."<sup>99</sup> Prior to the birth of the child, she "was convicted of a number of criminal offences, most of which involved possession of cocaine, prostitution and failure to attend court or to comply with probation orders."<sup>100</sup> When providing an updated description of the mother, Justice Murray referred to prostitution and drug use as two "major obstacles to being an adequate parent" that the mother had successfully dealt with.<sup>101</sup> Both children were made temporary society wards with supervised access, with one child to be returned to the mother in two months subject to a supervision order.

Second, in *Children's Aid Society of Oxford County v. CL*,<sup>102</sup> Justice Paull summarized the "traumatic personal history" of the mother—a former sex worker—at the onset of the decision. He described the mother as a victim, noting that she suffered from "a diagnosis of PTSD related to being a victim of human trafficking, violence, and prostitution".<sup>103</sup> Justice Paull recognized that the mother had overcome difficult facets of her life and was generally a good parent. He placed the child in temporary society care but noted that he would have placed the child in the care and custody of the mother had she agreed to live apart from the abusive father.<sup>104</sup>

And finally, perhaps the most disturbing language appears in *Children's Aid Society of Algoma v. LP*.<sup>105</sup> Justice Kukurin referred to the mother's sex work only at the beginning of the decision when explaining why he would not place the children with her. He described her as an "attractive prostitute" with chronic substance abuse problems and a "tragic waste of a life".<sup>106</sup>

## F. Concluding Thoughts on Child Protection Case Law

In the Child Protection cases, sex work was consistently treated as a negative quality in a parent rather than as an aspect of their life warranting further factual exploration. Courts appeared to rely more upon assumptions about sex work than on evidence of an actual impact (if any) of sex work upon a child. For every case, a parent's past or present involvement in sex work had a negative impact on their claim for custody or access at some point during the proceeding, ranging from an unfavourable description of the parent to a justification for an order for crown wardship. I argue that stigma against sex work and sex workers is a primary driver of those negative impacts.

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<sup>97</sup> *Ibid* at paras 25-26.

<sup>98</sup> 2011 ONCJ 648 [*CM*] at para 14.

<sup>99</sup> *Ibid* at para 15.

<sup>100</sup> *Ibid* at para 16.

<sup>101</sup> *Ibid* at para 71.

<sup>102</sup> 2019 ONCJ 923 [*CL*].

<sup>103</sup> *Ibid* at para 6.

<sup>104</sup> *Ibid* at paras 4, 79.

<sup>105</sup> 2011 ONCJ 712 [*LP*].

<sup>106</sup> *Ibid* at para 6.

In seventeen of nineteen cases, courts appeared to accept that sex work was incompatible with parenting yet did not explain how sex work effected the child. The Courts only connected sex work with a negative impact on a child in two cases.<sup>107</sup>

## V. FAMILY LAW

In contrast to the imbalance of power inherent in Child Protection proceedings, Family Law custody and access disputes are usually between two parents of (presumed) equivalent footing. Barring certain circumstances, a child's parents are equally entitled to custody<sup>108</sup> and a child should have as much contact with each parent as is consistent with their best interests.<sup>109</sup> Family Law proceedings are also relatively straightforward. Parents must only demonstrate that the order sought is in the best interests of the child. I have thus organized my analysis of the Family Law cases by the parent's status as a sex worker and outcome.

I located eight relevant Family Law cases and twelve allegation cases.<sup>110</sup> Four cases involved parents who were sex workers at the time of trial:

- One mother sought sole custody. She was awarded joint custody of the child, with primary care to the father.
- One mother sought and was denied custody.
- One father sought access, which was denied.
- One mother requested increased access to her child because of parental alienation by the father, which was granted. It is not clear from the decision why the sex worker mother did not originally have custody of the child.

Four cases involved former sex workers:

- Three mothers were awarded custody of the child. Courts appeared to treat the fact that the parent left sex work favourably.
- One mother sought, but was not, awarded custody. The mother had previously abandoned her child to pursue sex work in another province. The Court appeared to approve of the mother's subsequent decision to leave sex work but felt that placement with a person who had cared for the child during the mother's absence was in the child's best interests.

Like Child Protection, the Family Law cases are factually dense. None were rendered solely—or even primarily—based on the parent's sex work. Again, every sex worker experienced at least one shared precarity. Even so, judicial treatment of sex work throughout the Family Law cases further demonstrates the impact of stigma on sex workers in custody and access disputes.

<sup>107</sup> In *B(J)*, *supra* note 59; *DD ONCA*, *supra* note 75.

