

To: House of Commons Standing Committee on the Status of Women  
Re: Study on Human Trafficking of Women, Girls, and Gender-Diverse People in Canada  
Date: May 5, 2023  
From: Critical Trafficking and Sex Work Studies, Centre for Feminist Research, York University (Dr. Amanda De Lisio, Dr. Tuulia Law, Vincent Wong, JD, LL.M, PhD ABD, Lindsay Blewett, PhD ABD)

*Introduction: Who We Are*

The Critical Trafficking and Sex Work Studies Research Cluster is a collective of researchers interested in sex workers' experiences of labour, management, migration, advocacy, regulation and criminalization, stigma, and discrimination.<sup>1</sup> We work within a variety of related fields such as women's studies, social science, socio-legal studies, law, geography, public health, and political science. Our work nuances and problematizes the common conflation of sex work, labour exploitation, trafficking, and migration, and supports, consults, or is co-produced with sex workers and other people harmed by campaigns against trafficking.

Through our research expertise, we maintain that policies and legislation intended to combat human trafficking and prostitution are overwhelmingly informed by assumptions about individual vulnerability to exploitation rather than analyses of socioeconomic dynamics and problems. Policies stemming from these assumptions result in the further criminalization of individuals already most marginalized and vulnerable, rather than guaranteeing improved access to social, political, and economic security, decent-paying jobs, migration, etc.<sup>2</sup> This brief presents an overview of studies approaching human trafficking from intersectional, critical feminist, and interdisciplinary perspectives, which situate legal and policy frameworks within racialized and geopolitical hierarchies that structure contemporary labour markets and disproportionately affect women and gender-diverse people in Canada.

*Human Trafficking in Canada: Strategies & Consequences*

Since the *Protection of Communities and Exploited Persons Act* (PCEPA) implementation, the number of police-reported incidents of human trafficking has grown substantially—with 76 reported in 2011 and 552 in 2021.<sup>3</sup> In Canada, this can be attributed to repeated amendments of human trafficking laws in the *Criminal Code* and *Immigration and Refugee Protection Act* following the ratifying of the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, changes to sex work laws following *R. v. Bedford* (2013), development of the National Strategy to Combat Human Trafficking and subsequent investments (e.g., federally, \$75 million invested over six-years; \$307 million by the Ontario provincial government), coordinated specialized units (municipal police services, provincial governments, non-profits) as well as international influence through the US Department of State.<sup>4</sup> Research by Statistics Canada has shown that, because they usually involve multiple additional criminal charges, human trafficking cases take twice as long to complete as compared to other violent crimes. Moreover, since 2010, more than half of such cases have included a sex trade-related offence. With the discriminatory enforcement elaborated below, these findings suggest that trafficking-specific laws are not an effective way to protect women and gender-diverse people in the sex industry.<sup>5</sup>

Despite increasing rates of arrest there remains very little agreement on or consistent use of the term 'trafficking' in legal and political realms. Anti-trafficking laws in Canada follow the definition established by the US, and resultantly isolates components of trafficking such as recruitment,

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<sup>1</sup> Critical Trafficking and Sex Work Studies, Centre for Feminist Research, York University: <https://www.yorku.ca/cfr/trafficking-and-sex-work/>

<sup>2</sup> Kamala, K., McFadyen, N., Pilon, P., Sterling, A. & Mackenzie, A., *Challenging Trafficking in Canada*. Toronto: York University Centre for Feminist Research, 2017.

<sup>3</sup> Conroy, S. *Trafficking in Persons in Canada, 2021*. Juristat Bulletin. Statistics Canada, 2022.

<sup>4</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, 2019. Ministry of Children, Community and Social Services, *Ontario's Anti-Human Trafficking Strategy 2020-2025*, 2020.

