



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

June 2018

The Canadian HIV/AIDS Legal Network (“Legal Network”) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. We envision a world in which the human rights and dignity of people living with HIV and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support.

The Legal Network’s guiding values are rooted in a focus on the human rights of marginalized populations such as sex workers, migrant communities, Indigenous Peoples, people who use drugs and people in prison, and their meaningful participation in policies and programs that affect them. We are a member of the Canadian Alliance for Sex Work Law Reform, a coalition of sex worker rights and allied groups and individuals across the country who work together to fight for sex work law reform and sex workers’ human rights.

### **Background**

Exploitation within the sex industry, including human trafficking, is of great concern to sex workers and to allied groups such as the Legal Network working to uphold sex workers’ human rights. However, anti-trafficking policies must be based on evidence and human rights — not ideological positions on sex work or moral panic.<sup>1</sup> To date, anti-trafficking practices have had extraordinarily harmful impacts on sex workers and impaired efforts to support actual victims of trafficking and exploitation. In Canada, anti-trafficking enforcement efforts such as raids by the RCMP, Canada Border Services Agency (CBSA) and municipal police put women from the most marginalized groups, including Indigenous and migrant women, in danger. Law enforcement agencies across Canada have regularly participated in mass, indiscriminate efforts to identify trafficking victims in the sex industry such as Operation Northern Spotlight, during which police have detained and harassed numerous sex workers where there has been no evidence of coercion, exploitation or human trafficking. When police have raided indoor sex work establishments or posed as sex

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<sup>1</sup> See, for example, Catholic Women’s League of Canada, Vancouver Diocesan Council, *Submission to the Standing Committee on Justice and Human Rights National Consultation on Human Trafficking in Canada*, April 2018 and Resist Exploitation, Embrace Dignity, *Submission to the Standing Committee on Justice and Human Rights National Consultation on Human Trafficking in Canada*, 28 February 2018. Available at <https://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=9749514>.

workers' clients in their efforts to "rescue" human trafficking victims, sex workers have repeatedly experienced this as a form of intimidation, harassment, surveillance and a gross violation of privacy that has further entrenched fear and distrust of police services.<sup>2</sup>

This has not resulted in more protection or safety for trafficked persons. Rather, the increase in policing initiatives related to trafficking has contributed to greater surveillance, interrogation, harassment and detention of migrant and Indigenous women and youth who leave their communities and has undermined their relationships with family members or others who may offer safety or support to them, including in circumstances where they may be selling sex. Instead of meaningfully addressing human trafficking, current anti-trafficking efforts — bolstered by a problematic web of criminal, immigration and municipal laws and policies (among others) — increase sex workers' vulnerability to exploitation and violence by placing workers in conflict with the law and with law enforcement, contribute to the violence, stigma and discrimination that workers face, drive workers into precarious working conditions, prevent workers from accessing labour and employment protections, and deter workers from seeking supports and services, including the police and crucial health and social supports, if they do experience exploitation or violence.

### **Conflation of human trafficking and sex work**

Sex work is often seen as trafficking, regardless of circumstances. This problematic framing is evident in the *National Action Plan to Combat Human Trafficking*, in which the federal government claims "prostitution victimizes the vulnerable" and the "demand for sexual services can be a contributing cause of human trafficking,"<sup>3</sup> the *Immigration and Refugee Protection Regulations* prohibiting all temporary workers from sex work-related employment,<sup>4</sup> and the *Protection of Communities and Exploited Persons Act*, which contends in its preamble that exploitation "is inherent in prostitution".<sup>5</sup> As a result, anti-trafficking campaigns often promote misleading messages and statistics that conflate sex work with trafficking (e.g., false claims of "rescuing" potential victims, which increase anxiety, moral panic and racism against racialized migrants and sex workers).<sup>6</sup>

Some communities — particularly those that are already over-policed — are singled out for anti-trafficking efforts. For example, **Indigenous women who sell or trade sex are assumed to be trafficked, despite the fact that many do so as a means of generating money or resources in a context of poverty.** As a result, the estimated number of trafficked Indigenous women and girls in Canada has been inflated, which has in turn deeply influenced government initiatives to address violence against Indigenous women. Undue focus on trafficking of Indigenous women and girls has led to law enforcement

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<sup>2</sup> Centre for Feminist Research York University, *Challenging Trafficking in Canada: Policy Brief*, 2017. Available at <http://cfr.info.yorku.ca/files/2017/06/Challenging-Trafficking-in-Canada-Policy-Brief-2017.pdf>

<sup>3</sup> Government of Canada, *National Action Plan to Combat Human Trafficking*, 2012. Available at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>.

