

## **Brief to the Standing Committee on Justice and Human Rights**

### **Study of human trafficking in Canada**

**May 28, 2018**

#### **OVERVIEW**

1. Pivot Legal Society (“Pivot”) is a human rights organization in Vancouver that works on behalf of marginalized communities to create a just, fair, and equitable society through litigation, law reform, research, and legal education. We work in partnership with marginalized people and grassroots movements to challenge legislation, policies, and practices that undermine human rights, intensify poverty, and perpetuate stigma.
2. Pivot works with communities of sex workers in Vancouver to advance their rights, improve their safety and reduce stigma against them. Pivot advocates for the repeal of criminal laws that prohibit the purchase and sale of sexual services by adults and the involvement of third parties in sex work. This position is supported by a comprehensive examination of domestic and international evidence, by a robust human rights analysis, and by the experiences and evidence of sex workers from across Canada and around the world who have endured the harms caused by the criminalization of sex workers, clients, and third parties.
3. Our submission focuses on the Justice Committee’s mandate to examine “the current legal framework, its effectiveness and challenges, the challenges the justice system faces in prosecuting traffickers, and possible changes to the legal framework to more effectively combat human trafficking.” We urge this Committee to take steps to develop a nuanced, evidence-based, effective strategy that takes into account both the human rights and dignity of sex workers and the need to protect vulnerable groups from trafficking. Creating an environment where sex workers could enjoy respectful and trusting relationships with law enforcement would facilitate genuine trafficking cases being identified and prosecuted.

4. Pivot submits that:

- a. This Committee must take account of the fact that consensual, adult sex work and human trafficking are distinct, and Canada's laws and policies will only be effective if they recognize the difference between these two concepts.
- b. Conflating sex work with human trafficking is detrimental to important public policy objectives related to both sex work *and* human trafficking, and impairs the government's ability to assist people who have been trafficked, to detect and prevent trafficking, and to permit people involved in consensual sex work from being able to access rights and safety.
- c. In particular, the present *Criminal Code* provisions applicable to sex work must be repealed in order to ensure an effective anti-trafficking strategy in Canada and to protect the rights of both trafficked people and sex workers.

**A. FALSE EQUATION: THE CONFLATION OF TRAFFICKING AND SEX WORK**

5. This Committee has before it the important public policy objective of ensuring an effective legal response to human trafficking. To advance a sound policy response to human trafficking, Canada must have regard to what human trafficking is, and what it is not.<sup>1</sup> Taking into account the differences between consensual, adult sex work and human trafficking ensures an evidence-based policy, and addresses the respective needs of vulnerable groups in our society, particularly for Indigenous and migrant individuals.

*Defining Terms*

6. Adult consensual sex work ("Sex Work") is the exchange of sexual services for money or other consideration between adults, and with consent.

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<sup>1</sup> We commend to the Committee Pivot's Report titled *The Case for Repeal*, which outlines the harmful and arguably unconstitutional effects of the revised *Criminal Code* provisions passed in 2014 that regulate sex work, which is attached as an appendix to this submission. This Report details our concerns about creating an inaccurate legal equivalence in the law between trafficking and adult consensual sex work, in the context of the *Criminal Code*. In particular, we comment that the Committee review pages 65 – 74, which are relevant to the task before this Committee.

7. The internationally accepted definition of human trafficking (“Human Trafficking”) involves:
- 1) the recruitment, transportation, transfer, harbouring or receipt of persons;
  - 2) by *means* of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
  - 3) with the *purpose* of exploiting another person’s labour.