<sup>108</sup> *CLRA*, *supra* note 30, ss 20(1), (7).

<sup>109</sup> *Divorce Act*, *supra* note 30, s 16(1).

<sup>110</sup> Allegation cases: *Porter v Hamilton*, 2011 ONSC 5792; *Sangha v Meighan*, 2012 ONSC 2362; *Avakian v Natiotis*, 2012 ONCJ 584; *Aza v Zagroudinski*, 2014 ONCJ 293; *JBH v TLG*, 2014 ONSC 3569; *GTB v ZBB*, 2014 ONCJ 382; *Facchini v Bourre*, 2015 ONSC 763; *VB v MM*, 2016 ONCJ 98; *TEH v GJR*, 2016 ONCJ 156; *Daher v Kanafer*, 2016 ONSC 5969; *DE v CS*, 2017 ONCJ 668; *Hackett v Sever*, 2017 ONCJ 193.



### A. Parents Involved in Sex Work at the Time of Trial

Four cases involved parents who were sex workers at the time of trial. First, the mother in *Fias v. Souto* was a stripper and a masseuse.<sup>111</sup> Evidence of her sex work weakened the positive evidence that a clinical investigator from the Office of the Children’s Lawyer provided on behalf of the mother. After testifying to the strength of the mother’s parenting skills, the investigator acknowledged on cross-examination by counsel for the father that she was unaware that Ms. Fias had been working as a ‘stripper’ or in a ‘body rub parlour’. The witness admitted that she would need to understand the situation better to know how this would affect mother’s lifestyle.<sup>112</sup>

The father in *Fias* raised the mother’s sex work during evidence in chief when expressing concerns about her parenting ability. He gave evidence that he “question[ed] [the mother’s] choice of employment and denie[d] that he knew of [the mother’s] previous employment (until she was three months’ pregnant) as an exotic dancer.”<sup>113</sup> The mother’s direct evidence was that she worked as a server at that time, but later “admitted” to exotic dancing on cross-examination.<sup>114</sup>

When assessing the credibility of the mother, Justice Stevenson noted that she had been “less than forthright with respect to providing details regarding her current employment .... I accept [the mother’s] evidence that her current employment as a masseuse is not employment that she is comfortable with; however, this information should have been provided to allow [the clinical investigator] to have full information before her while she completed her investigation.”<sup>115</sup> Justice Stevenson nevertheless held that the mother was a good parent with a loving relationship with her child and ordered joint custody, with primary care for the father. Unfortunately, part of the mother’s success appears attributable to her apologetic attitude towards sex work. Justice Stevenson accepted that the mother was not comfortable with her employment, noting that she “often feels sick about” her work as an exotic masseuse.<sup>116</sup> The mother’s counsel submitted that she was looking for “meaningful employment” and only worked as a masseuse to “survive”.<sup>117</sup> Overall, it is unclear from the decision how the Court, the parties, and the witnesses in *Fias* believed the mother’s sex work affected the children.

Second, the mother and father in *Rivest-Marier v. Emond* both sought sole custody of a six-year-old boy. The opening paragraphs of Justice Shelston’s decision contain a refreshing example of judicial neutrality towards sex work.<sup>118</sup> When reviewing the backgrounds of the parents, Justice Shelston noted that the parents met when the father managed a strip club where the mother worked as a dancer, and that the mother worked as a dancer up until she became pregnant. Justice Shelston did not explicitly rely on the mother’s past sex work when ruling that sole custody to the father was in the best interests of the child.

Still, the mother’s sex work had at least two adverse impacts on her dispute with the father. Relatives encouraged the father to commence custody proceedings because they were concerned about the mother’s depression and involvement in prostitution, and the impact of same on her parenting abilities.<sup>119</sup> Then, at trial, the testimony of an aunt who provided evidence on behalf of the mother was weakened on cross-examination because the aunt “had never heard that the mother worked in a Swedish massage parlor”, a

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<sup>111</sup> 2015 ONSC 880 [*Fias*].

<sup>112</sup> *Ibid* at para 41.

<sup>113</sup> *Ibid* at para 55.

<sup>114</sup> *Ibid* at paras 80, 84, 97.

<sup>115</sup> *Ibid* at para 49.

<sup>116</sup> *Ibid* at para 88.

<sup>117</sup> *Ibid* at para 190.

<sup>118</sup> 2017 ONSC 4197 [*Rivest-Marier*].

