Exploited Employees or Exploited Entrepreneurial Agents?

A Look at Erotic Dancers

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Dans cet article, l'auteure s'attaque à une situation unique, légale, sociale et économique d'un groupe de travailleuses particulières: les danseuses du sexe. L'auteure discute et soupèse les arguments en faveur et contre l'encadrement des danseuses comme employées et comment ou l'économie actuelle ou le climat social limite leur accès aux bénéfices et aux protections légales.

Erotic dancing is located within unique legal, economic, and cultural institutions that ultimately govern whether or not it is recognized as legitimate work. For instance, dance clubs and their attendants are subject to specific municipal, provincial and federal legal regimes that circumscribe the means by which erotic dancers can access protective labour and human rights regimes. Additionally, the labour of an erotic dancer is neither static nor a-historical. Rather, it shifts with social economic and political trends and has been redefined over time. Generally, in Canada there has been a shift in the labour performed by erotic dancers from a more visual form of entertainment (stage dancing) to what Katherine Frank refers to as individualized services and interactions (lap-dancing).[1] According to the Ottawa-based Dancer's Equal Rights Association (DERA)—whose membership is limited to former and current erotic dancers—lapdancing as the defining feature of the industry has resulted in "the abuse, mistreatment and exploitation of the women working in [Ottawa]" (DERA 1).[2] In conjunction with the Stigmatized Labour Support Network (SLSN)—a coalition of dancers, service providers, lawyers, academics, and students—DERA is mobilizing to champion the rights of female erotic dancers. DERA has centered its energies around banning lap dancing within clubs as well as enhancing dancers' labour rights as a means of improving working conditions for erotic dancers.[3] Some initiatives include public education, coalition-building, political lobbying, establishing support groups, fundraising, and promoting in-club health programs.[4]

DERA would like to see the "fee system" abolished and a form of basic remuneration implemented and correspondingly challenge dancers' status as independent contractors. Over the last two years, I have worked with DERA through SLSN in an effort to strategize and effect more equitable working conditions for dancers. While myriad issues surround industries characterized by the commodification of sex, what follows is a discussion around one issue of concern and how it impacts dancers' access to basic rights and benefits bestowed upon other workers: their status as independent contractors. Before moving on, however, it is helpful to outline my theoretical underpinnings and methodological approaches.

Theoretical and Methodological Signposts

The exchange of sexual entertainment or services for money is a "contested commodity" (Radin) which has divided contemporary feminists. During the late 1970s and early 1980s, a debate emerged among feminists of the North around the rhetorics of choice/constraint or victim/agent as they related to the sex trades (Chandler; Razack). More recently, these binaries have been challenged for being caricatured. As Carol Ronai Rambo puts it:

> The simplistic binary constructs that my culture gives me to interpret these events, passive victim versus active agent, do not encompass my experience.... I was both and neither, something different, something to be located in the underlying play of differences between the dichotomy of victim and agent (126)

Instead, theorists and activists have shifted away from freedom or limitation to "move towards asking what can be done to reduce or alter *conditions* within which people experience oppression" (Chandler 164). It is this framing of erotic dance (a choice

made within limited alternatives) which directs my research. I believe that it allows for a more nuanced understanding of the fact that choice *qua* choice does not amount to agency when made in the face of unpalatable options. However, the idea of *choice within constraint* also allows space for the argument that despite being located in marginal legal, social, economic and political spheres, erotic dancers *do* resist violence, do talk-back to stigma, and do subvert legal regulation.

