



Supporting Women's Alternatives Network (SWAN Vancouver) Society

Realities of the Anti-Trafficked: How Canada's Human Trafficking Response Increases Vulnerability for Im/migrant Sex Workers

Brief to the Standing Committee on Justice and Human Rights on Human Trafficking
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SWAN Vancouver Society is one of two community organizations in Canada whose mandate is to support newcomer, migrant and immigrant (hereinafter im/migrant) women engaged in indoor sex work.¹ Since 2002, SWAN has provided non-judgmental support and services to women working in massage parlours, private residences and other indoor sites where im/migrant sex workers work. SWAN supports im/migrant women involved in the sex industry who work in a variety of circumstances, ranging from consensual sex work to circumstances of exploitation wherein they wish to exit these situations.

SWAN is a member of the Global Alliance Against Traffic in Women (GAATW) and, as such, supports an evidence-based, human rights approach to anti-trafficking. The views expressed in this Brief are based upon 16 years of providing services to im/migrant sex workers and evidence-based research published in peer-reviewed journals and other publications.² SWAN asserts Canada's anti-trafficking efforts do not adequately meet the needs of im/migrant sex workers who are trafficked and further, cause great harm to im/migrant sex workers who are not.

Current Context

Im/migrant sex workers, trafficked or otherwise, currently have little to no access to justice in Canada. In recent years, there has been a series of well intentioned but non-evidence based, misguided legislation that has pushed the im/migrant sex industry into isolated spaces where the implementation of most safety mechanisms is against the law. Im/migrant sex workers evade law enforcement at all costs as a result of increased criminalization of the entire sex

¹ The other being Butterfly: Asian and Migrant Sex Workers Network in Toronto www.butterflysw.org

² For example, Ham, J. (2017). *Sex Work, Immigration and Social Difference*. New York, NY: Routledge. K, N. & Feresteh. (2010). *Understanding Needs, Recognizing Rights: The Stories, Perspectives and Priorities of Immigrant Iranian Women in Vancouver, BC*. Available online at http://www.gaatw.org/FPAR_Series/FPAR_GAATWIS.2010.pdf. Mackenzie, K. & Clancey, A. (2015). *Im/migrant Sex Workers, Myths & Misconceptions: Realities of the Anti-Trafficked*. Available online at <http://swanvancouver.ca/wp-content/uploads/2015/12/SWAN-ADVOCACY-TOOLKIT.pdf> Clancey, A., Khushrushahi, N. & Ham, J. (2014) 'Do Evidence-Based Approaches Alienate Canadian Anti-Trafficking Funders?' *Anti-Trafficking Review*, (3)87-108. Mackenzie, K. (2017). *Barriers to Justice for Migrant and Immigrant Sex Workers: A Community-Led Research Project*. Available online at <http://swanvancouver.ca/wp-content/uploads/2017/05/SWAN-Barriers-to-Justice-FINAL-2.pdf>

industry via the *Protection of Communities and Exploited Persons Act* (PCEPA), and of the migrant sex industry via the *Immigration and Refugee Protection Act* (IRPA), namely 185(b), which prohibits employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services. PCEPA and IRPA have become tools to prosecute rather than protect some of the most marginalized women in the sex industry who are at heightened risk of human trafficking. Having to work in hidden spaces to avoid arrest, detention and deportation by police and Canada Border Services Agency (CBSA) increases vulnerability to violence, exploitation and trafficking. In these spaces, predators and traffickers target im/migrant sex workers knowing they will not call authorities. In these spaces, predators and traffickers operate with impunity, which is not in the interest of public safety. In research SWAN published in 2015, 95% of Chinese sex workers stated law enforcement would not be a strategy they would use to seek assistance. Given the number of women who have experienced punitive law enforcement measures, including anti-trafficking enforcement, it is not surprising that none of the im/migrant sex workers we approached in Toronto reported that they would call the police if they experienced, violence, harassment, abuse or exploitation.³

For im/migrant sex workers, anti-trafficking and anti-sex work efforts have been counterproductive and have resulted in much violence. We urge the Government of Canada to strongly reconsider the anti-trafficking and anti-sex work legislation that CBSA and police are mandated to enforce and to consider how the consequential fear of law enforcement creates barriers to reporting violence, exploitation and human trafficking.