<sup>119</sup> *Ibid* at para 10.

fact that mother eventually “admitted”.<sup>120</sup> Again, the *Rivest-Marier* decision does not clarify *how* the mother’s work allegedly affected the children.

Third, a parent with a long history in sex work brought a motion to restart access to her children in *HP v. PLC*.<sup>121</sup> The parent acknowledged a violent history—including sexual offenses against the mother—but submitted that there had been a material change in circumstances affecting the best interests of the children because she was ready to be present in her children’s lives and had dealt with her charges. Her motion was deemed to have no merit and was dismissed.

There is no question that domestic violence, which was significant in *HP*, can harm a child. For this research, however, it is noteworthy that Justice Hardman stated at the onset of her decision that her concern regarding the past sexual abuse of the mother had been “noted”, however there were a “number of other problems” regarding the parent’s sexual history. Justice Hardman then considered the parent’s involvement in sex work separately from the parent’s violent history.

Justice Hardman summarized the evidence regarding the parent’s sex work in *HP*:

[35] Despite [the parent’s] attempt in her materials to suggest that her participation in prostitution was historical, it is clear that it has continued throughout these proceedings. The advertisements filed invite paying customers to contact her by the cell phone number used by [the parent.] Further there is the offer of “incall” times at her home and “outcall” times elsewhere in the community. It appears that [the parent] even offers her services weekends.

[36] While [the parent] has denied that she entertains clients in her home, the phrasing of the advertisements is of concern. One advertisement on the internet sets out where she is prepared to engage in sex: “my place, his place, outdoors, restroom, bathhouse, theatre, truck stop or gym”.<sup>122</sup>

The parent’s sex work had five negative impacts on the decision. First, Justice Hardman reviewed a counsellor’s report confirming the parent demonstrated an “‘appropriate understanding of normative sexual behaviour’ ... and ‘was able to identify ‘pre-offense factors’ and develop a list of warning signs to avoid.’”<sup>123</sup> Despite the conclusions in the report that the parent could deal with inappropriate sexual urges, the Court commented that “[s]urely the participation of [the parent] as an escort-prostitute is exactly the impersonal sex risk factor that [she] planned to avoid.”<sup>124</sup> In deciding to give little weight to the report, the Court concluded that “Given [the parent’s] current lifestyle both for money and leisure, it would seem that any conclusions about risk from the report must be considered unreliable. [The parent] herself states on some of the advertisements that she is “drug and disease free”, identifying risks that are part of her lifestyle.”<sup>125</sup>

Second, Justice Hardman appeared to reject evidence that the sex worker was a good parent from the parent’s in-laws. The sex worker had a child from another relationship, and the witnesses had seen the sex worker exhibit positive parenting skills. Nevertheless, Justice Hardman appeared to discredit the evidence

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<sup>120</sup> *Ibid* at paras 33, 38.

<sup>121</sup> 2013 ONCJ 399 [*HP*].

<sup>122</sup> *Ibid*.

<sup>123</sup> *Ibid* at para 34.

<sup>124</sup> *Ibid* at para 34.

<sup>125</sup> *Ibid* at para 41.

from the in-laws because “whether [the witnesses are] aware of the background of [the parent] or the life style [*sic*] chosen by her...] is unknown.”<sup>126</sup>

Third, Justice Hardman concluded that the parent’s online advertisements and involvement in sex work demonstrates that she “clearly has not thought of the potential consequences of such revealing exposure of herself and lifestyle to her own children and family. What [the parent] does on the net, for work and recreation, is all about her and her focus on her own needs and not about any care taken about potential repercussions on her children.”<sup>127</sup> Justice Hardman provided some context for the parent’s sex work (*i.e.*, in calls and out calls, working weekends) but did not explain what the “potential repercussions” the mother’s sex work might have on the children.

Fourth, Justice Hardman appeared to accept the mother’s submissions that the parent’s sex work was a sufficient reason to deny access. Justice Hardman explained that the mother “has told the Court that she decided that it was not in the best interests of her children [to have access to the sex worker parent] based on all the information she had, and that the confirmation that [the sex worker parent] continued to prostitute made her realize that it had been the right decision.”<sup>128</sup> Justice Hardman agreed, concluding that the sex worker parent’s “untreated historical issues, her recreational pursuits, her risky employment and her without-boundary behaviour on the internet would raise alarms about the suitability of any person to parent.”<sup>129</sup> Justice Hardman accepted that “the mother does not want the choices that [the parent] has made to be part of her children’s lives given their differences in values. In the circumstances, her concerns are not unreasonable.”<sup>130</sup>