<sup>4</sup> *Regulations amending the Immigration and Refugee Protection Regulations*, SOR/2013-245 C. Gaz. 2014. II. 148. See *Immigration and Refugee Protection Regulations*, SOR/2002-227 sections 183(1)(b.1) , 196.1(a), 200(3)(g.1) and 203(2)(a).

<sup>5</sup> For example, the preamble of the *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25, which provides, "Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it."

<sup>6</sup> Butterfly: Asian and Migrant Sex Worker Support Network and Canadian HIV/AIDS Legal Network, *Brief to the Standing Committee on Social Policy Regarding Bill 96, The Anti-Human Trafficking Act 2017*, May 12, 2017. Available at <http://www.aidslaw.ca/site/brief-to-the-standing-committee-on-social-policy-regarding-bill-96-the-anti-human-trafficking-act-2017/?lang=en>.

strategies that increase over-policing in Indigenous communities, rather than investing in peer-led programs that allow Indigenous people who sell or trade sex to exchange knowledge and support each other. Negating Indigenous women's agency and limiting their realities within the discourse of trafficking also deflects from recognizing and understanding the numerous ways a colonial state reproduces violence, injustices and other harms against Indigenous women, including displacement, homelessness, poverty, racism, inequality and barriers to accessing services, supports and resources.

**Anti-trafficking initiatives and policies that conflate human trafficking with sex work also increase migrant sex workers' contact with law enforcement**, leading sex workers to avoid law enforcement due to precarious immigration status in addition to conflict with numerous sex work-related criminal and municipal prohibitions. For Asian sex workers, who may not speak English and have no reason to trust police, anti-trafficking raids and often warrantless incursions into their homes and workplaces are especially frightening.<sup>7</sup> They often result in anti-immigration tactics such as arrest, detention and deportation, which push sex workers further into isolation. Legally restricting migrant workers from sex work-related employment and criminalizing sex work-related activities also foster unsafe and exploitative living and working conditions by impairing the economic, employment and social rights of migrant sex workers and impeding their access to critical health, legal and social services for fear of detention and deportation. At the same time, such restrictions perpetuate stigma and discrimination by erroneously positioning sex work as inherently exploitative and stripping migrant sex workers of the rights and freedoms extended to permanent residents.<sup>8</sup>

Similarly, anti-trafficking measures designed to protect youth who sell or trade sex cause the same harms to those youth as they do to sex workers over 18. The best interests of youth must always be considered when addressing youth exploitation, including trafficking. **As with adults, anti-trafficking initiatives facilitate exploitation by driving both youth and those involved with them away from police, social services and other supports.** Youth who have fled families, group homes and other institutions often seek to create communities for support and survival, and members of these communities can be falsely targeted as traffickers. Rather than supporting youth at risk of exploitation, a myopic focus on trafficking hinders opportunities to explore and address the numerous factors such as poverty in the lives of people who sell or trade sex.

Framing all sex workers as victims has pressured some sex workers to identify themselves as victims in order to obtain social services or to avoid being treated as criminals by the police or social service agencies. This approach not only denies sex workers' agency, but also fails to respond to the socioeconomic and political oppression that sex workers experience. A singular focus on trafficking also fails to support sex workers when they face actual risks including sexual assault, robbery, blackmail or even murder. For example, Butterfly: Asian and Migrant Sex Worker Support Network attempted to seek information and support from the Special Victims Unit of the Toronto Police Services regarding the death of Annie Li, a sex worker. But the Special Victims Unit was restructured and renamed the "Human Trafficking Enforcement Team." This change — rather than ensuring the safety and human rights of sex workers — resulted in a reduced mandate focusing only on cases

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<sup>7</sup> A. Zerbisias, "Butterfly effect: Migrant sex workers' group aims to counter myths of 'rescue industry,'" *NOW Magazine*, June 24, 2015. Available at <https://nowtoronto.com/news/butterfly-effect/>.

<sup>8</sup> Butterfly: Asian and Migrant Sex Workers Support Network, *Upholding and promoting human rights, justice and access for migrant sex workers Part 2: Criminal Law and Migrant Sex Workers' Rights*, October 2017. Available at <http://plelearningexchange.ca/wp-content/uploads/2018/02/Part-2.-Criminal-Law-and-Migrant-Sex-Workers-Rights.pdf>.

of human trafficking. The termination of the Special Victims Unit dissolved an important platform through which sex workers who are not forced into the industry could report any risks they faced.<sup>9</sup>

The conflation of any involvement in selling sex with being trafficked and exploited is also too simplistic. 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 view as the result of trafficking or exploitation — even if it may be the case, for some women, that they are exercising that agency in constrained circumstances. Too often, the only stories presented by women who have experience of selling sex are ones that align with “victim” or “survivor” narratives. There is no doubt that too many women, and in particular Indigenous and migrant women, face violence in Canada. However, it would be a mistake and a disservice, in acknowledging these realities, to therefore see all people who have experience of selling sex as trafficked victims.

