

Brief to the Standing Committee on Justice and Human Rights on Human Trafficking

Submitted June 15, 2018 by the Canadian Alliance for Sex Work Law Reform

The Canadian Alliance for Sex Work Law Reform is a coalition of 28 sex worker rights and allied groups across Canada. The majority of our member groups are composed of sex workers and many groups offer services to sex workers in their region. Together, we work for law reform that supports the rights and safety of people who sell or trade sex, including safety from exploitation and trafficking.

Our member groups have comprehensive expertise on sex work, exploitation, and trafficking. This expertise combined with both anecdotal and academic evidence has informed our conclusions and recommendations about sex work and human trafficking in Canada, which we have outlined below.

1) The criminal law provisions against sex-work related activities (including those introduced through PCEPA) facilitate harm against sex workers and enable conditions favourable to exploitation, including human trafficking.

Far from being protective, the sex work prohibitions, and the end-demand model they represent, facilitate exploitation and trafficking by pushing people away from police and social services and into a clandestine underground where there are no legal or social protections.

In addition, the laws against managerial involvement in sex work divest sex workers of protective services such security, screening out dangerous people and providing safe work spaces, the value of which – and the Charter right to which - was recognized by the Supreme Court of Canada in the Bedford case. Importantly, it is often the most marginalized and under-resourced workers (including migrant, street-involved and Indigenous workers) who most benefit from having a third-party provide these otherwise unobtainable protections. These same laws prevent sex workers from ensuring their safety and rights are upheld when working for or with other people, because the criminal laws against procuring and materially benefiting from someone else's sex work in the context of a commercial enterprise effectively preclude them from basic labour and human rights protections, and from working collectively rather than in isolation.

The laws against purchasing sexual services have these same harmful impacts on sex workers as, along with the material benefit offence, the purchasing offence makes the exchange *de facto* a

criminal activity. This prevents sex workers from being able to *legally* establish safe workplaces as involvement in criminal activity is ground for eviction and closure. The criminalization of purchase further prevents sex workers from establishing additional security measures such as screening clients and meeting clients in non-isolated locations, as clients now fear incrimination and arrest. As long as sex workers' labour is criminalized, workers cannot legally establish health and safety measures or access basic labour and human rights protections.

2) The conflation of sex work and human trafficking harms sex workers, including those who have been trafficked.

Sex work is sometimes framed as an inherent form of human trafficking or, more generally, as an inherent form of violence against women. This framing underpins the PCEPA and promotes the ensuing harms outlined above. Further, when sex work is seen as an act of violence or outright human trafficking, it trivializes actual incidents of violence against sex workers, denies sex workers their right to address incidents of violence, violates sex workers' right to autonomy, and invalidates sex workers' right to consent to sex when exchanging sexual services for money.

When sex work is perceived as human trafficking, anti-trafficking initiatives become *de facto* anti-sex work initiatives, and sex workers and the people with whom they work are indiscriminately targeted for surveillance and investigation. Colleagues, employers and family members may be mistakenly identified as traffickers. People who work in the sex industry often rely on the support of third parties and family members to help organize their income, communicate with clients, offer additional security precautions or advertise their services. As well, sex workers themselves frequently act as third parties for other workers. Sex workers have been charged with trafficking offences, even in the absence of exploitation, because they work or associate with other sex workers, or receive material benefits related to services or resources they provided for other sex workers. In light of these impacts, sex workers and their personal and professional contacts are further compelled to isolate themselves from law enforcement. This undermines efforts to identify and assist actual trafficking victims.

Trafficking detection tools used by police, health and social service providers, and customer service providers conflate signs of trafficking with the signs of stigmatization, precarious and "illegalized" immigration status and fear of arrest, detention and deportation as sex work takes place in a criminalized context, and workers who do not have permanent residence may be deported for sex work involvement even in absence of criminal charges. This leads to sex workers isolating themselves from important services to avoid invasive and potentially harmful questions and disclosures. Law enforcement and social service focus on sex workers regardless of their circumstances dilutes and diverts resources away from actual human trafficking victims both within and outside the sex trade.

Alongside the problematic framing of sex work as a form of human trafficking regardless of circumstances, there is a parallel framing that conflates any labour exploitation within the sex trade with human trafficking. Workers in many different industries may experience poor working conditions, particularly people in precarious work and/or informal industries (for example, agriculture, hospitality, garment, sex work, construction). Exploitative working conditions and violence are realities that sex workers in general may face in the context of poverty, racism, precarious immigration status, colonization, and many others factors that lead to the inability to legally earn an adequate income.

