

Caught in the Carceral Web

Anti-Trafficking Laws and Policies
and Their Impact on Migrant Sex Workers



Judy Fudge,
Elene Lam,
Sandra Ka Hon Chu,
Vincent Wong

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Executive Summary

In Canada, a complex and multiscalar web of laws has been constructed to target sex trafficking. This web of laws is based upon two deeply rooted assumptions: the first, that immigrant women are especially vulnerable to trafficking for sexual exploitation, and the second, that the commercial sex sector is inseparable from trafficking. The express goals of this carceral and repressive approach to human trafficking are to protect immigrant women who are vulnerable to sex trafficking by prohibiting them from working in any aspect of the sex industry and to reduce demand by making it a crime to purchase, materially benefit from, procure, or advertise sexual services.

Yet, closer study reveals the harms of this carceral approach. A review of the academic and grey literature of the impact of Canadian federal immigration and criminal laws, provincial anti-human trafficking laws, and municipal laws ostensibly targeting human trafficking uncovered no evidence that they protect immigrant women from trafficking or migrant sex workers from exploitation. Rather, migrant sex workers have been targeted by law enforcement through surveillance, racial profiling, arrest, detention and deportation in the name of protecting them from human trafficking, with enormously negative impacts on their health and welfare.

A qualitative study conducted between June 2020 and March 2021 of migrant sex workers and their advocates regarding the operation of anti-trafficking laws and policies accords with these findings. Migrant sex workers described how these laws and policies have led to extraordinary surveillance and unjustified criminal charges, particularly within migrant sex work communities, as well as against third parties in the absence of evidence of exploitation. The immigration regulations prohibiting migrants without permanent residence from working in the sex industry is particularly pernicious because it is unaccountable, since immigration enforcement is adjudicated as an administrative matter and lack due process protection, despite the severe impact of the threat of detention and deportation.

Not only does this web of carceral laws and policies render migrant sex workers less likely to report crimes perpetrated against them, but migrant sex workers are also compelled to take steps to evade police and other law enforcement bodies for fear of detection, surveillance and apprehension related to the criminal status of their work and/or their precarious immigration status. As a result, migrant sex workers become increasingly susceptible to targeted violence by predators who know these workers, given their precarious legal status and the criminalization of their work, have no effective recourse to state protection. Rather than protecting the human rights of migrants and other communities who may be vulnerable to labour exploitation, existing laws, policies and law enforcement measures intended to combat human trafficking have stoked moral panic surrounding sex work, intensified profiling of sex workers and racialized

communities, and profoundly threatened the safety, security and well-being of migrant sex workers.

Efforts to resist punitive anti-trafficking policies are met with unsubstantiated claims that these repressive policies are crucial to stamp out a flourishing, sinister industry. Despite an arsenal of coercive laws and increased policing, surveillance and inspection powers, the number of trafficking victims detected and convictions for trafficking offences have been very low. Yet this evidence, instead of creating doubt concerning the need for such a thick and wide web of coercive anti-trafficking laws and policies, is dismissed on the basis that human trafficking is a “hidden” crime. In turn, the need to “uncover” this hidden crime is used to justify further increases in expenditures devoted to policing and surveillance.

As migrant sex workers and their advocates recommend, decriminalizing sex work and repealing the immigration prohibitions on sex work would enable migrant sex workers to have the same access to employment, labour and occupational health and safety protections as other workers. Such an approach would therefore reduce the vulnerability of these workers to conditions of exploitation, violence, and abuse. Repealing municipal bylaws that target sex work, ceasing law enforcement raids and intrusions into sex workers’ workplaces, ensuring that a labour and human rights analysis is used to examine and evaluate all existing and future laws and policies with respect to human trafficking, and reallocating human trafficking resources to settlement, health, legal and social services for migrant workers would also mitigate the harms perpetuated by Canada’s existing repressive and carceral web that has ensnared so many migrant sex workers.

I. Introduction

In Canada, a complex and multiscalar web of laws has been constructed to target sex trafficking. These laws range from federal prohibitions against human trafficking in the *Immigration and Refugee Protection Act* and *Criminal Code*, to provincial laws that provide tools to raise awareness of the offence, to detect alleged traffickers and to provide victims with redress, to municipal by-laws that strictly regulate businesses such as massage parlours, body rub salons and holistic centres considered to be at risk of harbouring human trafficking. This tight web of repressive and restrictive laws is based upon two deeply rooted assumptions; the first, that immigrant women are especially vulnerable to trafficking for sexual exploitation, and the second, that the commercial sex sector is inseparable from trafficking. The express goals of this carceral and repressive approach to human trafficking are to protect immigrant women who are vulnerable to sex trafficking by prohibiting them from working in any aspect of the sex industry and to reduce demand by making it a crime to purchase, materially benefit from, procure or advertise sexual services.¹

This report evaluates the combined impact of four areas of law on migrant sex workers: federal criminal laws targeting sex work and human trafficking; federal immigration laws regarding both inadmissibility as well as human trafficking; Ontario's human trafficking laws; and municipal bylaws in Toronto regulating holistic health centres and body rub parlours. To do so, it places the regulation of migrant sex workers in a broader historical context; maps the specific laws that create this carceral web; reviews the growing academic and grey literature on the impact of these laws on migrant sex workers; and provides a qualitative study of migrant sex workers and their advocates regarding the impact of these laws. The goal of this report is to review the evidence on the impact of these laws by centering the voices of migrant sex workers and their organizations.

There are two broad approaches to understanding the relationship between sex work and human trafficking and each approach uses different terminology. The repressive approach regards sex work as inherently exploitative and inextricably linked to human trafficking.² Its goal is to end human trafficking for the purpose of sexual exploitation by abolishing prostitution

¹ Rachele Daley, *Canada's Relationship with Women Migrant Sex Workers: Producing "vulnerable migrant workers" through "protecting workers from abuse and exploitation"* (Master's thesis, Wilfred Laurier University, 2017); Julie Kaye, *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women* (University of Toronto Press; 2017); Elya M. Durisin, Emily van der Meulen & Chris Bruckert (eds.), *Red Light Labour: Sex work regulation, agency, and resistance* (Vancouver: UBC Press, 2018).

² How to characterize different policies regarding commercial sex work is controversial. Some advocates tend to focus on the purchasers of sexual services, whereas others tend to target the sellers of sexual services. Moreover, policies run the gamut from full criminalization of all aspects to sex work to full decriminalization to the legalization or regulation of sex work. Some advocates argue that purchasers of sexual services should be punished, but sellers should be treated as victims. However, most laws around sex work tend to combine aspects of approaches that target sellers, buyers and third parties, and they involve a mix of criminalization and decriminalization. In this study, we will use the term *repressive* to cover approaches that target either or both the purchasers and sellers of sex. See also Cecilia Benoit, Michaela Smith, Mikael Jansson, Priscilla Healey and Douglas Magnuson, "The Relative Quality of Sex Work," *Work, Employment and Society* 35:2 (2020) 239–255.

through criminalizing demand and the ancillary services relating to the purchase of sex. This repressive approach harnesses criminal and immigration law, as well as provincial laws and municipal bylaws, to stop the supply and demand for sexual services. The other approach regards sex work as a feminized form of work that intersects with multiple forms of social inequality (including class and race) where, as in many other labour settings, exploitative practices can and do occur, and are fostered and exacerbated by criminalization. It adopts a social justice-based approach with the goal of promoting safe working conditions by advocating for sex workers to have the same access to employment, labour and occupational health and safety protections as other workers.

This report adopts a social justice approach to sex work. Throughout the report, the term “migrant sex worker” is used to refer to an individual who has travelled from one place to another (either through formal or informal avenues) and who exchanges sexual services for money, food, accommodation, status or other compensation.³ This report also uses the term “sex work” instead of “prostitution”, as the latter stigmatizes the individual performing the service. Individuals’ decisions to engage in sex work, like any other form of work, depend upon a blend of broader factors over which they either have no or limited control, such as economic and social conditions, immigration controls and opportunities.⁴

Canada’s current anti-trafficking policies are largely based on a repressive and carceral approach that views sex work and the sex industry as gateways to exploitation and regards migrant sex workers as especially vulnerable to exploitation. As the next section demonstrates, the shared goal of these laws and policies is to protect this group of vulnerable migrants from exploitation. This report questions whether this goal has been achieved by examining the available evidence on the impact of these anti-trafficking laws and policies on migrant workers in Canada. It begins by providing the broader context, one which shows that, historically, migrant sex workers have been the specific target of anti-trafficking laws and policies. This context is followed in Section 3 by a detailed mapping of the complex multiscalar web of anti-trafficking laws that operate federally, provincially in Ontario and municipally in Toronto as of August 1, 2021. Section 4 reviews the academic and grey literature that explore the impact of anti-trafficking laws and policies on sex workers in Canada, focussing on migrant sex workers. Section 5 reports upon a small study conducted between June 2020 and March 2021 of migrant sex workers and their advocates regarding the operation of anti-trafficking laws and policies. Section 6 concludes and offers recommendations to mitigate the harms perpetuated by Canada’s repressive and carceral approach to migrant sex workers.

³ Tara Santini and Elene Lam, *Upholding and Promoting Human Rights, Justice and Access for Migrant Sex Workers: Part 1 A Guide for Service Providers* (Butterfly 2017).

⁴ Cecilia Benoit, Michaela Smith, Mikael Jansson, Priscilla Healey and Douglas Magnuson, “The Relative Quality of Sex Work,” *Work, Employment and Society* 35:2 (2020) 239–255; Anna Malla, Elene Lam, Emily Van der Meulen & Hsin-Yun Peng, *Beyond Tales of Trafficking: A Needs Assessment of Asian Migrant Sex Workers in Toronto* (Butterfly 2019).

II. Setting the Scene: Targeting Migrant Sex Workers through Anti-Trafficking Laws and Policies

The powerful trope of criminal gangs transporting vulnerable women and children across borders in order to sexually exploit them has been an enduring feature of human trafficking discourse dating from the turn of the twentieth century when the first international treaties were adopted to end the “white slave trade”.⁵ Beginning in 1904, a handful of mostly northern European countries proposed a series of international conventions to address the problem of “white slavery”, which was the term used to refer to the traffic in women for sexual services. A panic around European women being procured to sell or trade sex in the colonies, which merged with ongoing moral and public health crusades to stop sex work, provided the impetus for these international conventions. These international laws were informed by a highly gendered notion of moral purity and a view of migration as a corrupting influence.

The term “white slavery”, with its explicit racialized connotations, was dropped in 1921 when the League of Nations adopted a new convention, the *International Convention for the Suppression of the Traffic in Women and Children*.⁶ The idea behind the 1921 Convention was to use the criminal law to reduce the supply of trafficked women and girls by making trafficking a criminal offence and to “rescue” them from a life of sex work. The need for coercion as a requirement of trafficking for sexual exploitation was dropped in the 1933 *Convention on the Suppression of Traffic of Women of Full Age* and sex work itself was directly equated with sexual exploitation.⁷ It was only in 1949 when the United Nations adopted the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* that men were treated along with women and children as potential victims.⁸ This Convention also continued to criminalize all forms of procurement and exploitation for the purposes of sex work, regardless of the consent of the person involved. The international anti-trafficking protocols were based on paternalistic, gendered and racialized understandings of women’s mobility as destructive to social order.⁹

This lineage informs the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the “Trafficking Protocol”), which was adopted by the UN in 2000. The Trafficking Protocol provides a framework for states to implement their own criminal laws and to develop coordinated approaches with other states and international institutions to tackle the global problem of human trafficking. The definition of human trafficking provided in the Protocol effectively leaves it to signatory states to decide the thorny question of whether

⁵ Stephen Legg, “The Life of Individuals as well as of Nations: International Law and the League of Nations’ Anti-trafficking Governmentalities,” 25:3 *Leiden Journal of International Law* (2012) 647.

⁶ Sept. 30, 1921, 9 L. N. T. S. 415.

⁷ Oct. 11, 1933, 150 L. N. T. S. 431.

⁸ Legg, “The Life of Individuals as well as of Nations”; Alice Edwards, “Traffic in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor,” *Denver Journal of International Law & Policy*, 36 (2007) 9, 13; Jean Allain, “White Slave Traffic in International Law,” *Journal of Trafficking and Human Exploitation*, 1:1 (2017) 1-40, 12-13.

⁹ Legg, “The Life of Individuals as well as of Nations”.

sex work should itself, without any element of coercion, be considered to be exploitation. Stereotypes about race, gender, sexuality and mobility are enduring features of anti-trafficking policies. But the fear no longer is of “white” European women being trafficked to the colonies; rather, the concern has pivoted to “non-western” women being transported into “western” countries.¹⁰

Canada was quick to ratify the Trafficking Protocol. Subsequently, the *Immigration and Refugee Protection Act, 2001 (IRPA)* introduced specific penalties for trafficking and ancillary activities. In 2003, when the US government dropped Canada’s anti-trafficking ranking in its influential Trafficking in Persons Report, the federal Liberal government responded by expanding the Royal Canadian Mounted Police’s (RCMP) anti-trafficking activities, setting up a special anti-trafficking immigration unit and adding a new provision to the *Criminal Code* in 2005 defining and prohibiting human trafficking.¹¹ In 2006, Canada introduced a program to enable foreign nationals who are trafficked to obtain a Temporary Resident Permit (TRP) for an initial “reflection period” of 180 days, which can be renewed at the discretion of Immigration, Refugees and Citizenship Canada (IRCC) for up to 3 years.¹² However, the available data indicates that very few TRPs have been issued for victims of trafficking.¹³ According to IRCC, between 2011 and 2015, the number of new TRPs issued to victims of trafficking varied from 5 to 22 per year.¹⁴

Researchers have documented how the federal government’s response to migrant sex workers slipped from claiming to protect victims from exploitation to “protecting” Canadians from undesirable migrants.¹⁵ Faced with demands to amend the criminal law provision that made communication for the purposes of solicitation a crime in order to decriminalize sex work, the Federal/Provincial/Territorial Committee on Prostitution stated in 1998 “that addressing the growing problems associated with the sex-trade (nuisance and violence) in Canada through decriminalization of the trade was unworkable because it might lead to an influx of prostitutes

¹⁰ Jo Doezema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women.” *Gender Issues*, 18 (1999) 23–50, 37; Annie Isabel Fukushima, *Migrant Crossings: Witnessing Human Trafficking in the U.S.* (Stanford: Stanford University Press, 2019) 40.

¹¹ Leslie Ann Jeffrey, “Canada and migrant sex work: Challenging the ‘foreign’ in foreign policy.” *Canadian Foreign Policy*, 12: 1 (2005) 33-48.

¹² During the reflection period, foreign nationals have access to health care, provincial services and financial assistance and they can apply for a fee-exempt work permit.

¹³ Research identified the issuance of 178 TRPs to 73 foreign nationals between May 2006 and the end of 2014, while a government study reported that IRCC issued 143 TRPs between 2012 and 2015. Sasha Baglay, “Access to Compensation for Trafficked Persons in Canada,” *Journal of Human Trafficking* (2020) DOI: [10.1080/23322705.2020.1738144](https://doi.org/10.1080/23322705.2020.1738144).

¹⁴ Immigration, Refugees and Citizenship Canada, *Evaluation of Temporary Resident Permits* (November 2016), online: *Government of Canada* <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/evaluation/pdf/temporary-resident-permits.pdf>.

¹⁵ Jeffrey, “Canada and migrant sex work”; Annalee Lepp, “Trafficking in Women and the Feminization of Migration: The Canadian Context,” *Canadian Woman Studies* 21/22: 4/1 (Spring/Summer 2002) 90-99.

and clients from outside the country”.¹⁶ At the same time, police in Toronto and Vancouver were raiding sex work establishments, leading to 1,100 arrests of mostly migrant women sex workers.¹⁷ Lepp notes that by 2001, officials had changed their tack from the lengthy process of prosecuting alleged traffickers to the quick solution of deporting migrant sex workers.¹⁸

This concern to keep migrant sex workers out of Canada is deep-rooted; the Canadian *Immigration Act* of 1910 introduced several classes of prohibited persons, including “women and girls coming to Canada for any immoral purpose”.¹⁹ This category of prohibited persons was maintained and expanded upon in the *Immigration Act* of 1952 to include “homosexuals or persons living on the avails of prostitution or homosexuality, pimps or persons coming to Canada for these or any other immoral purposes”.²⁰ Visa officers were empowered to determine if a person fit into one of these prohibited categories.

