



Submissions to the Standing Committee on Justice and Human Rights
Regarding Human Trafficking in Canada

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I. INTRODUCTION

Established in 1987, the Chinese and Southeast Asian Legal Clinic (CSALC) is a not-for-profit community based organization which provides free legal services to low-income, non-English speaking members of the Chinese, Vietnamese, Cambodian and Laotian communities in the Province of Ontario. In addition, CSALC conducts public legal education activities and engages in law reform and advocacy in order to advance the interests and rights of our constituent communities.

CSALC has appeared before a number of Parliamentary Committees including the Standing Committee on Justice and Human Rights and the Standing Committee on Citizenship and Immigration on numerous occasions. CSALC has also appeared before various Senate Committees to present on issues that affect immigrants, refugees and racialized communities in general.

CSALC was also a co-author of the report “Trafficking in Women including Thai Migrant Sex Workers in Canada” prepared for the Status of Women Canada in June 2000, along with the Toronto Network Against Trafficking in Women and the Multicultural History Society of Ontario.

CSALC thanks the Standing Committee on Justice and Human Rights for the opportunity to offer our comments on the issue of human trafficking in Canada.

II. BACKGROUND

Over its 30+ years of operation, CSALC has frequently provided legal advice and services to clients who are victims of labour exploitation as well as racialized and/or gendered violence. CSALC also frequently provides legal advice and services to migrant workers, who as a result of their precarious immigration status are frequently barred from access to crucial social, settlement, employment, legal and health supports – therefore increasing their vulnerability to further exploitation.

In recent years, there has been a shift in discourse towards categorizing many of these cases as examples of ‘human trafficking’, rather than approaching these cases from the lens of labour protections and migrant rights.

In the 2000 report “Trafficking in Women including Thai Migrant Sex Workers in Canada” of which CSALC co-authored, an introduction was given to the topic of migrant women working in the sex industry which has become only more relevant over time:

This study is therefore based on an assumption that migrant women who work in the sex industry, whether or not they are trafficked, are women in need of protection. They are highly stigmatized because of their occupation, and marginalized because of their racial and disadvantaged economic backgrounds. They have limited access to employment and services in destination countries. In addition, on a global scale, racist state policies, and regressive and repressive immigration and prostitution laws in countries of destination, account in part for the exploitation of migrant women. These

policies serve to push the international sex trade further underground and increase women's reliance on potentially abusive individuals and organizations including those representing the state.¹

In 2016, CSALC partnered with the Chinese Canadian National Council – Toronto Chapter (CCNC-TO), Butterfly: Asian and Migrant Sex Workers Support Network, and St. Stephen's Community House in a project to develop legal information and resources for migrant sex worker communities and service providers.

The project was entitled “Supporting the Human Rights of Migrant Sex Workers in Toronto: Accessing Justice through Legal Information and Services” and was funded by the Law Foundation of Ontario.

As part of the project, several legal guides were written and published on the interaction between various laws and the lived realities of migrant sex workers, including:

- [Criminal Law and Migrant Sex Workers' Rights](#);
- [Immigration Law and Migrant Sex Workers' Rights](#);
- [Municipal Law and Migrant Sex Workers' Rights](#); and
- [Migrant Sex Workers' Labour and Employment Rights](#).²

Through our work on the legal information project and our interactions with migrant sex workers and their communities, we gradually discovered that there was a massive ‘trust gap’ that existed between migrant sex workers and the existing network of service providers, including community legal aid clinics. Therefore, while the actual number of migrant sex workers in the community was quite substantial; they did not feel comfortable or safe accessing many community services.

This trust gap exists in large part because migrant sex workers are directly criminalized through existing provisions in the Canadian *Criminal Code* (including the *Protection of Communities and Exploited Persons Act* and anti-trafficking laws)³, immigration laws⁴, Municipal bylaws⁵, and anti-trafficking policies and practices. In other words, the current legal landscape, through the intersection of criminal, immigration, and municipal restrictions and sanctions, serves to directly marginalize migrant sex workers.

