

Brief submitted to the Standing Committee on the Status of Women
For their study on: Human Trafficking of Women, Girls, and Gender Diverse People
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Sex workers in Canada face an alarming web of punitive laws and policies from all levels of government that attempt, among other things, to crush the measures and networks that keep them safe (Fudge et al., 2021 and Appendix A). These include laws criminalizing sex work, including those passed via the *Protection of Communities and Exploited Persons Act* which prohibit working in public spaces, “materially benefiting from” and “procuring” sex work, purchasing sexual services (as well as to communicate for that purpose), and advertising sexual services, laws ostensibly aimed at criminalizing human trafficking, and immigration regulations that prohibit migrant workers from working in the sex industry. Additionally, a growing number of provincial human trafficking laws have been advanced that claim to promote awareness of human trafficking and facilitate its investigation (see Appendix A for a case study of *Ontario’s Combating Human Trafficking Act*, 2021).¹ Yet the experiences of Black, racialized, Indigenous, and migrant sex workers show that despite their nominally benevolent aims, anti-trafficking enforcement is frequently a source of harm rather than support for sex workers, particularly those most marginalized (Butterfly, 2018a; Chu et al., 2019).

Human trafficking is a loaded term used to describe everything from sex work to intimate partner violence to labour exploitation (De Shalit & van der Meulen, 2019; Hunt, 2015; Kempadoo, 2005; Roots, 2013, 2022; Sibley, 2020). Among many policymakers, law enforcement, and community-based services for survivors of human trafficking, the term is almost always associated with sex trafficking, given the pervading view that sex work is an illegitimate form of labour and that people who sell or trade sexual services are all victims of sexual exploitation (De Shalit, 2021; Durisin & van der Meulen, 2021; Sibley, 2020). Routinely, police construe all sex work as trafficking, and correspondingly, all third parties who work with and support sex workers as human traffickers — a position many social service providers also adopt, at the expense of sex workers and their networks of support. This, in turn, falsely inflates statistics of human trafficking victims.

Already, research shows how existing human trafficking initiatives have been exploited as a pretext to invade sex workers’ workplaces (Butterfly, 2018a, 2018b; Chu et al., 2019). In particular, Black, Indigenous, Asian, and migrant women have been subject to police profiling and targeting, including presumption of involvement in sex work (Hunt, 2015; Kaye, 2017; Maynard, 2017, 2018). Black women are often assumed to be involved in sex work merely for walking in public spaces due to sexualized stereotypes about them, and Indigenous and Black sex workers have themselves been accused of human trafficking when they work collectively (Crenshaw & Ritchie, 2015; Maynard, 2017; Ontario Human Rights Commission, 2003). Asian women and their networks of support have been racially profiled by law enforcement as human trafficking victims and members of “criminal organizations,” respectively, but those same women are then ticketed for municipal bylaw infractions or detained for immigration infractions, often resulting in deportation (Butterfly 2018a).

One sweeping commonality among all sex workers’ experience is of law enforcement as a source of repression, not protection (Bruckert & Hannem, 2013; Chu et al., 2019; Kur & Duffy, 2022). As Black women’s experiences with law enforcement make clear, policing is a form of racial and gendered violence. Available data suggests that Black women are policed at rates significantly higher than white women. In one study, Black women were *three times* more likely than white women to have been stopped by police (Owusu-Bempah & Wortley, 2014). Notably, in the 19th and early 20th century, Black women were disproportionately impacted by prostitution-

¹ Examples include Alberta, *Protecting Survivors of Human Trafficking Act*, 2020, c. P-26.87; Manitoba, *The Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94 and Saskatchewan, *The Protection from Human Trafficking Act*, SS 2021, c. 23.

related arrests and charges in many Canadian cities (see Backhouse, 1985; Mosher, 1998). In a variety of studies, Black women described incidents in which the police harassed them based on an assumption of their involvement in sex work (see Bernard, 2001; OHRC, 2003). The Ontario Human Rights Commission (2017) also reported on racialized women's experiences of being assumed to be a sex worker that contributed to their profiling (or that of others). In one such case, a Black woman and her white boyfriend were stopped by police because they thought he was a client, and she was a sex worker. A Halifax-based report found that Black residents are highly over-represented in all street check categories and are 4.5 times more likely to be involved in a "prostitution-related" check (Wortley, 2019).

