



Brief to the House of Commons Standing Committee on Justice and Human Rights on Human Trafficking in Canada

How migrant sex workers are harmed by anti-trafficking initiatives and policies.

Submitted By Butterfly (Asian and Migrant Sex Workers Support Network)

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Butterfly: Asian and Migrant Sex Workers Network (“Butterfly”)¹ Butterfly is the only migrant sex workers-led organization in Canada, formed by migrant sex workers themselves, social workers, legal and health professionals who support and advocate for the rights of Asian and migrant sex workers. Migrant sex workers are often perceived as a marginalized group that is difficult to engage. Butterfly, however, has built strong networks and leadership in the community. Over the past four years in Toronto, Saskatchewan, Winnipeg, Ottawa, and Vancouver, we have provided hotlines and outreach services, and offered crisis, emotional, social, and legal support to more than 2000 migrant sex workers, of varying immigration status, who work in massage parlours, apartments, hotels, and other indoor venues. We also offer crisis supports, information resources, trainings, and capacity building for migrant workers, while helping them to build up networks of support.

We have also conducted consultations, evidence-based and community-based studies in order to understand the reality and the working conditions of migrant sex workers; to identify their needs, as well as the problems they face, such as violence, discrimination, isolation, exploitation, and adverse encounters with law enforcement. The research includes such studies as *“Needs Assessment of Migrant Sex Workers,”* *“Survey on Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement”*² and *“Behind the Rescue: Stories of the Harm of Anti-Trafficking Investigations and Policies to Migrant Sex Workers.”*³ We interviewed 18 women who had experienced anti-trafficking investigations, yielding information that is extremely valuable for understanding the impacts of anti-trafficking policy and investigations by law enforcement.

¹ Butterfly works with a number of allies and coalitions to support and advocate for migrant sex workers, including as a member of the Canadian Alliance for Sex Work Law Reform (CASWLR) and the Migrant Workers Alliance for Change (MWAC).

² *Survey on Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement*
https://docs.wixstatic.com/ugd/5bd754_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf

³ Elene Lam (2018) *Behind the Rescue: The Stories of the Harm of Anti-Trafficking Investigations and Policies to Migrant Sex Worker* https://docs.wixstatic.com/ugd/5bd754_bbd71c0235c740e3a7d444956d95236b.pdf

Background

Sex work is diverse and sex workers make the decision to become involved in sex work to meet their basic needs, for economic security, and/or to move away from other kinds of oppression (e.g. labour exploitation, domestic violence). Their decisions may also be affected by their own personal circumstances, such as their race, class, gender and immigration status⁴. Sex work may be the best or one of few options available for those who engage in it.

Sex workers would like to live and work with the assurance of safety, dignity and equality. However, due to stigma, discrimination, over-policing (especially as enabled by anti-trafficking policies), and criminalization of sex work, they often become the target of violence from their partners, clients, police and other law enforcement agencies, and are not able to access protection and support. This stigma decreases their power to protect themselves, and to negotiate in their workplace or in their family.

Conflation of sex work with trafficking

The conflation of all sex work with trafficking - particularly as applied to migrant, youth and Indigenous sex workers - and the resulting application and aggressive enforcement of sex work and anti-trafficking laws, causes significant harm to sex workers and prevents them from accessing help and support even when they are actually experiencing violence, being exploited or trafficked. 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 decisions about their own livelihood. This reproduces the racist and sexist stereotype that Asian women are ignorant, passive, helpless and lack all agency and self-determination.

The term “trafficking” itself has silenced the voices and agency of people working in the sex industry and obscured public understanding of their experiences. It denies from the outset the voice and agency of any persons, including migrant and Indigenous women and youth, whose experience of selling sex they do not perceive to be the result of trafficking or exploitation — even if it may be the case, for some women, that they are exercising that agency within constrained circumstances. This denies the agency of sex workers and their ability to make decisions; it also fails to look at the complexity of identity and lived experiences of sex work.

