

**Joint Written Brief to the House of Commons
Standing Committee on the Status of Women**

Presented by PACE Society and Pivot Legal Society

Anti-trafficking policies that center policing instead of human rights harm sex workers

1. The UN Special Rapporteur on Violence Against Women has commented that “measures to address trafficking in persons should not overshadow the need for effective measures to protect the human rights of sex workers.”ⁱ The Committee’s report should therefore be informed by the ways in which sex work criminalization and the use of xenophobic immigration policies to target, surveil, limit income-generation, and detain people with precarious status, create the structural conditions for labour exploitation and trafficking of persons.
2. Various legal advocacy and human rights organizations have consistently argued that adult anti-trafficking efforts have often been deployed to justify the criminalization of sex work, the expansion of stringent immigration policies, heightened border surveillance, discriminatory policing tactics based in racial profiling, and repressive enforcement raids of indoor sex work and other migrant worker establishments that negatively impact Indigenous, Black, Asian, Muslim and im/migrant communities.ⁱⁱ
3. It is well established that sex work provides a welcome source of income to many people that are systematically excluded from the labour market, and that seek to achieve self-actualization,ⁱⁱⁱ including racialized and migrant communities, and people with disabilities.^{iv} Yet, the preamble of the *Protection of Communities and Exploited Persons Act* (“PCEPA”) furthers the view that “prostitution” is inherently exploitative.^v Because of the ways in which sex work is often conflated with sexual exploitation, anti-trafficking laws are often used as a pretext for investigations against sex workers and sex worker-led businesses, jeopardizing critical sources of income and stability for sex workers and their dependents.
4. For instance, in October 2017, a report submitted to the Toronto City Council indicated that 25% of 410 holistic centres in Toronto posed a risk of health, safety, and community issues, including the risk of trafficking. Research by Butterfly (Asian and Migrant Sex Workers Support Network) found that by-law inspections of holistic centres later increased by 212 percent and workers being targeted by these bylaw enforcement measures, were largely racialized, Asian women and migrant workers, regardless of whether they provided sexual services.^{vi}
5. As documented in Pivot’s 2016 report, “Evaluating Canada’s Sex Work Laws: The Case for Repeal,” border agencies, such as CBSA, exercise wide powers of entry, alongside police and bylaw enforcement who conduct raids on indoor establishments.^{vii} The expansion of law enforcement as part of these anti-trafficking efforts stands to increase the policing, harassment, and unlawful detention of sex workers, with detrimental impacts on their rights to equality, life, liberty, and security of the person as protected under ss. 7 and 15 of the *Charter*.
6. The harms that flow from police-led anti-trafficking efforts,^{viii} must be understood within a context of systemic marginalization and the detrimental impacts of heightened surveillance and criminalization for sex workers with intersecting identities, shaped by race, gender, disability, and citizenship status.

Blanket prohibitions on sex work in the immigration context undermine migrant communities' safety and security and amplify the risk of exploitation

7. As many anti-racist, feminist scholars have remarked increased patterns of migration in the world today stem from systems of globalization, neo-liberalism, and market-based pressures.^{ix} This has resulted in the displacement and dispossession of communities of colour that constrain their ability to provide for themselves and their families.^x Literature shows that global shifts in immigration policy have worked to effectively deny permanent status to a large majority of the world's migrant and poor communities.^{xi}
8. Canada has created further barriers to status for migrant communities by embedding blanket prohibitions on sex work into its immigration system. These sex work prohibitions, in addition to precarity in labour and immigration status, form an integral part of the conditions that put already criminalized communities at risk of various abuses, systemic oppression and exploitation.^{xii}
9. As part of the Federal Action Plan to Combat Trafficking, the Department of Citizenship and Immigration established Ministerial Instructions directing immigration officers not to process any work permit applications for those seeking employment in "a sector where there are reasonable grounds to suspect a risk of sexual exploitation." These sectors were deemed to include strip clubs, escort services, and massage parlours.^{xiii} Effectively, this barred sex workers from accessing temporary visas which had been open to them under the temporary foreign worker programme since the 1960s.^{xiv}
10. The *Immigration and Refugee Protection Regulations* ("IRPR") further prohibited temporary migrant workers from specifically engaging in sex work-related employment, including "striptease, erotic dance, escort services or erotic massages."^{xv} The impacts of these provisions and related immigration law enforcement, which include arrest, detention, and deportation, have been widely documented by migrant-led organizations.^{xvi}
11. In the 2022 review of PCEPA, the Standing Committee on Justice and Human Rights found that the IRPR provisions "unfairly put migrant sex workers at elevated risk of violence and danger by making them unable to report these incidents without fear of deportation" and recommended their repeal, but they remain in force.^{xvii}
12. This prohibitionist strategy replicates the harms of criminalization recognized as unconstitutional by the Supreme Court of Canada in *Bedford*, namely: creating barriers to reporting violence for fear of punitive repercussions (including deportation); preventing the use of safety measures, such as indoor work and security employees, and forcing sex work to be conducted secretly.
13. Section 7 and 15 of the *Charter* protect fundamental rights to dignity, autonomy, and equal protection of the law. These protections extend to migrant workers' rights to security and safer working conditions. The IRPR sex work prohibitions unjustifiably undermine these rights and must be repealed.

