The Case of *Quashie*: Between the Legalisation of Sex Work and the Precariousness of Personal Service Work

Einat Albin (Hebrew University)[1]

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Introduction

On the 21st of December 2012,the Court of Appeal (CA) gave its decision in the case of *Stringfellows Restaurants Ltd v Nadine Quashie*[2]. This case questioned whether Ms Quashie, a lap-dancer, was self-employed or whether she was an employee under a contract of employment. According to the facts laid down in the judgment, Ms Quashie worked a few times a week in a club, paid a fee to work there, was defined as an independent contractor in the club owners' hand book and the clients took part in the process of payment. The CA reversed the decision of the Employment Appeal Tribunal (EAT) and stated that there was no mutuality of obligations such as to constitute a contract of employment, since there was no wage-work bargain between the parties. The club had no obligation to pay the dancer 'anything at all',[3] and therefore, as the Court said, 'the dancer took the economic risk'.[4] *Quashie* provides us with an opportunity to consider the tight link that British labour law creates between service workers, gender and precariousness in the context of sex work. Particularly, it offers to rethink the way the court considers the

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[2] [2012] EWCA Civ 1735.
[3] *Quashie* at [45].
[4] *Quashie* at [51].

roles of the three parties in interactive service work - workers, management and customers - in its process of fact assessment, and accordingly its decision on whether a contract of employment was constructed.

Lap-dancing is a form of work that some define as entertainment, while others call it a form of sex work.[5] Feminist theories have discussed sex work at length. Radical feminists view it as a form of abuse that must be abolished, while liberal feminists view sex work as work that should be accompanied by various entitlements. In other words, they promote the legalisation of sex work. By analysing the question of whether Quashie had a contract of employment with the club owners, the CA (and the two previous courts – the Employment Tribunal and the EAT) adopted the liberal viewpoint. But the courts did not take this to its full extent. This is because, as I claim below, the court overlooked the personal service orientation of sex work and missed the true essence of the method of payment and the relationship between the parties.

Literature shows that sex work, although distinctive in many respects, is part of the increased scope of work to fulfil the bodily needs of others that typifies the past few decades.[6] Food-service, massage provision, caring for the elderly and for children, hairdressing, nursing and other activities that were once conducted by women in the household "for love" and not for pay,[7] or by household servants,[8] have now become an essential part of the market. They have been commercialized, remunerated and defined as

[5] J. Bindel, *Profitable Exploits: Lap Dancing in the UK* (London: Child and Women Abuse Studies Unit London Metropolitan University, 2004) Introduction.
[6] L. McDowell, *Working Bodies: Interactive Service Employment and Workplace Identities* (West Sussex: Wiley-Blackwell, 2009) Introduction.
[7] Ibid.
[8] E. Albin, 'From 'Domestic Servant' to 'Domestic Worker"' in J. Fudge, S. McCrystal & K. Sankaran (eds) *Challenging the Legal Boundaries of Work Regulation* (Oxford: Onati series Hart, 2012) 231.

'personal service work', i.e. 'the modern equivalent of past servitude – butlers, maids, cooks, gardeners, and other domestic help'.[9]

Sex work has features of personal service work. How did this affect the judgment in *Quashie*? This is the question I will discuss below. Part I describes the decisions of the EAT and the CA; Part II introduces the literature on sex work and the studies that locate it within the framework of personal service work. Special attention is given to the method of payment in strip clubs, which was the core reason that the CA refrained from viewing Ms. Quashie as having a contract of employment. Part III puts forward four reasons why Ms. Quashie and the club should have been viewed as having an employment relationship. Part IV concludes.

Part I: Quashie

Nadine Quashie worked as a lap-dancer in two London clubs owned by Stringfellows Restaurants Ltd. After 18 months of work Ms. Quashie was told she would no longer be permitted to work in the clubs, leading her to bring an unfair dismissal claim. This required the court to determine whether she was an employee as defined by sec 230 of the Employment Rights Act 1996 and if so, whether she had the necessary qualifying time of a year's continuous employment.