Fear of law enforcement inhibits im/migrant sex workers to access to justice

Im/migrant sex workers' fear of law enforcement is something that is not well understood nor considered in the development of anti-trafficking law enforcement approaches. More often than not, im/migrant sex workers express they need protection from law enforcement rather than by law enforcement. Research on a series of raids that resulted in the arrest of 'illegal' migrants, documented in a 2000 Status of Women Canada-funded research project, 'Trafficking in Women, Including Thai Migrant Sex Workers in Canada' stated, "Canadian police agencies and the judicial system treated the women [...] as criminals, as well as patronizing them because of their sex, race and occupation [...]. Their rights to due process were violated."⁴

Despite law enforcement's self-perception as protectors, im/migrant sex workers who are at risk of PCEPA or IRPA criminal charges, and/or are at heightened risk of trafficking, do not perceive law enforcement as protectors. In fact, im/migrant sex workers spend an inordinate amount of time strategizing how to evade police detection.⁵ This is valuable time lost that

³ Ham, J. (2015). *Chinese Sex Workers in Toronto & Vancouver*. Available on at <http://swanvancouver.ca/wp-content/uploads/2015/05/Chinese-sex-workers-in-Toronto-amp-Vancouver-Ziteng-SWAN-amp-ACSA.pdf>

⁴ 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*, Status of Women Canada, Canada, 2000, p. 25. Available online retrieved 12 at <http://ccrweb.ca/en/trafficking-women-including-thai-migrant-sex-workers-canada>

⁵ Ham, J. (2014). Intuiting illegality in sex work. In S. Pickering & J. Ham (Eds.), *The Routledge Handbook on Crime and International Migration* (pp. 206-219). London: Routledge.

would be better spent strategizing how to stay safe in an industry that is afforded no occupational health or safety or labour protections due to criminalization under PCEPA.

A lack of self-awareness on the part of police as to how they are perceived by im/migrant sex workers is a critical failure in current human trafficking awareness training. Topics such as implicit bias, power relations between police and criminalized and marginalized populations, the historical and continued adversarial relationship between police and sex workers, and sex work stigma are not addressed. SWAN has long been a vocal opponent of human trafficking awareness training which is increasing among police, CBSA, healthcare providers, hotel staff, taxi drivers, hairdressers, tattoo artists, airline staff, and others. Included in this training are vague, overbroad, situational 'red flags' that can apply to many people in society. Examples include: limited English, working long hours, fear of authorities, no access to medical care, and fear of revealing immigration status. According to these 'red flags', all women who SWAN supports could be identified as trafficking victims.

At SWAN, we are aware of many alternate meanings of these indicators based on 16 years of experience working with im/migrant sex workers who are largely perceived as trafficked. What current human trafficking awareness training does not cover is the unacknowledged role and complex interplay of gender, race, ethnicity, language and culture in creating these red flags; it is not always the red flag itself but who the indicator is applied to. For example, when a number of non-Caucasian, and especially Asian, sex workers who speak accented English work together, this work situation has been perceived as trafficking whereas the same conclusion would not be drawn from a group of Caucasian, Canadian-born sex workers. Not only are these trafficking indicators unhelpful in their present form, they are harmful. We witness the impacts of law enforcement indiscriminately acting upon these situational red flags including in the very problematic Operation Northern Spotlight.

Operation Northern Spotlight is the epitome of this harmful approach, informed by sex worker stereotypes and misrepresentations perpetuated in human trafficking awareness training. Law enforcement perceives trafficking where it does not exist. Sex workers become "collateral damage"⁶ by being unnecessarily targeted in raids and hotel room stings. The impacts of this overreach are felt most acutely among im/migrant sex workers.

SWAN has been critiquing and seeking accountability around this type of anti-trafficking 'rescue' operation for a decade. Years before Operation Northern Spotlight became a national law enforcement strategy, SWAN was voicing our concern about harms created from such law enforcement approaches. Im/migrant sex workers tell SWAN that when they are interrogated by law enforcement in anti-trafficking 'rescue' operations, they have two options: either denounce their work and identify as victims of exploitation and/or trafficking, or admit that they are autonomously making decisions and working to provide for themselves, in which case they are fined, arrested, detained and/or deported. We know of many instances when

⁶Global Alliance Against Traffic in Women. (2007). *Collateral Damage: The Impacts of Anti-Trafficking Measures on Human Rights Around the World*. Available online at http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf

im/migrant sex workers did not self-identify as trafficked and CBSA were called in to detain and deport women, or municipal bylaws inspectors were called in to issue fines for business license violations.

We are extremely concerned that since 2014, Operation Northern Spotlight has grown into a national law enforcement anti-trafficking strategy. Targeting only sex trafficking (not labour trafficking), Operation Northern Spotlight has had no input from sex work communities and no experientially-informed training on the sex industry. In fact, the sex work community has publicly denounced Operation Northern Spotlight and initiatives like it⁷ ⁸. In what other work sector would it be acceptable to have individuals who are directly affected by a government initiative to have no input into the creation of strategies that are designed to increase their safety? We at SWAN find it extremely concerning that even when Operation Northern Spotlight continues to fail in identifying large numbers of trafficking victims given the resources spent, government, media and general public cease to challenge and question the approach being used in such a failed method of victim identification.