Strategies that target harms faced by women, girls and gender diverse people must address the root causes of interpersonal and structural violence

14. As noted above, prohibitions on sex work in the immigration context give significant power to police, border agencies, and potential abusive clients — the threat of arrest or deportation can be wielded in an extremely dangerous way. It is imperative that legal schemes impacting the fundamental rights and safety of migrant communities not create further barriers to reporting violence and exploitation.

15. The singular focus on police-led anti-trafficking strategies obscures the social reality that migrant and sex worker communities alike report that police are the most common form of violence and harm that they experience. It is widely documented that there are systemic failures by the RCMP and policing forces to protect women, two-spirit, and gender diverse people from the violence perpetrated by men and state forces within their communities, including egregious forms of sexualized violence, assault, and human trafficking.^{xviii}
16. Additionally, a 2022 survey report by a community-based anti-violence services program confirms that the persistence of racism, transphobia, and misogyny within Canada's law enforcement agencies deters survivors from reporting gender-based violence.^{xix}
17. Similarly, a 2023 needs assessment of sex workers found that 38% of sex workers had reported non-sex work related harms to police, and 40% of participants in those circumstances found police unhelpful in addressing those harms.^{xx}
18. In this vein, we urge the Committee to adopt evidence-based strategies for policy reform that address the root causes of gender-based violence, that recognize peer-led alternatives to policing, and that center the experiences of survivors of colour, including the policy recommendations arising from the Colour of Violence Report on anti-racist best practices for violence prevention services.^{xxi}

Policy Recommendations

1. Repeal the laws under PCEPA and IRPR that criminalize sex work and immigration status.
2. Challenge discriminatory and stigmatizing narratives by auditing all legislation for the conflation of sex work and trafficking.
3. Invest in a social safety net that provides adequate income supports and livable wages to raise the material living conditions of women, youth, and gender diverse people, particularly for communities of colour and people with disabilities.
4. Listen to survivors of gender-based violence and invest in supports that are grounded in evidence-based policy-making.

About Pivot Legal Society

Pivot works in partnership with communities affected by poverty and social exclusion to identify priorities and develop solutions to complex human rights issues. Our work is focused in five policy areas: criminalization & policing, drug policy, anti-stigma, homelessness and sex workers' rights.

About PACE Society

PACE is a peer-driven organization located in the Downtown Eastside of Vancouver that provides support, advocacy and education by, with and for current and former sex workers of all genders. They seek to increase the health, safety and empowerment of their members by respecting their right to self-determination and supporting their self-identified needs.

ⁱ United Nations General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, April 1 2014, A/HRC/26/28/ Add. 1 at 19.

ⁱⁱ Lam, Elene and Annalee Lepp, "Butterfly: Resisting the Harms of Anti-Trafficking Policies and Fostering Peer-Based Organising in Canada" (2019) *Anti-trafficking Review* 12 at 91, available online: <antitraffickingreview.org>.

Chu, SK, Clamen, Jenn and Tara Santini, “The Perils of ‘Protection’: Sex workers’ experiences of law enforcement in Ontario (Canadian HIV/Legal Network, March 2019), available online: <<https://www.hivlegalnetwork.ca/site/the-perils-of-protection/?lang=en>>.

ⁱⁱⁱ Lam & Lepp, at 96.