Among migrant women, Butterfly (2018a) has repeatedly documented sex workers' experiences of human rights violations at the hands of law enforcement (see also Lam 2016). Migrant sex workers have been subjected to harassment and discrimination, arbitrary arrests, and detention. While in the custody of anti-human trafficking investigators, migrant sex workers have reported being prevented from accessing legal representation and support, and many have lost their immigration status and been deported. In a 2018 study by Butterfly of Asian migrant massage and holistic centers in Toronto, more than one-third reported having been abused or harassed by bylaw enforcement or police officers during anti-human trafficking investigations. Out of 61 workers surveyed, the study found no instances of trafficking or forced labour (Lam, 2018). In a 2018 submission to a federal Parliamentary Committee studying human trafficking in Canada, Butterfly (2018b) also described the arrests and deportations of 23 of its members since 2015. The workers reported degrading experiences of detention and confiscation of money and other personal belongings by law enforcement officers during human trafficking investigations. While one worker reported her exploitative boss to the authorities, the information was shared with an anti-trafficking team and a raid was carried out at her workplace, resulting in the arrest and deportation of her co-workers, and eventually the worker herself, after it was revealed to immigration authorities that she was working in Canada without status.

In research conducted by the HIV Legal Network, Indigenous sex workers also shared their experiences of pervasive racial profiling, as well as arrest, incarceration, and physical assault by police investigating sex work, including an instance where an Indigenous worker was charged with human trafficking and running a "prostitution ring" merely for working with other sex workers in a shared workplace (Chu et al., 2019). As the Vancouver Sex Workers Rights Collective (2018), a "diverse collective of Indigenous individuals who participate or participated in sex work or trade or provide sexual services in Downtown Eastside of Vancouver" (p. 2), submitted to the National Inquiry into Missing and Murdered Indigenous Women and Girls:

The use by academics, activists, the media and governments of human trafficking as *the* framework or lens through which responses to murdered and missing Indigenous women and girls are considered is inappropriate, ineffective and harmful. The focus on human trafficking shifts attention away from the systemic colonial factors that created and maintain the circumstances and structures of violence. This approach focuses resources and responses to violence into increased policing and away from programs and services that may help individuals that are facing specific types of violence that are conflated into human trafficking (child exploitation, sexual exploitation or violence experienced when participating in sex work). Police attention on individuals who participate in sex work reclassified as victims in the human trafficking framework puts these individuals at risk. (p. 8)

The extension of law enforcement powers also facilitates the racial profiling of Black men. In a recent study, Millar and O'Doherty (2020) found that after the passage of the *Protection of Communities and Exploited Persons Act* in 2014, law enforcement in Canada have continued to treat sex work and trafficking interchangeably, and that Black communities in particular have been associated with sex work, particularly vis-à-vis the stereotype of Black men as "pimps". The same study found that anti-trafficking prosecutions have

steadily increased, and Black and Caribbean men comprised at least 40% of primary or co-accused in over 87 trafficking cases prosecuted between 2006 and 2017. Researchers also found media coverage related to human trafficking saturated with images of accused Black men in a manner that was not seen when the accused was white (Millar & O’Doherty, 2020). A study by Roots (2022) that analyzed 123 court information and indictments from Ontario found that the primary target of human trafficking investigations in Canada has become the prototypical “Black pimp,” a figure easily resurrected and redeployed as part of Canada’s anti-human trafficking efforts. Closer attention to the role of third parties in the sex industry illuminates that the terminology of “pimping” is often used in such a wide-spanning manner that it encapsulates not only relationships of physical or financial abuse in the context of sex work but an assortment of other consensual roles and services in the industry from arranging transportation to security (Bruckert and Parent, 2018).

Conclusion

Contemporary state-led anti-trafficking efforts serve to both effectively obscure and exacerbate the root causes of social, racial, and economic disenfranchisement that create the conditions rife for exploitation and abuse of all kinds: anti-Black criminalization, the racialization of poverty and housing precarity, as well as “current and historical colonialism [and] the criminal and immigration laws that place people in a rights-vacuum” (Maynard, 2015, 41) in the first place. Sex workers have been at the helm of movements to eradicate violence against sex workers, forced labour, racism, and other exploitative working conditions, as well as intimate partner violence, and to provide education around safer sex and HIV prevention — all while demanding labour and citizenship rights for all. In effect, communities of people who sell and trade sex have been and continue to organize in their own communities to address the myriad of harms that are increasingly lumped under the catch-all term of “trafficking” (see, for example, Native Youth Sexual Health Network, Black Sex Workers Collective, Butterfly). Criminalization of sex work, couched as ending exploitation, effectively undercuts this organizing, and minimizes the ability of different communities to undertake meaningful, community-led anti-violence work.