Equally disturbing is the dismissal of the fact that this enforcement action is counterproductive to its goals; it increases fear and distrust of law enforcement meaning im/migrant sex workers will not turn to police in their actual time of need. The outcomes have resulted in a perpetual state of frustration and desperation for SWAN's advocacy. We receive calls from im/migrant sex workers who have experienced violence, exploitation and/or trafficking but these women are too afraid to contact law enforcement. There is no access to justice for these women. We reiterate: we ask the Canadian government to strongly reconsider how current legislation has contributed to this environment in which im/migrant sex workers are apprehensive toward contacting local authorities to file critical reports and would choose rather to jeopardize their own safety as a result.

A Final Word on the National Action Plan to Combat Human Trafficking

In December 2017, the government released the Evaluation of Canada's National Action Plan to Combat Human Trafficking (NAP-HT)⁹. Despite the following findings, it appears more funding will be dedicated to addressing human trafficking.

- "There are limited reliable and accurate data sources to map out the scope and nature of human trafficking in Canada, making it difficult for policy makers to implement effective federal responses to human trafficking";
- "The NAP-HT had a limited contribution to the investigation and prosecution of human trafficking crimes";
- "Potential victims and Canadian citizens do not have access to a dedicated mechanism for accessing services or reporting suspected cases of human trafficking"; and

⁷ BC, Ont and NL sex workers and allies' letters opposing Operation Northern Spotlight available at <http://swanvancouver.ca/operation-northern-spotlight/>

⁸ Ditmore, M. (2009). The Use of Raids to Fight Anti-Trafficking in Persons. Available online at <http://sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>

⁹ See <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/vltn-nap-ht/index-en.aspx>

- "Federal partners were unable to track NAP-HT expenditures as they did not receive any dedicated funding"

In sum, the Evaluation indicated the scope and nature of human trafficking in Canada is unknown, the NAP-HT has had limited impact on the prosecution of trafficking crimes, victims cannot access supports with ease and it is unknown how much money has been spent. The lack of accountability in how the money is being spent raises another concern. In one case in 2017 when SWAN supported a trafficking victim, SWAN had to pay out of pocket for all support services including shelter, food and daily expenses.

These findings are hardly basis on which to commit further resources. We urge the Federal government to not give way to popular fascination and political preoccupation with trafficking hysteria that is largely established on unsubstantiated sources.

Recommendations

Based on our experience, we recommend the following:

- *Re-examine how anti-trafficking police resources are allocated:* Anti-trafficking funding positioning police as 'outreach' is very troubling. In a legal framework where police are mandated to enforce PCEPA, police can and never will be able to assume of the role of community anti-trafficking outreach. Instead, police resources must be spent developing relationships all year long with those at risk of trafficking via sex work support organizations that are always carrying out preventative trafficking measures and responding to trafficking when calling police is not an option. We also caution against the future commitment of police resources without the input of the sex industry to target trafficking facilitated online. Sex workers exercise agency and use the internet as a screening tool.¹⁰ Targeting yet another resource sex workers utilize to stay safe will only increase vulnerability to violence, exploitation and trafficking.
- *Overhaul human trafficking awareness training, particularly training for police and CBSA:* Human trafficking awareness training that does not include experiential input on the distinction between sex work and human trafficking is causing great harm and impeding efforts to address human trafficking in the sex industry.
- *Acknowledge the unintended consequences of current anti-trafficking strategies that result in increased fear and distrust of law enforcement:* Cease Operation Northern Spotlight immediately and meaningfully consult with sex work communities as to what non-harmful anti-trafficking strategies could look like.
- *Dedicate resources to community-based, sex work organizations:* Sex work organizations are best placed to provide comprehensive, non-judgmental, and tailored services to their constituencies, yet are chronically under-resourced to prevent and respond to human trafficking. Acknowledge the critical role sex workers supported by these organizations can play in identifying predators and traffickers.

¹⁰ Belak, B. & Mackenzie, K. (2017, June 1). Backpage: Sex workers can find safety in online marketplace. *The Globe and Mail*. Available online at <https://www.theglobeandmail.com/opinion/backpage-sex-workers-can-find-safety-in-online-marketplace/article35181699/>

- *Examine how the Government of Canada has structured immigration systems, work visas and sex work legislation:* Currently, these systems leave im/migrant sex workers vulnerable to employment abuses, unable to articulate and defend their human rights, and unable to effectively organize to protect themselves from human trafficking. Concentrating efforts solely on traffickers who capitalize on these state-created vulnerabilities absolves government of addressing systemic causes of human trafficking among im/migrant sex workers.
- *Repeal PCEPA:* Criminalization of the sex industry impedes efforts to address human trafficking. Revisit *Bedford v. Canada's* unanimous Supreme Court decision that outlines the harms created via criminalization.
- *Repeal IRPA 185(b):* Remove laws that explicitly prohibit the participation of migrants in the sex industry, as these render them vulnerable to exploitation. Acknowledge that the threat of deportation under IRPA is a significant contributing factor to the underreporting of violence, exploitation and trafficking. Enable migrants to apply for the right to work and reside on the grounds of their sex work. Recognize that IRPA 185(b) undermines the autonomy of migrant sex workers, rather than empower them.