¹ Toronto Network against Trafficking in Women, Multicultural History Society of Ontario, Metro Toronto Chinese and Southeast Asian Legal Clinic, *Trafficking in women including Thai migrant sex workers in Canada* (June 2000), online: Multicultural History Society of Ontario <www.mhso.ca/mhso/trafficking_women.pdf> at 6.

² Online: Butterfly: Asian and Migrant Sex Workers Network <<https://www.butterflysw.org/legal-information-for-services-prov>>.

³ *PCEPA* introduced five broad categories of sex work related offences: paying for sexual services, communicating to exchange sexual services, profiting as a third party from someone else's sexual services, procuring (hiring or inducing) someone to provide sexual services, and third party advertising to provide sexual services; see *Criminal Code* ss. 213(1), 213(1.1) and 213(2); s. 286.1(1), s. 286.1(2), 286.1(3), 286.1(4), 286.1(5); ss. 286.2(1)–s. 286.2(6); s. 286.3(1) and 286.3(2); s. 286.4 and s. 286.5(1) and 286.5(2).

⁴ *Immigration and Refugee Protection Regulations*, SOR/2002-227 ss. 183(1)(b.1) and 196.1(a).

The criminalization framework makes migrant sex workers less likely to report real crimes perpetrated against them and forces them to constantly avoid police and other law enforcement bodies, such as CBSA, for fear of detection, surveillance and apprehension related to the criminal status of their work and/or their precarious immigration status. As a result, violence against migrant sex workers is exacerbated by sex work-specific criminal offences and immigration regulations.⁶

Anti-trafficking policies and practices which are divorced from the understanding of the existing framework of criminalization and the potential consequences of involving law enforcement puts migrant sex workers at increased risk of harm, even when accessing community social and health services. Migrant sex workers may be fearful that service providers may impose unwelcome discriminatory and stigmatizing scrutiny and/or contact police without their informed consent.⁷

The primary issue we want to ensure this Standing Committee fully understands and considers is how the State itself, through its laws, regulations, policies, and practices, is directly contributing to the conditions in which sex workers and migrant workers are exploited and trafficked.

Once this legal framework of marginalization and criminalization is understood, it becomes clear why existing ‘raid and rescue’ law enforcement based approaches to human trafficking are fundamentally flawed and are causing tremendous harm to the individuals and communities that they purport to protect. Understanding this framework also is a key step to arriving at sustainable and effective solutions to human trafficking which are informed by a labour and human rights approach rather than a criminalization, law enforcement, and morality driven approach.

III. CONFLATION BETWEEN SEX WORK AND TRAFFICKING

Investigating and prosecuting anti-trafficking offences in the *Criminal Code* in the context of sex work requires both caution and care. Anti-trafficking provisions can be misused by law enforcement to target sex workers by conflating sex work with human trafficking and exploitation. Overbroad misuse of anti-trafficking laws places migrant sex workers at great harm, including further risk of isolation, marginalization, violence, detention, surveillance, arrest and deportation.

⁵ See Santini, T. and Lam, E., *Municipal Law and Migrant Sex Workers’ Rights* (October 2017), online: <https://docs.wixstatic.com/ugd/5bd754_c5dcee7f55114eaf82ba5ddee244fb68.pdf>.

⁶ Santini, T. et al, *Criminal Law and Migrant Sex Workers’ Rights* (October 2017), online: <https://docs.wixstatic.com/ugd/5bd754_7e9b78110c594d959c9af10a47f176b6.pdf> at 3.

⁷ See Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada* (2017), online: <<http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>> at 44.

Remunerated, consensual sexual services (i.e., sex work) must not be confused or conflated with human trafficking. Human trafficking involves a form of physical or psychological force or coercion in addition to exploitation.⁸

Exploitative working conditions are a reality that many migrant workers may face in the context of precarious immigration status, poverty, racial discrimination, inaccessible channels of regularized migration, and inability to legally access decent paying jobs.