The current anti-trafficking law and policies have been developed from the misconception of sex work as trafficking - an ideological position and source of moral panic which is not based in evidence. The *Protection of Communities and Exploited Persons Act (PCEPA)*, which describes exploitation as “inherent in prostitution” and effectively criminalizes sex work. The “*National Action to Combat Human Trafficking*” states that “prostitution victimizes the vulnerable”. The 2010 report from the RCMP, *A Threat Assessment*, described Asian and Eastern European workers’ involvement in the sex industry as being “linked to organized criminal activities,” “organized crime,” or “prostitution rings”. *Immigration and Refugee Protection Regulations* prohibits all temporary workers from sex work-related employment. It prohibits all temporary residents and foreign nationals – including those 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-

⁴ Tara Santini & Elene Lam (2017) Legal Resources for Services Providers (Upholding and Promotion Human Rights, Justice and Access for Migrant Sex Workers). Part 1: Upholding and promoting human rights, justice and access for migrant sex workers: [A Guide For Services Providers](#)

related businesses are in automatic violation of their immigration conditions, which is grounds for deportation.

All temporary workers are prohibited from working in “businesses related to the sex-trade” regardless of how they are authorized to work (e.g., international students doing work off campus, those with otherwise open work permits, as well as people who are self-employed). While section 183(1)(b.1) applies to work permits issued to those already inside Canada, section 200(3)(g.1) imposes the same restriction on everyone seeking to enter Canada.⁵ The restriction is so broad that temporary residents may be prohibited from working in any capacity in sex work-related employment (e.g., even as cleaning staff at a strip club).

Harm of Anti-Trafficking Initiatives and Investigations

Arrest, detain and deportation

The PCEPA, aforementioned immigration regulations and other policies have become the tools by which to prosecute and target migrant sex workers instead of protecting them. Migrant sex workers often work together, yet sex workers themselves, third parties, and members of their communities are criminalized and identified as traffickers by sex work and trafficking 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 enforcement actions to seek out trafficking victims are informed by non-evidence based, stereotypical and racist understandings of the sex industry.

Even those who have work permits, such as international students, refugee claimants, or those under sponsorship, are not allowed employment in the sex industry. For example, when a member of Butterfly was harassed by a perpetrator, his student visa was removed and he lost his immigration status after the perpetrator reported to Immigration, Refugees and Citizenship Canada (IRCC) that he was providing erotic massage services.

Anti-trafficking initiatives and policies that conflate human trafficking with sex work also increase migrant sex workers’ involuntary contact with law enforcement (including Canada Border Services Agency or CBSA, RCMP, other police and bylaw enforcement officers). Despite the fact that these investigations have yielded no evidence of coercion, exploitation or human trafficking, there continues to be a significant push in funding, resources and efforts for “Investigation” and “Rescue”.

The current “Rescue Model”, as modelled by Operation Northern Spotlight, not only harms sex worker communities, but increases the surveillance, arrest, detainment and deportation of sex workers, particularly migrant sex workers. Police and city bylaw enforcement officers actively share information with CBSA. 23 members of Butterfly have been arrested and deported since 2015. In a report produced by Butterfly, 18 of them described how anti-trafficking investigations often turn into anti-sex work and anti-migrant investigations. They reported that their human rights were violated during the investigation and detention and that money (up to \$50,000) and other personal belongings were stolen

⁵ IRPR at s.200(3)(g.1).

by the law enforcement officers. The workers experienced degrading and inhumane treatment, with one being locked up in chains even though she had been identified as a suspected victim of trafficking.

For example: “11 massage workers face deportation: While it was run by the Human Trafficking Section, no human trafficking was found. Instead, they inspected 20 places and laid 11 bylaw fines.” (Ottawa Sun, May 11, 2015)

A sex worker reported her exploitative boss; however, the information was shared with the anti-trafficking team and a raid was carry out at her workplace. Her co-workers were arrested and deported, and so was she, after it was revealed to CBSA that she was working in Canada without status.