Second, my epistemological approach favours "subjugated knowledges"—the knowledge of the oppressed—over dominant knowledges—Eurocentric, masculinist knowledge systems (Hill Collins). I acknowledge that individual women have variegated, intersecting standpoints based on their race, class, sexual orientation, culture, age, and ability; each with their own ontological legitimacy (Harding). To this end, I draw attention to the fact that I am focusing on a specific form of stigmatized sexualized labour performed by predominantly working class, young women, in a particular region of the "West." My informants all self-identify as white. The knowledge that emerges from my research, then, is highly "localized' and evidences both subjugated (stigmatized and margina-lized working-class women) and dominant (white and abled-bodied young women) experiences. These feminist epistemological assumptions in turn influence and shape my methodological approach—feminist ethnography—and research tools—semi-structured interviews, literature review, and participant observation. With this in mind, I move to a discussion of the current labour trends in erotic dancing, with emphasis on dancers' status as independent contractors.

Some Issues Around the Organization of Dancers' Labour

Several characteristics of Ottawa-area erotic dance clubs merit mention. Erotic dancers perform routines on stage, usually in sets of three songs. While local ordinances on nudity vary, in Ottawa, an erotic dancer will remove all of her clothing (usually with the exception of her footwear) by the third song. Between stage shows, dancers promenade around the main floor, fraternize with patrons, sell liquor, and most importantly, try to attract private dances. To this end, the stage show is essentially a form of advertisement; the main source of income for dancers is gratuities/tips.

The lack of access to basic protective employment legislative or common law remedies is further compounded by the stigma associated with their labour and the fine line dancers walk between legal and illegal sex acts.

With exception of the few remaining "scheduled dancers," club owners have altogether stopped paying dancers a salary. Approximately one quarter of the 750 dancers in Ottawa receive a meager wage (DERA). These "scheduled dancers," sometimes known as "House girls" have a work schedule, which is set weekly. Dancers typically receive $30 to $45 for a six- to eight-hour-shifts, which includes regular stage shows (Bruckert 2002).

'Freelancers' on the other hand, are considered to be 'independent contractors'.[5] These dancers are neither scheduled to work on certain days, nor paid per shift. Some perform stage shows. All are expected to work a minimum of four hours per shift and pay what are known as "stage fees." Throughout Ontario, and practically industry-wide, clubs engage in the highly egregious practice of forcing erotic dancers to "stage fees," "deejay fees," "tip outs," or "commissions" for every shift they work.[6] Ottawa dancers are charged anywhere from $20 to $30 by clubs before they are able to earn money from customers. Clubs promote the idea that dancers are engaged in *contract for service* (independent contractors / self-employed own account) rather than in *contracts of service* (employees) (Bruckert and Parent).

The status of independent contract denies dancers the protections and benefits generally afforded "employees" through protective employment legislation and common law duties. Protective employment regimes provide for minimum standards including, among other things, maximum work hours, minimum pay requirements, general wage protections, overtime benefits, stipulations on hours of work as well as public holidays and other non-working days, proper notice for termination, and minimum vacation time.[7]

Club owners justify these fees and the corresponding loss of wages by framing the dancers as independent contractors paying for the privilege of using the club facilities as a venue to sell their labour. Management argues that they rent out the venue in which women can sell titillation and company and the dancers pay the fees for access to the customers. The lack of access to basic protective employment legislative or common law remedies is further compounded by the stigma associated with their labour and the fine line dancers walk between legal and illegal sex acts.

Erotic Dancers as Employees

Despite being deemed independent contractors, a number of factors indicate that dancers may well be employees. As noted, the status of employee is a source of labour law protection both at common law and within statutory frameworks. Employee status, or the lack thereof, has

implications for taxation liability, eligibility for employment insurance and other benefits, including collective bargaining procedure (England *et al.*; Fudge *et al*). Drawing on Jurisprudential and statutory definitions of "employee," a few legal scholars have argued that erotic dancers should be deemed to hold employee relationships with club owners rather than be framed as independent contractors (Chun; Fischer; Wilmet). First, club owners and managers exert a high level of "control" over the working environments of erotic dancers through the shift setting process.[8] As well, dancers are subject to fines and penalties for failing to adhere to "club rules." Like any other business, strip clubs govern the organizational practices that will be most profitable. Social control in "deviant" settings like the strip club, however, is more stringent than in other more "legitimate" employment settings (Montemurro; Murphy). Dancers are usually charged anywhere from $10 to $20 for breaking "club rules,"[9] and when salaried, they may have their paycheque withheld entirely. Moreover, they may be told to leave the club and to never come back. The "fine system," whereby dancers are charged a sum of money as punishment for breaking house rules, has been held in the United States at least to be evidence of club control and of high probative value in establishing employees status (*Riech* v. *Circle C Invs)*.