The failure to recognize sex work as a form of labour or income generation prevents the application of employment standards, occupational health and safety, and human rights laws to sex work businesses. In many contexts, these would be more effective and appropriate anti-exploitation measures than the blunt and often harmful instrument of the anti-trafficking law.

3) Criminal and immigration sex work prohibitions are barriers to anti-trafficking initiatives both within the sex trade and by law enforcement.

The criminal laws against procuring and materially benefiting from another party's sex work are serious obstacles to trafficking prevention, as people who work with sex workers are well placed to detect and report trafficking activities but are deterred from doing so out of fear of criminal prosecution and/or deportation. Law enforcement agencies lack productive relationships with sex work employers because the latter distance themselves from police.

The end-demand model and consequent criminalization of purchasing sexual services has had an equally deleterious impact on trafficking prevention. Before PCEPA, clients were one of the best sources of information about abuse of sex workers. As opposed to other industries where trafficked people can be held in complete isolation, sex work by its nature requires private contact with clients outside the trafficker's immediate circle. But clients no longer come forward for fear of criminal charges and prosecution. The criminalization of purchasing sexual services has cost society and trafficking victims a significant anti-trafficking tool.

The *Immigration and Refugee Protection Regulations* (IRPR) prohibit all temporary residents and foreign nationals – including people with valid work permits – from working in “businesses related to the sex trade.” This applies to people working for employers as well as people who are self-employed. Migrants working for sex work-related businesses are in automatic violation of their immigration conditions, which is ground for deportation. The subsequent fear of detention, arrest and deportation deters sex workers from seeking help when they or a colleague is trafficked. Those who employ migrant sex workers are also subject to increased

surveillance and racial profiling, which has numerous negative impacts on working conditions and safety measures.

The IRPR prohibitions against migrant sex work exemplify an anti-trafficking initiative that has resulted in increased levels of law enforcement at the federal, provincial and municipal levels, increased rates of arrest, detention and deportation faced by migrant sex workers, and as a result has had devastating impacts on sex workers' safety, working conditions, and ability to protect their human rights and resist conditions that foster vulnerability to exploitation.

4) The *application* of anti-trafficking laws and social initiatives harm sex workers, especially those who are migrant, Indigenous or youth.

The Alliance does not oppose the current criminal code definition of trafficking. However, we are opposed to Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons) that lowers the evidentiary requirements to prove trafficking. Under this Bill, evidence that a person living with or habitually in the company of a person who is "exploited" is — in the absence of contrary evidence — proof that the person is trafficking them. As has happened with PCEPA and the conflation of all sex work with trafficking, this will further alienate sex workers from police and social services because they will fear implicating their colleagues and loved ones as traffickers. Evidence demonstrates that when sex workers attempt to avoid laws that they experience as harmful, they work in more isolation, creating conditions for greater exploitation and risk.

We understand that the Committee has heard from witnesses recommending that "the abuse of a position of vulnerability" be added to the Criminal Code definition of human trafficking, in keeping with the definition under the Palermo Protocol. Given the harmful impact of anti-trafficking initiatives on sex workers and the current conflation of sex work and trafficking, we are strongly opposed to this possibility. As long as PCEPA and its underlying ideology equating sex work with *de facto* vulnerability and abuse are in force, sex workers will become even greater targets of oppressive enforcement under the suggested changes.

While we are not opposed to the current definition of human trafficking, we are deeply concerned about the harmful application of the law and related anti-trafficking initiatives.

Law enforcement agencies across Canada regularly participate in mass, indiscriminate efforts to identify trafficking victims in the sex industry. Additionally, law enforcement initiatives also target sex workers occupying public space with undercover enforcement posing as clients. In a claimed effort to fight human trafficking, enforcement actions to seek out trafficking victims are informed by non-evidence based, stereotypical and racist understandings of the sex industry.

These efforts continue to break trust and increase suspicion between sex workers and law enforcement. Most importantly, countering violence and exploitation itself when it does occur, is not addressed through anti-trafficking strategies.

While all sex workers are negatively affected by anti-trafficking strategies, Indigenous women, migrant workers and youth are disproportionately targeted and impacted.