Sex workers are best positioned to observe situations of violence and exploitation within the industry, but the criminalization of sex work and the terrifying experiences of sex work and human trafficking investigations, among other forms of criminalization, only serve to further marginalize sex workers from supports in times of need. Increasing surveillance, criminalization, and violence by police does nothing to end violence, gendered violence, and labour exploitation experienced by people who sell or trade sex.

Any measure of protection that relies on policing and surveilling marginalized communities to fulfill its mandate — the way anti-trafficking measures do — facilitates labour exploitation by pushing people away from services and into isolation where there are no legal or social protections. In practice, anti-human trafficking initiatives function effectively as anti-sex work initiatives, and sex workers and the people with whom they work are indiscriminately targeted for surveillance and investigation. If policymakers are truly concerned about these abuses, they must address structural barriers such as poverty, precarious immigration status, and lack of access to affordable housing and health and social services, support the repeal of sex work offences and immigration regulations that make it more difficult for sex workers and migrants to work safely, and support access to permanent status for migrants so that they are not forced into vulnerable positions where they could be exploited in any industry where human trafficking — that is, forced labour — occurs. The decriminalization of sex work and the regularization of immigration status would be meaningful steps towards ending labour abuses.

RECOMMENDATIONS FOR A RIGHTS-BASED APPROACH TO ADDRESS EXPLOITATION AND VIOLENCE

The most effective way to end violence and exploitation is to listen to those who are experiencing and mitigating it within the context of criminalization and targeted violence. Sex worker-led organizations hold the knowledge, experience, and trust from sex workers to best determine what services sex workers need, how these services

should be implemented, and above all, how to address violence in their lives. This Committee needs to center the perspectives and solutions put forward by people who are closest to the issues.

Recommendation 1: Remove criminal, immigration, and municipal laws and regulations.

- Repeal the *Protection of Communities and Exploited Persons Act* and all other sex work-specific criminal offences.
- Repeal regulations in the *Immigration and Refugee Protection Regulations* that prohibit sex work. The Canada Border Services Agency needs to immediately stop “visiting” massage parlours, and all law enforcement need to cease raids and intrusions into sex workers’ workplaces and cease detention and deportation of migrant sex workers.
- Expunge sex workers’ records for sex work convictions that impede economic and physical mobility.
- Repeal municipal bylaws and stop bylaw enforcement that target sex work or the adult entertainment industry, e.g., body rub parlours, strip clubs, and holistic centres.

Recommendation 2: Ensure full and permanent immigration status for all in Canada, without exception and provide everyone with access without fear to services.

Recommendation 3: Reframe funding initiatives so that they are not dependent on “human trafficking” frameworks.

Anti-trafficking services (including most “victim funds”) are a barrier to sex workers getting support. They often require sex workers to identify as “victims of human trafficking” or to “exit” sex work. This committee needs to review existing anti-trafficking policies and programs that conflate sex work with human trafficking, and revise policies to remove assumptions that sex work is a form of trafficking or sexual exploitation. In this vein: recognize sex work as work and invest in projects that address labour exploitation and improve working conditions for sex workers.

Recommendation 4: Invest money into sex worker-led community initiatives – Indigenous, Black, and migrant sex worker led groups.

Reallocate human trafficking resources from law enforcement to settlement, social, health, legal, and housing services and supports without requirement to identify as a trafficking victim. Sex workers need non-judgmental programs that do not minimize opportunities for sex work, seek to abolish sex work or conflate sex with trafficking.

Recommendation 5: Address root causes of violence and exploitation by: i. ensuring access to food and secure housing for marginalized and low-income communities (Black, Indigenous, migrant, drug-using communities and people with disabilities); ii. expanding funding and lowering barriers to social, legal, health and other supports for survivors of violence; and iii. ensuring long-term sustained funding for community-based anti-violence programs (i.e., not tied to law enforcement).