This definition is set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the “Trafficking Protocol”), to which Canada is a signatory.<sup>2</sup>

8. The definition of trafficking in s. 279.01(1) in Canada’s *Criminal Code* does not follow the direction provided by the Trafficking Protocol. It lacks the same degree of specificity. Section 279.01(1) states,

“Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence...[emphasis added]”

9. The *Criminal Code* definition of Human Trafficking does not require an element of “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.
10. This departure from the international definition of Human Trafficking is important. By omitting specific language from s. 279.01(1) regarding the use of threats, force, coercion, abduction, fraud, deception, and abuse of power has contributed to the conflation of Sex Work and Human Trafficking in public discourse and in government policy. The element of “exploitation” is not proving to be sufficient to distinguish the two realities. As we have

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<sup>2</sup> The full name is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, and the full text is available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>. The Protocol supplements the United Nations *Convention Against Transnational Organized Crime*.

seen in public discourse, some people consider all consensual, adult Sex Work to be a form of exploitation, and incorrectly assume that all transactions involving sex involve forced or non-consensual sexual acts. This ignores the reality that the vast majority of people who sell sex in Canada do not experience coercion or force and choose Sex Work as an effective means of earning an income. They are not “trafficked,” by their own accounts and according to the definitions provided under international or Canadian law.

11. The misrepresentation of consensual adult Sex Work as Human Trafficking endangers sex workers, particularly those who are im/migrants to Canada, by subjecting them to intensified scrutiny from law enforcement and immigration officials. In addition, misplaced enforcement efforts result in sex workers’ diminished access to meaningful labour protections. It also impairs the detection of and effective response to Human Trafficking because individuals engaged in Sex Work that may have the opportunity to detect Human Trafficking in the industry are dissuaded from engaging the attention and assistance of law enforcement because they are engaged in criminalized work.
12. Currently, Canada’s legislative definitions for Human Trafficking do not accord with international standards, and instead conflate the concepts of Human Trafficking and Sex Work in certain cases. For example, s.286.2(1) which was introduced under *The Protection of Communities and Exploited Persons Act (PCEPA)* states, in relation to Sex Work, that everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years. Section 279.02(1), in relation to Human Trafficking, duplicates this language in its entirety and was introduced under PCEPA. This indicates that legislators at that time had conflated the two concepts.
13. Disentangling the concepts of Sex Work and Human Trafficking is consistent with international recommendations aimed at the eradication of sexual abuse and sexual exploitation. Effective measures to address the needs and rights of people affected by each

must be advanced.<sup>3</sup>

## **B. CONFLATING SEX WORK AND HUMAN TRAFFICKING IS HARMFUL AND COUNTERPRODUCTIVE**

14. Both Sex Work and Human Trafficking are legitimate considerations for policy makers.

However, treating them as equivalent in making or interpreting policy gives rise to a range of harms, resulting in ineffective public policy in relation to each.

### **a. Reporting of actual violence and mistreatment by those who do not identify as “trafficked victims” is deterred.**

15. When a group of people is criminalized or at risk of deportation, there is necessarily a challenging dynamic between that group and law enforcement. That dynamic will often result in an unwillingness to report concerns to police because of fear of prosecution or deportation as the case may be. As such, policy must be carefully and thoughtfully designed to account for the needs of affected groups, and to maximize safety and security.

16. Indoor Sex Work locations such as massage parlours, micro brothels, and spas are often targeted as locations of suspected Human Trafficking. For example, in 2006, police in Vancouver raided 18 massage parlours to identify victims of Human Trafficking. None of the 78 women arrested were found to have been trafficked.<sup>4</sup> Investigations for Human Trafficking that are based on the suspected presence of sex workers, but not founded on reliable information about the presence of trafficked persons, and that employ aggressive raids as a strategy, increase the fear that im/migrant sex workers have of police. These fears are real. Raids can and do result in attention to immigration status and deportation.

17. Trust in law enforcement by sex workers is eroded as a result of these intrusive police strategies focusing on Human Trafficking. For example, from 2015 to 2017, Operation Northern Spotlight mobilized police forces across Canada to search for Human Trafficking

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<sup>3</sup> GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (Bangkok: Global Alliance Against Trafficking in Women, 2007), [http://www.gaatw.org/Collateral%20Damage\\_Final/singlefile\\_CollateralDamagefinal.pdf](http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf).