Indigenous sex workers

Indigenous people who sell or trade sexual services do so for a wide range of reasons and motivations. Indigenous women and Two-Spirit people exercise agency and self-determination and, like other sex workers, make decisions in various contexts including poverty, homelessness, and discrimination, in addition to historical institutionalized colonialism. While many Indigenous women and Two-Spirit people are assumed to be selling sexual services in a context of trafficking, some sell sexual services as a means of generating income to fulfill many needs and aspirations such as supporting families and relieving themselves of poverty. Indigenous people may also be part of street economies and communities that occupy public space and cannot access other opportunities for work and income generation.

Limiting all Indigenous women and Two-Spirit people's realities in the sex trade within the discourse of trafficking and exploitation deflects from recognizing and understanding the numerous ways that Indigenous women and Two-Spirit people exercise agency and self-determination and make decisions. It also invisibilizes how a colonial state reproduces violence, historical and trans-generational trauma, injustices and other harms against Indigenous people — including displacement, homelessness, poverty, racism, inequality, and barriers to accessing services, supports and resources. It ignores the self-determination of people who are seeking to survive and thrive within a context of poverty, discrimination, targeted violence, racial and social profiling, and constant police surveillance.

The assumption that all Indigenous women and Two-Spirit people who sell or trade sex are trafficked blurs these realities and over-simplifies these realities. It is a lost opportunity to explore the ways factors such as poverty in urban and rural communities impact the lives of Indigenous women, girls, and Two-Spirit people and how the sale or trade of sex can be a path that represents agency and self-reliance.

Focusing solely on trafficking and imposing this framework onto Indigenous women has deeply influenced governments' and non-profit organizations' initiatives that attempt to address violence against Indigenous people and has encouraged anti-violence strategies based in anti-trafficking strategies. This results in prioritizing and funding law enforcement strategies that

increase over-policing in Indigenous communities, instead of investing in peer-led programs that allow Indigenous people selling or trading sex to exchange knowledge and support each other.

Indigenous women, girls and Two-Spirit people experience many types of violence. This targeted and systemic violence needs to be understood in the context of colonialism. Indigenous women and Two-Spirit people are targeted for violence because predators know police are less inclined to investigate their disappearances, and also because they know Indigenous women are constantly avoiding police for fear of detection and apprehension. Indigenous women and communities are both over-policed and under-protected.

Indigenous communities receive little to no access to justice and have very limited remedy to address the violence they experience. Responses to address this violence need to account for the reality that strategies that rely on the criminal system often isolate and further marginalize Indigenous communities. These strategies often racially and socially profile people within Indigenous communities, using criminal law and human trafficking charges against members of Indigenous communities. These charges are often the result of criminalization of relationships and over-policing and leads to the disproportionate incarceration of Indigenous communities.

Indigenous people who sell or trade sex are over-surveilled by law enforcement for occupying public space. Additionally, policing is overwhelmingly equated with protection in the context of human trafficking and sex work. This constant police presence results in social and racial profiling and human rights violations of Indigenous people in public space. Encounters that Indigenous people are forced into with police are exorbitant; they have detrimental impacts on the human rights of Indigenous people. Reducing this antagonism begins with removing the tools that law enforcement uses to over police Indigenous communities, including but not limited to criminal and municipal laws. Laws empower police antagonism towards Indigenous communities, which then results in the alienation of Indigenous communities from society and police, making Indigenous women and Two-Spirit folks targets for violence from predators who know reporting violence to police is unlikely. Rates of violence increase when Indigenous women are not able to report violence or when they do not have access to both institutional and community safety and protection. Well-known lack of reporting encourages violence against Indigenous women and Two-Spirit people.

The consequences of criminalization and police over-surveillance go beyond lack of reporting, and beyond over surveillance, arrest and over-incarceration of Indigenous women and Two-Spirit people. Over-policing displaces and isolates Indigenous sex workers and this leads to vulnerability to violence and detrimental health conditions, abuse, and extreme poverty. It also exacerbates already significant barriers to supports and protections, and, again, makes access to police protection and legal systems even more difficult for Indigenous people who sell or trade

sex.

The ongoing crisis of Missing and Murdered Indigenous Women is exacerbated by antagonistic relationships with police, government and social service agencies. The role of criminalization – and how criminal and municipal laws are used to racially and socially target Indigenous women and Two-Spirit people -- needs to be accounted for when understanding and responding to why Indigenous women, girls and Two-Spirit people go missing and are murdered.