The facts of the case were the following: work in the clubs was conducted in shifts running from 9pm to 4:30am; dancers were obliged to work once in two weeks on the weekend and at least once a week at the Angels club; Ms. Quashie worked an average of twice a week at the clubs, and although there was no formal restriction preventing her

[9] H. L. Browing and J. Singelmann, *The Emergence of a Service Society: Demographic and Sociological Aspects of the Sectoral Transformation of the Labour Force in the U.S.A.* (Springfield: National Technical Information Service, 1975) 4.

from working elsewhere, the Employment Tribunal found that she and other dancers were under the impression that management would not be happy if they did. The dancers could take holidays when they wished but were required to fill-in a holiday booking form in advance; they were paid in what was called 'heavenly money' which were vouchers purchased by customers from the club that they gave to the dancers. The club had a menu setting out the dance packages: £20 for a full nude tableside dance; £200 for half an hour and from £300 for one hour to invite the dancer for "sit downs" – where the dancer sits on the customers' lap "for a talk". The dancers paid their own taxes and did not receive sick pay or holiday pay. Their pay was based on the 'heavenly money' alone, from which the club made certain deductions including a commission fee, a house fee and relevant fines when the dancers arrived late for a shift, were off rota, late for a dance, etc. The dancers also had a house mother who took care of them, ensuring that 'they are well turned out in their appearance and are properly dressed to maintain the standards of the club'.[10] Dancers paid the house mother a 'tip out' fee of £15 each night before commencing their shift. The club had an agreement form that was not given to Ms. Quashie when she began working, but whose rules were in a booklet entitled: *'Welcome to Stringfellows: the Cabaret of Angels'* that Ms. Quashie did receive. The booklet stated that the dancer would be an independent contractor paid by the clients.

This was a judgment that the strip club sector eagerly awaited due to the common patterns of work – hiring lap-dancers on a self-employed basis – and methods of payment. The Employment Tribunal concluded that Ms. Quashie was not an employee because there was no work-wage bargain and that she did not have the necessary time requirement of continuous employment. In her appeal to the EAT, Ms. Quashie's claims on both grounds were accepted. The EAT stated that she performed the work personally and that the club had control over her. Moreover, by adopting a broad test the Court

[10] *Quashie* at [14].

viewed her work arrangement as consisting of a work-wage bargain. This test views the wage-work bargain as one that occurs once the establishment provides something in exchange for the work. Such an exchange can include accommodation, study fees or an opportunity to dance at the club. A narrow focus on wage-work, said the EAT, 'does not encompass all forms of bargains within employment relationships'.[11] Additionally, it said that '[t]he fact that her pay came indirectly through vouchers from the customers is not material'.[12] This broad view of the wage-work bargain, and including the pay Ms.Quashie received within it, was what enabled the EAT to see her as having a contract of employment with the club owners. The club owners then turned to the CA.

In its judgment, the CA said that, while there was mutuality of obligations among the parties to some degree, it was not sufficient to constitute a contract of employment. The CA accepted that the club had control over Ms. Quashie, but said that although she had a duty to work on certain days, in other respects the club owners had no obligation towards her. Particularly, the club owners were not obliged to pay her for the work she performed. According to the judgment, the club did not employ the dancers to dance. It was rather the worker who paid the club to be provided with the opportunity to earn money by dancing for the clients.[13] The dancer was the one taking the economic risk, and therefore should be seen as an independent contractor. In its judgment, the Court emphasised the arrangement in the booklet and the behaviour of the parties that followed that arrangement, saying that 'the fact that the parties here intended that the dancer should have self-employed status reinforces the conclusion of the employment judge in this case'.[14] Essentially the finding that the dancers took the economic risk was

[11] *Quashie v Stringfellows Restaurants Ltd* [2012] UKEAT 0289_11_2604 at [51].
[12] *Quashie* EAT at [54].
[13] *Quashie* at [50].
[14] *Quashie* at [53].

based on the method of payment in the club – one in which clients gave 'heavenly money' to the dancers.

In the following Parts I explain why the CA should have read the facts differently and conclude that even though Ms Quashie might have taken the economic risk on herself, she was economically dependent on management. Together with the finding that the club had control over her work the court should have concluded that Ms. Quashie had a contract of employment.

Part II: Sex Work as Personal Service Work

Lap-dancing is presented in Britain as part of the entertainment industry. It is legal and regulated.[15] However, studies on activities within the clubs reveal that lap-dancing is actually part of what has been termed as 'sex work'. The various courts discussing the *Quashie* case did not refer to Ms. Quashie's work in this way, but this characteristic of the occupation cannot be ignored.