Migrants in many different industries may experience poor working conditions, particularly migrants involved in precarious work and/or informal and poorly regulated industries (e.g., agriculture, restaurant, textile, sex work, grocery stores, construction). Yet people who do not recognize sex work as a legitimate form of labour mistakenly define sex work as inherently exploitative and/or related to human trafficking and therefore not deserving of the same labour protections as other industries.

Conflating human trafficking with sex work, or focusing solely on human trafficking and imposing this framework onto migrant sex workers, can have extremely harmful effects. When Canada Border Service Agency (CBSA) officials or police target what they term trafficking and sexual exploitation, the people most frequently harmed are sex workers. While the purported justification for targeting migrant sex workers is most often to protect them, interaction with law enforcement frequently results in arrest, detention and/or removal from Canada.⁹

Conflation between sex work and trafficking also results in municipal bylaw enforcement practices that are abusive, disproportionate, and result in overpolicing of racialized immigrant communities. For instance, the City of Toronto Municipal, Licensing and Standards (MLS) has in recent years subjected holistic practitioners to substantially increased levels of bylaw inspection and prosecution using vague and unsupported concerns of human trafficking as a justification. These concerns frequently arise from automatically assuming, without empirical evidence, that places where consensual sex work or erotic services may take place are also places where human trafficking occurs.¹⁰

From 2013 to 2016, the number of MLS inspections at holistic centers increased by 212% (from 569 to 1,780 visits) and inspections of individual holistic practitioners has increased by 323% (611 to 2,585 visits in 2016). Inspections of holistic centers and practitioners now comprise over 23% of total MLS inspections to all businesses in 2016, up from only 7% of all inspections in 2013.

⁸ *Criminal Law and Migrant Sex Workers' Rights*, *supra* note 6 at 8-9.

⁹ *Ibid* at 10-11.

¹⁰ For example, see City of Toronto Auditor General, *A Review of Municipal Licensing and Standards Division's Management of Business Licences – Part Two: Licensed Holistic Centres* (October 24, 2017), online: City of Toronto <<https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/auditor-general/reports/auditor-generals-reports/a-review-of-municipal-licensing-and-standards-divisions-management-of-business-licences-part-two-licensed-holistic-centres/>> which states that holistic centres “could potentially pose an array of health, safety and community issues, including the risk of human trafficking.” However, the only findings used to justify this risk was that certain holistic centres “advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massage.” This is but one example of the direct conflation of sex work and human trafficking as justification for increased criminalization and surveillance of migrant worker communities.

Similarly, the number of bylaw charges has spiked 215% from 75 charges in 2013 to 236 charges in 2016. The most common of these charges were for minor issues such as table mats not being in good repair or not having licensing numbers on business cards, which cannot be said to have any relevance or connection to the issue of human trafficking.¹¹

Even more troubling than the issue of overpolicing and ticketing are reported incidents of sexual harassment and violence by bylaw officers perpetrated against women working in holistic centres, many of whom are from Chinese backgrounds, speak little English, and feel like they are being racially targeted by City officers. The women reported being forced to take off their clothes to show officers their undergarments and have photos taken of them without their consent. Other allegations include women who were forced to sing for the officer's entertainment, told to stand as a form of punishment, and being barred from using the bathroom during an inspection.¹²

IV. HARMS INFLICTED BY A RAID AND RESCUE BASED APPROACH TO HUMAN TRAFFICKING

Significant resources have been dedicated to law enforcement agencies in order to pursue 'raid and rescue' based initiatives to tackle human trafficking. Many of these raids have been targeting sex work establishments, particularly sex work establishments staffed by racialized workers.

Anti-trafficking initiatives that conflate human trafficking with consensual sex work, such as Operation Northern Spotlight, cast an overly broad net and have dire consequences. It has been reported that anti-trafficking raids have resulted in police approaching, detaining, and harassing sex workers in situations where there have been no evidence of coercion, exploitation or human trafficking.¹³

Worse still, these raids push sex workers, particularly migrant sex workers, further into isolation by undermining the already tenuous relationship between sex workers and law enforcement. For Asian sex workers, who may face linguistic barriers, racial discrimination and may have a pre-existing lack of trust with law enforcement, raids and incursions into their homes and workplaces can be especially frightening and traumatic.