Increase the vulnerability of migrant sex workers to violent and exploitation

The anti-sex work laws, and “end demand” model, facilitate exploitation and trafficking by alienating the trust of workers in the police, and forcing their work underground such that they don't have legal or social protections. Migrant sex workers are over-policed and over-surveilled. Rather than trusting law enforcement and seeking help from them, workers endure dangerous conditions to avoid the risk of discovery, which could lead to arrest and deportation. The current laws and policy (PECPA, immigration regulations, other anti-trafficking initiatives such as Operation Northern Spotlight) increase the fear of law enforcement, especially among those who are racialized, non-English speaking or have precarious immigration status.

These misplaced assumptions about rescue, sex work and trafficking increase the isolation and marginalization of sex workers, and obstructs sex workers' access to protection from other kinds of violence.

To avoid the greater scrutiny and law enforcement surveillance, interrogation, harassment, detention, deportation and arrest associated with such campaigns, sex workers are forced to work in greater isolation and secrecy, reducing their capacity to earn money and hindering their ability to negotiate safer working conditions with clients and with third parties. The Supreme Court of Canada, in the *Bedford* case, has recognized the harm of criminalization of sex work.

Instead of supporting sex workers and migrant workers to build their capacity and empowerment to negotiate or escape from exploitative situations, the investigation and surveillance of the sex industry has pushed migrant sex workers' work underground. Sex workers are left feeling confused, frightened, stressed and traumatized after these interactions with police, followed by intense feelings of mistrust in the overall police system. This not only increases the vulnerability and isolation of migrant sex workers, but also increases their risk of facing violence and exploitation, and enables unsafe and exploitative living and working conditions by impairing workers' economic, employment and social rights.

Criminalization and over policing of sex work not only perpetuates stigma and discrimination against sex workers, who are consequently denied access to vital health and social supports. It also prevents sex workers from taking critical steps to protect their human rights and ensure their personal safety. It is harmful to all sex workers, including those who are victims of violence, exploitation and even trafficking,

Research conducted by Butterfly shows that 33% of the women working in massage parlors have experienced various forms of violence from law enforcement. 60% of them have experienced violence from client perpetrators. Less than 7% will report such incidents to law enforcement.⁶ Another survey showed that none of the workers interviewed would call police when they experienced violence.

Four Asian and migrant sex workers were murdered in Ontario from 2013-2017. Instead of investigating their deaths, law enforcement is investigating the friends of these victims, who are being perceived as traffickers.

Other harmful anti-trafficking initiatives

The government has funded a great deal of public education on trafficking. However, the images of trafficked victims and rescuers presented in the media, or even in anti-trafficking trainings, have served only to conflate sex work with trafficking and create a moral panic. Sex work is often presented as a crime, a social nuisance, immoral, inherently wrong, sexual exploitation, and violence against women. This, in turn, induces a desire to “rescue” sex workers, who are described as victims.

The public campaigns and trafficking awareness trainings of hotel staff, health care workers, taxi drivers and the general public have increased the moral panic against sex workers by treating them only as criminals or victims.

As a result of such trainings, many law enforcement and social service organizations have developed lists of “signs,” “indicators,” “checklists,” and “red flags” to identify trafficking victims in order to facilitate “rescuing the victims” from exploitative and violent situations. The indicators used conflate trafficking with sex work, which assumes all sex workers are trafficked victims. The indicators are heavily focused on identifying people involved in sex work, for example: having knowledge of the sex industry, saving numbers of multiple taxi companies, visiting sexual health clinics, etc. The indicators also conflate trafficking with migration. They assume that people who are not Canadian-born, do not speak English, do not have identification, and/or receive assistance from a third party are trafficked victims. These ideas are based on a racist image of im/migrant and racialized people.

These indicators are problematic because they are based on assumptions, myths, and misconceptions related to trafficking, sex work and migration. They are not based on empirical evidence and experiences of trafficked victims. These faulty indicators increase surveillance of marginalized communities and create barriers for sex workers to be listened to, and to access supports and services. Social services and community support programs are facing the challenge to produce “victims” by identifying sex workers as victims of trafficking, to meet funding requirements.