The 1976 *Immigration Act* dropped all express references to morality as a condition of admitting a foreign national to Canadian territory at the same time as it abandoned Canada’s explicitly racialized immigration policy. A category for “foreign exotic dancers” was opened up under the temporary work permit process introduced in 1978.²¹ However, in the early 1990s, as countries from which cross-border exotic dancers migrated shifted from the US to those in Eastern Europe and Asia, concerns about human trafficking in Canada began to resurface.²² In 2005, the granting of exotic dancer visas triggered a political scandal involving the Liberal Immigration Minister, who was alleged to have assisted an individual involved in her election campaign to obtain a visa. The Minister resigned and the visa program was more tightly regulated.²³ As sex work became increasingly conflated with sex trafficking and sexual exploitation, fewer permits were issued.²⁴

The election of a federal Conservative government in 2006 was the tipping point in human trafficking policy towards the express exclusion of migrant sex workers through immigration law as a way of “protecting” them from exploitation.²⁵ In 2007, the government targeted the

¹⁶ Jeffrey, “Canada and migrant sex work,” 26.

¹⁷ Lepp, “*Trafficking in Women and the Feminization of Migration*”; Jeffrey, “Canada and migrant sex work.”

¹⁸ Lepp, “*Trafficking in Women and the Feminization of Migration*”.

¹⁹ Daley, *Canada’s Relationship with Women Migrant Sex Workers*, 7.

²⁰ Ibid.

²¹ Audrey Macklin, “Dancing Across Borders: ‘Exotic Dancers,’ Trafficking, and Canadian Immigration Policy.” *International Migration Review*, 37:2 (2003) 464-500.

²² Kaye, *Responding to human trafficking*, 161; Rachele Daley, *Canada’s Relationship with Women Migrant Sex Workers*. Researchers attribute this shift in the location of the supply of exotic dancers to the expansion of lap-dancing in the industry.

²³ Kaye, *Responding to human trafficking*, 161-2; Daley, *Canada’s Relationship with Women Migrant Sex Workers*, 7

²⁴ Audrey Macklin, “Dancing Across Borders: ‘Exotic Dancers,’ Trafficking, and Canadian Immigration Policy” *International Migration Review*, 37:2 (2003) 464-467.

²⁵ Kaye, *Responding to human trafficking*, 161-2; Daley, *Canada’s Relationship with Women Migrant Sex Workers*, 7; Robyn Maynard, “Fighting Wrongs with Wrongs? How Canadian Anti-Trafficking Crusades Have Failed Sex Workers, Migrants, and Indigenous Communities,” *Atlantis* 37/2, (2015-16) 40-5; Kate Grantham, “Criminals or Victims? An Analysis of the Harper Conservatives’ Efforts on the Sex Trade and Human Trafficking,” in S. Barany

exotic dancers' visa and proposed amending the *IRPA* to "allow immigration officers to refuse to authorize foreign nationals to work in Canada if they are deemed to be at risk of exploitation".²⁶ This proposal was defeated. However, once the Conservatives obtained a majority in the 2011 election, they introduced a host of changes to immigration rules in order to target human trafficking.

A 2010 Report on Human Trafficking in Canada prepared by RCMP Criminal Intelligence for the Immigration and Passport Branch influenced the federal government's anti-trafficking policy, which targeted migrant sex workers, especially those from Eastern Europe and Asia.²⁷ The Report identified "exploitation occurring in bawdy houses operated by criminal organizations with Asian associations" as "an increasing concern to law enforcement".²⁸ However, it provided little evidence of trafficking. In fact, it noted that an extensive investigation in 2006, which targeted massage parlours and sex workers' workplaces in BC's lower mainland to determine whether foreign nationals had been trafficked into Canada for the purpose of sexual exploitation, resulted in no criminal prosecutions and found no indication that workers were trafficked or otherwise working against their will.²⁹ According to the Report, a majority of the Asian migrant sex workers they encountered had entered Canada with visitor or student visas, some of whom were found to have overstayed their visas. Since they were not found to be victims of human trafficking, the migrant sex workers were subsequently deported for engaging in illegal employment.³⁰

As part of an omnibus crime bill entitled the *Safe Streets and Communities Act*, the federal government amended the *Immigration and Refugee Protection Act* to provide immigration officers the "discretion to refuse to authorize foreign nationals to work in Canada if, in the opinion of the officers, the foreign nationals are at risk of being victims of exploitation or abuse".³¹ New regulations prohibiting all foreign nationals without permanent residence status from working in any capacity in strip clubs, massage parlours or escort services regardless of their immigration status came into effect on December 31, 2012. In addition, the prohibition of employment in sex work was printed on visitor, student and temporary work permits. Justified as protecting foreign nationals from exploitation, in particular young women between the age of 15 and 21, these regulations and amendments authorized immigration officials to prevent the admittance of foreign nationals suspected to be traveling to Canada to work in the commercial sex sector and to deport foreign nationals found working in industries deemed related to sex work.³² The federal government's 2012 *National Action Plan to Combat Human*

and R. Tiessen (eds.), *Obligations and Omissions: Canada's Ambiguous Actions on Gender Equality* (Kingston: McGill-Queen's University Press, 2017).

²⁶ Daley, *Canada's Relationship with Women Migrant Sex Workers*, 11.

²⁷ RCMP, *Human Trafficking in Canada*, March 2010 (Ottawa); Government of Canada, *National Action Plan to Combat Human Trafficking*, 2912 (Ottawa), 6.

²⁸ *Ibid.*, 19.

²⁹ *Ibid.*

³⁰ *Ibid.*, 15.

³¹ Daley, *Canada's Relationship with Women Migrant Sex Workers*, 7.

³² Kaye, *Responding to human trafficking*, 162-4; Daley, *Canada's Relationship with Women Migrant Sex Workers*, 9-10.

Trafficking identified countries in Asia, notably Thailand, Cambodia, Malaysia and Vietnam, as well as in Eastern Europe, as the primary sources of victims who were trafficked into Canada.³³

While purporting to protect potential migrants from the risk of sexual exploitation in Canada, these regulations also insulate Canadians from “risky” migrants and sex work. They also appear to rely on gendered and racialized preconceptions of migrant sex workers.³⁴ Importantly, since the Immigration, Refugees and Citizenship Canada (IRCC) RCC does not keep data about who is refused entry on the ground that they are perceived to be at risk of exploitation or the number of foreign nationals deported for working in sex work-related industries, it is impossible to collect data on refusals and deportations to determine whether the regulations have a disproportionate impact on specific groups and discriminate against them.

The next step in the federal government’s anti-trafficking policy was its revision to the criminal law provisions pertaining to sex work after the Supreme Court struck down three sex work offences.³⁵ The Conservative government justified the newly promulgated *Protection of Communities and Exploited Persons Act (PCEPA)* in 2014, which prohibits the purchase of sex, among other prohibitions, on the ground that sex work and the commercial sex industry are gateways for trafficking.³⁶ Indeed, the legislative summary of the *PCEPA* states that the law was enacted to “ensure consistency between prostitution offences and the existing human trafficking offences.”³⁷ This “end demand” type of legislation criminalizes the purchasing of sexual services and all third parties in the sex industry.³⁸ The *PCEPA* emphasizes “the exploitation inherent in prostitution, and risks of violence posed to those who engage in it”.³⁹ The *PCEPA* casts sex workers as victims, while purchasers and third parties (including other sex workers) who facilitate or advertise sexual services, or gain materially by providing services relating to the purchase of sex, such as managed in-call establishments, are portrayed as villains and criminals. Clamping down on sex work was characterized as a way of protecting vulnerable women, such as migrant women, from exploitation.⁴⁰

³³ Public Safety Canada, *National action plan to combat human trafficking*, 2012, 6, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>.

³⁴ When Daley attempted to obtain data from Immigration, Refugees and Citizenship Canada (IRCC) about migrants who were refused entrance into Canada for reason of risk of exploitation and about migrants who have been deported for working in the sex industries, she was informed that no data was available. Instead of refusing an application on the grounds that the potential migrant was at risk of exploitation, IRCC officials reported that they simply did not process the applications and, thus, there were no refusals of entry to report. Moreover, when a foreign national is deported for engaging in sex work, contrary to the *IRPA* regulations, IRCC simply record the reason for deportation as illegal work and do not specifically mention sex work. Daley, *Canada’s Relationship with Women Migrant Sex Workers*, 100.

³⁵ *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101.

³⁶ Kaye, *Responding to human trafficking*, 162-4.

³⁷ S.C. 2014, c. 25, Summary, section (f).

³⁸ Technically, the sale of sex is also criminalized under the *PCEPA*. However, sex workers are not to be prosecuted for “materially benefiting” from the sale of their own services. See 286.5 (1), “No person shall be prosecuted for (a) an offence under section 286.2 if the benefit is derived from the provision of their own sexual services.”

³⁹ S.C. 2014, c. 25, Preamble.

⁴⁰ The 2012 National Action Plan to Combat Human Trafficking identified “some Aboriginal women, youth, and children, migrants and new immigrants, teenaged runaways, children who are in [state] protection, and rural girls

The enforcement of human trafficking laws has also been bolstered by consecutive national strategies to address human trafficking that fund and prioritize law enforcement responses and carceral logics within community agencies. For example, the Conservative federal government's 2012 *National Action Plan to Combat Human Trafficking* allocated \$25 million over four years to "introduce aggressive new initiatives to prevent human trafficking, identify victims, protect the most vulnerable and prosecute perpetrators" and established a dedicated team comprised of members of the RCMP, Canada Border Services Agency (CBSA) and local police services to investigate human trafficking.⁴¹

The subsequent Liberal Government's *National Strategy To Combat Human Trafficking 2019-2024* further allocated \$75 million over six years to support, among other activities, "community-led empowerment programs," the coordination of "Canadian law enforcement outreach operations to proactively identify potential victims of human trafficking" and the establishment of a project "to produce financial intelligence on money laundering related to human trafficking."⁴² The plentiful allocation of government resources "spurred an enormous growth in the number of community-based and non-governmental organizations focusing on anti-trafficking,"⁴³ leading to concerns that some of these organizations are potentially redefining or modifying their programming to align with government priorities in order to access funds.⁴⁴

and women who move (whether voluntarily or involuntarily) to large urban centres as being most at risk for trafficking." Public Safety Canada, *National action plan to combat human trafficking*, 2012, 6.

⁴¹ Government of Canada, *National Action Plan to Combat Human Trafficking*, 2012 at 9, online (pdf): <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>.

⁴² Government of Canada, *National Strategy to Combat Human Trafficking 2019-2024*, 2019 at 10 and 11, online (pdf): <https://www.passengerprotect-protectiondespassagers.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtyg-hmnn-trffc/2019-ntnl-strtyg-hmnn-trffc-en.pdf>.

⁴³ Elya M. Durisin & Emily van der Meulen, "Sexualized Nationalism and Federal Human Trafficking Consultations: Shifting Discourses on Sex Trafficking in Canada," *Journal of Human Trafficking*, (2020) DOI: 10.1080/23322705.2020.1743604, online: <https://doi.org/10.1080/23322705.2020.1743604>.

⁴⁴ Ann De Shalit & Emily van der Meulen, "Thinking critically about human trafficking claims: Definitional and conceptual challenges," *Justice Report*, (2019) 34(3): 37–40. <https://www.ccja-acjp.ca/pub/en/justice-report/issue-34-3/#a7>.

III. Mapping Anti-Trafficking Law and Policy in Canada: An Endless Web of Criminality

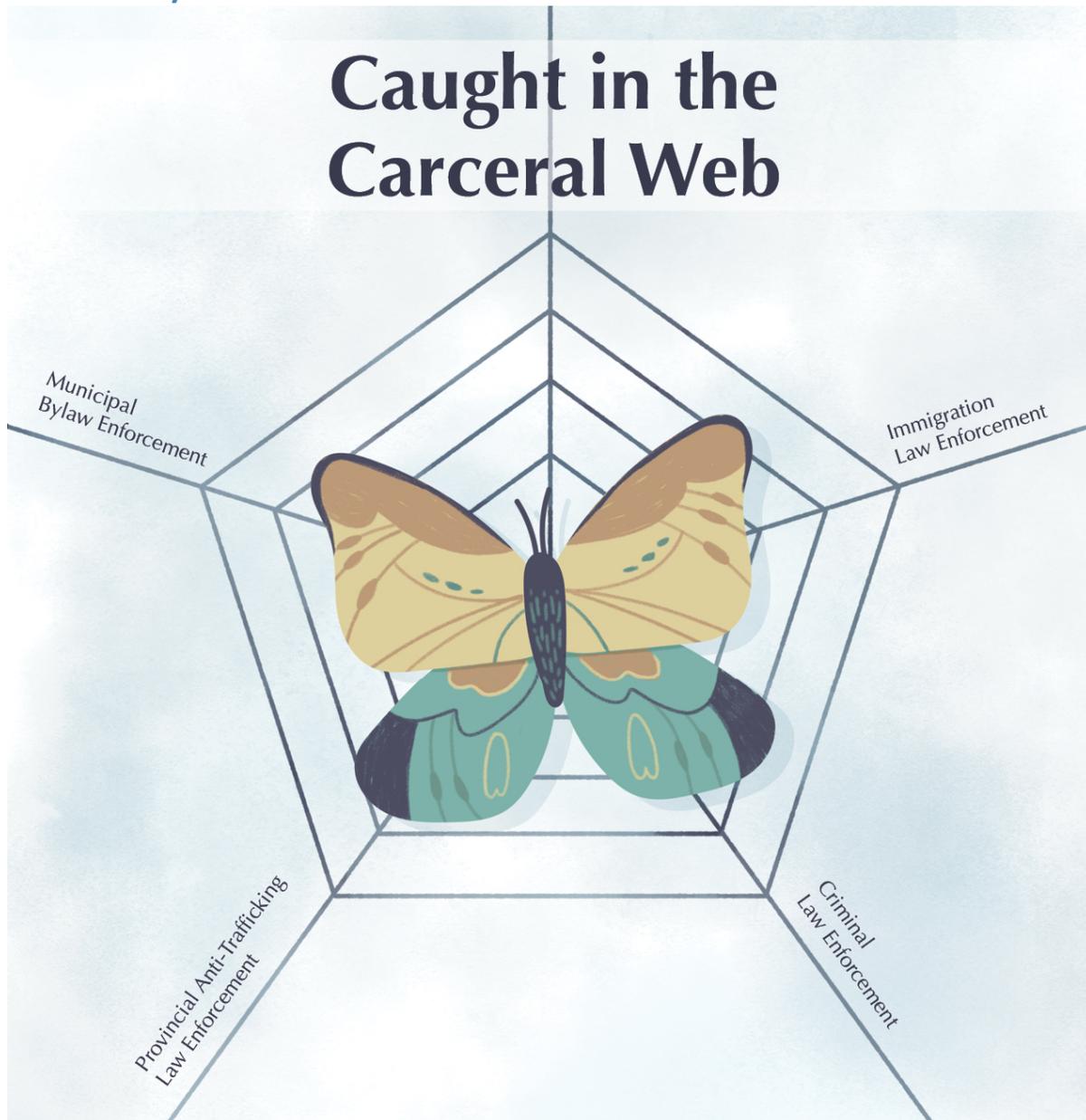


Figure 1: Graphical representation of several key interrelated law enforcement regimes that regulate and collectively impinge on the rights and security of migrant sex workers.