Sex work is gendered, and feminist theories have dealt with it in conflicting ways, the two main approaches being that of radical feminists and of liberal feminists. Radical, or "structural", feminists view the strip club as reproducing and enforcing subordination of women by men.[16] This not only strengthens gender inequality, but also normalizes men's violence towards women. Such claims are supported by studies showing that strippers work under the domination of male club owners and clients and are in constant danger of violence and abuse. Accordingly, radical feminists view this activity as something that should be abolished. Liberal, or "individual", feminists adopt a different line of thought.

[15] T. Sanders and K. Hardy, *The Regulatory Dance: Sexual Consumption in the Night Time Economy* (Leeds: Economic and Social Research Council University of Leeds, 2012).
[16] C. Ronai and C. Ellis, 'Turn-Ons for Money: Interactional Strategies of the Table Dancer' (1989) 18(3) *Journal of Contemporary Ethnography* 271.

They claim that the discussion of sex work sets aside the visibility of the individual person. Within this line of literature, there are those who say that 'selling sex is just another occupation', and others who claim that lap-dancing is an empowering experience for women due to the control it gives them over the extent and time of their work.[17] For these scholars, the legalization of sex work is important. Legalisation means complete decriminalisation and positive legal provisions, including labour law, employment law, welfare benefits, etc.[18] In other words, if sex work is recognised as a form of work, then sex workers should have the same set of rights as others.

In the past few years, with the growing number of studies on service work, a new line of literature has joined the feminist literature, one that views sex work as a form of personal service work, which is embodied, emotional and interactive.[19] An analysis of sex work through this viewpoint enables researchers to analyse in more depth the radical-liberal debate,[20] and to shed light on the complex form of power relations and distributive consequences that this type of work entails.

Studies on service work stress that with the growth of services, there has been a transformation of the embodied attributes of workers. These have become part of the service: 'their height, weight, looks, attitudes are part of the exchange, as well as part of the reason why some of them get hired and others do not'.[21] Emotions too are central to personal service work. The management of feelings needed by workers in their work, especially in contact with clients or customers, requires manipulation by the worker

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17 K. Pilcher, 'Empowering, Degrading or a 'Mutually Exploitative' Exchange for Women?: Characterising the Power Relations of the Strip Club' (2009) 10(3) *Journal of International Women's Studies* 72.
18 J. Halley et al, 'From the International to the Local in Feminist Legal Reponses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard Journal of Law & Gender* 335, 339.
19 McDowell, note 6 above; E. A. Wood, 'Working in the Fantasy Factory: The Attention Hypothesis and the Enacting of Masculine Power in Strip Clubs' (2000) 29(1) *Journal of Contemporary Ethnography* 5.
20 Wood, ibid.
21 McDowell, note 6 above, 9.

herself in the process of producing these emotions.[22] The embodiment of service work and the production of emotions are interconnected with the interactive feature of personal service work, i.e. the contact between workers and clients.[23] In interactive service work, a triangle of relationship is constructed between the worker, the employer and the client. Not all forms of work require such contact (working on an assembly line being a prominent example), but in service work the contact with customers or clients is very much in evidence – in salons, fast-food restaurants, bars, childcare, nursing, etc.

Lap-dancing has all three features. Lap-dancers' work is embodied for it requires particular looks (a sexy body and clothes). It is also emotional because it involves making clients feel they are cared about. The client wants to believe that the dancer is interested in him, and there is an emotion in that idea, 'described as something akin to pride and self-confidence'.[24] Dancing at a strip club is interactive because it demands constant contact with clients. In the strip club, the triangular relationship is between the dancer, the client, and management. The method of payment in the sector results from and intensifies these features and in this way maintains the activity in the sector and increases the income of the club owners. Moreover, it shapes the power relations among the three parties to this relationship.

The method of pay, in which customers take part in remuneration, is not unique to Britain, and it is so structured, among other reasons, to preserve the *embodied*, *emotional* and *interactive* features of lap-dance work. In order to get paid, dancers have to adopt particular looks - appealing and sexy - and behaviours - creating feelings of intimacy, interest and desire - thus upholding the feature of embodied work. Acts such as

[22] See A. R. Hochschild, *The Managed Heart: Commercialization of Human Feeling* (Berkeley: University of California Press, 1983) 7.
[23] R Leidner, *Fast Food Fast Talk: Service Work and the Routinization of Every Day Life* (Berkeley: University of California Press, 1993) 1.
[24] Wood, note 19 above, 23.