Fifth, Justice Hardman concluded that the parent had a lack of focus on the children, in part because “she could have chosen a life style [*sic*] that would allow her to contribute to both the emotional and financial stability of these children.”<sup>131</sup> In the end, despite strong condemnation for the parent’s work and lifestyle choices, it does not appear that Justice Hardman made any connection with the sex worker parent’s lifestyle to her request for *access*. She concluded that:

Perhaps the most important consideration is the fact that the children are happy, stable and secure in the home where they are. The mother and her husband work diligently to ensure that the girls have everything that they need. In considering best interests, the Court must consider that family unit and ensure that no decision will adversely affect the stability of that home.<sup>132</sup>

While the parent “proposed to have the children come visit her and become part of her life”,<sup>133</sup> she did not propose a change of residence for the children or anything else that would otherwise appear to affect the stability of the home. Further, the Court did not consider a form of access that would not require contact between the sex worker parent and the mother, or that the children attend the sex worker parent’s home, such as supervised access at an access centre.

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<sup>126</sup> *Ibid* at para 53.

<sup>127</sup> *Ibid* at para 43.

<sup>128</sup> *Ibid* at para 67.

<sup>129</sup> *Ibid* at para 95.

<sup>130</sup> *Ibid* at para 105.

<sup>131</sup> *Ibid* at para 98.

<sup>132</sup> *Ibid* at para 106.

<sup>133</sup> *Ibid* at para 99.

One case suggests that sex workers are at increased risk of being alienated from their children. Alienation occurs when one parent tells the child that the other parent is not a good parent, is a bad person, or otherwise attempts to “poison ... a child’s mind against the other parent.”<sup>134</sup> In *Lopez v. Dotzko*, the mother was an exotic dancer. She brought a motion for increased access because the father continuously refused to allow her to see her child.<sup>135</sup> The father’s pleadings and evidence at trial contained numerous disparaging references to the mother’s work as an exotic dancer. He claimed that the mother’s profession “compromised her ability to parent [the child]”<sup>136</sup> and was “incompatible with ‘a healthy family environment’”.<sup>137</sup> The father also claimed that she had “inappropriate relationships” with clients, including accepting gifts.<sup>138</sup> The Court held that father’s remarks were evidence of alienation, which arises “from a combination of programming indoctrinations by one parent adding to and/or colouring a child’s own feelings toward the other parent causing a negative emotional atmosphere between the child and the parent victim.”<sup>139</sup> Justice Price held that the father’s negative attitude about the mother created such a negative emotional atmosphere and significantly increased the mother’s access rights.

## B. Past Involvement in Sex Work

Four Family Law cases involved former sex workers. In each of these cases, the fact that the parent left sex work was treated favourably by the presiding judge.

The first, *Griffiths v. Leonard*, involved a motion by a former stripper for access to a 9-year-old child. Justice Blishen provided the following overview of the mother’s history:

[27] There is no question that Elizabeth manipulated and deceived her parents while in a relationship with Nicolas Leonard. Her lifestyle, unbeknownst to her parents, involved drugs, alcohol and partying. She was subjected to ongoing abuse by Nicolas Leonard, most of which she hid from her parents who considered her to be an ideal daughter. In addition, she worked briefly at a Gatineau strip club, which she also hid from her parents.<sup>140</sup>

Justice Blishen found that the mother had overcome her difficult past, and was able to provide a stable, loving home environment for the child:

Nevertheless, despite these difficulties as a teenager, I find based on all the evidence that Elizabeth Griffiths has turned her life around. Once she terminated her relationship with Nicolas Leonard, she obtained full-time employment, met David, got married, and now is happily raising both Isabelle and baby Melissa with the assistance of her husband and her parents. She has a close supportive extended family and both children appear to be thriving in their mother’s care.<sup>141</sup>

Second, *Angus v. Angus* chronicles how a mother, a former “masseuse in the adult entertainment industry”,<sup>142</sup> expressed shame of and hid her work, left the industry, and improved her life. She was ultimately awarded custody. The mother gave evidence that “she felt that she did not have many options

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<sup>134</sup> Anita Volikis & AJ Jakubowska, *The 2018 Annotated Ontario Children’s Law Reform Act* (Toronto: Thompson Reuters Canada, 2018) at 647.

<sup>135</sup> 2011 ONSC 6778 [*Lopez*].

<sup>136</sup> *Ibid* at para 42.

<sup>137</sup> *Ibid* at para 43.

<sup>138</sup> *Ibid* at para 43.