This lack of trust is an issue that is borne out by empirical studies: a survey of Asian sex workers in Toronto and Vancouver conducted by the Supporting Women's Alternatives Network (SWAN) revealed that 95 per cent of respondents never seek help from law

¹¹ Butterfly et al, *Stop abuse and harassment by bylaw enforcement & police officers; Stop the misuse of bylaws against holistic practitioners* (April 10, 2018), online: City of Toronto <<https://www.toronto.ca/legdocs/mmis/2018/cc/comm/communicationfile-79714.pdf>> at 1-2.

¹² Ferguson, A., *Investigation launched after sexual harassment allegations by body rub workers* (April 11, 2018), online: CityNews < <http://toronto.citynews.ca/2018/04/11/bylaw-officers-sexual-harassment/>>.

¹³ Canadian Alliance for Sex Work Law Reform, *Turn off the Spotlight: Sex workers and allies urge an end to Operation Northern Spotlight* (October 19, 2017), online: Canadian HIV/AIDS Legal Network <<http://www.aidslaw.ca/site/download/16267/>>.

enforcement - even if they are experiencing violence, abuse, harassment or exploitation. In Toronto, not a single respondent stated that they trusted the police.¹⁴

By further alienating sex workers in this way, raid and rescue based initiatives such as Operation Northern Spotlight discourages those in the sex industry from reporting actual cases of human trafficking and criminal violence to police, frustrating the ultimate objective of these campaigns.

A recently published report called “Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers” details 18 personal stories of migrant sex workers which illustrate the specific harms they experienced due to their encounters with Canadian law enforcement agencies involved in anti-trafficking raids.¹⁵

Sun’s Story: How Anti-Trafficking Raids are used to target Migrants

One of the case studies, Sun’s Story, illustrates how anti-trafficking raids can quickly turn into anti-migrant raids. Sun was an indoor sex worker who had worked in Canada for five years and formed deep relationship with friends, clients, and other migrant sex workers in Canada. On Christmas Eve of 2014, Sun and her colleague were raided by several male police officers in their apartment:

One of the officers spoke their language and told them, “Don’t be scared. Are you under Police Officer: “Are you under the control of anyone? Is anyone forcing you to do this? Who is your boss?” Police Officer: “How long have you been here? What is your immigration status?” Sun: “No, I’m doing this out of my own volition, I have no boss.”

The officer then proceeded to ask her a series of questions including, “How long have you been here?” and, “What is your immigration status?” He then requested that she show him her identification. After an extensive period of questioning that lasted for over an hour, four additional men came into their apartment. Sun had no idea who they were, as they were in plainclothes. Only later did she realize that these were immigration officers. Throughout this process, Sun sent messages to her friends and to Butterfly, seeking their help, and expressing her fear and concern.

The immigration officers brought Sun to the immigration department (CBSA) and she was once again put through an interrogation process, after which she was taken to a holding cell.¹⁶

Sun was detained in immigration hold for over 30 days and was not able to find a lawyer to represent her or understand any of the legal documents that were presented to her in

¹⁴ Ham, J., *Chinese Sex Workers in Toronto and Vancouver* (2015), online: SWAN Vancouver <<http://swanvancouver.ca/wp-content/uploads/2015/05/Chinese-sex-workers-in-Toronto-amp-Vancouver-Ziteng-SWAN-amp-ACSA.pdf>> at 28-29.

¹⁵ Lam, E., *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers* (April 2018), online: Butterfly <https://docs.wixstatic.com/ugd/5bd754_f1fe5b57f4004ed39ea9550e1777ef34.pdf>.

¹⁶ *Ibid* at 6-7.