### ***Increased law enforcement surveillance***

The problematic manner in which sex work is conflated with exploitation and has informed anti-trafficking initiatives has hurt sex workers in the most precarious situations, enabling law enforcement to intensify police surveillance and other policing initiatives. Currently, anti-trafficking provisions are employed as a general law enforcement strategy to target sex work and capture third parties working with sex workers. These **third parties may be mistakenly identified as “traffickers” rather than co-workers, employers or employees**. Already, the sex work community and sex workers’ allies are perceived as traffickers, an issue that is particularly pronounced for youth who are in custody and migrant sex workers, who may have limited resources and face language barriers and who often rely on the support of third parties to help organize their work, communicate with clients, offer additional security precautions and/or advertise their services.<sup>10</sup> Often as a result of over-policing, human trafficking charges are also laid against members of Indigenous communities, which lead to their disproportionate incarceration.

The experience of other countries that have criminalized clients and third parties involved in the sex trade has shown that this approach to “end demand” for sex work has muddled anti-trafficking efforts by confusing trafficking with sex work.<sup>11</sup> “End demand” approaches have also deterred sex workers from reporting violence and exploitation to the police for fear of detention or deportation and in some cases, prevented clients from helping to identify trafficked persons or from helping women to escape trafficked situations.

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<sup>9</sup> Butterfly: Asian and Migrant Sex Worker Support Network and Canadian HIV/AIDS Legal Network, *Brief to the Standing Committee on Social Policy Regarding Bill 96, The Anti-Human Trafficking Act 2017*, May 12, 2017.

<sup>10</sup> Butterfly: Asian and Migrant Sex Workers Support Network, *Upholding and promoting human rights, justice and access for migrant sex workers: Part 2: Criminal Law and Migrant Sex Workers’ Rights*, 2017.

<sup>11</sup> See, for example, J. Levy and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers,” *Criminology and Criminal Justice* published online 31 March 2014 and Global Network of Sex Work Projects, *The Real Impact of the Swedish Model on Sex Workers, Impacts of Other Legislation and Policy – The Danger of Seeing the Swedish Model in a Vacuum*, December 2014. Available at

[www.nswp.org/sites/nswp.org/files/4.%20Impacts%20of%20Other%20Legislation%20and%20Policy%20-%20The%20Danger%20of%20Seeing%20the%20Swedish%20Model%20in%20a%20Vacuum%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20December%202014.pdf](http://www.nswp.org/sites/nswp.org/files/4.%20Impacts%20of%20Other%20Legislation%20and%20Policy%20-%20The%20Danger%20of%20Seeing%20the%20Swedish%20Model%20in%20a%20Vacuum%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20December%202014.pdf).

Sex workers themselves frequently act as third parties for other workers and have been charged with trafficking offences, even in the absence of exploitation, because they work in association with other sex workers or receive material benefits related to services or resources they provided for other sex workers. Sex workers' labour and work relationships are frequently framed as “transactional or national organized crime,” a view that increases stigma, marginalization and discrimination against sex workers. Sex workers may lose vital peer supports that can be helpful for people who experience problematic labour conditions. Anti-trafficking initiatives consequently isolate sex workers from essential third parties as sex workers fear and avoid detection and detention by law enforcement. As a result, sex workers' security and general working conditions are compromised.

The problematic conflation of sex work with trafficking has led to law enforcement approaches and detection tools that fail to distinguish third parties involved in sex work, or poor working conditions in the sex trade, from trafficking. In many cases, detection tools employed by police, health and social service providers and customer service providers conflate signs of trafficking with signs of stigma, illegal immigration status, and sex work in a criminalized context. Some of these tools are based on racist, classist and sexist ideologies about people who work in the sex industry, placing people who are Asian, migrant, Indigenous and young at greater risk of being surveilled by law enforcement, with harmful repercussions. For example, an increasing number of hotels have stopped renting rooms to sex workers, especially migrant and Asian sex workers, with some even contacting the police or the CBSA when they learn a sex worker is working in their hotel. This practice has forced sex workers to work in hazardous environments.<sup>12</sup> Policies that address possible exploitation in the sex industry need a nuanced and more complex rights-based approach rather than one based on fear in order to meaningfully address the lived realities and challenges of sex workers who are migrant, racialized or young.