<sup>4</sup> “18 massage parlours raided, 100 arrested,” Vancouver Sun, 9 December 2006, cited in A Clancey, N Khushrushahi & J Ham, “Do Evidence-based Approaches Alienate Canadian Anti-Trafficking Funders?” *Anti-Trafficking Review*, Issue 3, 2014, p. 87-108.

victims. In an April 2015 sting in Ottawa, 11 people were arrested, held without contact, and ultimately deported, without having received any assistance from community organizations.<sup>5</sup> Because undercover police have deceived sex workers by setting up fake dates and gain access to their workplaces, which are often their homes, Operation Northern Spotlight (which is ongoing) continues to generate fear and mistrust. This type of aggressive law enforcement is not only counterproductive, it increases the risk faced by sex workers.

18. Anti-trafficking enforcement also makes it more difficult for sex workers to report problematic employment environments. Because they do not have the benefit of employment protections afforded to other workers in Canada, sex workers may be concerned that their report may trigger a police response rather than employment protections. A common employment issue such as long shifts at massage parlours or payroll errors may be falsely categorized as exploitation and Human Trafficking. This mischaracterization can result in unwarranted and intrusive investigation by police or immigration officials. In addition, the loss of privacy over one's identity as a sex worker can dissuade im/migrant sex workers from accessing vital services such as health care and makes them hesitant to seek protection under the justice system when they are victims of crimes, including theft, which occurs commonly.<sup>6</sup> The criminalization of the purchase of sexual services also dissuades the clients of sex workers from reporting Human Trafficking when it is encountered in the context of obtaining sexual services.
19. Abusive police conduct in so-called trafficking investigations is also a significant barrier to reporting, as it erodes any trust between the police and victims of crime. More than 40% of

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<sup>5</sup> Carmelle Wolfson, "Eleven women face deportation following human trafficking investigation in Ottawa," Canada OH&S News, May 19, 2015, <http://www.ohscanada.com/health-safety/eleven-women-face-deportation-following-human-trafficking-investigation-in-ottawa/1003347142/>; Catherine McIntyre, "Migrant sex workers caught up in Ottawa sting facing deportation, further exploitation: activists," May 13, 2015, <http://news.nationalpost.com/news/canada/migrant-sex-workers-caught-up-in-ottawa-sting-facing-deportation-further-exploitation-activists>.

<sup>6</sup> For additional information, we recommend reviewing the report of Millar, H., & O'Doherty, T. (2015). The Palermo Protocol & Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada, Key Findings (2002-2015) p. 71-72. <https://icclr.law.ubc.ca/publication/the-palermo-protocol-canada-the-evolution-and-human-rights-impacts-of-anti-trafficking-laws-in-canada-2002-2015/>

the women contacted by the Toronto-based organization Butterfly say that they have experienced abuse at the hands of police. In Vancouver, Detective Constable Jim Fisher recently plead guilty to two counts of breach of trust and one count of sexual exploitation against minor victims of sexual exploitation and Human Trafficking.<sup>7</sup>

20. The seizure of condoms as evidence is common, and in some cases, police have pulled up sex workers' dresses to see if they were wearing underwear.<sup>8</sup> Not surprisingly, a survey conducted by SWAN in Vancouver in 2013 found that 95% of the im/migrants they work with would not contact law enforcement if they experienced a violent crime.<sup>9</sup> There have been three murders of im/migrant sex workers in Ontario since 2014, and all remain unsolved.