<sup>5</sup> Ibid.

transportation, and exploitation. According to Roots (2018), the legal definition of trafficking in Canada is premised on a perilous concept of exploitation, which according to the Ontario Court of Appeal need not actually occur, and despite encompassing a wide array of activities (e.g., employer-employee relationships, intimate domestic relationships) has continually prioritized sexual exploitation and commercial sex industries as the primary focus of law enforcement efforts—overlooking other forms of labour exploitation (e.g., migrant agricultural and domestic workers) and causing increased vulnerability for sex workers.<sup>6</sup> In addition to the arbitrary and discretionary enforcement by courts and legal actors, flight attendants and hotel staff, amongst others, are increasingly deputized to monitor and report signs of trafficking, leading to reports of social and racial profiling by racialized women (cis and trans\* as well as racialized men suspected of being traffickers), that in turn isolates and foments mistrust of authorities amongst sex workers.<sup>7</sup>

Research repeatedly demonstrates that anti-trafficking initiatives disproportionately target women and gender-diverse people, subjecting them to racialized sexual stereotyping, harassment, arrest, deportation, and even violence.<sup>8</sup> In particular, several Canadian studies have empirically examined anti-trafficking policing and prosecutorial efforts and have problematized inconsistencies and ambiguities in enforcement and interpretation of terms. Ferguson (2012) examines the incongruities amongst claims of international human trafficking as widespread in Canada versus the paucity of international trafficking prosecutions following almost a decade of anti-trafficking enforcement.<sup>9</sup> Kaye (2017) examines anti-trafficking policies and measures in Canada, and argues that such efforts create additional harms (by reproducing structures and conditions of inequality) for individuals, particularly migrant and Indigenous women, whom they intend to aid.<sup>10</sup> Roots (2022) examines the ways in which anti-trafficking laws, policies, and discourses in Canada are enacted by frontline actors who draw upon class, race, and gender-based stereotypes to construct and enforce familiar tropes of women as deviant/victim—in the absence of broader discussions of the socioeconomic or geopolitical dynamics that lead people to migrate for work (and also make it dangerous or unfeasible for them to return to their home country).<sup>11</sup> Sibley and van der Meulen (2022) examine the legal framings of exploitation in human trafficking cases in Canada to argue courts and legal actors do not respect complainants' agency or their subjective experiences of socio-economic, racialized and gendered power inequalities.<sup>12</sup> Finally, Millar and O'Doherty (2020) examine the Canadian enforcement and judicial interpretation of anti-trafficking laws, highlighting the inadequacies of legal responses and the need to address structural causes of precarious working conditions across all forms of labour.<sup>13</sup>

Drawing on survey data from workers in British Columbia, Ivanova and Strauss (2023) show that young (especially racialized and Indigenous) women and recent immigrants are less likely to have a full-

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<sup>6</sup> Roots, K. "The Human Trafficking Matrix: Law, Policy and Anti-Trafficking Practices in the Canadian Criminal Justice System," PhD diss., York University, 2018. See also Sibley, M. & van der Meulen, E. "Courting Victims: Exploring the Legal Framing of Exploitation in Human Trafficking Cases," *Canadian Journal of Law and Society* 37, no. 3, 2022: 409–29.

<sup>7</sup> Shih, E. "The Fantasy of Spotting Human Trafficking: Training Spectacles in Racist Surveillance," *Wagadu* 22, no. 1, 2021.

<sup>8</sup> Kempadoo, K & Shih, E. eds., *White Supremacy, Racism and the Coloniality of Anti-Trafficking*, New York: Routledge.

<sup>9</sup> Ferguson, J. "International Human Trafficking in Canada: Why So Few Prosecutions?" PhD diss., University of British Columbia, 2012.

<sup>10</sup> Kaye, J. *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women*, University of Toronto Press, 2017.

<sup>11</sup> Roots, K. *The Domestication of Human Trafficking: Law, Policing, and Prosecution in Canada*, University of Toronto Press, 2022.

<sup>12</sup> Sibley, M. & van der Meulen, E. "Courting Victims: Exploring the Legal Framing of Exploitation in Human Trafficking Cases." *Canadian Journal of Law and Society* 37, no. 3, 2022: 409–429.