In order to avoid over-policing in their communities, including surveillance and unwanted interactions with law enforcement, **members of these oppressed communities are especially likely to isolate themselves from vital health and social services, in addition to police and other law enforcement, to avoid invasive and potentially harmful questions and disclosures.** For example, Butterfly has reported that more than 60 per cent of migrant sex workers have experienced violence and four Asian and migrant sex workers (Evelyn Bumatay Castillo, Jiali Zhang, Tammy Le and Annie Li) have been murdered in the past four years. Yet in a survey of Asian sex workers in Toronto and Vancouver, 95 per cent of respondents indicated that they never seek help from law enforcement — even if they are experiencing violence, abuse, harassment or exploitation. In Toronto, not a single respondent indicated that they trusted the police.<sup>13</sup> Police routinely call CBSA when the sex workers they confront are not citizens. When sex workers face harm, the police are not a safe option for them to call.

Similarly, Indigenous women and girls know all too well that policing under the guise of anti-trafficking does not lead to their protection and that an increase in policing more directly represents an increase in criminalization. Rather, rates of violence increase when Indigenous women are not able to report violence or when they do not have access to safety and protection. Indigenous women are targeted for violence because predators know

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<sup>12</sup> Butterfly: Asian and Migrant Sex Workers Support Network, *Upholding and promoting human rights, justice and access for migrant sex workers: Part 2: Criminal Law and Migrant Sex Workers' Rights*, October 2017.

<sup>13</sup> Butterfly: Asian and Migrant Sex Worker Support Network and Canadian HIV/AIDS Legal Network, *Brief to the Standing Committee on Social Policy Regarding Bill 96, The Anti-Human Trafficking Act 2017*, May 12, 2017.

police are less inclined to investigate their disappearances, and also because they know Indigenous women constantly avoid police for fear of detection and apprehension. The consequence of over-policing moves beyond arrest: over-policing displaces Indigenous sex workers, which has led to isolation, vulnerability to violence and health conditions, abuse and extreme poverty. It also exacerbates already significant barriers to supports and protections, and has made access to police protection and legal systems even more difficult for Indigenous people who sell or trade sex.

Exacerbating the harms of anti-trafficking efforts, Bill C-452, *An Act to amend the Criminal Code (exploitation and trafficking in persons)* lowers the evidentiary requirements to prove trafficking. Under this Bill, evidence that a person living with or habitually in the company of a person who is “exploited” is — in the absence of contrary evidence — proof that the person is trafficking them.<sup>14</sup> This proposed change is driven by moral panic, and sex workers will be further alienated from police and social services for fear of implicating their colleagues and loved ones as traffickers. Invariably, sex workers will be forced to work in less visible spaces to avoid being caught in the vast net of this law, creating conditions for greater exploitation and risk for sex workers. This does not increase public safety. **Current anti-trafficking initiatives merely increase the policing and monitoring of sex workers and their workplaces. As a result sex workers must work in greater secrecy and isolation, increasing their vulnerability to violence and exploitation.**

### ***Distinguishing between poor or exploitative work conditions and human trafficking***

Anti-trafficking policies that do not distinguish between sex work, poor working conditions and human trafficking impose inaccurate and harmful definitions of exploitation on sex workers. Exploitative working conditions are a reality that workers in general may face in the context of poverty, racism, precarious immigration status, colonization, youth and many others factors that hinder people’s ability to access decent-paying jobs. Workers in many different industries may experience poor working conditions, particularly workers involved in precarious work and/or informal industries (e.g., agriculture, restaurant, textile, sex work, grocery stores, construction).

Sex workers — as with workers in other sectors — can be victims of human trafficking. But like workers in other sectors, not all sex workers are human trafficking victims. People who do not recognize sex work as a form of labour mistakenly define sex work as inherently exploitative or related to human trafficking. This undermines responses to actual instances of labour abuse and prevents sex workers from accessing basic labour protections, thus exacerbating labour exploitation when it occurs. Moreover, when sex work is seen as an act of violence (i.e., human trafficking), this trivializes actual incidences of violence against sex workers, denies sex workers their right to address an incident of violence, violates sex workers’ right to autonomy, and invalidates sex workers’ right to consent to sex when exchanging sexual services for money.