Second, the relative investments of erotic dancers (in terms of work attire and paraphernalia) is outweighed by the club owner's investment in his or her business's operation (maintenance, food and alcohol supplies, security staff, utilities, liquor licenses, sound and light equipment). As Carrie Fischer argues even though dancers supply their own costumes and incur costs for tanning and plastic surgery, these

> minimal investments do not rise to the level required to indicate independent contractor status—this is because the "primary equipment requirement is *themselves, their exposed bodies* and this does not constitute "equipment' under the meaning of the [economic realities] test (546) [emphasis added].

Third, United States courts have held that dancers' decision-making authority is limited to choice of costume/persona, hairstyle, and choreography (*Harrel* v. *Diamond A Enter. Inc.*). Fourth, aside from the ability to converse, dance suggestively and be physically attractive according to industry standards, both Holly Wilmet and Carrie Fischer argue, there are no skill requirements or specific criteria for evaluating dancers. Fifth, the key determinants that American courts will look at in establishing who bears the risk of "profit and loss" favour a finding of dancers being economically dependent on clubs. For instance, dancers' income opportunities vary with a club's hours of operation, general atmosphere, advertising, and set fees for private dances. Dancers' risk for loss, according to Wilmet is limited to the price of stage fees (which in turn are determined by clubs). Finally, erotic dancers are an integral and essential part of club operations, upon which owners rely for the continued success of their business.

If deemed employees, dancers will have access to protective employment legislation and a means of launching more sexual harassment and sexual assault claims as well as accountability from clubs when their employment relationship is terminated without reasonable notice. Furthermore, as employees, erotic dancers could forge associations with unions and gain access to collective bargaining rights. Indeed, Vicki Funari has demonstrated that through formal union, erotic dancers can gain input over the terms and conditions of employment, access to due process, and protection from unreasonable management actions.

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Despite the very real benefits of employee status and unionization, the findings upon which the legal argument against independent contractor status and the conclusions drawn therein can be challenged. In particular, there has emerged among more recent writings an understanding that erotic dancing is a transient entrepreneurial endeavor. To this end, how dancers themselves view their interaction with management may not always correspond to the traditional employer-employee relationship.

Erotic Dancers as Entrepreneurs

A few ethnographic accounts have emphasized how erotic dancers (Bruckert and Parent; Sanchez), like other sex and skin trade workers (Alexander; Brewis and Linstead; Chapkis), present themselves as autonomous businesswomen who legitimately services a social need. This self-framing as entrepreneur in a means by which dancers constitute

themselves as "ethical subjects."

In particular, Chris Bruckert and Colette Parent have emphasized the positive aspects of being considered an independent contractor: flexibility of work hours and length of shifts, and as freelancers, dancers have the ability to negotiate with club owners. They highlight that while owners attempt to regulate dancers' work through fines, they must also be able to rely on a steady workforce. For this reason, they may well take care not to alienate particular women because the success of their business is to a certain extent reliant on having attractive friendly naked women interact with patrons. Second, as Sam Smyth, co-founder of DERA comments, some dancers make the most of being independent contractors by claiming everything from costumes to travel to clubs as work-related expenses. In my own research, I found that dancers use the precarious nature of their employment status to claim social assistance in addition to dancing as a means of making a living wage. Third, some dancers indicated to me that the "club rules" were only sometimes enforced, and even then, some dancers (namely those with the "right" attributes—white, blond, with medium to large breasts, attractive by industry standards) could "get away" with things. As Heather, a DERA member explains:

> Well there were all these rules in the clubs even though you were a freelancer, you had to come in and work four hours ...you couldn't leave before that supposedly, even though I have. If I'm not making any money I'd leave and they'd say "don't come back." ... It's ridiculous, if you're not making any money and you're not being paid to be there, it's ridiculous to stay.