<sup>13</sup> Millar, H. & O'Doherty, T. *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?* International Centre for Criminal Law Reform and Criminal Justice Policy, 2020.

time, permanent position with a single employer that includes at least some benefits.<sup>14</sup> Their analysis confirms other studies which illustrate the myriad ways in which precarious employment compounds systemic, intersecting inequalities in Canada, and disproportionately impacts racialized and immigrant communities, Indigenous peoples, women, and lower-income groups.<sup>15</sup> For sex workers, who may work in mainstream and sex industry jobs simultaneously or who are seeking to transition into mainstream work, hardships are exacerbated by criminalization, demonization, and subsequent charges and arrests.<sup>16</sup> For example, in anti-trafficking raids, migrant women working in alternative massage are subject to harassment by police and threats from border services officials that can drive them to work further underground in more criminalized sex industry sectors (such as full-service sex work, i.e., prostitution).<sup>17</sup> Trafficking prevention efforts directed at Indigenous women similarly perpetuate framings of Indigenous women as risky rather than providing culturally appropriate supports and material resources that would alleviate the socioeconomic needs that contribute to their over-representation in street-based sex work—another sector of the sex industry wherein racialized women and gender-diverse people are subject to disproportionate scrutiny, stereotyping and harassment by police, media, and residents, and violence.<sup>18</sup>

In consideration of these overlapping contexts, sex workers who have participated or collaborated in our research have emphasized that they are best situated to help women and gender-diverse people who are victims of trafficking or other forms of exploitation, particularly in the sex industry.<sup>19</sup> Unlike police or NGO workers, sex workers are peers, who can intervene and offer support when a colleague confides in a casual conversation in the strip club change room or massage parlour waiting area that she is being exploited. In these situations, the criminalization and stigmatization of sexual services only undermines survivors' and peers' ability and willingness to avail themselves of the help from authorities. Thus, sex workers – and not only women who self-identify as former victims of trafficking – need to be included in government responses to human trafficking. Moreover, this involvement needs to be more meaningful and in good faith than previous government consultations, such as the hearings leading up to the PCEPA, in which sex workers who opposed 'partial' criminalization were subjected to disrespect and hostility.<sup>20</sup>

#### *Recommendations Relevant to the Committee*

1. Listen to and support sex workers and other people harmed by anti-trafficking efforts;
2. Focus on structural factors that shape and allow exploitation to occur—particularly immigration and economic policies which authorize the exploitation of migrants and economically vulnerable citizens; and
3. Consider the impacts of the criminalization of prostitution (particularly on gender-diverse and racialized people in Canada) and commit to non-carceral alternatives, which respect and guarantee bodily integrity, autonomy and basic human and labour rights.

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<sup>14</sup> Ivanova, I. & Strauss, K. *But is it a Good Job? Understanding Employment Precarity in BC*, Canadian Centre for Policy Alternatives, 2023.

<sup>15</sup> Lewchuk, W. et al., *Getting Left Behind: Who Gained and Who Didn't in an Improving Labour Market*, Poverty and Employment Precarity in Southern Ontario, 2018.

<sup>16</sup> Bowen, R. "Squaring Up: Experiences of Transition from Off-Street Sex Work to Square Work and Duality—Concurrent Involvement in Both—in Vancouver, BC," *Canadian Review of Sociology* 52, no. 4, 2015: 429-449.

<sup>17</sup> See, e.g., Bruckert, C. & Law, T. *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry*, Ottawa: Rethinking management in the sex industry project, 2013.

<sup>18</sup> Maynard, R. Fighting Wrongs with Wrongs? How Canadian Anti-Trafficking Crusades Have Failed Sex Workers, Migrants, and Indigenous Communities, *Atlantis* 37.2, no. 1, 2015: 40-56.

<sup>19</sup> Fudge, J. Lam, E., Ka Hon Chu, S. & Wong, V. *Caught in the Carceral Web: Anti-trafficking Laws and Policies and Their Impact on Migrant Sex Workers*, McMaster University, Butterfly, and HIV Legal Network, 2021. Butterfly Asian and Migrant Sex Workers Network, *Journey of the Butterflies*, 2016.

<sup>20</sup> Porth, K. "Sex, Lies and Committee Hearings: Challenging Prostitution Propaganda," in *Red Light Labour: Sex Work, Regulation, Agency and Resistance*, eds. Durisin, E., Van der Meulen, E. & Bruckert, C., Vancouver: UBC Press, 2018.