A. Introducing the “endless web of criminality”

Migrant sex workers must navigate a complex web of punitive and intersecting criminal laws targeting sex work and human trafficking, federal immigration laws (both ordinary inadmissibility and human trafficking-related provisions), provincial human trafficking laws and

municipal bylaws.⁴⁵ Separately, these areas of law are informed by, and perpetuate, the idea that sex work is inherently a form of exploitation that requires punitive state intervention to deter. Together, they form a ramifying legal and policy framework that seeks to regulate and ultimately eradicate sex work, while banishing the migrant sex workers who labour in this sector from mainstream society. This overlapping and interlocking legal regime has been described as “an endless web of criminality.”⁴⁶ In turn, this complex web of punitive laws and policies has led to aggressive surveillance and raids of migrant sex workers’ workplaces by federal, provincial and municipal law enforcement; over-charging and multiple convictions for the same offence; campaigns to shut down workplaces upon which migrant sex workers rely for their livelihoods; and deportations of migrant sex workers. Several of these key interrelated laws and law enforcement regimes are explored below.

B. Criminal Code offences

The *Criminal Code* includes specific human trafficking offences, which prohibit:

- **human trafficking**, defined as recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control, direction or influence over the movements of a person, “for the purpose of exploiting them or facilitating their exploitation” with penalties ranging from a mandatory minimum sentence of 4 years up to life imprisonment (s. 279.01(1) of the *Criminal Code*);⁴⁷
- **materially benefitting from human trafficking**, prosecuted either as a summary offence or an indictable offence liable to a 10-year prison sentence (s. 279.02 of the *Criminal Code*); and
- **withholding or destroying travel or identification documents**, prosecuted either as a summary offence or an indictable offence liable to a 5-year prison sentence (s. 279.03 of the *Criminal Code*).

The legal element of “exploitation” is broadly defined to encompass causing another person “to provide, or offer to provide, labour or a service by engaging in conduct that ... could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service”; notably, a person cannot legally consent to being “exploited”. A court is to consider,

⁴⁵ Sandra Ka Hon Chu, Jenn Clamen and Tara Santini, *The Perils of “Protection”: Sex Workers’ Experience of Law Enforcement in Ontario*, Canadian HIV/AIDS Legal Network, 2019 at 8, online: <http://www.hivlegalnetwork.ca/site/the-perils-of-protection/?lang=en> [*Perils of Protection*].

⁴⁶ Sandra Ka Hon Chu, Jenn Clamen and Tara Santini, *The Perils of “Protection”: Sex Workers’ Experience of Law Enforcement in Ontario*, Canadian HIV/AIDS Legal Network, 2019.

⁴⁷ Section 279.01 of the *Criminal Code* (R.S.C., 1985, c. C-46) prohibits “trafficking in persons,” Section 279.02 prohibits receiving a “financial or other material benefit” from trafficking, and Section 279.03 prohibits “withholding or destroying documents to facilitate trafficking.” There are also additional offences and harsher penalties for these activities involving people under 18.

among other factors, whether the accused “used or threatened to use force or another form of coercion,” “used deception,” or “abused a position of trust, power or authority.”⁴⁸

Of 1,708 incidents of human trafficking reported by police since 2009, the vast majority (97%) involved women and girls as alleged victims. According to Statistics Canada, human trafficking for the purpose of domestic “sexual exploitation” is most prevalent, with the majority of police-reported cases of human trafficking related to alleged *Criminal Code* offences, and fewer pertaining to alleged international trafficking under the *Immigration and Refugee Protection Act* (described further below).⁴⁹ Additionally, very few cases of non-sexual labour trafficking have been pursued, resulting in an extraordinarily narrow framing of human trafficking as almost exclusively domestic sex trafficking and leaving abuse in other labour sectors unaddressed.

In addition, under the *Criminal Code*, sex work–specific criminal offences, including those introduced in December 2014 by the *PCEPA*⁵⁰ prohibit:

- **impeding traffic or pedestrians or communicating in a public place** next to a school ground, playground or daycare centre, for the purpose of offering, providing or obtaining sexual services, prosecuted as a summary offence (s. 213 of the *Criminal Code*);
- **purchasing** or attempting to purchase sex in any place and at any time, prosecuted either as summary offence liable to a minimum fine and/or a prison sentence up to 2 years less a day or an indictable offence liable to a fine and up to 5 years imprisonment (s. 286.1(1) of the *Criminal Code*);
- **materially benefitting** from sexual services, prosecuted either as a summary offence or an indictable offence liable to a 10-year prison sentence (s. 286.2(1) of the *Criminal Code*);
- **procuring** sexual services, defined as recruiting, holding, concealing or harbouring a person who offers or provides sexual services for consideration, or exercising “control, direction or influence over the movements of that person,” prosecuted as an indictable offence liable to 14 years of imprisonment (s. 286.3(1) of the *Criminal Code*); and
- **advertising** sexual services, prosecuted either as a summary offence or an indictable offence liable to a 5-year prison sentence (s. 286.4 of the *Criminal Code*).

The absolute prohibition on the purchase of sex introduced by *PCEPA* effectively criminalizes sex work in all situations and drives the entire industry underground since every individual transaction would run afoul of section 286.1(1) of the *Criminal Code*. Further, prohibitions on

⁴⁸ Section 279.04 of the *Criminal Code*.

⁴⁹ Adam Cotter, *Trafficking in persons in Canada, 2018*, Juristat, June 23, 2020.

⁵⁰ *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25.

other integral aspects of sex work, such as material benefit, procuring and advertising (i.e., the “third party” offences), capture any person who provides services to, manages or associates with, sex workers. These parties include, *inter alia*, drivers, bookers, translators, webmasters, business owners, managers, receptionists, accountants and other colleagues.

Since the passage of the *PCEPA*, a number of third parties charged with the material benefit, procuring and advertising offences have challenged the constitutionality of these prohibitions. In 2020 and 2021, the Ontario Court of Justice and the Superior Court of Justice of Ontario, respectively, held that the material benefit, procuring and advertising offences were unconstitutional, as they violated sex workers’ Charter rights.⁵¹ In contrast, subsequent 2021 decisions of the Superior Court of Justice upheld these three third party offences.⁵²

While persuasive, these trial-level cases are not binding on prosecutors and courts. In 2021, the Canadian Alliance for Sex Work Law Reform (CASWLR, a coalition of 25 sex workers’ rights groups predominantly run by and for sex workers) and six individual applicants (five individual sex workers and one former escort agency operator) also initiated a court case in the Superior Court of Justice of Ontario challenging the public communication, purchase, material benefit, procuring and advertising offences on the basis that these offences violate sex workers’ constitutionally-protected rights to life, liberty, security of the person, personal and sexual autonomy, equality, freedom of expression and freedom of association. At the time of writing, the case had yet to proceed to a hearing.

Notably, patterns in charges laid by police reveal a concerning conflation of human trafficking and sex work. Since 2009, close to two-thirds (63%) of all human trafficking police reports with “secondary violations” have also involved a sex work offence, while more than one-third (34%) of human trafficking charges *actually laid* are in conjunction with sex work offences, primarily those related to materially benefiting from others’ sexual services, procuring or advertising.⁵³ These patterns, combined with the similar wording of the human trafficking and sexual services offences, suggest that “there is now a troubling prospect for over-charging and multiple convictions for essentially the same offence,.... especially procuring and financially or materially benefiting from sexual services and the criminal trafficking in persons offences.”⁵⁴

Moreover, only 48% of police-reported incidents of human trafficking since 2009 have resulted in charges being recommended or laid against an accused person, and 62% of completed cases where human trafficking was the most serious offence have resulted in the case being stayed, withdrawn, dismissed or discharged.⁵⁵ Only 29% of cases where human trafficking was the most serious offence in the case resulted in conviction, compared to 58% of cases involving violent

⁵¹ *R. v. Anwar* 2020 ONCJ 103 and *R. v. N.S.* 2021 ONSC 1628.

⁵² See, for example, *R. v. MacDonald*, 2021 ONSC 4423 and *R. v. Williams*, 2021 ONSC Court File No. 18—0000980.

⁵³ Adam Cotter, *Trafficking in persons in Canada, 2018*, Juristat, June 23, 2020.

⁵⁴ Hayli Millar and Tamara O’Doherty, *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?*, 2020.

⁵⁵ Adam Cotter, *Trafficking in persons in Canada, 2018*, Juristat, June 23, 2020.

offences and 56% of cases where at least one charge of human trafficking was involved but was not the most serious offence.⁵⁶

Where charges have been pursued and a conviction has ensued, Millar and O’Doherty found that sentences for human trafficking suggest a conflation of trafficking and sex work jurisprudence “that is tied to a deeply entrenched narrative of a ‘parasitic and exploitive’ nature of the relationship between pimp and prostitute.”⁵⁷ The sentencing cases also illustrate a “post-PCEPA paradigmatic shift of increased sentencing ancillary court orders — usually some combination of authorization to take a DNA sample, to be included in the sex offender registry (SOIRA), a weapons prohibition, no contact orders, forfeiture of technology or monies seized by the police in their investigations and prohibitions on the use of technology.”⁵⁸

C. Immigration offences

The constellation of human trafficking and sex-work related criminal offences reviewed above can, for migrant sex workers, *directly* result in immigration sanctions and penalties as a result of the “crimmigration” nexus: the increasing integration of criminal and immigration law, law enforcement and sanctions.⁵⁹ In Canadian law, the key pivot point for crimmigration is section 36 of the *Immigration and Refugee Protection Act (IRPA)*, which renders any person in Canada with immigration status short of full citizenship inadmissible if that person is convicted of one of a host of criminal offences, many of which are relatively minor and pose no obvious risk to public safety.⁶⁰

Section 36 acts as a node by which criminal charges and convictions can result in removal of status, detention and deportation. This section contains provisions that can render even Canadian permanent residents inadmissible to Canada, removing their Canadian permanent residence status and leaving them vulnerable to deportation. Canadian permanent residents could lose their status if they are convicted or plead guilty and receive a prison sentence of more than 6 months for a given offence (which is possible if convicted of the purchasing, material benefit, procuring or advertising offences and any of the human trafficking offences), or if the offence that they are convicted of, or plead guilty to, carries a maximum prison sentence of 10 (or more) years, regardless of the actual sentence (which includes the material benefit, procuring, human trafficking and materially benefitting from human trafficking offences).⁶¹

⁵⁶ Adam Cotter, *Trafficking in persons in Canada, 2018*, Juristat, June 23, 2020.

⁵⁷ Hayli Millar and Tamara O’Doherty, *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?*, 2020.

⁵⁸ Hayli Millar and Tamara O’Doherty, *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?*, 2020.

⁵⁹ Kelly Kennedy, “Emerging Issues - Crimmigration in Canada: Are We Inducing False Guilty Pleas?” *Robson Crim Legal Blog*, December 21, 2018, online: <https://www.robsoncrim.com/single-post/2018/12/21/Emerging-Issues---Crimmigration-in-Canada-Are-We-Inducing-False-Guilty-Pleas>.

⁶⁰ *Immigration and Refugee Protection Act*, SC 2001, c. 27, s. 36 [IRPA].

⁶¹ IRPA at s 36(1).

Aside from *IRPA* section 36, which ties criminal offences to potential immigration inadmissibility and deportation, the *IRPA* also has standalone provisions for human trafficking-specific offences. The most pertinent offence is section 118, which states that “[n]o person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.”⁶² The punishment for this offence is severe: those charged face fines of up to \$1,000,000 or jail time of up to life imprisonment, or both.⁶³ Other offences under the *IRPA* that could potentially apply to human trafficking-related cases include: human smuggling,⁶⁴ passport offences,⁶⁵ employing a foreign national without authorization,⁶⁶ misrepresentation,⁶⁷ and aiding and abetting another to breach the *IRPA*.⁶⁸

Yet for all the attention and resources devoted to combating cross-border human trafficking, between January 1, 2006 and July 13, 2020, the CBSA recorded a total of eight charges laid, with zero convictions.⁶⁹ This data suggests that anti-trafficking investigations and raids rarely, if ever, uncover “traffickers” in the context of cross-border migration.

However, the spectre of cross-border human trafficking *is* deployed in immigration law to significantly curtail the ability of migrants who work in the sex industry to make a livelihood through legal means. Immigration law reforms have been advanced so as to effectively prohibit those with temporary status from legally engaging in sex work and, more broadly, any sort of employment in a wide range of industries deemed to be related to sex work. Notably, these sex work employment prohibitions do not apply to citizens or permanent residents, but only to migrants with temporary status.⁷⁰

The current regulatory framework for this prohibition for temporary residents can be found in the *Immigration and Refugee Protection Regulations (IRPR)*⁷¹ as well as Ministerial Instructions on the issuance of work permit conditions pursuant to *IRPR* section 185(b). Overall, there are three primary components to the immigration prohibitions.

First, *IRPR* section 183(1)(b.1) imposes a general prohibition on sex work on *all* temporary residents (that is, those who are not Canadian citizens or permanent residents). The provision

⁶² The definition of trafficking in the Criminal Code hinges on exploitation, whereas the definition of trafficking in the *IRPA* centres on using fraud, deceit etc. to bring someone into Canada.

⁶³ *Ibid.*, s 120.

⁶⁴ *Ibid.*, s 117.

⁶⁵ *Ibid.*, s 122.

⁶⁶ *Ibid.*, s 124(c).

⁶⁷ *Ibid.*, ss 126-127.

⁶⁸ *Ibid.*, s 131.

⁶⁹ Freedom of Information Request to Canadian Border Services Agency, on file with authors. There were 23 open investigations recorded in the CBSA system. The system of recording did not identify cases where CBSA referred suspected human trafficking cases to Canadian police agencies.

⁷⁰ Immigration status in Canada can be roughly understood as a gradation of security from citizenship to permanent residency to temporary residency to non-status.

⁷¹ SOR/2002-227 at ss 183(1)(b.1), 196, 200(3)(g.1).

mandates that all temporary residents are not allowed to “enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”⁷²

Subsequent Ministerial Instructions elaborate that “the new regulations prohibit all foreign nationals (that is, visitors, students and workers) from working for these businesses, regardless of how they are authorized to work (e.g., work off campus, work without a permit, have an open work permit, are self-employed, etc.).”⁷³ In addition, temporary residents are prohibited from working in *any* capacity in sex work-related industries (e.g., even as a janitor, cook, security guard, receptionist or dancer).⁷⁴ Officers are also empowered to refuse permits where they consider that work is related to sex-trade industries.⁷⁵

Second, while *IRPR* section 196 imposes a requirement that all temporary residents must not work in Canada without a work permit or be otherwise authorized to work under the *IRPR*, section 196.1 explicitly prohibits even temporary residents who *otherwise have authorization to work* from entering “into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massage”.⁷⁶ This means that temporary residents who otherwise are legally allowed to work cannot be employed in certain sex work-related industries without risking revocation of their immigration status and deportation.

Third, section 200(3)(g.1) states that immigration officers “shall not issue a work permit to a foreign national” if they intend to “work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages”.⁷⁷ This means that immigration officers are barred from issuing new work permits — even open work permits — for migrant workers who may find work in sex work-related industries.

⁷² *IRPR*, s 183(1)(b.1).

⁷³ Citizenship and Immigration Canada, *Operational Bulletin 567: Protecting foreign nationals from the risk of abuse and exploitation* (14 February 2014), archived online: *Government of Canada* <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/bulletins-2014/567-february-14-2014.html>> [OB 567].

⁷⁴ *Ibid.* In theory an assessment was to be conducted to distinguish between business that normally provided escort, massage, strip tease or erotic services and those that only periodically hosted such events (the former being necessarily exploitative). However, OB 449 specified that when a foreign national applies for a permit in a location that merely hosted events, the presumption is that it is also exploitative and therefore the permit will be refused.

⁷⁵ The new program delivery instructions continue to require officers to refuse the work permit application if the employer “regularly provides striptease, erotic dance, escort services or erotic massage.” See Citizenship and Immigration Canada, *Steps to determine work and assessment of work permit applications* (Last updated 4 June 2019), online: *Government of Canada* <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/eligibility/steps-determine-work-assessment-work-permit-application.html>>.

⁷⁶ *IRPR*, ss 196, 196.1.

⁷⁷ *Ibid.*, s 200(3)(g.1).