<sup>139</sup> *Ibid* at para 109.

<sup>140</sup> 2010 ONSC 4824 [*Griffiths*] at para 27.

<sup>141</sup> *Ibid* at para 27.

<sup>142</sup> 2017 ONSC 4911 [*Angus*] at para 17.

without a formal education. She did not want to return to massage following the birth of her child but felt that the family needed the money.” The mother testified that the father supported her work because of the financial benefit. Justice Howard accepted that the father did not object to the mother’s return to work and was “certainly complicit in the decision.”<sup>143</sup>

Justice Howard described how the mother experienced shame because of her work, noting that “[the] job was not something that Ms. Angus was proud of, and she did not want people to know what she did for a living. Ms. Angus strived to keep her employment in the adult entertainment industry separate and apart from her day-to-day life.<sup>144</sup> He was careful to note that the mother “did not engage in prostitution.” She would “remove her clothes while she performed the massage, but there was no sexual intercourse.”<sup>145</sup> The mother “stopped working in the adult entertainment industry” two years before trial and was in the process of furthering her education. The Court agreed that the mother was a “devoted, committed mother ... [and a] caring parent who is able to safely and appropriately parent [the child]”.<sup>146</sup>

Third, when describing the background of the parties’ relationship in *Melanie Gillett v. James Gratton*, Justice Charbonneau explained that “when [the parties] met, the [mother] was a sex trade worker. She was 16 years old and a heavy drug user. She had been brought into this unfortunate and dangerous lifestyle by her much older sister, Christine, who was herself a sex worker and a heavy drug user. The [father] was 42 years old and a client of Christine.”<sup>147</sup> The Court noted that Ms. Gillett “terminated her sex trade involvement” when she moved in with the father. After being subjected to domestic abuse, the mother left the father and commenced an application for custody.

Justice Charbonneau granted full custody to the mother, noting that the child was well cared for. Further, the Court granted the mother’s request to relocate to Germany with the child, noting that she “has had a very difficult and problematic period when she was only 15 years old. She has however taken important steps to improve her situation” and would be in a better position to continue to improve herself in Germany.<sup>148</sup>

The final Family Law case, *Hernandez v. Nikas*, is the only one of the four cases involving a former sex worker where the Court connects the evidence related to the mother’s sex work and the child’s best interests to hold that the mother should not have custody of the child.<sup>149</sup> *Hernandez* involved a dispute between a mother who worked as an exotic dancer and Ms. Stewart, a long-time caregiver of the child. In this case, the mother effectively abandoned her child by moving from Ontario to Alberta to dance. She left the child in Ms. Stewart’s care for several years.<sup>150</sup> When ruling that it was in the child’s best interests for Ms. Stewart to have custody, the Court primarily relied upon the mother’s absence in the child’s life and Ms. Stewart’s demonstrated ability to provide the child with structure and a permanent, stable home.<sup>151</sup> There was a tangible connection between the mother’s choice to engage in sex work far away from her son and his best interests. Even so, aside from the fact that dancing was the reason for the mother’s absence, it is unclear how the act of exotic dancing had negative impact on the child.

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<sup>143</sup> *Ibid* at para 24.

<sup>144</sup> *Ibid* at para 19.

<sup>145</sup> *Ibid* at para 19.

<sup>146</sup> *Ibid* at para 75.

<sup>147</sup> 2018 ONSC 362 [*Gillett*].

<sup>148</sup> *Ibid* at para 55.

<sup>149</sup> 2017 ONSC 162 [*Hernandez*].

<sup>150</sup> *Ibid* at para 12.

<sup>151</sup> *Ibid* at paras 105-106.

The evidence regarding the mother's sex work in *Hernandez* was largely used to negatively describe the mother and her lifestyle. When summarizing the background evidence of the relationship between the parties, Justice Henderson explained that the mother originally told Ms. Stewart that she worked as a hairstylist in Toronto, but eventually "confessed" that she was an exotic dancer and providing escort services.<sup>152</sup> I again suggest that the use of terms "confessed", like "admitted", suggests that exotic dancing and escorting are shameful activities. Justice Henderson notes that after moving to Alberta, the mother was "caught up in the lifestyle of an exotic dancer".<sup>153</sup> This language, I suggest, further reflects a negative view of exotic dancing.