**b. Dangerous assumptions of guilt by association are reinforced.**

21. Im/migrant sex workers, particularly those whose English or French language skills are limited, depend on the assistance of others in very specific ways to make their work safe and viable. They often rely on others, informally and in managerial positions, to help them place ads and to find workspaces. Yet under the trafficking and procuring laws, they fear implicating friends and coworkers, who could face serious charges merely for being an associate.
22. For example, Pivot received a report from Butterfly regarding a woman who was detained for two weeks by police as a “trafficked person”, despite her insistence that she was working voluntarily. Although she was never criminally charged, her phone was seized as evidence, and she was forbidden from making calls to anyone, including legal counsel. Police seized \$10,000 of her money as evidence and as part of their “ongoing investigation.” It has not been returned. After a search of her hotel room, the police came across a photo of her and a friend, and swiftly arrested her friend. Although the friend was eventually released, she lost her housing in the process. During the process, the sex worker disclosed

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<sup>7</sup> Simon Little, “Decorated former VPD Detective Jim Fisher pleads guilty to sexual exploitation, breach of trust” *Global News*. March 28, 2018. <https://globalnews.ca/news/4111285/vpd-jim-fisher-guilty-plea/>

<sup>8</sup> Personal communication with Butterfly support person, June 6, 2016.

<sup>9</sup> SWAN, Zi Teng & ACSA, *Chinese Sex Workers in Toronto and Vancouver*, 2015, p. 28, <http://swanvancouver.ca/wp-content/uploads/2015/05/Chinese-sex-workers-in-Toronto-amp-Vancouver-Ziteng-SWAN-amp-ACSA.pdf>.

to police that she had recently been sexually assaulted and robbed. No investigation was undertaken into the crimes committed against her.<sup>10</sup>

23. There is no credible public policy goal advanced with this type of treatment, which is founded in assumptions of guilt or complicity instead of evidence and relies upon the detention and coercion of women engaged in Sex Work. If the goal of policy makers is to reduce harm, strategies that exacerbate harm, using measures that push vulnerable people into more and more covert situations, is contrary to the laudable purpose of any such measures. In fact, it has the effect of increasing the barriers that sex workers face when trying to access police protection. In some cases, sex workers feel that in order to report assaults or robberies to the police and have their cases taken seriously, they must misrepresent themselves as victims of Human Trafficking when that does not reflect their experience and is not the offence they wish to report to police.

**c. Conviction in *bona fide* cases of coercion is made more difficult.**

24. Researchers and criminal justice system personnel have suggested that the anti-trafficking narrative has created false expectations among prosecutors and courts about what exploitation looks like and has contributed to a lack of conceptual clarity about the elements of offences.<sup>11</sup> When judges and prosecutors are conditioned to associate Human Trafficking and exploitation with stories of young women forcibly confined and sexually assaulted, it may be harder to get convictions for more frequent, but still serious, labour abuses that involve elements of deception or coercion, but not necessarily egregious violence or personal indignity.
25. As an example, im/migrant workers in a variety of industries who do not have work visas are legitimately concerned that if they complain about work conditions, their immigration status will be reported. Acts of blackmail like this, which are common, can amount to Human Trafficking, but in most industries these scenarios are less salacious than those of sex trafficking, and rarely gain media attention.

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<sup>10</sup> “Migrant Sex Workers Live Under Constant Police Threat,” (Part 5 of Series) *Ricochet*, <https://ricochet.media/en/1421/migrant-sex-workers-live-under-constant-police-threat>

<sup>11</sup> Millar and O’Doherty, p 61-62



26. Heavy dependence at trial on testimony by victims about their perceived fear that their safety or the safety of a person known to them would be threatened also makes it harder to meet the criminal burden of proof beyond a reasonable doubt, particularly when complainants' may be reluctant to testify, or their credibility is questioned.<sup>12</sup>
27. The result is a worst-case scenario, where police use intrusive tactics to enforce an overbroad concept of exploitation, and the court system is unable to properly address the issues that may be present in the case and amounting to real disadvantage to a sex worker, such as working hours, access to finances, and appropriate vacation time.