Together, these three elements create a two-tiered scheme in which Canadian residents who do not have permanent resident status are targeted by immigration enforcement if they work in sex work-related industries while Canadian permanent residents and citizens are not directly prohibited by immigration law from engaging in sex work. The scheme intertwines with the severe and immediate impacts of the PCEPA on all sex workers to further exacerbate the risks and consequences of criminalization and law enforcement for sex workers who are non-citizens. Along the way, the scheme also creates a blanket ban on migrants who are not sex workers (e.g., janitors, receptionists, accountants, cooks, security guards, etc.) from working in sectors such as massage parlours and strip clubs.

As a result of this immigration prohibition, during police raids and other law enforcement encounters (e.g., with municipal bylaw enforcement), those with precarious status risk being identified by and having information shared with the CBSA, which may trigger a whole host of *IRPR* violations resulting in immigration detention and eventual deportation from Canada.

D. Provincial anti-human trafficking laws

A growing number of provinces in Canada have developed their own human trafficking strategies and/or laws, many of which feature similar provisions. In 2013, B.C. introduced a provincial *Action Plan to Combat Human Trafficking* and established a dedicated Office to Combat Trafficking in Persons to coordinate the provincial government's response,⁷⁸ while Alberta introduced a "nine-point Action Plan to Combat Human Trafficking" in 2019 that established a provincial human trafficking task force, supports training for judges, prosecutors, police officers, nurses and doctors, promotes "naming and shaming" traffickers by publishing the names of businesses found to have "knowingly facilitated human trafficking," and lobbies the federal government to strengthen penalties against human traffickers.⁷⁹ Alberta, Manitoba and Saskatchewan also have laws (respectively, the *Protecting Survivors of Human Trafficking Act*, *The Child Sexual Exploitation and Human Trafficking Act*, and *The Protection From Human Trafficking Act*) that facilitate the ability of alleged victims to seek protection orders against and compensation from traffickers.⁸⁰

In Ontario, the provincial government released its first provincial *Strategy to End Human Trafficking* in 2016, devoting \$72 million to activities to increase awareness of trafficking and improve housing, mental health services, trauma counselling and job skills training for survivors; enhance "justice sector initiatives" such as "effective intelligence-gathering and identification, investigation and prosecution of human trafficking"; support Indigenous-led approaches and culturally relevant services and responses; and establish a provincial anti-

⁷⁸ Government of British Columbia, "About Office to Combat Trafficking in Persons," undated, online: [About Office to Combat Trafficking in Persons - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/industry/employment/office-to-combat-trafficking-in-persons).

⁷⁹ Government of Alberta, "Human trafficking action plan," undated, online: [Human trafficking action plan | Alberta.ca](https://www.alberta.ca/human-trafficking-action-plan).

⁸⁰ 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.

human trafficking coordination office to “help improve collaboration across law enforcement, justice, social, health, education and child welfare sectors.”⁸¹ Ontario’s strategy also included the assignment of six new Crown attorneys specializing in human trafficking cases across the province. Roots notes that the emphasis on trafficking prosecutions and the introduction of specialized Crown attorneys was “likely a response to the relatively low conviction rates and high rate at which trafficking charges [were] withdrawn, despite a rise in the number of charges following” the Supreme Court of Canada’s decision in 2013 (*Bedford*) striking down the prostitution-related offences in the *Criminal Code* prior to the *PCEPA*.⁸² The following year, the provincial government introduced the *Anti-Human Trafficking Act*, proclaiming February 22 as “Human Trafficking Awareness Day” in Ontario, allowing individuals to apply for restraining orders against traffickers and establishing the tort of human trafficking — mirroring laws passed or being contemplated in Alberta, Manitoba and Saskatchewan.⁸³

According to Shalit et al., the *Anti-Human Trafficking Act* “generated ample commentary among provincial politicians, most of which centered around the failure of the government to respond adequately to trafficking, and the need to enhance policing measures and cooperation across jurisdictions.”⁸⁴ In the news release accompanying the Act’s passage, the provincial government described human trafficking as a “growing and complex problem” in the province and Ontario as “a major centre for human trafficking in Canada,” and underscored the need to “prevent further exploitation of other victims through more effective prosecution of traffickers.”⁸⁵

Recent high-profile anti-human trafficking campaigns in Ontario have also illustrated how human trafficking has been conflated with sex work and justified the escalation of law enforcement intrusions in sex workers’ workspaces. “Operation Northern Spotlight,” a yearly initiative undertaken by the RCMP, the Ontario Provincial Police (OPP) and other police forces, has involved police posing as clients and targeting sex workers in their workplaces.⁸⁶ As the CASWLR described in 2017, its member groups reported crisis calls from sex workers resulting from the initiative, during which police approached, detained and harassed numerous sex

⁸¹ Ministry of Children, Community and Social Services, “Ontario’s Strategy to End Human Trafficking: First Year Progress Report,” undated, online: <https://www.mcscs.gov.on.ca/en/mcscs/programs/humantrafficking/firstYearProgress.aspx#:~:text=Ontario's%20Strategy%20to%20End%20Human%20Trafficking%2C%20launched%20in%202016%2C%20aims,and%20enhance%20justice%2Dsector%20initiatives> and Ministry of the Status of Women, “Ontario Taking Steps to End Human Trafficking: Province Investing in Strategy to Improve Services, Help Survivors,” June 30, 2016, online: <https://news.ontario.ca/en/release/40984/ontario-taking-steps-to-end-human-trafficking>.

⁸² Katrin Roots, *The Human Trafficking Matrix: Law, Policy and Anti-Trafficking Practices in the Canadian Criminal Justice System*, Dissertation submitted to the Faculty of Graduate Studies, York University, Toronto, Ontario, June 2018.

⁸³ *Anti-Human Trafficking Act, 2017*, SO 2017, c. 12.

⁸⁴ Ann De Shalit, Katrin Roots & Emily van der Meulen, “Knowledge Mobilization by Provincial Politicians: The United Front against Trafficking in Ontario, Canada,” *Journal of Human Trafficking* (2021), DOI: 10.1080/23322705.2021.1934370.

⁸⁵ Ministry of the Status of Women, “Ontario Introduces Legislation to Protect Human Trafficking Survivors,” February 22, 2017, online: <https://lennoxandaddington.civicweb.net/document/26702/For%20Information%20-%20Human%20Trafficking%20Legislation.pdf?handle=B8CCE2A15841403DA40C7EF37A5FFD7E>.

⁸⁶ Chu, Clamen and Santini, *The Perils of “Protection”*.

workers without evidence of coercion, exploitation or human trafficking. According to the CASWLR, “when police raid indoor sex work establishments or pose as sex 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.”⁸⁷ Troublingly, Project Crediton, a 2020 initiative carried out by the OPP Anti-Human Trafficking Team that was described as a “major human trafficking bust”⁸⁸ did not result in a single human trafficking charge, although it led to multiple sex work charges being laid.⁸⁹

In 2020, Ontario launched its *anti-human trafficking strategy 2020-2025*, which was supported by an historic investment of \$307 million to be spent on “awareness raising, victim protection, survivor supports, policing and law enforcement initiatives, and more.”⁹⁰ According to the Ontario government, “human trafficking is one of the fastest-growing crimes worldwide,” and “approximately two-thirds of police-reported human trafficking cases in Canada occur in Ontario.”⁹¹ This initiative represents the largest total investment in an anti-human trafficking strategy in Canada and it coincided with some of the most comprehensive budget cuts and privatization of services in Ontario.⁹²

The following year, the Ontario government enacted the *Combating Human Trafficking Act, 2021*.⁹³ The stated purpose of the Act is to end human trafficking in Ontario and provide support for survivors by adopting a law enforcement model and increasing surveillance powers for police and ministerially appointed inspectors. These inspectors “may, without a warrant or notice, and at any time, enter and inspect any place” to determine compliance with the Ministers’ regulations.⁹⁴ They are also granted unfettered powers to examine, demand, remove or copy any “thing that is or may be relevant to the inspection” and to “question a person on any matter that is or may be relevant to the inspection, including questioning a person separate

⁸⁷ CASWLR, “Call to end participation in Operation Northern Spotlight and refocus efforts on support for sex workers,” October 4, 2017, online: [TURN OFF THE SPOTLIGHT: Sex workers and allies urge an end to Operation Northern Spotlight — HIV Legal Network](#).

⁸⁸ Darren MacDonald, “Several people charged in major human trafficking bust with ties to Sudbury,” *CTV News*, July 17, 2020, online: [Several people charged in major human trafficking bust with ties to northern Ontario | CTV News](#).

⁸⁹ Lake Superior News, “Seven persons charged with running commercial sex trade organization,” July 17, 2020, online: <https://lakesuperiornews.com/News/Ontario/seven-persons-charged-with-running-commercial-sex-trade-organization>.

⁹⁰ Ministry of Children, Community and Social Services, “Ontario’s anti-human trafficking strategy 2020-2025,” 2020, online: <https://www.ontario.ca/page/ontarios-anti-human-trafficking-strategy-2020-2025>.

⁹¹ Ministry of Children, Community and Social Services, “Ontario’s anti-human trafficking strategy 2020-2025,” 2020, online: <https://www.ontario.ca/page/ontarios-anti-human-trafficking-strategy-2020-2025>.

⁹² Elene Lam, Anne Margaret Deck & Sandra Ka Hon Chu, “Ontario’s anti-human trafficking initiative,” *The Lawyer’s Daily*, March 26, 2020, online: <https://www.thelawyersdaily.ca/articles/18322/ontario-s-anti-human-trafficking-initiative-elene-lam-anne-margaret-deck-sandra-ka-hon-chu>.

⁹³ S.O. 2021, c. 21

⁹⁴ *Anti-Human Trafficking Strategy Act, 2021*, S.O. 2021, CHAPTER 21, section 7(3).

from others.”⁹⁵ Non-compliance is a punishable offence, subject to a fine of \$50,000 or \$100,000 for an individual or corporation, respectively.

The broad investigative powers granted to Inspectors give them wide latitude, based on their sole discretion, in determining what “is or may be” relevant to an inspection — discretionary powers that are arguably broader than the search and seizure powers that police have under exigent circumstances. Troublingly, an individual is not permitted to “refuse to answer questions on any matter that is or may be relevant to the inspection.”⁹⁶ A person who is suspected of committing an offence is thus compelled to answer questions in breach of their constitutionally protected right to silence.

Moreover, Schedule 1 of the *Combating Human Trafficking Act, 2021* would repeal the current *Hotel Registration of Guests Act*, replace it with the *Accommodation Sector Registration of Guests Act, 2021* and require that an owner and manager of a hotel or a business in a yet-to-be defined “prescribed class” (which provincial MPPs have advocated to include short-term rental premises such as Airbnb⁹⁷) maintain a register and record the name of one of the guests, their primary residence and any other “prescribed information.” The Act would require that information in the register be maintained for a prescribed period after it is recorded, and also authorizes the Minister to make regulations prescribing *additional* information to be recorded in the register, which may include “names, residence or other information or more than one person from a group of guests.”⁹⁸

The Act would make it an offence for a person who applies for admission as a guest to make a false statement of information that is required to be in the register, and authorizes law enforcement to demand to view information recorded in the register if “there are reasonable grounds to believe information recorded in the register will assist in locating or identifying a person who is currently a victim of human trafficking or is at eminent risk of being trafficked,” and “there are reasonable grounds to suspect that the victim of human trafficking will suffer bodily harm” or “there are reasonable grounds to believe information recorded in the register will be destroyed” in the time it would take to obtain a judicial order.⁹⁹ Failing to keep a register in this manner, knowingly and wilfully permitting a false statement to be entered in the register, or failing to comply with an order or urgent demand to view the register would be an offence subject to a fine of up to \$5,000.

E. Municipal bylaws

⁹⁵ *Anti-Human Trafficking Strategy Act, 2021*, S.O. 2021, CHAPTER 21, section 7(7).

⁹⁶ *Anti-Human Trafficking Strategy Act, 2021*, S.O. 2021, CHAPTER 21, section 7(11)(d).

⁹⁷ Nicole Ireland and Trevor Dunn, “Advocates urge Ontario government to fill potential gap in new human trafficking bill,” *CBC News*, February 28, 2021, online: <https://www.cbc.ca/news/canada/toronto/ontario-government-combat-human-trafficking-bill-251-1.5930882>.

⁹⁸ *Accommodation Sector Registration of Guests Act, 2021*, S.O. 2021, CHAPTER 21, SCHEDULE 1, Section 4(2).

⁹⁹ *Accommodation Sector Registration of Guests Act, 2021*, S.O. 2021, CHAPTER 21, SCHEDULE 1, Section 7(b).

In addition to criminal, immigration and provincial laws and policies, migrant sex workers must also navigate municipal bylaws. Municipal bylaws regulate the nature of bylaw offences and their penalties, as well as licensing application and renewal requirements. The goals of municipal business licensing and regulation are to: (1) foster the local economy; (2) protect workers; and (3) protect the public from risks associated with particular activities.¹⁰⁰

Municipal bylaws, which can differ from jurisdiction to jurisdiction, give another set of powers to law enforcement officers to, *inter alia*: monitor behaviour and people in public spaces where sex work can occur (e.g. for activities that officers perceive to be “causing a disturbance” or “loitering”), and ensure establishments where sex work may occur (such as strip clubs, massage parlours, holistic centres or body rub parlours) abide by a myriad of restrictions that ostensibly address health and safety and public nuisance issues. All business owners and operators need a municipal license (which can be revoked) to operate their business; staff may also need municipal licenses depending on the municipality.¹⁰¹

In the City of Toronto (as with many other municipal jurisdictions), municipal bylaws and bylaw enforcement of massage parlours, holistic centres and body rub workplaces appear to conflate sex work, criminality and human trafficking.¹⁰² In 2013, Toronto City Council directed its Municipal Licensing and Standards (MLS) division, in consultation with the Toronto Police Service, to undertake a review of businesses that are “destinations for human trafficking” from the perspective of “health and safety, and crime prevention”.¹⁰³ This followed an initiative in 2012 to “better control the nuisances created by holistic establishments.”¹⁰⁴ When pressed for evidence of trafficking, however, city staff and politicians have frequently pointed merely to evidence of erotic services, reinforcing the conflation between trafficking and sex work.¹⁰⁵

City of Toronto bylaw offences that target owners and workers at holistic centres and body rub parlours include:

¹⁰⁰ Mariana Valverde, “MLS policies and practices in regard to holistic health practitioners and related businesses” (April 10, 2018), online: <https://www.toronto.ca/legdocs/mmis/2018/ls/comm/communicationfile-79542.pdf>.

¹⁰¹ Tara Santini & Elene Lam, “Municipal Law and Migrant Sex Workers’ Rights” (October 2017), online (pdf): *Butterfly* <https://docs.wixstatic.com/ugd/5bd754_7e9b78110c594d959c9af10a47f176b6.pdf>.

¹⁰² For example, similar bylaw frameworks can be found, *inter alia*, in Hamilton, Richmond Hill, Mississauga, Markham, Ottawa, London, and Newmarket.

¹⁰³ City of Toronto City Council, “Initiatives to Address Human Trafficking” (16 December 2013), online: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.13>.

¹⁰⁴ City of Toronto Municipal Licensing and Standards, “Review of Body Rub Parlour and Holistic Centre By-laws - Consultation and Research Findings (6 May 2019), online: <https://www.toronto.ca/legdocs/mmis/2019/gl/bgrrd/backgroundfile-132769.pdf> at 3.

¹⁰⁵ See Mike Adler, “Stop racially profiling Scarborough spa workers, advocates tell city” (March 19, 2019), Toronto.com, online: <https://www.toronto.com/news-story/9219191-stop-racially-profiling-scarborough-spa-workers-advocates-tell-city>.

- Restrictions on operating hours;¹⁰⁶
- Clothing restrictions;¹⁰⁷
- Restrictions on locked doors;¹⁰⁸
- Advertising restrictions;¹⁰⁹
- Specifications for washrooms and showers;¹¹⁰
- “Clean and in good condition” requirements for mats;¹¹¹
- Camera restrictions;¹¹²
- Receipt and record requirements;¹¹³ and
- Substantial financial penalties for violations of any bylaws.