When assessing credibility, Justice Henderson noted that the mother "apologized so often about the poor decisions she has made that she lacked sincerity." He ruled that the mother did not have the capabilities to properly parent the child, living a life in "turmoil ... without stability, replete with conflict, drug addictions, and a self-indulgent lifestyle. [Although] she has made some strides towards self-improvement ... I am skeptical to believe that she can sustain it."<sup>154</sup>

### C. Concluding Thoughts from Family Law Cases

The Family Law cases further illustrate the negative impact of stigma against sex work in custody and access disputes. Like the Child Protection decisions, in one hundred percent of the Family Law cases, a parent's past or present involvement in sex work had a negative impact on the parent's claim for custody or access at some point during the proceeding. Such negative impacts again ranged from a descriptive aspect of a parent's difficult past (*Griffiths*),<sup>155</sup> increased risk of parental alienation (*Lopez*),<sup>156</sup> or as a contributing factor for severing the parent-child relationship (*HP*).<sup>157</sup> Overall, seven of the eight decisions contain no indication of how sex work actually, or even allegedly, affected the child (the exception being *Hernandez*).<sup>158</sup>

I noted an increase in the level of description devoted to the type of sex work that the parent engaged in among the Family Law cases. Only one decision simply referred to the sex worker as a "sex trade worker" (*Gillett*)<sup>159</sup> and, unlike several of the Child Protection cases, none of the Family Law cases referred to the parent as a "prostitute".

#### Discussion

My research supports two earlier findings regarding sex worker parents: that sex workers involved in Child Protection proceedings frequently lose custody of their children in Ontario<sup>160</sup> and that sex workers involved in private Family Law disputes in Ontario experience low levels of success at trial. For parents involved in sex work at the time of trial, eight out of eight parents noted in the Child Protection case law and three out of four parents noted in the Family Law case law were not granted custody of the child that was the subject of the proceeding. Further, in all cases where a former sex worker was granted custody of a child, evidence that the parent was no longer involved in sex work appeared to bolster their claim.

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<sup>152</sup> *Ibid* at para 11.

<sup>153</sup> *Ibid* at para 22.

<sup>154</sup> *Ibid* at para 94.

<sup>155</sup> *Supra* note 140.

<sup>156</sup> *Supra* note 135.

<sup>157</sup> *Supra* note 121.

<sup>158</sup> *Supra* note 149.

<sup>159</sup> *Supra* note 147.

<sup>160</sup> Dewey *et al*, *supra* note 5; Duff *et al* (2014), *supra* note 18; Kenny, *supra* note 17;

Second, my results are consistent with earlier findings that sex worker parents frequently experience at least one shared precarity.<sup>161</sup> Every sex worker parent (past and present) noted in the case law experienced substance abuse, domestic violence, poverty/homeless, and/or compromised mental health. Given the factually-rich nature of all custody and access disputes, I did not analyse or compare the weight given to evidence regarding the shared precarities and sex work by judges, nor did I critique the outcomes of the decisions. Such analyses would have been beyond the scope of this initial, exploratory research.

We know that sex workers lead diverse lives, and that custody and access disputes are supposed to be decided on the specific facts of each case. Even so, the case law demonstrates that evidence regarding parental involvement in sex work—a broad profession that encompasses parents from across the socioeconomic spectrum—is generally treated as an adverse factor in custody and access cases without full consideration of the evidence of the case. Often, judges simply noted that the parent was involved in prostitution or the sex trade. We were not told whether the parent was involved in street-based or indoor sex work, even though such sex workers may have very different lifestyles.<sup>162</sup> In other cases, judges offered slightly more details about sex work, using terms such as an escort, dancer, or masseuse. However, those judges still did not discuss other aspects of employment that are relevant in custody and access disputes, such as work hours and income, even though such factors can influence the parent's ability to meet the child's needs.<sup>163</sup>

For one hundred percent of the sex worker parents described in the case law, sex work appeared to have an adverse impact on the parent's claim. In all twenty-seven cases, the way sex work was presented in evidence by a party to the proceeding and/or considered by the court appeared to have a negative impact on the views and assessment of the sex worker's parenting capacity. However, courts only referred to evidence about the specific nature of the parent's involvement in sex work in six of the twenty-seven cases (two Child Protection and four Family Law). Within those six cases, courts only drew connections between that evidence and an impact on the child in three cases (one Child Protection and two of the Family Law).

The case law reveals a judicial tendency to rely upon negative stigma and assumptions about sex work and sex workers as opposed to requiring evidence about the nature of the parent's sex work and an impact on their child. Many judges appeared to draw adverse inferences about a sex worker's parenting abilities based on labels. As such, I conclude that stigma and assumptions about sex work and sex workers appear to play bigger roles in custody and access disputes than evidence about the impact, if any, that a parent's sex work has on a child. The twenty-six allegation cases suggest that sex work is assumed to be incompatible with parenting by the community at large, further highlighting societal stigma against sex worker parents.