approaching clients, humouring them and making them feel special have been documented as an essential part of the work that keeps the money flowing. The method of payment in the clubs also motivates dancers to increase their interaction with clients in order to raise their pay. Once they have been remunerated by one client they turn to another in the hope of fulfilling his fantasy and opening his pocket. A study revealed that when strip dancers are paid wages they have no incentive to indulge clients and follow their expectations.[25] In this way, payment by clients not only fulfils the client's needs and the interests of management to enhance interaction and activity in the club, but it is also a way to control the quality of work. Greater interaction is also encouraged by the 'menu' that sets higher remuneration for a tableside dance or for 'sit downs'. This interaction results in emotional work that provides excessive power to the client over the dancers.

Wood has importantly highlighted that through the process of pay in the club there is affirmation of power and desirability.[26] Indeed, the method of payment is part of the mechanisms that create the power relations among the three parties to the relationship - dancers, clients and management. For some dancers it is a source of empowerment in that it gives them control over their time, work schedule and the customer.[27] But for most it is also a form of male domination.[28] Registration of the economic activity in the club, in the form of 'heavenly money', other kinds of vouchers or any other means, intensifies the club owners' control over the dancers. It enables the club owners to see how much the dancer earns, whether she is kind, service oriented and also her degree of success, setting the platform for further determination of her work practice, behaviour and looks. In addition, pay through some form of tipping gives the clients greater control and power over the dancer. Paying money only when the dancer provides something

[25] W. Chapkin, 'Power and Control in the Commercial Sex Trade' in R. Weitzer, (ed) *Sex for Sale: Prostitution, Pornography and the Sex Industry* (London: Routledge, 2000) 181, 185.
[26] Wood, note 19 above.
[27] Chapkin, note 25 above.
[28] Ibid; Sanders and Hardy, note 15 above.

means that money is valued as long as it can be exchanged for something else. As Wood notes, 'the money now has not only value but power'.[29] At the same time, this payment pattern serves the construction of the clients' masculinity - being desirable to women and being able to financially take care of women. Moreover, setting different levels of pay for different kinds of services – nude dance, personal dance or 'sit downs' – may pressure dancers to conduct more intimate sexual work, activities that studies have shown to increase their exposure to harassment, abuse and rape.

The complexity of the power relations that emerges from the discussion above does not necessarily lead to conclude that lap dancing should be abolished, as radical feminists might say. But it should impact the process of legalising this type of work through an understanding of the control and dependence that it creates. The CA has not recognised these aspects of the payment method, or, more accurately, it used them to decide that Ms.Quashie had no contract of employment. This outcome is highly problematic and even absurd, as discussed below.

Part III: The Contract of Employment and Personal Service Work

Although around 75 per cent of the British labour force is employed in services, and despite its vast growth in the past few decades, British labour law is not attuned to the service economy. I have claimed elsewhere that the cause for disparity between labour law and services is that, while the service economy is characterised by the tight interlinking of production and consumption, labour law focuses only on the former

[29] Wood, note 19 above, 14.

without giving the necessary attention to the latter.[30] In the case of lap-dancing, this is highly problematic due to the close contact between workers and clients.

The features of personal service work, mainly interaction, have several attributes in the organization of work. These include: work patterns that accommodate the dependence of work on clients' requests and demands (like working under zero hour contracts, part time, shift and night working, sleeping in the employer's household, being 'on call' etc.); and methods of payment that result from client's involvement, some of which are used to motivate workers to be service oriented and to increase the success, reputation and income of the business (such as tips, commission etc). Often these attributes lead courts to misinterpret the type of work relationship between the parties because they are foreign to the personal-binary (employee-employer), full-time, manufacturing, male-oriented model of employment according to which British courts make judgments, including in their construction of the contract of employment. Therefore, while a high percentage of personal service workers are socially subordinated and economically dependent on their work, they are placed outside the boundaries of labour law, are viewed as self-employed and thus do not enjoy many of the protections of labour law. This is what happened in *Quashie*. Her method of payment was performance related and, according to the arrangement set by the management, the club had no obligation to pay her anything at all. But does this mean that there was no employment relationship? This conclusion is problematic on several levels and in the following paragraphs I will make four comments in this respect.