Migrant sex workers

Migrant sex workers' realities are unique and diverse. Migrant sex workers do sex work for many reasons, such as generating income to provide for themselves and their families, and accessing things they want or need. They also may experience multiple and intersecting struggles related to language, legal systems, immigration status, finances, health, safety, racism/racial profiling, sexism, employment conditions and family, among other struggles.

Migrant sex workers' are often the targets of anti-trafficking policies and practices. Migrant sex workers – particularly workers who are Asian – are assumed to be trafficked victims without agency or capacity to make their own life decisions. This reproduces the racist and sexist stereotype that Asian women are ignorant, passive, helpless and lack all agency and self-determination.

Racist and oppressive views underpin current anti-trafficking initiatives and policies; they function as racial profiling tools used to detain and exclude migrant and racialized individuals and communities. Racialized communities are stigmatized by law enforcement and policy makers and misrepresented as “organized crime rings.”

Anti-trafficking initiatives and policies that conflate exploitation and human trafficking with sex work increase migrant sex workers' contact with law enforcement and often lead to highly negative consequences for sex workers who avoid law enforcement due to precarious immigration status, in addition to conflict with numerous criminal and municipal sex work related laws.

Anti-trafficking initiatives have resulted in increased operations and raids of sex workers' workplaces. Law enforcement may assert that these initiatives are intended to target clients and third parties, but they often result in the detention, arrest and deportation of migrant sex workers.

The threat of detention and deportation pushes sex workers into precarious working conditions,

increases their vulnerability to exploitation and violence, and deters them from seeking supports, including state protection, if they do experience exploitation or violence.

Anti-trafficking initiatives, in addition to sex work prohibitions and the constant presence, surveillance and interrogation by law enforcement (including police, Canada Border Service Agency (CBSA) and City inspectors), create disincentive for sex workers to report exploitative working conditions or violence for fear of repercussions for themselves or for their colleagues, friends or family. This also creates barriers to implementing health and safety practices at work that protect migrant sex workers' rights and promote their personal safety. Migrant sex workers — including workers who may experience mistreatment — are further marginalized and isolated as a result. The very people most in need of protection are denied access to the criminal law system.

When the CBSA or police target what they term human trafficking and sexual exploitation, the people most usually harmed are sex workers. CBSA and police routinely target migrant sex workers in order to “protect them,” which often translates into removal and/or detention. Migrant sex workers tell us that when they are interrogated by law enforcement, they have two options: either they denounce their work, identify as victims and *possibly avoid* detention and deportation, or they admit that they are autonomously making decisions and working to provide for themselves, in which case they *will* be fined, detained and/or deported. Police and CBSA have conducted periodic investigations and raids in the name of anti-trafficking investigations, even when there is no evidence of human trafficking, exploitation or coercion.

Youth who sell or trade sexual services

Dialogue about the involvement of young people selling or trading sex evokes strong reactions and it is difficult to find agreement on the best policy responses. Despite this, all involvement of anyone under 18 in the sex industry is viewed as human trafficking. The best interests of youth must always be considered when addressing youth exploitation, including trafficking, which includes a close look at the ways in which law enforcement further isolate and marginalize youth.

Current anti-trafficking measures designed to protect youth who sell or trade sex cause the same harms to those youth as they do to sex workers over 18. As with adults, anti-trafficking initiatives facilitate exploitation, by driving both youth and those involved with them away from police, social services, and other supports.

Human trafficking charges are also laid against youth themselves. Youth who have fled families, group homes and other institutions are often seeking to create communities for support and

survival. Members of these communities can be falsely targeted as traffickers. These charges are often the result of criminalization of relationships and overpolicing, and lead to the over-incarceration of racialized, often Black, youth.

In order to actually address the lived realities and challenges confronting youth, policies to address youth who sell or exchange sexual services need to integrate a more nuanced and complex rights based approach, rather than those based in fear and stigma. This includes reviewing and restructuring child and youth protection services (including group and foster homes), secure care initiatives, and supports for street-involved youth.

Recommendations for a Human Rights Based Approach to Prevent Human Trafficking

1. Provide resources and support to sex workers and sex worker rights organizations to address human rights violations.

Sex workers are in constant contact with people working in the sex industry and are best placed to support sex workers who are experiencing human rights violations, including exploitation and trafficking. Because of profound stigma, in addition to fear of law enforcement, discrimination, violence and exclusion, sex workers are more likely to turn to sex workers and sex worker organizations for support.