**d. The lived experiences of racialized women engaged in Sex Work are misconstrued and stereotyped.**

28. Anti-trafficking campaigns contribute to and rely on racial profiling and are often used as a pretext for investigating indoor establishments employing racialized women, particularly Asian women with non-Western accents and Indigenous women. In indoor Sex Work settings, racialized women may be present, but the presumption that they are "trafficked" is inaccurate, when many are working consensually, and have Canadian citizenship or permanent resident status or have otherwise migrated legally. Indigenous women are over-represented in street-level Sex Work but it wasn't until the mid-2000's when a community of advocates began to characterize the experiences of Indigenous people selling or trading sex as Human Trafficking, irrespective of whether consent was present or not. Further, this framework has been increasingly used to describe the phenomenon of missing and murdered Indigenous women and girls.<sup>13</sup>
29. Legal im/migrants face jeopardy in such investigations. Given that restrictions on work visas prohibit women coming to Canada from engaging in work considered sexually exploitative,<sup>14</sup>

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<sup>12</sup> Millar and O'Doherty, p. 63-64; Julie Kaye I, and Bethany Hastie, The Canadian Criminal Code Offence of Trafficking in Persons: Challenges from the Field and within the Law Social Inclusion (2015, Volume 3, Issue 1) Pages 88-102

[http://digitool.library.mcgill.ca/webclient/StreamGate?folder\\_id=0&dvs=1527563432332~474](http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1527563432332~474)

<sup>13</sup> Hunt, S. (2016). Representing colonial violence: trafficking, sex work, and the violence of law. *Atlantis: Critical Studies in Gender, Culture & Social Justice*, 37(2), 25-39.

<sup>14</sup> Section 30(1.4) of the *Immigration and Refugee Protection Act* empowers the Minister of Citizenship and Immigration to enact regulations or issue instructions to "protect foreign nationals who are at risk of being subjected to humiliating or degrading treatment, including sexual exploitation."

including escort work and exotic dancing, disclosure of Sex Work may jeopardize the legal immigration status of someone holding a temporary work visa or student visa.

30. Canadian Border Services Agency, which has broader powers of entry than municipal police, often accompanies other police or local by-law officers to raid indoor establishments, under the guise of “rescuing” the “foreign” women working there. When this does not result in deportations or immigration charges for the sex workers employed there, it serves to drive clients away, meaning that those who are paid per-client rather than per-hour have to work longer to make a living, and it leaves sex workers with pervasive anxiety about their work. Incorrectly assuming that all migrant sex workers are victims of Human Trafficking is a form of racism that denies the agency of adult sex workers and contributes to their ongoing economic and social disadvantage.
31. According to organizations whose mandate it is to provide services and support to im/migrant women doing Sex Work, including SWAN in Vancouver and Butterfly and the Migrant Sex Workers Project at Maggie’s in Toronto, the descriptions of exploitation and of trafficked persons propagated by the anti-trafficking movement do not match peoples' lived experiences. SWAN, which has operated in Vancouver for more than a decade offering services to im/migrant indoor sex workers, has only encountered two cases of Human Trafficking in its 10+ years of operation. In focus groups conducted with SWAN members, a participant described im/migrant sex workers as contrary to the stereotype trafficking victims:
- “I think the women are the opposite of who the trafficking victim is represented to be and who migrant and immigrant sex workers are represented to be, i.e. passive, subservient, uneducated, backwards, unable to speak for themselves [...]. They’re actually the opposite of that. They’re go getters. Despite all the barriers that they have in the Canadian labor market, they still find a way to provide for their families.”<sup>15</sup>
32. Given this information that contradicts the acquired wisdom about Human Trafficking, we submit that it is vital to base sound public policy in a more nuanced framework, one that

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<sup>15</sup> *Im/migrant sex workers, myths and misconceptions: Realities of the Anti-Trafficked*. SWAN Vancouver, Written by Kimberly Mackenzie and Alison Clancey. Vancouver (2015) at p. 12. <http://swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf>.

recognizes a greater diversity of both experiences and needs. Doing so will contribute to being better able to address the vulnerabilities and needs of all.