Bylaw enforcement can be carried out either by specific municipal bylaw enforcement officers or by local police forces. Where there are municipal officers, they (and not the police) typically spearhead bylaw enforcement. However, the two forces may collaborate in certain circumstances, such as during joint human trafficking raids targeting massage parlours.¹¹⁴

As authorized by the Ontario *Municipal Act*,¹¹⁵ municipal bylaw officers have significant powers of entry into workplaces or non-dwellings without warrant for the purposes of inspection to determine bylaw compliance.¹¹⁶ The Act also grants broad powers during these inspections to require production of “documents or things relevant to the inspection,”¹¹⁷ “inspect and remove documents or things” for the purpose of making copies or extracts,¹¹⁸ “require information from any person concerning a matter related to the inspection,”¹¹⁹ and “make examinations or take tests, samples or photographs necessary for the purposes of the inspection.”¹²⁰ Notably, while these broad powers of entry and inspection are granted to municipal officers and municipal police officers, these frontline officers may also “be accompanied by a person under his or her direction,” which allows these powers to be extended, upon invitation, to other law

¹⁰⁶ City of Toronto, by-laws, C 545-183, *Hours of Operation*, online: https://www.toronto.ca/legdocs/municode/1184_545.pdf.

¹⁰⁷ *Ibid.*, C 545-185(B).

¹⁰⁸ *Ibid.*, C 545-177(I) and 545-343.

¹⁰⁹ *Ibid.*, C 545-180.

¹¹⁰ *Ibid.*, C 545-177 and 545-345.

¹¹¹ *Ibid.*, C 545-177(E) and 545-345(N).

¹¹² *Ibid.*, C 545-358.

¹¹³ *Ibid.*, C 545-173 and 545-376.

¹¹⁴ For instance, as detailed by the HIV Legal Network, bylaw enforcement and local police forces collaborated in the raid of an Asian massage parlour where staff detailed that they were rounded up and ordered to face the wall while the officers searched the premise without warrant or explanation. When they attempted to speak, staff were told to “shut up”. <https://www.hivlegalnetwork.ca/site/the-perils-of-protection/?lang=en> at 23.

¹¹⁵ SO 2001, c 25.

¹¹⁶ *Ibid.*, ss 435-439.

¹¹⁷ *Ibid.*, s 436(2)(a).

¹¹⁸ *Ibid.*, s 436(2)(b).

¹¹⁹ *Ibid.*, s 436(2)(c).

¹²⁰ *Ibid.*, s 436(2)(d).

enforcement (or others) who would not otherwise be allowed to enter.¹²¹ Municipalities have broad discretion to set fines for non-compliance from a minimum of \$500 to a maximum of \$100,000.¹²²

After the City explicitly pivoted its municipal licensing and bylaw enforcement towards “human trafficking”, “nuisance”, “health and safety” and “crime prevention”, punitive municipal bylaw enforcement practices skyrocketed. From 2013 to 2016, the number of Toronto MLS inspections at holistic centers increased by 212% (from 569 to 1,780 visits) and inspections of individual holistic practitioners increased by 323% (611 to 2,585 visits in 2016). Inspections of holistic centers and practitioners comprised more than 23% of total MLS inspections to all businesses in 2016, up from only 7% of all inspections in 2013. Similarly, the number of bylaw charges spiked 215% from 75 charges in 2013 to 236 charges in 2016. The most common of these charges were for minor issues such as table mats not being in good repair or not having licensing numbers on business cards.¹²³ Despite the massive increases in inspections and charges towards these businesses, the City doubled down again in 2018 by budgeting to hire five new bylaw enforcement officers solely dedicated to monitor and inspect holistic centres and body rub parlours.¹²⁴

Penalties for bylaw contraventions in Toronto can be very expensive, with fines of up to \$25,000 for individuals and \$50,000 for corporations. In practice, fines commonly range between several hundred dollars to \$2,000 for typical violations. Given that the individuals ticketed for infractions are generally migrant Asian women working in small parlour settings, a massive increase in charges can lead to severe impacts to livelihood. Most cannot afford legal representation and thus plead guilty. Indeed, this is explicitly the purpose of some human trafficking organizations such as Defend Dignity, a faith-based organization dedicated to the eradication of all “commercial sexual exploitation.”¹²⁵ One of its aims is to use bylaws “as the tools/reason to audit/raid the body rub centres ... by creating fines for every infraction, with the goal of trying to make it unfeasible for the body rub centres to operate economically, or to remove their license due to too many infractions.”¹²⁶

There is also an increasing use of exclusionary licensing and zoning requirements for industries that are perceived as sex work-related. Exclusionary zoning restrictions can present significant safety and accessibility concerns for workers that increase their vulnerability. For instance, Toronto’s 2013 zoning bylaws (Zoning By-Law 569-2013) resulted in Body Rub Parlours being

¹²¹ *Ibid.*, s 435(1)(3).

¹²² *Ibid.*, s 435(3).

¹²³ Butterfly et al, Stop abuse and harassment by bylaw enforcement & police officers; Stop the misuse of bylaws against holistic practitioners (April 10, 2018), online: <<https://www.toronto.ca/legdocs/mmis/2018/cc/comm/communicationfile-79714.pdf>> at 1-2.

¹²⁴ Canadian HIV/AIDS Legal Network, *Re: Unfair municipal bylaw enforcement of holistic health centres* (April 23, 2018), online: <<https://www.toronto.ca/legdocs/mmis/2018/cc/comm/communicationfile-79712.pdf>>.

¹²⁵ Defend Dignity, <https://defenddignity.ca/about>

¹²⁶ Defend Dignity, *Guide for Churches to End Sexual Exploitation in Canadian Body Rub Centres* (September 3, 2020) 3, online: <<https://defenddignity.ca/wp-content/uploads/2020/10/guide-for-churches-to-end-secual-exploitation-in-canada.pdf>>.

subject to the city' strictest zoning requirements, allowing them only in "Employment Industrial Zones" (reserved for businesses such as manufacturing, warehouse storage and shipping terminals) and treating them similarly to propane storage facilities and crematoria.¹²⁷

Employment Industrial Zones are sparsely populated and isolated areas of the city that remain virtually empty and unlit in the evening. Without the benefit of proper outdoor lighting, adequate and frequent transit or public/community presence, body rub workers coming to and from work are especially vulnerable to theft and violence. Safety concerns stemming from industrial zoning were indeed recorded in a May 2019 community consultations report, in which body rub workers in Toronto explicitly identified the zoning requirements as a threat to their health and safety.¹²⁸

Many of the exclusionary licensing requirements also run afoul, often in spirit if not in technical wording, of the City of Toronto's "access without fear" policies for migrants with an irregular immigration status, first introduced in 2013.¹²⁹ For instance, holistic license applications and renewals require two pieces of identification (one needing to be photo ID) from a very short list of accepted immigration and other government documents.¹³⁰ The limited number of options excludes those without status in violation of City Council's access without fear directive. Mandatory criminal records and judicial matters checks are also exclusionary for migrant sex workers as the potential for acquiring criminal records (including warrants) is heightened by the fact that federal criminal and immigration laws criminalize all aspects of sex work.¹³¹

IV. The Impact of the Carceral Web on Migrant Sex Workers: A Literature Review¹³²

Studies of sex workers in various sites across Canada have found that sex work, like many forms of feminized labour, is precarious, but what makes it particularly stressful is its criminalization and stigmatization.¹³³ The harmful impact of criminal laws prohibiting the purchase of sex and

¹²⁷ City of Toronto Zoning By-Law, Volume 1, 2013, By-Law 569-2013, Chapter 60.

¹²⁸ City of Toronto Municipal Licensing and Standards Committee, *Review of Body Rub Parlour and Holistic Centre By-laws - Consultation and Research Findings Report*, May 6, 2019.

¹²⁹ City of Toronto City Council, "Undocumented Workers in Toronto" (20 February 2013), online: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CD18.5>.

¹³⁰ City of Toronto, "Holistic Practitioner - Identification Requirements", online: <https://www.toronto.ca/services-payments/permits-licences-bylaws/holistic-centre-and-practitioner-reikki-aromatherapy-or-massage-therapy/holistic-practitioner/>.

¹³¹ *Ibid.*, "Criminal Record & Judicial Matters Check".

¹³² A comprehensive review of the academic and grey literature that documents the impact of Canadian anti-trafficking laws and policies on sex workers in general and migrant sex workers in particular was conducted. Only literature that provided evidence of the impact was reviewed.

¹³³ Cecilia Benoit, Michaela Smith, Mikael Jansson, Priscilla Healey and Douglas Magnuson, "The Relative Quality of Sex Work," *Work, Employment and Society* 35:2 (2020) 239–255; Julie Sou, Kate Shannon, Jean Shoveller, Putu Duff, Melissa Braschel, Sabina Dobrer and Shira M. Goldenberg, "Impacts of im/migration experience on work stress among sex workers in Vancouver, Canada," *Canadian Journal of Public Health*, 110 (2019) 344–353 <https://doi.org/10.17269/s41997-018-0161-3>; Malla et al., *Beyond Tales of Trafficking*.

the involvement of third parties in the sex industry on sex workers has been well documented. The use of the criminal law increases the stigma associated with sex work, which, in turn, poses a barrier to sex workers accessing health and social services.¹³⁴ Combined with restrictive immigration laws and regulations, these criminal laws have had a very negative impact on migrant sex workers, who face a host of barriers – linguistic, social and legal – that deter them from accessing health services¹³⁵ and approaching authorities for legal protection.¹³⁶ A Canadian study found that recent immigrant sex workers (who have arrived in the last five years) were three times as likely as non-immigrant sex workers to have unmet health needs.¹³⁷

Criminalizing sex work means that this form of work is effectively excluded from the host of labour-related legislation, from employment standards to occupational health and safety and collective bargaining, that applies to most other workers.¹³⁸ The possibility of arrest, charges and prosecution also means that sex workers hesitate to involve the police if they witness or experience a crime.¹³⁹ The end-demand approach to combatting sex trafficking increases the surveillance of sex workers and pushes sex work underground.¹⁴⁰ Researchers conclude that the combination of criminal and immigration law exacerbates access to justice and equity issues for migrant and racialized sex workers in Canada.¹⁴¹

¹³⁴ C. Benoit, S. M. Jansson, M. Smith and J. Flagg, “Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers,” *Journal of Sex Research*, 55 4-5 (2018) 457–471, DOI: [10.1080/00224499.2017.1393652](https://doi.org/10.1080/00224499.2017.1393652).

¹³⁵ M.E. Socías, J.S. Montaner, S. Guillemi and P. Nguyen P, “Gaps in the hepatitis C continuum of care among sex workers in Vancouver, British Columbia: Implications for voluntary hepatitis C virus testing, treatment and care,” *Can J Gastroenterol Hepatol*, 29 (2015) 411–6; Malla et al., *Beyond Tales of Trafficking*.

¹³⁶ Chu, Clamen and Santini, *The Perils of Protection*; E. Lam, *Behind the rescue: How anti-trafficking investigations and policies harm migrant sex workers* (Toronto, 2018); V. Bungay, M. Halpin, P.F. Halpin, C. Johnston and D.M. Patrick, “Violence in the Massage Parlor Industry: Experiences of Canadian-Born and Immigrant Women,” *Health Care Women Int.* 33 (2012) 262–84; Malla et al., *Beyond Tales of Trafficking*.

¹³⁷ Sou et al., “Recent im/migration to Canada linked to unmet health needs among sex workers in Vancouver, Canada.”

¹³⁸ Because the sale of sex work is criminalized in Canada, it would be very difficult to establish an employment contract or employment relationship, which is the prerequisite for accessing most employment-related standards.

¹³⁹ C. Benoit, L. Belle-Isle, M. Smith, R. Phillips, L. Shumka, C. Atchison, M. Jansson, C. Loppie and J. Flagg, “Sex workers as peer health advocates: Community empowerment and transformative learning through a Canadian pilot program,” *International Journal for Equity in Health*, 16:1 (2017) 160. <https://doi.org/10.1186/s12939-017-0655-2>; C. Benoit, S. M. Jansson, M. Smith, and J. Flagg, “‘Well, It Should Be Changed for One, Because It’s Our Bodies’: Sex Workers’ Views on Canada’s Punitive Approach towards Sex Work,” *Social Sciences*, 6:2(2017) 52–69; T. O’Doherty, “Criminalization and Off-Street Sex Work in Canada,” *Canadian Journal of Criminology and Criminal Justice*, 53(2) (2011) 217–245. doi:10.3138/cjccj.53.2.217.

¹⁴⁰ Canadian Alliance for Sex Work Law Reform (CASWLR) and Pivot Legal Society, Joint Submission for Canada’s Review before the UN Committee on the Elimination of All Forms of Discrimination against Women, 65th Session. Geneva: Committee on the Elimination of All Forms of Discrimination against Women, 2016 at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25385_E.pdf; Global Network of Sex Work Projects (NSWP), Policy Brief: The impact of anti-trafficking legislation and initiatives on sex workers. Edinburgh: Global Network of Sex Work Projects, 2018 at https://www.nswp.org/sites/nswp.org/files/impact_of_anti-trafficking_laws_pb_nswp_-_2018.pdf.

¹⁴¹ Hayli Miller and Tamara O’Doherty, Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms? 2020, 15; Benoit et al, “Prostitution stigma and its effect on the working conditions”; McBride et al., “Third Parties (Venue Owners, Managers, Security, Etc.)”

The criminalization of third parties isolates sex workers from their networks and prevents sex workers from taking critical safety steps. A six-year study of 816 sex workers found that 29.5% accessed third-party administrative or security services, and of that group, migrant sex workers were twice as likely as their Canadian-born counterparts to rely on third parties. Significantly, the study also found that accessing third-party services increased the chances that sex workers used condom-distribution and community-led services.¹⁴² However, sex workers are concerned that third parties with whom they are associated and who provide them services will be subject to criminal prosecution.¹⁴³ Many in-call sex workers are thus forced to work independently because third parties who provide services run the risk of having criminal charges laid against them. Research involving 85 in-call sex workers in Vancouver found that this arrangement leaves them isolated and vulnerable to violence from clients and predators who pose as clients.¹⁴⁴

Moreover, a study of the impact of Canada's end-demand legislation on third parties found that *over half* of third parties were current sex workers, while others had moved from sex work into managerial roles, confirming other research that found dual and fluid roles as and between sex workers and third parties were common.¹⁴⁵ While many third parties are involved in protective activities like screening clients and removing problematic clients, this study found that the criminalization of third parties made them reluctant to assist in interactions between sex workers and their clients directly relating to pay or sexual services, and hesitant about contacting police for assistance in the event of assaults or robberies at the venue.¹⁴⁶

There is mounting evidence of the detrimental impact on sex workers of the end-demand model enacted by the *PCEPA*. A study of 299 sex workers in Vancouver who worked in the sex industry before and after the *PCEPA* was implemented found that "almost three quarters of the sex workers reported no changes in working conditions, one quarter experienced negative

¹⁴² B. McBride, S. M. Goldenberg, A. Murphy, S. Wu, M. Braschel, A. Krüsi, and K. Shannon, "Third Parties (Venue Owners, Managers, Security, Etc.) and Access to Occupational Health and Safety among Sex Workers in a Canadian Setting: 2010–2016." *American Journal of Public Health*, 109:5 (2019) 792–798, 795-6. doi:10.2105/AJPH.2019.304994.

¹⁴³ Chu, Clamen and Santini, *The Perils of Protection*.

¹⁴⁴ V. Bungay and A. Guta, "Strategies and Challenges in Preventing Violence against Canadian Indoor Sex Workers," *American Journal of Public Health*, 108:3 (2018) 393–398. DOI:10. 2105/AJPH.2017.304241.