Stigma has no place in the courtroom. As legal professionals, we must ensure that stigma stays out of legal decisions. Reducing stigma is particularly important when dealing with marginalized women like sex workers, and high-stakes outcomes like custody of a child.

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<sup>161</sup> Dewey *et al*, *ibid*.

<sup>162</sup> Emily van der Meulen, Elya M Durisin, & Victoria Love, eds, *Selling Sex: Experience, advocacy, and research on sex work in Canada* (Vancouver, BC: UBC Press, 2013); Duff *et al* (2014), *supra* note 18.

<sup>163</sup> Alison Granger-Brown *et al*, "The Spectrum of Motherhood" in Bromwich & DeJong *supra* note 2; Mysterious Witt, "I'm a Single Mom Who Makes A Living as a Sex Worker", (29 October 2019), online: *Medium*: <<https://medium.com/sugar-cubed/im-a-single-mom-who-makes-a-living-as-a-sex-worker-a79d45e0ef6e>>; Ella Stranger, "I'm a Sex Worker, and This is What I'll tell my Child", (18 March 2016), online: *Elephant Journal*: <<https://www.elephantjournal.com/2016/03/im-a-sex-worker-and-this-is-what-ill-tell-my-child/>>.

I do not argue that sex work is never relevant to custody and access disputes. Indeed, sex work likely *is* an important consideration in many cases. The sociological studies and the case law support a reasonable concern that parental involvement in sex work may increase the risk of harm to a child, in part due to the high correlation between street-based sex work and shared precarities. Further, there are aspects of sex work—such as bringing clients into the home, as occurred in *DD*—that could directly expose a child to a risk of harm. I agree that society workers and courts can and should exercise caution and make inquiries into the specific facts of the case. However, the case law suggests that such inquiries are not always made.

Legal decisions must be only based on admissible evidence, not assumptions. Courts should not draw negative conclusions about a parent based on a label. I suggest that so long as sex work remains publicly denounced—by all members of society, from individuals to Parliament—sex worker parents will be vulnerable to the negative stigma and stereotypes about sex work when authorities cast judgment on what is in the best interests of their children.

I am confident that reducing stigma against sex workers in the courtroom is not a pipe dream. We saw that some judges did not jump to conclude that sex work is inherently harmful, particularly Justice Shelston’s neutral description of the mother as a dancer in the opening paragraphs of *Rivest-Marier*.<sup>164</sup> Further, courts have successfully moved away from stigma-based assumptions about a parent in other contexts. With respect to substance abuse, courts recognize that their analyses must consider whether the parent’s drug use in fact causes harm to the child.<sup>165</sup> Drug use alone is understood to be insufficient: courts must find a corresponding negative impact on the child.<sup>166</sup> Historically, children of LGBTQA+ parents were assumed to be at risk of harm simply due to their parent’s sexual orientation or gender identity.<sup>167</sup> With awareness, education, and effort, legal actors can work to promote the same shift towards an “evidence-based understanding”<sup>168</sup> for sex workers that we have already seen for LGBTQA+ parents and parents with substance abuse issues.

#### Areas for future research

Further research is required to understand the true impact of sex work on trial outcomes. Research comparing case law involving sex worker parents with non-sex worker parents facing similar shared precarities is necessary to see the real impact of sex worker status at trial. Cases involving sex worker parents who did not experience shared precarities would also be illuminative. As noted, I did not locate any such cases. Perhaps examples would arise through case file reviews, or interviews. Follow-up research could also be undertaken as more cases are brought and decided under the *CYFSA, 2017*.<sup>169</sup>

My results are further limited by the fact that many Child Protection and Family Law cases resolve before trial.<sup>170</sup> Qualitative research could be done to learn about the experiences of sex worker parents involved in custody and access disputes, and the impact of their careers throughout the legal proceedings.

<sup>164</sup> *Rivest-Marier*, *supra* note 118.

<sup>165</sup> *DB-S*, *supra* note 83 at para 200.

<sup>166</sup> In *DB-S*, *ibid* at para 200, the Court notes that “Use of marijuana, in and of itself, does not indicate incompetent parenting, absent some evidence that the drug use negatively affects the parent’s abilities”.