## **Conclusion**

It is critical for the Standing Committee on Justice and Human Rights to consider the harms of the legal and social conflation of sex work with human trafficking and exploitation, as well as harms resulting from the *Protection of Communities and Exploited Persons Act* and immigration restrictions that prevent migrant workers from sex work–related employment.

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<sup>14</sup> *An Act to amend the Criminal Code (exploitation and trafficking in persons)* S.C. 2015, c. 16.

This requires the Committee to **recognize that sex work is work**. It is only when sex work is not perceived as exploitation that sex workers' human rights, including their personal safety and working conditions, can be recognized and respected.

While some have argued that criminalizing sex work will help fight trafficking by ending the demand for sexual services and “weeding out” incidents of trafficking, this is harmful to both sex workers and trafficking victims. Far from supporting victims of trafficking, anti-trafficking efforts erode trust and increase suspicion between sex workers and law enforcement. At the same time, anti-trafficking initiatives do not provide support to sex workers facing exploitative conditions nor do they address the underlying causes of exploitation, such as poverty, racism, colonialism, sexism, transphobia, racist and sexist immigration policies, lack of safe spaces to live and lack of decent work. Increased funding of human trafficking discourse, enforcement and programs (including programs run by organizations that seek to prohibit sex work) has resulted in more policing and more exit-based programs that do not address sex workers' needs. This is not an effective way to support sex workers' capacity to improve working conditions and quality of life, resist exploitation and violence, and uphold their human rights.

Sex workers and sex worker rights organizations are in constant contact with people working in the sex industry and are best placed to support sex workers who experience human rights violations. **Anti-trafficking efforts must be based on evidence, and sex workers can play an essential role in formulating constructive solutions to counter trafficking**. Yet, their voices are repeatedly dismissed or disparaged. As a result, anti-trafficking measures often result in further human rights abuses against sex workers and other marginalized communities. It is incumbent on the Standing Committee on Justice and Human Rights to take into the account the experiences of people who currently sell sex and for whom current anti-trafficking initiatives are not a source of protection or assistance, but have contributed to their vulnerability in various ways, including by forging an adversarial relationship with the police that deters them from reporting violence, exploitation and trafficking.

### **Recommendations for a rights-based approach to address human trafficking**

Current laws regulating sex work have had led to human rights abuses against sex workers, particularly those from marginalized and already over-policed communities, and hampered efforts to identify and support victims of human trafficking. It is thus imperative for the federal government to **repeal and reject laws, policies and initiatives that cripple meaningful efforts to address human trafficking**, including by:

- Decriminalizing sex work by repealing all sex work–specific offences introduced through the *Protection of Communities and Exploited Persons Act*;
- Removing all immigration regulations and work permit conditions that prohibit migrant communities from working in the sex industry;
- Stopping raids, detentions and deportations of sex workers;
- Ensuring CBSA is never involved in anti-trafficking investigations, because their involvement exacerbates migrant workers' fears of detention and deportation and inhibits reporting of violence if it occurs; and

- Rejecting *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.

Furthermore, an effective anti-trafficking strategy should prioritize support to people at risk or who wish to seek help, rather than employing law enforcement measures as a method of protection. Sex worker–led organizations are best positioned to provide services that are safe, relevant and accessible to other sex workers and to provide concrete and relevant supports to community members who are experiencing — or who are vulnerable to — violence, exploitation and trafficking. Therefore, the federal government should immediately **invest in community initiatives run by and for people working in the sex industry that are based in human rights**, so that the sex work community can connect with others and assist in actual cases of exploitation, abuse and trafficking, including by:

- Investing in Indigenous, migrant and youth-based initiatives that seek to address homelessness, unemployment and poverty and provide services directed by sex workers;
- Implementing harm reduction approaches that require authorities to use the least intrusive approach towards communities with an emphasis on preserving their community and upholding their human rights;
- Recognizing that apprehension, detention and involuntary rehabilitation are often experienced as antagonistic and often traumatic;
- Implementing approaches that are sensitive to the realities and needs of Indigenous youth, and more broadly, measures and services that support and empower young people;
- Providing adequate training to police, prosecutors and other law enforcement officers about the differences between sex work and human trafficking; and
- Re-envisioning and recreating detection tools to identify trafficking victims and creating instead guidelines for support in consultation with communities.

Moreover, as sex worker–led groups have consistently recommended, the federal government must also increase the minimum wage and increase social assistance, invest in affordable housing and affordable childcare, direct more funding towards social supports such as sex worker–led organizations, shelters, transitional housing and supports for youth, Indigenous and migrant workers. These measures will help to prevent exploitative conditions, and should be made available to everyone — and not only to people who identify as “trafficked.”