**C. SEX WORK SHOULD BE DECRIMINALIZED BOTH TO EFFECTIVELY RESPOND TO HUMAN TRAFFICKING AND TO PROMOTE THE HUMAN RIGHTS OF SEX WORKERS**

33. For the reasons set out in our report, *The Case for Repeal*, the *Criminal Code* should be amended to dismantle the harmful amendments brought about in 2014, which further criminalized Sex Work, and enhanced the harms and stigma faced by sex workers. Doing so would not undermine the ability of the *Criminal Code* to respond to Human Trafficking, coercion, abuse, assault and other harmful mistreatment of trafficked persons and sex workers, as well as the general public.
34. When Sex Work occurs above-ground, without the cloak of criminalization, it becomes easier to detect Human Trafficking. Providing sex workers with strong occupational health and safety protections and access to police is the most effective way to ensure that incidents of exploitation, violence or Human Trafficking are brought forward to the authorities. Increased legal rights enable sex workers to access police protection and bring legal action against third parties who attempt to extort or coerce them. These protections should be offered to everyone engaged in Sex Work.
35. Repealing PCEPA and decriminalizing adult Sex Work will mean:
  - a. Sex workers can work together and with third parties without fearing arrest. Providing ways to work with others legally is essential to sex workers' health and safety. Being able to build relationships with other sex workers and trusted third parties in the industry is essential to combatting a dangerous illicit market for sexual services.
  - b. Some sex workers choose to work in managed work-places as they do not have the resources to pay for a work-place on their own. Third parties provide other important services to sex workers such as answering phones, housekeeping, security, and transportation. Current laws prohibiting receiving a material benefit from the sexual services of another person are confusing and create an environment where sex workers are more vulnerable to exploitation

and Human Trafficking. For example, S.286.2(1) *presumes* anyone who lives with or is habitually in the company of a person who offers or provides sexual services is guilty of an indictable offence unless they fall within 4 listed exceptions, but goes on to list 5 circumstances where these exceptions would not apply. Further, there is no exception when the material benefit was received in the context of a commercial enterprise that offers sexual services for consideration, but it is unclear to sex workers what constitutes a commercial enterprise for the purposes of the *Criminal Code*.

- c. Sex workers can work indoors safely if the laws are repealed. Providing safe and legal indoor venues for Sex Work is critical to providing sex workers with control over their conditions of their work, and provides greater opportunities for sex workers to avoid exploitive third parties on the street, or in undesirable indoor venues.
- d. The Supreme Court found in *Canada (AG) v. Bedford*, 2013 SCC 72, that when sex workers did "in-calls", offering services at premises over which they had a measure of control, they were more able to establish a regular clientele roster, employ preventive health and safer sex measures, work together with other staff, and use security protocols such as audio room monitoring. The SCC concluded that prohibiting in-calls increased risk to sex workers.<sup>16</sup> Therefore, Canada's laws should permit indoor Sex Work in order to ensure that sex workers have access to safe work environments and can create a network of sex workers that victims can rely on for help if they are exploited or trafficked.
- e. For example, in India, a sex worker run self-regulatory board called the Durbar Mahila Samanwaya Committee in Sonagachi (Kolkata) India was successful in identifying and supporting women who had been trafficked.<sup>17</sup>

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<sup>16</sup> *Canada (AG) v. Bedford*, 2013 SCC 72, paras. 61-65

<sup>17</sup> Jana S et al., "Combating human trafficking in the sex trade: can sex workers do it better?" *Journal of Public Health*, 36(4), (2014): 622-628, <http://www.ncbi.nlm.nih.gov/pubmed/24179187>

When freed from the threat of law enforcement, sex workers can organize and collaborate with law enforcement in a far more effective way. They are essential to effective Human Trafficking investigations.