¹⁴⁵ Bronwyn McBride, Kate Shannon, Alka Murphy, Sherry Wu, Margaret Erickson, Shira M. Goldenberg & Andrea Krüsi, "Harms of third-party criminalisation under end-demand legislation: undermining sex workers' safety and rights," *Culture, Health & Sexuality* (2020) DOI: 10.1080/13691058.2020.1767305; 1241; S. M. Goldenberg, A. Krüsi, E. Zhang, J. Chettiar, and K. Shannon, "Structural Determinants of Health among Im/Migrants in the Indoor Sex Industry: Experiences of Workers and Managers/Owners in Metropolitan Vancouver." *Plos ONE* 12:1 (2011): e0170642. Doi:10.1371/journal. Pone.0170642; C. Bruckert and T. Law, *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry*. Deslibris: University of Ottawa, 2013 at <https://www.deslibris.ca/ID/244374>.

¹⁴⁶ McBride et al., "Harms of third-party criminalisation under end-demand legislation."

changes, and less than 2% experienced any improvements since the implementation.”¹⁴⁷ The findings also suggested that migrant workers working in formal indoor workspaces, women experiencing workplace violence and those who already face high rates of criminalization may be most likely to experience negative impacts on working conditions as a result of the implementation of the *PCEPA*.¹⁴⁸

Research also reveals that migrants who work in the sex industry are disproportionately harmed under laws criminalizing sex work. A longitudinal eight-year study of 759 sex workers who identified their immigration status found that workers with precarious migrant status, described as either permanent or temporary residency, were two and a half times as likely as their counterparts pre-*PCEPA* to experience clients who engaged in condom refusal (i.e., forcing sex without a condom or removing or breaking the condom during sex). After the *PCEPA* was implemented, the odds of those workers facing condom refusal by clients increased to four-fold.¹⁴⁹

Law enforcement strategies such as raids negatively affect sex workers’ health and well-being, for instance by confiscating condoms and instilling a culture of fear.¹⁵⁰ Migrant sex workers largely work in in-call venues such as massage parlours and body rub studios.¹⁵¹ These establishments are subject to close regulation in many municipalities because they are considered to be fronts for sexual services and, thus, havens for traffickers.¹⁵² As detailed above, many cities have bylaws that impose special and often onerous terms on massage parlours and holistic practitioners. An increasingly aggressive and punitive approach to compliance and inspection has also increased experiences of abuse, harassment and discrimination among workers. For instance, a 2018 survey of Asian holistic centre workers in Toronto found that *half* of the respondents reported having faced fines/tickets from bylaw

¹⁴⁷ Sylvia Machat, Kate Shannon, Melissa Braschel, Sarah Moreheart & Shira M. Goldenberg, “Sex workers’ experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada,” *Canadian Journal of Public Health*, 110 (2019) 575-583, 578, doi: 10.17269/s41997-019-00226-z.

¹⁴⁸ *Ibid.*

¹⁴⁹ Bronwyn McBride, Kate Shannon, Melissa Braschel, Minshu Mo & Shira M. Goldenberg, “Lack of full citizenship rights linked to heightened client condom refusal among im/migrant sex workers in Metro Vancouver (2010–2018),” *Global Public Health*, 7 (2020), DOI: 10.1080/17441692.2019.1708961.

¹⁵⁰ K. Shannon, S. A. Strathdee and S. M. Goldenberg, P. Duff, P. Mwangi, M. Rusakova, S. Reza-Paul, J. Lau, K. Deering, M. R. Pickles and M. C. Boily, “Global epidemiology of HIV among female sex workers: influence of structural determinants,” *Lancet*, 385:9962 (2015) 55–71. [https://doi.org/10.1016/S0140-6736\(14\)60931-4](https://doi.org/10.1016/S0140-6736(14)60931-4).

¹⁵¹ Goldenberg et al., “Structural Determinants of Health among Im/Migrants in the Indoor Sex Industry”; Kimberly Mackenzie, *Barriers to Justice for Migrant and Immigrant Sex Workers: A Community-Led Research Project* (Vancouver: SWAN), 2017; S. Anderson, J.X. Jia, V. Liu, J. Chattier, A. Krüsi, S. Allan, L. Maher and K. Shannon, “Violence prevention and municipal licensing of indoor sex work venues in the Greater Vancouver Area: narratives of migrant sex workers, managers and business owners,” *Cult Health Sex*, 17 (2015) 825–41; Malla et al., *Beyond Tales of Trafficking*; V. Bungay, M. Halpin, P. F. Halpin, C. Johnston and D. M. Patrick, “Violence in the Massage Parlor Industry: Experiences of Canadian-Born and Immigrant Women,” 3 (2012) 262–84, DOI: 10.1080/07399332.2011.603868.

¹⁵² Elene Lam, *Survey on Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement and Police* (Toronto: 2018). Butterfly. Retrieved from <https://www.butterflysw.org/publication>.

enforcement.¹⁵³ Punitive bylaw enforcement practices have had a detrimental impact on already economically marginalized communities that disproportionately consist of racialized immigrant women.

Moreover, under the guise of anti-trafficking initiatives, raids and inspections of sex work establishments by police, bylaw officers and CBSA authorities have increased.¹⁵⁴ These raids and inspections heighten sex workers' vulnerability to violence as well as result in lost income.¹⁵⁵ Since the advent of end-demand legislation in 2014, anti-trafficking raids across Canada have led to the arrest of, charges against and detention and deportation of migrant sex workers.¹⁵⁶ During these raids, migrant sex workers report that police and CBSA officers seem to be much more interested in ticketing for bylaw infringements or discovering violations of immigration laws than in protecting them from trafficking.¹⁵⁷ Migrant sex workers who work indoors are even less willing than their non-migrant counterparts to contact authorities to report crimes, even violent ones, due to fear of arrest, charges, police harassment and discrimination,¹⁵⁸ and potential detention and deportation. This unwillingness to contact authorities leaves migrant sex workers particularly vulnerable to various forms of predation.¹⁵⁹

End-demand legislation criminalizing sex work clients and third parties, such as venue owners and managers, contributes to punitive policing of indoor sex work venues.¹⁶⁰ A recent study of indoor sex workers in Vancouver revealed that laws criminalizing the purchase of sex, immigration policies targeting sex workers and the increased policing of indoor venues may disproportionately impact migrant sex workers.¹⁶¹ It also suggested that fear associated with workplace inspections inhibits migrant sex workers from accessing health services. A survey of 53 Asian migrant women working in the indoor sex industry in Toronto confirmed the findings of the Vancouver study: respondents reported fearing interactions with police and bylaw officials and their reluctance to access health services.¹⁶²

¹⁵³ *Ibid.*, 29.

¹⁵⁴ Chu, Clamens and Santini, *The Perils of Protection*; Lam, *Behind the Rescue*.

⁶⁴ Bungay et al., "Violence in the Massage Parlor Industry"; Anderson et al., "Violence prevention and municipal licensing".

¹⁵⁶ Lam, *Behind the Rescue*, 46–49.

¹⁵⁷ Chu, Clamen and Santini, *The Perils of Protection*; Lam *Behind the Rescue*; Malla et al., *Beyond Tales of Trafficking*; Lam, *Survey on Toronto holistic practitioners' experiences with bylaw enforcement and police*.

¹⁵⁸ Bungay et al., "Violence in the Massage Parlor Industry"; McBride et al., "Harms of third-party criminalisation under end-demand legislation".

¹⁵⁹ Goldenberg, Krüsi and Zhang, et al., "Structural determinants of health among im/migrants in the indoor sex industry,"; Bungay and Guta, "Strategies and Challenges in Preventing Violence against Canadian Indoor Sex Workers."

¹⁶⁰ PION, *CEDAW 2017: Shadow report by PION* (2017). Available at <https://www.nswp.org/resource/pion-norway-cedaw-shadow-report>; Published in final edited form as: J Immigr Minor Health. 2019 December; 21(6): 1290–1299. doi:10.1007/s10903-019-00859-9.

¹⁶¹ McBride et al., "Harms of third-party criminalisation under end-demand legislation."

¹⁶² Malla et al., *Beyond Tales of Trafficking*.

Research indicates that Asian migrant sex workers and managers perceive themselves to be disproportionately targeted for surveillance by police and bylaw officers.¹⁶³ This perception is not surprising as Asian and migrant sex workers have long been a primary focus of anti-trafficking policies and restrictive immigration legislation.¹⁶⁴ A study of 18 Asian migrant sex workers who were arrested and detained in anti-trafficking investigations across Canada between May 2015 and August 2016 reported that they were not able to make phone calls and were not provided with interpretation services.¹⁶⁵ Fifteen out of these 18 migrant sex workers were eventually deported. The workers also described difficulties in accessing legal representation and bail, and, most disturbingly, their degrading and inhumane treatment by law enforcement officials.¹⁶⁶

Migrant sex worker organizations and academic researchers have also expressed their concern about the red flags, or indicators, used by service providers and law enforcement officials to identify victims of trafficking. They argue that these indicators, which include inability to speak English, fear of law enforcement and avoiding eye contact, not only conflate sex work and trafficking, but are also based on stereotypes that perpetuate racialized and gendered exclusions from social protection and social services.¹⁶⁷

Additional research is needed to explore the discriminatory and racialized impact of anti-trafficking laws on migrant sex workers to ensure that the laws do not have a disproportionate racialized impact. The federal government's failure to record and publicize data on the numbers of migrants who are being deported and their place of origin, gender, race and ethnicity creates a real difficulty in assessing the impact of anti-trafficking policies. It also reinforces the concerns expressed by migrant sex workers and their advocates that anti-trafficking laws, policies and practices are based on racialized stereotypes about victims of trafficking and sex workers. Positive change in this regard may be underway as the federal government has made a formal commitment to collect disaggregated data under their federal anti-racism strategy.¹⁶⁸

¹⁶³ Chu, Clamens and Santini, *Perils of Protection*; Goldenberg et al., "Structural determinants of health among im/migrants in the indoor sex industry"; Bungay et al., "Violence in the Massage Parlor Industry"; Bungay et al., "Violence prevention and municipal licensing of indoor sex work venues"; Lam, *Survey on Toronto holistic practitioners' experiences with bylaw enforcement and police*.

¹⁶⁴ Annalee Lepp, "'Collateral Damage': Anti-trafficking campaigns, border security, and sex workers' rights struggles in Canada", in P Gentile, G Kinsman, and L P Rankin (eds.), *We Still Demand! Redefining resistance in sex and gender struggles* (Vancouver: University of British Columbia Press, 2017); Kaye, *Responding to human trafficking*.

¹⁶⁵ Lam, *Behind the Rescue*.

¹⁶⁶ Ibid.

¹⁶⁷ Elene Lam and Annalee Lepp, "Butterfly: Resisting the harms of anti-trafficking policies and fostering peer-based organising in Canada," *Anti-Trafficking Review*, (2019), 91-107; Kimberly Mackenzie and Alison Clancey, *Im/migrant Sex Workers, Myths & Misconception: Realities of the Anti-Trafficked*. (Vancouver: Swan 2020); Ann De Shalit, Emily van der Meulen & Adrian Guta, "Social service responses to human trafficking: the making of a public health problem," *Culture, Health & Sexuality*, (2020): DOI: 10.1080/13691058.2020.1802670.

¹⁶⁸ Government of Canada, Our commitment to anti-racism, date modified: 2021-05-28, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/anti-racism.html>.

The overall lack of evidence to support the current anti-trafficking policies is troubling. When researchers point to the low numbers of identified victims of trafficking and small numbers of individuals convicted of trafficking, the typical response is to refer to the hidden nature of the crime. For example, a recent *Juristat* report claims that human trafficking is both difficult to detect and underreported because alleged victims may, among other things, be “unaware that they are being trafficked, in precarious or vulnerable situations, fearful or distrustful of authorities, fearful of deportation or loss of employment.”¹⁶⁹ The problem with this kind of reasoning is that it denies workers the possibility of agency (e.g. since they are “unaware” of being trafficked) and is circular; increased surveillance and greater resources are called for in order to raise awareness in victims and to “uncover” this hidden crime. It is also used to justify the surveillance of “at-risk” communities.¹⁷⁰ The possibility that many sex workers may not, in fact, be exploited or that claims of the extent of human trafficking are overblown are dismissed under this reasoning.

A review of the literature on the impact of the laws and policies criminalizing sex work and human trafficking and deterring migrant sex work uncovered no evidence that this combination of criminal and immigration prohibitions protects immigrant women from trafficking. Instead, it reveals that migrant sex workers are targeted by law enforcement through surveillance, racial profiling, arrest, detention and deportation in the name of protecting them from human trafficking. The existing literature supports the conclusion that these laws and policies do not protect migrant sex workers from exploitation, but, instead, make them more susceptible to deportation, criminalization, poor working conditions, exploitation, predators, racial profiling and ill health.

V. Centering the Voices of Migrant Workers and their Advocates

A. Giving Voice to Migrant Sex Workers: The Study

Since anti-trafficking policies are often developed and implemented on the assumption that migrant sex workers do not know what is good for them, this report questions this assumption by reporting on a small study conducted in order to determine what migrant sex workers and their advocates have to say. To do so, it adopts an action research methodology.

Action research centers the voices and experiences of the research “subject” by developing participatory and democratic research processes concerned with developing practical knowledge that brings action and reflection, and theory and practice into dialogue.¹⁷¹ A primary

¹⁶⁹ Adam Cotter, “Trafficking in persons in Canada,” 2018, *Juristat*, June 23, 2020, 4, <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00006-eng.pdf?st=QAQFdvN>.

¹⁷⁰ Hayli Millar and Tamara O’Doherty, *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms*, 2020, 27, <https://icclr.org/wp-content/uploads/2020/06/Millar-and-ODoherty-Technical-Report-on-Canadian-Human-Trafficking-Prosecutions-1.pdf?x48887>.

¹⁷¹ M. Brydon-Miller, D. Greenwood & P. Maguire, “Why action research?” *Action Research*, 1:1 (2003), 9–28, 10–11.

goal of action research is that research should be informed by social justice goals and should provide tangible benefits for the community involved. It also actively promotes and encourages the direct participation of local stakeholders.¹⁷²

The research questions and method for this project were developed through a collaborative process with Butterfly (Asian and Migrant Sex Workers Support Network) formed in 2014 by sex workers, social workers and legal and health professionals to provide support to, and advocate for, the rights of Asian and migrant sex workers. Butterfly is founded upon the belief that sex workers are entitled to respect and basic human rights, and that, regardless of their immigration status, Asian and migrant sex workers should be treated like all other workers.¹⁷³ Three of the four researchers in this project have worked closely with Butterfly and with sex workers. All of the researchers believe the voices and views of migrant sex workers should be centered in the policy process, especially since the anti-trafficking laws and policies are purportedly designed to protect them. All of the researchers believe that coercion and violence are unacceptable in any form of work, including sex work. However, they question the elision of sex work with trafficking and advocate for evidence-based research to understand the relationship between sex work and trafficking, and the impact of anti-trafficking laws and policies on the populations they are meant to protect.

The goal of the study was to contribute to knowledge about the impact of anti-trafficking policies on migrant sex workers by conducting interviews with migrant sex workers and their advocates in order to provide perspectives from those primarily affected. The recruitment strategy was facility-based; service organizations predominantly in Montreal, Ottawa, Toronto and Vancouver that had contact with sex workers and did not endorse the current official policy of abolishing prostitution through end-demand legislation were contacted. These organizations were asked to convey the research study to sex workers with whom they had contact. In order to meet the requirements of the McMaster University Ethics Review Board, the researchers were unable to interview migrant sex workers who were involved in ongoing legal proceedings involving sex work. Thus, an initial screening question separated out this cohort. Additional screening questions included whether the respondent was older than 18, a migrant to Canada and worked in massage parlours, erotic services or another sex work-related industry. A snowballing methodology was used as sex workers who agreed to be interviewed were asked to pass on the research study and contact information to other migrant sex workers. Interviews were conducted in Cantonese, Mandarin and English with sex workers, who were provided with a small honorarium for their time. The interviews were transcribed and translated into English when necessary. Throughout the study, sex workers are referred to as “participants”.

Advocates for migrant sex workers, referred to as stakeholders in this study, were also interviewed. An initial contact list of stakeholders was compiled. Stakeholders on this list were contacted and screened for whether or not they had worked with migrant sex workers or if

¹⁷² Emily Van Der Meulen, “Action research with sex workers: Dismantling barriers and building bridges,” *Action Research*, 9 (2011) 370–384. doi:10.1177/1476750311409767.