Economic Risk: The CA said that Ms. Quashie took the economic risk upon herself. While this might be true, the court should have also asked whether she had the ability to manage that risk, or in other words, whether she was economically dependent. Previous

[30] E. Albin, 'Labour Law in a Service World' (2010) 73(6) *The Modern Law Review* 959.

case law determined that workers with a high degree of personal autonomy may still be categorised as employees if they are economically dependent on one principal employer. This was decided in *Market Investigations Ltd v Minster of Social Security*[31] and continues to be an essential test today.[32] In service work, economic dependence should be assessed in a similar way as in a personal-binary contract while capturing the role of clients in the relationship. In order to capture that role it is important to understand the triangle of workers-management-customers, and the activities of all three parties. An assessment of the facts in *Quashie* through a perspective of interactive personal service work leads to conclude that Ms. Quashie was not economically dependent.

In *Quashie*, the court accepted that the dancers did not work elsewhere because they thought management would not approve. Therefore, it was only the club that provided Ms. Quashie with work opportunities, and her earnings were based on that alone. An analogy is a sales person working in one store for commission. The store provides her with the opportunity to make a living and increase her earnings, making her fully economically dependent on it. In both situations, workers have no ability to manage their risk, for they cannot spread their risk in the market by working in other places. Moreover, the salesperson in the store and the lap-dancer have no say in setting the price for the products they sell. Ms. Quashie was paid according to a 'menu' determined by the club. If it was a slow night, she could not ask clients for higher pay in order to manage her economic risk. Her reliance on the club for income is thus quite obvious. A reading of the facts in this way classifies the clients in the strip club as customers coming to purchase services offered by the club and at price rates set by the club. In service work, where performance related payments are very common, it is crucially important to view these payments as *determined by management* in order to sustain the activity of the sector,

[31] [1969] 2 QB 173.
[32] S. Deakin and G. S. Morris, *Labour Law* (Oxford: 4th ed, Hart Publishing, 2005) 152.

increase client satisfaction and maximise joint income, and not as creating an *independent* relationship between workers and clients. The latter option misses an accurate reading of payment in services.

From that perspective the payment method that was used is more accurately viewed, not as constructing a direct relationship between the dancer and customer, but rather, as presented above, as using performance related payment as a means to sustain the club's activities and profitability. The provision of a work opportunity that was entirely dependent on the club and the club's determination of the level of earning should have been sufficient for fulfilling the economic dependency test, and to conclude that Ms. Quashie did not take the economic risk upon herself.

The 'Heavenly Money': The court saw the payment that the dancers received as coming directly from clients, when it should have read the facts regarding this payment method as a salary based on commission alone. While the payment method was related to the amount of 'heavenly money' given by clients, at the end of the shift it was the club that paid cash to Ms. Quashie. In other words, her salary was calculated with reference to her performance according to the amount of 'heavenly money' that she received. Indeed, the payment method determined by management did not place any obligation on the club to pay her anything at all. But this only means that in fact 100 per cent of what management paid her was performance-related. From this perspective, the court should have reached the conclusion that there was mutuality of obligations that included reciprocal promises between the parties: Ms. Quashie was obliged to work and the club was obliged to pay her according to performance. Hence, there was a work-wage bargain between Ms. Quashie and Stringfellows.

Pay by Clients: If the clients would have paid Ms. Quashie directly it is still questionable whether this fact should affect the existence of a contract of employment. In the case of

Ready Mixed Concrete the court decided that three conditions should be fulfilled for determining an employment relationship, the first being that: 'The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master'.[33] By using the term 'remuneration' the court acknowledged that other sorts of income can classify a relationship as one of employment. And indeed, British labour law is unclear on whether pay by an employer should be decisive in conceptualising the employment relationship. An analysis of the approach taken to different sectors where there is performance-related pay, reveals that it is mainly cultural conceptions regarding sectors that determine courts' decisions. This is very evident from reviewing the courts' approach to tip payments. The case of *Cheng Yuen v Royal Hong Kong Golf Club*,[34] concerned a golf caddie who came to work every day but who was not guaranteed work and consequently waited with the other caddies for his turn to offer service to the members. At the end of each working day he was paid in cash by the club, which debited the member concerned who then repaid the club the amount paid to the worker. The Privy Council found he was not an employee. The main reason was that the club was not 'obliged to give him work or to pay him other than the amount owed by the individual golfer for whom he caddied'.[35] On the other hand, waiters are viewed as having a contract of employment even though they too are not guaranteed work by the restaurant/bar/pub. They were viewed as such even before legislation saw them as entitled to minimum wage under the Catering Wages Act 1943, and the employer as obliged to pay them wages.[36]