Finally, in contradistinction to Fischer and Wilmet who argue that erotic dancing requires little skill, the dance club, like other commodified sex industries exhibits a wide variety in organizational structure and job content which demands a medley of skills of the women who intend to make dancing a successful career. Erotic dancers usually learn about the organizational aspects of their work through informal socialization with other dancers, drivers and managers/owners. Often without any formal training, erotic dancers nevertheless develop and intensify a number of (though often not socially recognizable but highly transferable) skills such as: sales and marketing techniques, money management, business planning, and accounting, diplomacy and people skills, emotion management,[10] legal analysis, the ability to "decode" male behaviour and figure out individual patrons' desires and preferences (how much if any facial expression, what level of intimate conversation, what manner to display her body) (Brewis and Linstead; Bruckert and Parent; Frank).

While persuasive, understanding dancers as entrepreneurs has a number of limitations. Primarily, while being an independent contractor is linked with ideas of autonomy and agency, in fact, between being self-employed and the idea of being an entrepreneur is more ideological that based in reality (Fudge *et al.*). While the number of "self-employed" people have statistically increased in Canada and worldwide over the last few decades, the numbers have been concentrated in the service sector, homeworkers, and labour-only contractors. As such, these "owners" do not own the means of production; they do not control production; nor do they do not accumulate capital (Fudge *et al.*). In fact, the majority of "self-employed" work could be classified as "disguised" or "false" employment (Fudge *et al.* 7). Moreover, these ethnographic texts, while rich in analysis offer little in terms of options for direct political action.

In short, while the legal analyses (dancers as employees) offer rich insights into how labour organizing and formal employee status may assist dancers in subverting oppressive working conditions, they lack the ethnographic insights of writings by academics who have worked within the industry and who see value in entrepreneurial status. However, these ethnographic accounts lack legal interpretation of the repercussions of employment status or lack thereof. Nor do they provide insight into effecting broader social change.

Without a doubt, erotic dancers are being economically exploited in clubs. Nevertheless, it is true that self-defining as independent contractors may be a means of identity management in light of the stigma and marginalization they face. Furthermore, employee status may well limit dancers' options in terms of supplementing their income through social assistance or having flexible enough work schedules which allow them to meet their child/eldercare responsibilities. However, without broader societal changes—universal childcare, the right to welfare/living wage, affordable housing, and dismantling systems of race, class, and gender oppressions—narrative resistance is limited to individual survival. What remains to be examined is how and whether DERA's attempts to mobilize dancers and challenge their employee status—a collective attempt at resistance with far reaching consequences—may actually effect meaningful change in dancers' working lives.

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[1]Lapdances occur in the champagne rooms and are essentially "body-to-genital friction and masturbation" (Rambo Ronai 403) that cost about $20. In theory, a lapdance is where a half or fully naked dancer sit on the lap of the patron, either facing the customer or with her back to him,

and gyrates. In practice however, the extent of contact between a patron and a dancer varies according to dancers' personal boundaries, customer preference, municipal regulations, the presence or absence of seclusion, the amount of money exchanged, and club rules.

[2]In 1999, the Supreme Court of Canada's held in *Pelletier* that dancers allowing patrons to touch their breasts and buttocks does not amount to "indecency" under the *Criminal Code*.