¹⁷³ Butterfly: Asian and Migrant Sex Workers Support Network, https://www.butterflysw.org/about_us.

they had direct knowledge of migrant sex workers and the impact of the immigration prohibition on non-nationals working within the sex industry. If stakeholders agreed to be interviewed, they were also asked to suggest other advocates to contact. Interviews were conducted in English with advocates.

We interviewed 17 people in this study, comprising eight migrant sex workers, one local sex worker, and eight stakeholders. Three sex workers were interviewed as both sex workers and stakeholders. This research focuses on how the migrant sex workers are affected by the law and law enforcement.

All interviews were conducted between June 2020 and March 2021 by telephone or on a video call via Zoom on account of the pandemic. Each interview was transcribed, and the transcripts were reviewed several times by two researchers who conducted all the interviews and obtained ethical clearance from the McMasters Ethics Review Board to conduct the interviews.

B. The Anti-Trafficking Web in Action: The Findings

1) Demographics: Whom did we interview?

All the migrant sex workers we interviewed (“participants”) are over 18 years old and they have diverse identities and backgrounds in terms of their gender, class, race, age, country of origin, immigration status, language and education levels. The majority identify as women; two are trans women and one is a male sex worker. The sex workers self-identified as white, Asian and Latino and as coming from Mexico and Latin America, the USA, Hong Kong and China. Some of them are seasonal migrants. Their workplaces included massage parlours (spas, holistic centres, etc.), streets, bars, hotels and apartments, with some working as escorts and in BDSM (BDSM is a term used to describe certain aspects of sex that can be split into these major groups: bondage and discipline, domination and submission, sadism and masochism). The workers in massage parlours may provide different types of services, including non-sexual services. Some of the migrant sex workers had worked in different sectors of the sex industry. Some worked independently, and some worked with a third party. They had varied English skills, including having English as their first language, speaking limited English and not speaking any English at all.

The workers we interviewed had resided in Canada from two years to over twenty years. Their immigration statuses are fluid and have changed at various times. Some of them came to Canada as tourists, international students and refugee claimants and became non-status residents, permanent residents and citizens. Most of the participants worked in Montreal and Toronto, but some of them had worked in other areas such as York region, London, Ottawa and Vancouver. Although all are trapped by the web of criminality, they are affected differently by the law and by law enforcement. For example, according to the responses, the Asian migrant sex workers were investigated as trafficked victims while the

trans women were targeted as criminals. Rather than offering protection, the sex workers we interviewed experienced these laws and enforcement actions as oppressive.

The stakeholders we interviewed included an executive director, a frontline worker, a board member and legal professionals in the areas of sex workers' rights, human rights, migrant rights, community organizations and community legal clinics. Some sex workers had dual roles as participants and stakeholders.

2) The situation of migrant sex workers

a) How did they start working in the sex industry?

"Migrant sex workers are...we're talking about extremely diverse, various overlapping, non-overlapping communities. Extremely...yeah, extremely diverse lives. However, there is also unfortunately, certain – within all of them fortunately there's certain unifying themes such as their resilience and their strength and their – their amazingness." (Stakeholder 3)

Most of the participants started working in the sex industry after migrating to Canada to have a better life. The participants shared their views on sex work. Rather than being trafficked and exploited, all of them reported that they had decided to work in the sex industry for different reasons. Many described sex work as a job that is often a better option than other jobs available for non-status or otherwise precarious migrants. The participants reported that they had better incomes and working conditions compared with those offered by other forms of precarious, and potentially exploitative, work. Their well-being and working conditions were influenced by their specific socioeconomic circumstances (e.g., their gender, immigration status, language skills, educational background, support networks and experiences with law enforcement).

Migration for a better life

"They come to Canada with hopes and dreams of lives for their themselves and their children, just like anyone else who migrates, except that the type of work that they chose is criminalized." (Stakeholder 8)

"My family is facing some political issues, and they thought that it would be much safer for me to live in [Canada] than in my home country. Instead of applying to be a refugee, who would be stigmatized and face a lot of uncertainty in the immigration process, my family decided that it would be better for me to come to Canada with a student visa because my scores were quite high, and I had graduated from the university in my hometown." (Participant 6).

A trans sex worker (Participant 2) described how trans women refugees come to Canada to have a better life:

"It will be...for them...a place of refuge. But also, for them, [there is] the very concept that they are not allowed to work – to say what they do. They are trans – a beautiful trans

woman that was trying to get a better life...so basically – yeah, they come here, even before they start to get their papers, and they learn the language.”

Seasonal migration

Some of the migrant sex workers reported traveling frequently between their home country and Canada:

“So, there is kind of a regular – even just, like, seasonal – migration, essentially, and a lot of trans women in particular would, um...come to Montreal and stay for the summer and work and then, um, go back home.” (Stakeholder 9)

Starting work in the sex industry

Participant 1 started working in the sex industry when he was 21. He worked two or three times a year during his travels in San Francisco, New York and other cities before moving to Canada when he was in his late twenties.

Some migrant sex workers described their experiences of starting to work in massage parlours and the sex industry. Participant 5 explained that she would like to buy an apartment in her home country in Asia; however, she was not able to earn much money back home because she was not formally educated. She started organizing a trip to Canada: *“I just went to a travel agency. I told them I wanted to go to Canada for a week. I was so brave. I did not even know what the place would look like. I went there and asked if they would hire any people.”* After she arrived, she found her first job through newspaper advertisements.

Participant 6 explained how she found work in massage parlours after moving to Canada: *“I saw an advertisement that they were hiring. Most jobs have long hours, and their labour is low paid. I found a massage parlour that was hiring. I contacted the boss, who told me I could have flexible hours so I could continue to study and would accommodate my school schedule. I would mainly take the night shift, so I could earn more money and not affect my school, volunteering, or ability to deal with family issues.”*

Providing different types of sexual and non-sexual services

Many participants said that they could decide what types of services they would like to provide at massage parlours and in the sex industry. However, their specific circumstances, as well as investigations and raids, may limit their options.

Participant 1 described how he selected the sector of the sex industry that fit him best. He explained why he decided to do BDSM work:

“...stiff someone, or...like slap someone while having sex with them – ...I'm much more able to do this as an act, like, I don't have any moral or...intellectual opposition...” He also stated, *“mostly because I find the emotional labor of providing a boyfriend experience just too fucking much.”*

The services provided by massage parlours are very diverse. They may include sexual and non-sexual services. Some parlours may provide services to both male and female clients. Participant 6 explained her decision to offer only a certain set of services:

“When I worked in massage parlours, I mainly offered massage, and sometimes body slides and hand jobs. I did not do full services, but it was OK. I am still a virgin. Some girls did it, and some didn't. This was my bottom line, and I had enough clients to survive. I did not discriminate against other people. They had made more efforts and made more money. I had done what I could accept and accepted what I deserved.”

Empowerment

Instead of feeling exploited and oppressed, many of the sex workers interviewed expressed that working in the sex industry helped them overcome many of the challenges that they faced. Some also believed sex work to be empowering, as it enables them to have better incomes, access necessary resources, work with others who speak the same language, have greater flexibility in hours and a stronger sense of control of their life, expand their social networks, feel connected and contribute to Canadian society. The stakeholders who provided support to migrant sex workers also shared similar views.

“I have to tell you, but it may sound little bit crazy. I really enjoyed seeing the man ‘come.’ It gives me a lot of satisfaction. I found that it is miracle. It is hard to explain. I do not know why I feel this way, but this is how I feel.” (Participant 6)

An immigration lawyer (Stakeholder 4) who works at a community legal clinic said that she had worked with many migrant sex workers and recognized the importance that the work held for them:

“Non-status migrants also face those barriers, ... and, you know, different issues around housing and childcare access and access to different services, including social assistance. What was really good in that situation was, you know, the work she was doing, sex work, was something she has control over, so she would take on work when she needed it when something was needed ... she could control when and how she worked.”

Participant 4 felt proud of herself and her ability to provide for her family:

“What’s more, massage can really help people... My job is very important to me. I can’t take my children to school if I work in other industries. And if I stop working, we can’t pay our bills.”

However, the participants indicated that they are trapped in the “web of criminality,” including of criminal laws, immigration laws, and municipal bylaws. Participant 2 (a trans sex worker) argued that the laws were controlling their body:

“So, as long as we have that law saying that we are not allowed to be free doing what we want to do with our body, we cannot do whatever we want as long even if we don’t destroy anybody else’s body.”

Participant 5 said that she needs to decide between being robbed or arrested: *“I had prepared to be either robbed or arrested by the police.”*

b) Precarious immigration status: How migrant sex workers are affected by their immigration status

Sex workers without Canadian citizenship or permanent resident status are prohibited from entering Canada. The disclosure of working experiences in sex work–related industries also prevents them from obtaining permanent resident status and citizenship. This type of work may also trigger them to lose their immigration status or even to be deported.

Exclusion of migrant sex workers at the border

Stakeholder 5, an immigration consultant, explained how sex workers and massage workers are turned away at the border:

“They’re gonna ask you, ‘Are you involved in sex work?’ And if you say... no, when they find out you are, then you’re told you misrepresented. And you’re not allowed to come into Canada for four years.”

“They’d either turn you right back at the airport, but there’s also a possibility that they’d decided to make life more miserable for you. Bring you in, detain you, spend a while talking about your file and then deport you back.”

Participant 1 and stakeholder 5 shared how trans and racialized women are profiled at the border. Some migrants are also banned from entering Canada when they are suspected of being sex workers:

“I actually know non-sex worker women from Eastern Europe who were profiled by the CBSA [Canada Border Services Agency] when they were coming into the country with their student permits, basically being told, ‘We don’t think you’re here to be a student; we think you’re here as a sex worker.’” (Participant 1)

“If you ever stand at the border and look at what they call secondary investigation, every person who comes out of that room, when they enter that room is a person of colour by and large.” (Stakeholder 5)

3) Immigration prohibition on sex work

The immigration prohibition on non-citizens and migrants without permanent resident status working in the sex industry increases the vulnerability of migrant sex workers. Even if they have a work permit and are allowed to work in Canada, they are not allowed to work in a sex work–related industry. This condition is included in their work permits.

“Actually, we have to protect women, and one of the ways we protect them is we deny their visas, if they engage in any part of the sex industry, whether it's under the criminal prohibition or whether it's lawful.” (Stakeholder 3)

Participants 1 and 6 expressed worries that they would lose everything they had built in Canada:

“It would have been clear that I was breaking the conditions of my work permit. I would be deported, I would lose my degree, I would lose the opportunity to apply for my postgrad work permit, and I would lose my opportunity for [permanent residency], and I would probably be banned from the country for 10 years.” (Participant 1)

Participant 6 reported that she had never been robbed in massage parlours, but she was robbed three times while working in an apartment, which she did to avoid police investigation:

“The working permit restricts me from doing any sex work–related jobs. One of my friends was arrested after the border agency caught her working in a massage parlour, and I had heard 10 other women were deported. Therefore, I had to be careful.”

“I was afraid that by calling the police, I would risk losing my study permit and risk deportation due to breaching the conditions of my working permit. I would never make the call. I would rather be robbed, beaten up and raped than be arrested.”

Stakeholder 4 also shared her experience working with an international student who was deported because she had worked in the sex industry.

Participant 8 described how the immigration prohibition on sex work was created by the state to protect women who were not asking to be protected.

a) Vulnerability and precariousness caused by immigration policy

Most of the participants came to Canada with a temporary and, thus, precarious, immigration status, including as tourists, refugee claimants, international students and temporary workers or under spousal sponsorship. They are excluded from accessing social, health, economic and legal support because of their immigration status. They could only work in low-paid jobs with exploitative, poor working conditions. Many of them have regulations imposed on their work; for example, they are not allowed to work in Canada, can only work limited working hours or are prohibited from working in a sex work–related industry.

Participant 3 is an Asian woman. She came to Canada over 17 years ago when she was a caregiver in a live-in caregiver program, where the working conditions were not good, and she was exploited by her employer and sexually assaulted:

"[The employer] said that he would help me to apply for a work permit and asked me to give him my passport. However, it took a long time. It was very important for my [permanent residency] application that my employment should continue. Otherwise, I could not meet the requirement of paying taxes for 24 months in the past 36 months because the application time took 3 months. If I had applied for the work permit immediately after I changed to the new employer, it would not have been a problem. However, he took more than a month and still did not apply for me. I was very nervous... In addition, I was hurt by his sexual harassment. ... The agent asked me to avoid him and tolerate it. He said I should expect that being a caregiver would not be a comfortable job."

Although international students are allowed to work in Canada, it is difficult for them to find a job that will enable them to earn a living wage because they are not permitted to work more than 20 hours per week.

b) Difficulties in finding a job

Many of the participants reported their difficulty finding employment in Canada because of their precarious immigration status. Those who are tourists or non-status or temporary residents without work permits are not allowed to work in Canada. Although some of the migrant sex workers had a work permit, they could not find a secure and well-paying job because of racial discrimination and language barriers. Work in the sex industry is one of the few options available to them.

Participant 1 expressed: *"I wasn't legally allowed to work until September, but I had moved in July...so I started doing sex work, in a nutshell, pretty much as soon as I moved there."*

Migrant sex workers' precarious immigration status not only increases their marginalization and vulnerability but also increases the violence they face, including discrimination, harassment and assault from perpetrators and law enforcement officers. Their fear of losing their immigration status also prevents them from speaking out, seeking help and advocating for their rights. Many of them struggle to obtain legal status, especially as permanent residents or citizens.

Moreover, sex workers are often treated differently than other migrants with precarious status. *"[We] often we hear that when people have in their history doing sex work, so the immigration treat them so differently from other migrants."* (Participant 7)

For trans people, changing their name and gender on their identity documents to what they self-identify as is essential for many reasons, including their access to housing, health and social support and how they are treated in the social and legal system:

"Identity documents would then also play a large role in dictating where they'd be detained. For example, trans sex workers were being detained in a men's prison" (Stakeholder 7).

Many migrants are also refugee claimants, and some of them became non-status immigrants after their refugee claims were rejected. Meanwhile, Stakeholder 9 stated that although many trans refugees are successful with their refugee claim or humanitarian and compassionate applications, some are unable to obtain permanent residence or citizenship on account of having a criminal record.

c) Financial burden

Financial need is the primary motivator for many migrant workers who enter the sex industry. Most of the participants said that sex work provided them with a better income, which allows them to fulfill their needs, including paying school fees, living costs, legal fees, supporting their families and paying mortgages. Both international students (Participants 2 and 6) said that international students also carry huge financial burdens while studying in Canada, including proving their financial ability, paying high tuition and enduring the high cost of living.

“We knew that it would be expensive. I have to pay over \$45,000 a year, but it was also important for me to leave the country. For the first year, my family still sent me money. I could manage my school fees for the first semester. However, they were having some difficulties and were not able to send me so much money.” (Participant 6)

“I need my job to pay my rent and support my two children. What would I do if I lost my job?” (Participant 4)

Participant 3 started working at a massage parlour to earn more to pay her legal fees to obtain legal immigration status. She had borrowed money in order to pay immigration consultants over \$50,000 in legal fees:

“I gave him \$4,000, which I borrowed from my family. ... before court, I gave him \$500 again. He [the agent] took my money to appeal, but actually he never did.”

While some anti-trafficking organizations urge the government to provide financial support to sex workers (including migrant sex workers) to prevent them from working in the sex industry and massage parlours, some participants said that sex work is their job, and they want to be self-reliant. They wished to be independent and earn a living, rather than receive social assistance:

“I use my hands to earn money. I do not rely on anyone and do not want to rely on the government. I want to earn a living by myself.” (Participant 7)

d) Language barriers and racism in employment

Racialized communities, migrants and immigrants face systematic racism and inequality in the job market, all of which undermine their employment opportunities.¹⁷⁴ In addition, language is a barrier for migrant sex workers searching for work.