Sex worker-led human rights organizations understand how systemic injustices prevent sex workers from accessing the supports required to resist the conditions that increase our vulnerability to violence and exploitation and we know what we need to do to combat these injustices.

Sex worker-led organizations know how to directly provide services that are safe, relevant and accessible to other sex workers. They hold the knowledge and experience to best determine *what* services sex workers need, and *how* these services should be implemented.

2. Invest in community initiatives that are non-directive, not focused on “exit” and based in a human rights, not morality, approach, that address structural issues related to poverty, homelessness, education. These initiatives should be led by people in the community, for people in the community.

As explained above, community-led initiatives are best informed to provide concrete and relevant supports to community members who are experiencing, or who are vulnerable to, violence and exploitation. These supports should include actions to:

- Invest in Indigenous community initiatives, migrant sex worker community initiatives and youth-based initiatives that are seeking to address homelessness, poverty, and provide services directed by sex workers;
- Implement harm reduction approaches that require authorities to use the least intrusive approach towards communities with an emphasis on preserving their community and upholding their rights;
- Recognize that apprehension, detention and involuntary rehabilitation are often experienced as antagonistic and often traumatic;
- Recognize that returning youth to their family of origin may not be in their best interest, particularly for those who are abused or experiencing violence in those families — alternative living arrangements must be considered in those situations;
- Implement approaches that are sensitive to the realities and needs of Indigenous youth;
- Implement measures and services that support and empower young people;
- Provide adequate training to police, prosecutors and other law enforcement officers about the differences between sex work and human trafficking; and
- Re-envision and re-create “tool kits” intended to “spot trafficking victims” – create guidelines for support in consultation with communities.

3. Remove laws that create antagonistic relationships between sex worker communities/actors and law enforcement and/or that mandate or otherwise encourage law enforcement to monitor sex workers and work spaces. This includes:

- Decriminalize sex work by removing all sex work provisions introduced through the *Protection of Communities and Exploited Persons Act* as well as 213(1)(a) and (b);
- Remove specific immigration regulations and work permit conditions that prohibit migrant people from working in the sex industry;
- Urge the government to stop raids, detentions and deportations of sex workers;
- Ensure CBSA is never involved in anti-trafficking investigations; and

- Reject amendments to Bill C-452 (now Bill C-38), written in Bill C-75, An Act to amend the Criminal Code (exploitation and trafficking in persons).

The Canadian Alliance for Sex Work Law Reform formed in 2012 and is composed of sex worker rights and allied groups and individuals in cities across Canada: Calgary, Edmonton, Hamilton, London, Longueuil, Montreal, Kingston, Québec, Sault Ste. Marie, St. John's, Toronto, Vancouver, Victoria, and Winnipeg. Members work together to fight for sex work law reform, sex workers' rights, and community well-being.

Member groups include: Angel's Angels (Hamilton); Action Santé Travesties et Transexuel(le)s du Québec (ASTTeQ) (Montréal); BC Coalition of Experiential Communities (Vancouver); Angel's Angels (Hamilton); Butterfly Asian and Migrant Sex Workers Network (Toronto); Canadian HIV/AIDS Legal Network (Toronto); Downtown Eastside Sex Workers United Against Violence (SWUAV) (Vancouver); Émissaire (Longueuil) FIRST (Vancouver); Maggie's Toronto Sex Workers Action Project (Toronto); Maggie's Indigenous Sex Workers Drum Group (Toronto); Migrant Sex Workers Project (Toronto); PEERS (Victoria); Projet Lune (Québec); Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton); Providing Alternatives, Counselling and Education (PACE) Society (Vancouver); Rézo, projet travailleurs du sexe (Montréal); Safe Space (London); Safe Harbour Outreach Project (S.H.O.P.) (St John's); Sex Professionals of Canada (SPOC); Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury); Stella, l'amie de Maimie (Montreal); Stop the Arrests! (Sault Ste. Marie); Strut! (Toronto); Supporting Women's Alternatives Network (SWAN)(Vancouver); HIV Community Link Shift Program (Calgary); West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver); Sex Workers of Winnipeg Action Coalition (Winnipeg)