[3]Note however, that DERA is a fairly small group of women and their perspective may not represent the views of all dancers. There is no unified "dancer voice" and DERA has taken a principled stance on the issue of lapdancing. Specifically, it formed in response to the *Pelletier* ruling which, according to DERA "created absolute chaos in the exotic dance business by reducing the exotic dancers' standards of exotic dance to the lowest common denominator—lapdancing! This has opened the floodgate to increased exploitation of exotic dancers" (DERA 2). However, this position does not resonate with all erotic dancers. As DERA member Raye Ann comments, "What about the girls who do like to suck cock or do like it a little bit and are willing to compete at any level sexually to do that? [DERA] is not speaking for those girls, they're really not" (Personal communication).

[4]For over three years, DERA has been working in conjunction with a public health nurse for the region of Ottawa-Carleton who has been going into clubs offering dancers, other staff and patrons, Hepatitis B shots and in-club health care.

[5]In *Algonquin Tavern* (1981), the Ontario Labour Board held that the dancers were independent contractors rather than employees or dependent contractors.

[6]While in the early 1980s women were paid minimum wage by the hour in addition to having to report their own tips, by 1987 the Mitchell Brothers' *O'Farrell Theatre* in San Francisco had removed salaries and implemented the stage fee system. The fees in the US (from $50 to $150) remain considerably higher than in Canadian clubs (from $20 to $75) (see generally: DERA; Frank).

[7]Employee status or lack thereof is determined by a court, labour/employment standards board, or a human rights tribunal. A number of factors are influential in determining whether an individual holds employee status: control of the work environment, risk of loss and profit, risk or expectation on the part of the employee, suspension or dismissal rights, the control over methods of doing work, the means of paying wages. Despite the distinction between an employment contract in which the worker is an "employee" and those based on a contract *for* services in which the worker is an "independent contractor," all workers are protected under occupational health and safety acts and human rights codes (England 2000).

[8]Dancers "call in" every week to get scheduled on particular shifts; this is a means by which clubs can implement and enforce quotas (certain number of women of colour for instance) as well as rewarding certain dancers by giving them "choice" hours and correspondingly punishing others by giving them fewer hours, less desirable shifts, or not scheduling them at all (Wilmet).

[9]Dancers pay fines for: tardiness or absences, making outside arrangements with customers, going to the bathroom without permission, refusing to give a customer a free dance at the manager's request, having gained weight, acting "unladylike," leaving the main floor before being called by the DJ, bringing outside food into clubs, taking a nap when intoxicated, and removing their footwear (interviews with Christina, Heather, and Julie).

[10]This is in keeping with Arlie Hochschild's well-known concept of emotional labour (the regulation and expression of one's own and others' emotions in exchange for a wage)

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NAN BRYNE

ALPHONSINE

You were a slim question mark
in the family album
Sugary hair dusting
a red cotton handkerchief
In your hand a cigarette
buried beneath bone
Rimless eyes that accepted no truth
larger than your own
Make something up they said
I am too much for you to fathom
Spring water racing down a winter hill
Foolish sixteen I broke
the unspoken rule
Whispered your name, *Alphonsine.*
Grand mere Jeanne,
Queen mother of cautious sensibilities
Tempted to despair that I might never
Imagine something more for myself
than a squat house
with a sleek black dog
Unfurled the flag of fat French lip
Crasse purre. No good whore
I took the sound in my mouth
Imagined worlds and places
as far away as these words

Nan Bryne's poetry appears earlier in this volume.

MARLENE KADAR

Barbaric poem

To write poetry after Auschwitz is barbaric[1]

The only way we can know
barbed wire
is when we see it flash in the sunlight in idyllic meadows.

The only way we can know
the ardor of the lost child's fever
is when we can wipe the wet forehead.

The only way we can address a stolen daughter's family[2]
is by reading about the story you made up
about her based on facts based on memories now found.

To write poetry after Auschwitz is all we can know.

[1] *Theodore Adorno, 1949*
[2] *The stolen daughter is Sidonia Adlersburg, a Roma child who, in 1939, was removed from her family to Auschwitz by the authorities in her home town of Steyr in Austria.*

Marlene Kadar's poetry appears earlier in this volume.