^{iv} 73% of sex workers surveyed in a 2023 report identified as being people with disabilities, and 55% received disability assistance: Transitions Metro Vancouver Consortium, *By Us, For Us: A needs and risks assessment of sex workers in the Lower Mainland and Southern Vancouver Island* (2023) [By Us, For Us Report] at 28-29, available online: <https://wish-vancouver.net/content/wp-content/uploads/2023/04/by_us_for_us_-_a_needs_and_risks_assessment_of_sex_workers_in_the_lower_mainland_and_southern_vancouver_island_-_web.pdf>

^v See for instance *R v. N.S.* [2022 ONCA 160](#): the harmful conflation of sex work and sexual exploitation is apparent in recent judicial commentary, which notes that sex work encompasses risks of violence to those who engage in it, and causes irreparable social harm through the objectification of the human body and commodification of sexual service. Contrary to this policy position, we view consensual adult sex work as distinct from the continuum of harm and structural violence that functions synergistically to constrain the material living conditions of women, youth and gender-diverse people and expose them to various forms of structural, interpersonal, and gender-based violence, such as sexual exploitation, deceptive hiring practices of migrant workers, debt bondage, threats, and other forms of coercion.

^{vi} Lam & Lepp, at 95.

^{vii} Pivot Legal Society, “Evaluating Canada’s Sex Work Laws: The Case for Repeal” (2016), available online: <https://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal>.

^{viii} Global Alliance Against Traffic in Women, “Criminalizing Clients Endangers Sex Workers” (September 2014), available online: <https://gaatw.org/advocacy/Bill_C-36-GAATW_brief.pdf>.

^{ix} Sharma, Nandita, “Anti-Trafficking Rhetoric and the Making of a Global Apartheid.” (2005) *NWSA Journal* 17(3):88-111, available online <https://www.researchgate.net/publication/236766702_Anti-Trafficking_Rhetoric_and_the_Making_of_a_Global_Apartheid>.

^x *Ibid.*

^{xi} *Ibid.*

^{xii} For further commentary, see SWAN Vancouver, “Immigration and Refugee Protection Regulations Sex Work Prohibition Analysis” (2022), available online: <<https://swanvancouver.ca/resource/immigration-and-refugee-protection-regulations-sex-work-prohibition-analysis/>>. See also Lam & Lepp at 97.

^{xiii} Department of Citizenship and Immigration, *Immigration and Refugee Protection Act*, New Ministerial Instructions, Canada Gazette, Part I, Vol. 146, No. 28: Government Notices (14 July 2012), available online: <<https://gazette.gc.ca/rp-pr/p1/2012/2012-07-14/html/notice-avis-eng.html#d113>>.

^{xiv} Lam & Lepp, at 94.

^{xv} Immigration and Refugee Protection Regulations [SOR/ 2002-227](#), ss. 183(1)(b.1), 196.1, 200(3)(g.1), 203(2)(a).

^{xvi} Chu, Clamen, & Santini, at 18. *Lam & Lepp*, at 99-100. See also United Nations General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Dubravka Simonovic, November 4, 2019, A/ HRC/ 41/42/Add. 1 at para 56.

^{xvii} Standing Committee on Justice and Human Rights, “Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act”. (June 2022. 44th Parl 1, 1st sess., at 2, available online: <<https://www.ourcommons.ca/Content/Committee/441/JUST/Reports/RP11891316/justrp04/justrp04-e.pdf>>.

^{xviii} McDougall, Angela; Walia, Harsha; and Melody Wise, “Colour of Violence: Race, Gender and Anti-Violence Services” (2022), Battered Women’s Support Services, available online: <<https://www.bwss.org/colour-of-violence/report/>> at 50. National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered” (2019), Privy Council Office, available online: <<https://www.mmiwg-ffada.ca/final-report/>>. See also Misra, Shivangi, Major, Ashley, Palmater, Pamela, and Shelagh Day, “The Toxic Culture of the RCMP: Misogyny, Racism and Violence Against Women in Canada’s Policing Forces” (2022), Feminist Alliance for International Action, available online: <https://fafia-fai.org/wp-content/uploads/2022/05/FAFIA_RCMP_REPORT.pdf>.

^{xix} McDougall et al., at 50.

^{xx} *By Us, For Us Report* at 34.

^{xxi} McDougall et al., at 127.