The difference between the case of the golf caddie and that of waiters can only be explained by a cultural conception that views the latter as having a contract of

[33] *Ready Mixed Concrete (South East) Ltd v Minister for Pensions and National Insurance* [1968] 2 QB 497.
[34] [1997] 3 LRC 414 (PC).
[35] Ibid 421.
[36] E. Albin, 'A Worker-Employer-Customer Triangle: The Case of Tips' (2011) 40(2) *ILJ* 181.

employment and the former as not. The same can be said in regard to lap-dancing. Because the method of payment in this sector has for years been one in which lap-dancers' remuneration depends on performance and client involvement, and in which at the same time the dancers pay fees to the club, they are culturally presumed to be self-employed. Legal tests should try to overcome cultural biases. If other tests lead to viewing the relationship as constituting a contract of employment, the method of payment is not a fact that should lead to different conclusion, or put differently, it should not be a decisive problem that the remuneration comes from the clients.

This is also a line of thought that was accepted by the CA in *Quashie*. There, the court said: 'It is not necessary to go so far as to accept the submission of Mr Linden that absent an obligation on the employer to pay a wage… the relationship can never as a matter of law constitute a contract of employment'.[37] I agree, and argue that this is especially important in personal service work where such arrangements are many times the rule and not the exception. The courts should assess these payment methods accordingly.

Dignity and Equality: Lap dance work is different from waiting on tables and golf training. It is sex work that has further implications for workers, especially in respect of dignity and equality. These are additional grounds that justify labour protection. In the changing world of work there is an increasing acknowledgment that dignity and equality justify extending legal protection to groups who the more traditional tests would place outside the boundaries of labour protection.[38] I contend that the case of lap-dancing falls into that category of justification. In lap-dancing the remuneration by clients is used to induce dancers to engage in activities that are demeaning to their dignity in order to maximize

[37] *Quashie* at [51].
[38] M. R. Freedland and N. Kountouris, *The Legal Construction of Personal Work Relations* (Oxford: OUP, 2011) Chapter 9.

their income. It is highly problematic for law then to see the pressure thereby imposed as a reason for denying them labour rights. This reasoning has the absurd effect that use of this payment method makes these dancers' position legally precarious as well, and this despite all other factors that show the existence of a contract of employment also applying strongly in their situation.

Equality is an additional justification. Once the precarious position in which court decisions leave workers is unpacked, it is evident that such precariousness is not only found in the placing of these workers outside the scope of labour law. It also reflects cultural norms that are unfairly biased toward some types of workers – here the male manufacturing model – and at the same time has distributive consequences on labour and capital. Labour which is more emotional, embodied and interactive – in other words gendered - is seen as not covered by a contract of employment, and the workers are conceptualised by labour law as taking the economic risk entirely on themselves. Needless to say, these workers are predominantly women.

It is important to note that in *Quashie* the court did not have to extend the legal tests that have been set in previous case law regarding a contract of employment. I have shown above that it only needed to read the facts through the prism of personal service work to reach a different conclusion regarding economic dependency, the wage-work bargain and the necessity of wage payment by management. Dignity and equality are thus further justifications to adopt the reading as proposed in this review.

Part IV: Conclusion

Under the current legal framework, the features of personal service work: embodiment, emotion and interactive work, affect the interpretation of a contract and locate personal

service workers outside the scope of labour law. This was the decision of the CA in *Quashie*. Even though the court viewed the clubs as having an obligation to provide future work to Ms. Quashie, the method of payment determined by management led the Court to conclude that they were not obliged to pay wages, and thus that the contractual obligations among the parties did not constitute a contract of employment. In making this decision, the court overlooked the personal service orientation of sex work, and more specifically of lap-dancing.

From a personal service work perspective, it becomes clear that the court misunderstood the true essence of the relationship. It determined that the dancers took the economic risk upon themselves, without giving enough weight to the issue of control, economic dependence, the question of whether the dancers could manage the economic risk and the implications of the payment method. At a time when there are voices that call for the legalisation of sex work and courts are engaged in that process, there is a crucial need to incorporate the theory of service work into the courts' fact assessment as offered here. Otherwise, the essence of sex work is missed by the courts, strengthening the power of those who gain from the work of lap-dancers, i.e. management and clients, and reinforcing the link between those serving the bodies of others, gender and precariousness.