- f. The ability to communicate freely is a critical safety measure for sex workers. They must be able to negotiate the terms of each Sex Work transaction in order to provide consent. These negotiations include determining the location of work, the services agreed to, safer sex education, and cost. They also provide the sex worker an opportunity to assess the clients' intentions to ensure that they intend no harm. The SCC found in *Bedford* that criminalizing communication and enforcement of these laws interfered with sex workers' abilities to screen prospective clients.
36. Sweden's criminalization approach has made it harder to fight Human Trafficking. With the criminalization of clients, police and sex workers report that it is more difficult to respond to Human Trafficking. The Swedish National Police Board found no evidence that Human Trafficking has diminished and found that the criminalization of clients has made it more difficult to prosecute "traffickers and coercive pimps".<sup>18</sup> Research in Sweden found that the criminalization of clients has made sex workers more reliant on third parties to find clients and thus more vulnerable to abusive or coercive third parties.<sup>19</sup>
37. Decriminalization of adult consensual Sex Work, instead, would contribute to the social citizenship of sex workers, enable them to safely report abuse and Human Trafficking when it is detected by them, and reduce the overall danger faced by trafficked people and sex workers - both groups who face vulnerability and danger under the current legal order.

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<sup>18</sup> Susanne Dodillet and Petra Östergren, The Swedish Sex Purchase Act: Claimed Success and Documented Effects, Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011

<http://www.nswp.org/sites/nswp.org/files/Impact%20of%20Swedish%20law.pdf>

<sup>19</sup> Norwegian Ministry of Justice and Police Affairs (2004). "Purchasing Sexual Services in Sweden and the Netherlands". [http://www.nswp.org/sites/nswp.org/files/232216-purchasing\\_sexual\\_services\\_in\\_sweden\\_and\\_the\\_netherlands.pdf](http://www.nswp.org/sites/nswp.org/files/232216-purchasing_sexual_services_in_sweden_and_the_netherlands.pdf)

## CONCLUSION

38. Both Human Trafficking and Sex Work require public policy attention. Trafficking provisions in the *Criminal Code* and in the *IRPA* are of public value and have the potential to address the inhumane and harmful conditions faced by trafficked people, and to deter Human Trafficking. When bona fide Human Trafficking occurs, use of these provisions is entirely appropriate when the situation reveals exploitation, coercion and abuse. These provisions are not suitable as a catchall for enforcement in situations of consensual Sex Work. Understanding and respecting the difference will assist in protection of the rights of all involved.

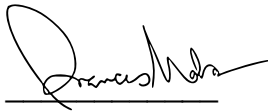
39. A public policy approach that more appropriately addresses the issues of concern before this committee would involve:

- a. providing funding for partnerships between sex workers and unbiased researchers to research the nature and extent of Human Trafficking in Canada, with a research framework that distinguishes between Human Trafficking and adult, consensual Sex Work;
- b. engaging in evidence-based policy design that takes account of the different characteristics and realities of sex workers from various aspects of the sex industry;
- c. considering and giving considerable weight to information from sex workers, who are best placed to recognize exploitation in their occupation, and information from people who have been trafficked, who are best placed to convey the ways in which they could most effectively seek assistance and the barriers that policy can cause;
- d. education for law enforcement to change attitudes about how laws and policies are enforced or carried out, so that anti-trafficking measures are deployed to stop and prevent actual coercion, and not to terrorize people who are engaged in Sex Work consensually;
- e. policies guaranteeing im/migrants access to health care, community services and police services without fear of deportation or immigration charges;
- f. providing sex workers greater access to safety, security, the protection of the law, including protection against Human Trafficking, and the benefit of labour

protections and access to human rights protections under provincial and federal laws by repealing the following sections of the *Criminal Code* that relate to adult Sex Work:

- a) Section 213: Stopping or impeding traffic & communicating to provide sexual services for consideration
- b) Section 286.1 (1): Obtaining sexual services for consideration
- c) Sections 286.2 (1), (3), (4), (5), (6): Material benefit from sexual services
- d) Section 286.3 (1): Procuring
- e) Sections 286.4 and 286.5 (1), (2): Advertising sexual services

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of May 2018.



Frances Mahon,  
Kerry Porth, and  
Elin Sigurdson  
ON BEHALF OF PIVOT LEGAL SOCIETY