Due to multiple levels of discrimination, marginalization, criminalization and fear of law enforcement, sex workers may not want to disclose information about their work and lives to service providers in order to protect themselves. However, people are often required to identify themselves, or are being forced to identify as trafficked victims, in order to access support or services. Those who do not wish to be identified are excluded from accessing supports.

Conclusion :

Ant-trafficking policies and the criminalization of sex work do not only perpetuate stigma and discrimination against sex workers, but actively increase the surveillance, arrest and deportation of migrant sex workers. These policies also prevent sex workers from taking critical steps to protect their human rights and ensure their personal safety, as well as denying them access to vital health and social supports. It is harmful to all sex workers, including those who are victims of violence, exploitation and even trafficking. Rather than having laws and law enforcement which target and oppress those involved in the sex industry, it is essential to listen to sex workers to understand how they experience their reality and what aspect of their circumstances they are looking to address.

Although we have not touched specifically on the experiences of Indigenous and youth sex workers in this submission, Butterfly supports the analysis and recommendations of the Canadian Alliance of Work Law Reform and the Canadian HIV/AIDS Legal Network.

Recommendations for repeal of oppressive laws and adopt the rights-based approach:

Current laws and policy regulating sex work have had led to human rights violations against sex workers, increase their vulnerability to violence and obstruct them from seeking help, particular migrant sex workers. The federal government should thus **repeal and reject laws, policies and initiatives that cripple meaningful efforts to address human trafficking**. Furthermore, an effective anti-trafficking strategy should use the “Rights, not Rescue Approach” which prioritize support to people at risk or who wish to seek help, rather than relying on anti-trafficking investigation by law enforcement. Sex worker-led organizations are best positioned to provide supports and services that are safe, relevant and accessible to other sex workers, particular those who are vulnerable to violence, exploitation and trafficking.

Recommendations:

- Repeal *Protection of Communities and Exploited Persons Act* (PCEPA) and other sex work related criminal laws; the PCEPA should not be enforced before the repeal of the laws.
- Remove immigration regulations and work permit conditions that prohibit migrant communities from working in the sex industry and related industry (including repealing the *IRPR 183 (1)(b)* and remove the conditions from all the work permits) ;
- Reject *An Act to amend the Criminal Code (exploitation and trafficking in persons)*, which would lower the evidentiary requirements to prove trafficking, and further alienate sex workers from police and social services for fear of implicating their colleagues and loved ones as traffickers.
- Re-exam the anti-trafficking laws and policies. Understand the complexity and diversity of sex workers. Respect the rights, agency and decision of sex workers. Recognize that sex work is work and eliminate discrimination against sex workers.
- Recognize sex work is not human trafficking. Stop the conflation of trafficking of sex work. Support sex workers’ rights, and justice, and the right not to be “rescued”.
- Stop surveillance, raids, detentions and deportations of sex workers (e.g., stop Operation Northern Spotlight or other recue missions)

- Ensure CBSA is never involved in anti-trafficking investigations; and other law enforcement should share information with CBSA or CIC during the anti-trafficking investigation
- Defund anti-trafficking investigation and redirect funding and resources to community initiatives run by and lead by sex workers that are based on human rights approach. So that the sex work community can connect with others and assist in actual cases of exploitation, abuse and trafficking, including, provide supports and resources for sex workers to increase resources, power and control of their situation, and increase their safety, and address the actual issues that they experience.
- Recognize that apprehension, detention and involuntary rehabilitation are often experienced as antagonistic and often traumatic.
- Provide adequate training to police, prosecutors and other law enforcement officers about the racism, differences between sex work and human trafficking as well as the harms of anti-trafficking investigation.
- Re-envision and re-create detection tools to identify trafficking victims and creating instead guidelines for support in consultation with communities.

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