<sup>167</sup> For example, see Nancy Polikoff, “Invisible and Ignored: LGBT Parents in the Child Welfare System” (21 March 2018), online: *LGBTQ Poverty Initiative* <<https://www.lgbtqpoverty.info/poverty-initiative-blog/2018/invisible-and-ignored>>; Janette Norrington, “Does Parental Sexual Behavior Influence ‘Parental Fitness’ and Child Custody Determinations?” (2011) 3 *The University of Maryland McNair Scholars Undergraduate Research Journal* 161.

<sup>168</sup> Jacqueline Lewis, Frances M Shaver, & Eleanor Maticka-Tyndale, “Going ‘round Against: The Persistence of Prostitution-Related Stigma” in Chapter 13 of van der Meulen, Durisin, & Love., *supra* note 162 at 205.

<sup>169</sup> *Supra* note 30.

<sup>170</sup> Canada Department of Justice, “The Child-centered Family Justice Strategy Baseline Information from Family Law Practitioners: 2.0 Survey on the Practice of Family Law in Canada” (Date Modified: 2015-01-07), online: Canada Department of Justice <<https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/biflp-dbpdf/p2.html>>.



Finally, the Black Lives Matter and Missing and Murdered Indigenous Women movements remind us that there is much work to be done regarding the impact of systemic racism on Black, Indigenous, and People of Colour (BIPOC) including during interactions with authorities.<sup>171</sup> Black and Indigenous children are overrepresented in the Ontario Child Welfare system.<sup>172</sup> Beneficial research could focus on the intersections between race and racism, sex work, and society and legal players involved in custody and access proceedings to determine if BIPOC sex workers experience additional negativity to the situations of sex workers described in this research.

For Indigenous families that receive Child Protection services, Parliament recently passed new Child Protection legislation: *An Act respecting First Nations, Inuit and Métis children, youth and families*.<sup>173</sup> This Act contains a new list of factors that courts must consider when rendering orders in the best interests of Indigenous children<sup>174</sup> and addresses many of the shared precarities faced by sex workers. Section 15 states that indigenous children “must not be apprehended solely on the basis of his or her socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider.”<sup>175</sup> Work could be done to explore the impact of this Act on Indigenous sex worker parents involved in Child Protection proceedings and their children.

## V. CONCLUSION

No parent should fear being separated from their child due to a label. However, in every reported custody and access decision involving a sex worker parent, the parent’s involvement in sex work was presented as an unfavourable aspect of the parent and their lifestyle, or otherwise appeared to have a negative influence on the parent’s claim. I conclude that in reported case law in Ontario from the last decade, sex work was more often treated as a negative quality in a parent rather than as an aspect of a parent’s life that warranted further factual exploration.

Of the Child Protection cases, sex work, or simply allegations of same, contributed to society decisions to investigate, conclude that a child is in need of protection, apprehend, and/or commence proceedings. At trial, courts have relied upon the presence of sex work to rule that it would not be in the child’s best interests to be returned for the parent. Courts implied that sex work prevented the parents’ abilities to provide stability, permanency, or structure for the child moving forward, or rendered the child at increased risk of physical harm.

For Family Law cases, we saw that parental involvement in sex work was twice raised on cross-examination to discredit evidence of good parenting, contributed to another parent’s decision to bring claims for custody, and led to alienation. In nearly every decision, courts did not refer to any evidence regarding the specific nature of the sex worker parent’s work or make any direct connection between the sex work and an impact on parenting or the child.

<sup>171</sup> Black Lives Matter, “Toronto: Demands” (2016), online: BLM-TO <<https://blacklivesmatter.ca/demands/>>; Black Lives Matter, “BLM’s #whatmatters2020” (2020), online: Black Lives Matter <<https://blacklivesmatter.com/what-matters-2020/>>; Marion Buller, Chief Commissioner *et al*, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (3 June 2019), online: National Inquiry into Missing and Murdered Indigenous Women and Girls <<https://www.mmiwg-ffada.ca/final-report/>>.

<sup>172</sup> Ontario Human Rights Commission, “Report: Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” (February 2018), online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/interrupted-childhoods>>.

<sup>173</sup> An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.

<sup>174</sup> *Ibid*, s 10(1)-(3).

<sup>175</sup> *Ibid*, s 15.

Custody and access orders should only be based on evidence. Assumptions about sex work and sex workers contribute to the uphill battle that many already face in Child Protection and Family Law courts. The case law supports the unfortunate conclusions from earlier studies that many sex workers, particularly street-based, experience multiple and intersecting social and economic barriers that can complicate parenting. We must not allow stigma to be added to the list.