English. Desperate to leave the conditions of jail, she consented to leave Canada, but her request to gathering her belongings before leaving was rejected. After a month of detainment, Sun returned to her country of origin, where she suffered bouts of insomnia and often considered suicide. She was traumatized by having her life in Canada abruptly come to an end.¹⁷

Blue's Story: How Massage Parlour Workers are interrogated and harassed through Anti-Trafficking Raids

Another case study tells the story of Blue, an international student studying engineering in a Canadian university. The tuition for international students in her program was \$45,000 a year, so when a financial downturn hit Blue's family, they could not longer help support her and Blue decided to work at a massage parlour where she could have a flexible schedule and good pay to aid in covering her school fees. She had valid permits to work and study in Canada.¹⁸

In 2015, police raided her massage parlour as part of their anti-trafficking initiatives. They barged into Blue's service room and asked if she was being trafficked or controlled, which she denied. Police were asked to produce a search warrant, to which they did not, but kept searching anyway.

Blue was asked to produce immigration documents, which she did. However, police refused to let her leave and called CBSA officers in while continuing to interrogate her:

They asked her many questions about why she had come to Canada and why she worked in a massage parlour. Overwhelmed and insulted, Blue eventually started to cry. She repeated to the officers that she wasn't doing anything illegal. When the border agency officials arrived, they continued to interrogate Blue and would not allow her to make a telephone call.

A very long two hours later, the police ordered Blue to leave the massage parlour immediately and warned her that if she returned to work there, she would be arrested and deported. Blue left without ever knowing what law, if any, she had broken.

The police raid scared Blue so much about ever having to deal with law enforcement again that rather than return to her job at the massage parlour, she decided instead to become an indoor sex worker.¹⁹

V. A LABOUR BASED APPROACH TO TACKLING HUMAN TRAFFICKING – WHAT NEEDS TO BE DONE?

We agree in part with the submissions of the Canadian Council of Refugees in that there is a "need for human trafficking to be understood and conceptualized in a broader

¹⁷ *Ibid* at 7-8.

¹⁸ *Ibid* at 9.

¹⁹ *Ibid* at 10-11.

framework of exploitation, coercion and power imbalance.”²⁰ However, this committee must be cognizant of the ways in which our laws (criminal, immigration and municipal) and law enforcement practices *directly* contribute to the conditions of marginalization in which egregious forms of exploitation and trafficking are allowed to occur. These laws force certain groups to hide from law enforcement and impinge on their ability to access critical services, find support, and access employment and human rights enforcement mechanisms. Therefore, the issue of labour exploitation and trafficking cannot be solved without a labour and human rights-based approach to potential solutions.

Recommendations

Given the ongoing harms and violence experienced by various marginalized groups as a result of overly broad ‘raid and rescue’ based anti-trafficking initiatives, CSALC recommends the Standing Committee to call on the Federal Government to adopt the following actions:

- 1. Ensure that a labour and human rights analysis is used to examine and evaluate all existing and future laws and policies with respect to human trafficking;**
- 2. Immediately decriminalize sex work by repealing the *Protection of Communities and Exploited Persons Act* (PCEPA) and replacing it with a legal framework which does not endanger sex workers’ lives, health and safety, as contemplated by the 2013 Supreme Court decision in *Bedford*;**
- 3. Repeal ss. 183 (1) (b.1) and 196.1(a) of the *Immigration and Refugee Protection Regulations* which force migrant sex workers out of status;**
- 4. Ease work permit restrictions for all temporary foreign workers;**
- 5. Transfer human trafficking resources to settlement, health, legal and social services for migrant workers and other groups who are most at risk of experiencing labour exploitation;**
- 6. Ensure that the Federal government immediately cease raids, detentions and deportations of migrant workers, including migrant sex workers;**
- 7. Ensure that CBSA is never involved in anti-trafficking investigations and raids, as their involvement endangers migrant workers, including migrant sex workers, and destroys these communities’ trust in police and law enforcement.**

²⁰ Canadian Council of Refugees, *CCR Concerns: Human Trafficking in Canada* (April 2018), online: House of Commons <<http://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR9826273/br-external/CanadianCouncilForRefugees-e.pdf>> at 5.