Those who do not speak English encounter greater challenges in finding employment. Participant 4, who worked in a massage parlour, explained: *“When I first came to this country, my language was not good, so it was hard for me to find other jobs. Working in factories is tough. Therefore, I chose to work in the massage industry.”*

Working in the sex industry is one way that migrant sex workers adapt to and resist discrimination in employment.

e) Better income and working conditions

Some of the migrant sex workers worked in other industries, including as caregivers or in restaurants or factories. They found that working in the massage and sex industries resulted in higher incomes, flexible working hours and better work environments. For example, Participant 4 preferred working in massage parlours over other options, because it offered better income and working conditions and the ability to help others. She was even able to save money to start her own small business.

Participant 6 explained that working in a massage parlour allowed her to participate in an internship and to volunteer:

“It was very challenging for me to find a paid job. Most of the jobs available were cash jobs in restaurants or factories. I had studied engineering, and I really wanted to spend time on my school and learning relevant experience. As an international student and a girl, I was not able to find an internship or part-time job in the field so easily. I want to spend some time as a volunteer to earn more experiences that would be better for my future.”

Low pay and poor working conditions in factories and restaurants

For migrants who do not speak English, jobs at factories, restaurants or grocery stores are the most common ones available to them. However, such migrants often are exploited and contend with bad working conditions in these industries. As Participant 4 explained regarding her work in a factory:

“\$10 per hour, 8 hours a day. The lunch break is half an hour, and it’s not part of the working hours. So it’s about \$70 per day”.

She also said:

¹⁷⁴ Sheila Block, Grace-Edward Galabuzi, Ricardo Tranjan, *Canada’s Colour Coded Income Inequality*, Canadian Centre for Policy Alternatives, 2019, <https://www.policyalternatives.ca/publications/reports/canadas-colour-coded-income-inequality>

“It’s very cold in the chicken factory. The temperature is below zero, in summer or in winter. There are terrible smells, and you have to stand there all the time. In a massage parlour, you can rest when there are no clients. Compared to factory work, doing massages is better.”

Flexible working hours

“You don’t need to get up as early as when working in factory. If you take day shift, you have to leave home at 5:00 in the morning. In comparison, the working hours at a massage parlour start at 10:00 a.m. And you can leave by 21:00. So, the working hours are more friendly.” (Participant 4)

“I have children, and I can take them to school in the morning before I go to work. If I worked in a factory, I would have to leave very early. I can take my children to school in the morning and ask someone else to pick them up after school.” (Participant 4)

Better income in massage parlours

“It’s usually \$30 per hour [in a massage parlour]. So, if there are four or five clients a day, you can make more than a hundred dollars. You could work seven days a week, if you don’t need weekends. And you could just work five days a week. It’s more flexible than working in a factory. You can choose your own working hours” (Participant 4).

f) Working with third parties

Participant 5 shared her experiences of working with different third parties: *“It doesn’t matter. There are good bosses and bad bosses. Some offer higher prices, and some offer lower prices.”*

She was able to leave her workplace, where one bad boss treated the women badly: *“I had changed to another place to work for YY. She was very kind to clients and the women who worked there. No matter if you were pretty or not, she would help you to find clients. Many women like to work for her. You had to queue [wait] if you wanted to work for her.”* (Participant 5)

Participant 3 said that her boss used her immigration status to threaten her. Her boss pressured her to offer services to a client against her will: *“At the beginning, she treated me quite well. However, I had some conflict with a client. She started to threaten me. She said that if I would not offer the service, she would report me to immigration. She used it to threaten me.”*

g) Migrant sex workers are not trafficked victims

None of the migrant sex workers identified themselves as trafficked victims. They also said that they opposed this label and are afraid that being labelled this way would result in losing their jobs and livelihood:

“People I know and I myself have never been involved in this. We are willing to work, and we chose this career because it’s good for us.” (Participant 4)

“I am worried that they will shut down our business. We rely on this job [massage services] to support us and our families. I do not know what I would do if the business were shut down.” (Participant 4)

By conflating sex work and human trafficking, the laws and law enforcement harm migrant sex workers:

“If you're aiming to protect – for nationals who are risk of being subjected to humiliating or degrading treatment, including sexual exploitation. And I think this is also super important to talk about because it's the context that we're in, where sexual exploitation is – particularly in Quebec, we use that even more than human trafficking to refer to consensual sex work, right?” (Stakeholder 3)

4) Impact on criminalization: The web of criminality

Migrant sex workers are penalized by immigration prohibitions on sex work, sex work–related criminal laws, human trafficking laws, municipal bylaws and other types of law and their enforcement:

“If you don't have Canadian citizenship in full, there are an increasing amount of risks that you take if you reveal to other people that you are involved in some sort of sex work related industry or employment.” (Stakeholder 8)

All aspects of migrant sex workers’ lives are affected. One of the most significant impacts of criminalization is that predators can act with impunity, knowing that migrant sex workers have no safe way to access any criminal legal response to address any violence they experience:

“So, in every aspect of their life, they can’t exercise safety, human rights, health access..., connectedness to community. Just, every act, every aspect of their life is negatively impacted by criminalization of the sex industry.” (Stakeholder 8)

Stakeholder 8 also raised her concern about the challenge migrant sex workers face in disclosing their identity when seeking help from legal clinics:

“There was a hesitancy to reveal if one was in sex work – even if the legal ramifications weren't so severe the stigma could be really great within the community and amongst family as well. But there are also additional layers of risks that are introduced by immigration laws and regulations.” (Stakeholder 8)

Participant 5 explained how clients provided important support to sex workers, but that after the *PCEPA* was introduced, clients are more hesitant to do so because clients are now subject to criminal prosecution.

Stakeholder 1 said that criminalization negatively affects the financial livelihood, physical safety and mental health of sex workers, and leads to stigmatization, profiling as well as increasing exploitation and the risk of arrest, detention and deportation.

Criminalizing sex work also prevents migrant sex workers from accessing labour standards and occupational health and safety regulations, which exacerbates the situation and creates an environment in which violence perpetrated against them can thrive because the restrictions force the migrant sex industry underground.

5) Experiences of violence

a) How the laws and law enforcement increase the risk of violence and prevent migrant sex workers from seeking help

Migrant sex workers are exposed to violence by state and non-state actors. The laws and policies described in Section III above have increased the vulnerability of migrant sex workers:

“The new laws [criminalizing sex work] are actually more tangled up than the old laws were, in some ways ...and I think that by insisting that sex workers have to work in a criminalized environment, that’s why there’s violence and exploitation.” (Participant 8)

Some participants said that they would accept the dangerous situation and suffered in order to avoid being deported or lose the chance to gain permanent residency. Most of the interviewed migrant sex workers said that they would not report any violence they experience to the police. They reported that they always need to worry about police and violence:

“You know, like, if all these laws didn’t exist, none of that would have been an issue. But the law actually created a situation that made me more vulnerable...simply because, like, what I was doing suddenly became, like, technically not...or, like, not that it’s illegal, but it’s a breach of my – my work permit.” (Participant 1)

“So that means people will stay in more dangerous situations, people will work in more dangerous situations, because they know that if they – if something happens and they get

deported, they will lose – they could have been here 6 months, 9 months, whatever it is – they lose all that, in-terms of working towards permanent residence.” (Participant 1)

Repressive laws and law enforcement increase vulnerability

Criminalizing clients and third parties, including managers and receptionists, prevents migrant sex workers from taking safety measures to protect themselves:

“So, screening has become a lot more difficult. And if you can’t screen your clients, you can’t necessarily screen out bad actors, and that can contribute to violence. Because sex work has to occur in clandestine environments, it can sometimes mean that sex workers are having to rely on others to help them with their work. And those people are criminalized under material benefit laws.” (Participant 8)

Participant 6 reported that she had not been robbed in a massage parlour. However, when she moved to an apartment to avoid police investigations, she was robbed three times. Asian migrant sex workers report that locking the door of their work premises is an important safety measure. However, for Participant 4, a local bylaw prohibited them from doing so:

“Locking the door is a way to protect yourself. You could know who’s outside and refuse to open the door when you don’t feel right.”

Participant 7 was robbed and physically and sexually assaulted because she could not lock her door. She stated, *“I had previously been charged by bylaw enforcement officers, and already have had a \$240 fine in court.”* She expressed the importance of locking the door: *“With locked doors, we would be able to screen clients and refuse entry to those who seem suspicious or bad intentioned. We can prevent this violence towards us from occurring again. Right now, we face danger when we are at work. We are middle-aged women who are at high risk of being targeted because the robbers know we are vulnerable and marginalized women.”*

b) Unwillingness to call the police

Participant 3 had experienced violence many times, including from her boss and clients. She had also been robbed four to five times per year. Once, she was seriously injured but was not able to call the police because of her immigration status and fear of being deported: *“I was worried that I would be deported. Being deported means I would have nothing. I would only have debts and illness.”*

“If you don’t have legal status, you’ll be deported if you called the police. And they don’t want to leave records.” (Participant 4)

Participant 1, a male sex worker, had experienced harassment and violence from a stalker, who had threatened to out him, harassed him and posted non-consensual nude photos online. However, he was not able to report the abuse and worried about losing his

immigration status if the stalker reported him, even if he may not have been criminally charged:

“And so...I kind of freaked out. And I was, like, thinking he was gonna try to, like, report me to the police or something. And that’s when I started doing research, ‘cause I was, like, worried about what could happen to me. And it was at that moment when I realized, like, I could get deported without even anything criminal happening.”

“Our business is small, with only one or two workers. We are vulnerable. And we are too weak to fight back because we are women. They might beat us to death. My experience was that I didn’t even dare to resist when he seized my throat. He could easily kill me, so I gave him the money. I just wanted him to leave.” (Participant 7)

Migrant sex workers are not only afraid to call the police; they are also afraid of accessing health services, even when they are injured:

“The robbery had a great impact on me psychologically. On the one hand, I was worried about the police and immigration. On the other hand, I was worried about the bad guys. I was seriously injured in a robbery...but I was too afraid and did not go to the hospital.” (Participant 3)

Very few migrant sex workers reported crimes to the police

Only two migrant sex workers interviewed who experienced violence had their experience of violence reported to the police. Participant 7 experienced an extremely dangerous situation that she reported to the police because she was a permanent resident when it occurred. Participant 4 did not call the police, but her female client did as she was receiving non-sexual services.

c) Types of violence that migrant sex workers face

As detailed above, all the migrant sex workers had experienced violence, including discrimination, physical assault, sexual assault, burglary, stalking, harassment and robbery.

Discrimination

Many of the migrant sex workers faced discrimination because of their sex work and most of them are unwilling to disclose their work to others because of the stigma associated with sex work. For example, they were discriminated against and profiled by taxi drivers, neighbours, landlords, law enforcement, government officials and service providers. The stakeholders interviewed also observed that most migrant sex workers are unwilling to disclose their identity when they access community services.

“Many people look down upon this industry. They really don’t understand our work and discriminate against us.” (Participant 4)

The migrant sex workers also reported being discriminated against by government officials and anti-trafficking organizations. Participant 4 participated in a bylaw review meeting for a holistic centre, and she felt that migrant sex workers were being discriminated against by municipal authorities:

“They said this industry should be shut down. They didn’t care about us, saying, ‘You can do other jobs.’”

Systemic racism and transphobia

The migrant sex workers also shared the systemic racism and transphobia they faced, as racialized people (e.g., as Asians, Eastern Europeans and South Americans) and trans people.

The racist idea of racialized sex workers and migrants being trafficked victims is used to justify investigations and arrests by law enforcement:

“When they encounter or interact with racialized sex workers, there’s an automatic assumption that the women are trafficked, and it’s racist assumptions and thinking that the women don’t have agency, they’re docile, they’re all passive, and this narrative of the woman being duped into work.” (Stakeholder 8)

Physical and sexual assault

Several participants described experiences of physical and sexual assault.

“One of the men forced me to sit on the floor and sexually assaulted me, while the other men looked at me and laughed. I was humiliated and insulted, but I continued to collaborate because I was afraid that they would hurt me more. At this point, I was about to collapse from fear and the trauma of the situation. I kneeled down and begged them to let me go. I saw a chance to run out the door, which I took. I ran in bare feet to the store next door and sat down on the floor, shaking.” (Participant 7)

Many of the participants who had experienced violence were traumatized:

“The robbery had a great impact on me, psychologically. On the one hand, I was worried about the police and immigration. On the other hand, I was worried about the bad guys. I was seriously injured in a robbery.” (Participant 5)

Sometimes, assault occurred in the context of workplace robbery.

“For 3 months after the robbery, I was unable to work due to the trauma caused from the psychological and physical harm I experienced. I still have flashbacks and feel constant fear.” (Participant 3)

“As for the robbery, I worked with other girls at that time. The robbers came in and found all of us women. So, he took out a knife and threatened us for money.” (Participant 4).

One participant who was robbed was greatly traumatized:

"I want to describe my true feelings. Every time the doorbell rings, I'll jump to see who's there. And I keep watching outside while sitting at the reception. After the robbery, I do not dare to stay in the parlour alone for a long time." (Participant 4)

Participant 5 had experienced robbery several times. She felt safer when her boss and clients were there:

"When I went to the washroom, I heard that a woman was robbed outside. I was hiding in the washroom. All the woman's money was being taken away. There was a client inside. He also was robbed. I opened a shower and made some noise (to pretend someone was taking a shower). I was holding a tool. Someone kicked the door, and he left. I was lucky enough to escape."

d) Being arrested when calling the police

Many of the migrant sex workers in this study saw law enforcement, who discriminated against, abused, harassed and intimidated them, as the major source of the violence they faced.

Participant 2 and Stakeholder 9 said that migrant sex workers, and particularly trans sex workers, are charged when they try to defend themselves.

Stakeholder 9 shared what happened to a trans sex worker who was a victim of domestic violence: she was arrested for assault and placed in a male prison for two months.

“If a customer was aggressive and came to their place and beat them up and stole their money, they probably won’t say anything to the police because they’re afraid, because we’re doing sex work and they don’t – they don’t – like I did, I didn’t call the police when I had some trouble clients because I know I was doing sex work.” (Participant 2)

Participant 3 was arrested when a neighbour called the police after she and her co-worker were robbed. Both Participant 3 and her friend were asked to show their ID, after which the police arrested them and called CBSA even though they had been injured. She was handcuffed and brought to the police station. She was sent to prison the next day: *“He [the policeman] said, ‘Sorry.’ Then, he called immigration [CBSA].”* She also added, *“I was very angry. There was a regulation [the Access without Fear policy] stating that they would not check [ID]. Why did they check [my ID]? I was very angry.”*

Stakeholder 8 shared her experience of working with a migrant sex worker: *“There was a woman who experienced a bad date. I think there was some violence involved. And, um ... I think it came to the attention of the police through some [can’t distinguish] a 911 call. And the police came and apprehended the perpetrator. However, the next day, several police showed up and initiated an anti-trafficking investigation.”* The police frequently initiate trafficking investigations or call the CBSA.

Not only do migrant sex workers feel that they cannot report crimes to the police because they are afraid of deportation or other forms of criminalization, several participants reported that the police also abuse their power.

6) Everyday policing: Experiences of encountering law enforcement

Migrant sex workers and stakeholders report that the police, CBSA officials and bylaw officers have abused their power and authority under the web of laws that are used to end sex trafficking. These authorities have become sources of violence.

“The women always feel the police or other types of authorities like Canada Border Services or bylaw officers are the greater evil.” (Stakeholder 8)

Most of the migrant sex workers, particularly racialized sex workers and trans sex workers, reported that they often experienced harassment, profiling and investigation by law enforcement:

“A number of massage parlours in the downtown area have primarily Caucasian women working or Caucasian and mixed ethnicities but not Asians. And those massage parlours do not experience the same types of police enforcement or anti-trafficking raids as the Chinese massage parlours.” (Stakeholder 8)

Asian sex workers are seen as illegal migrants, regardless of their immigration status, and are racially profiled: *“They still look at an Asian woman and say, ‘Well, you’re not Canadian.’ So, it’s not – it’s not as much about if you have a work visa or not; it’s ‘You’re Asian; we need to call in CBSA.’”* (Stakeholder 8)

Stakeholder 8 further stated, *“Having interactions with a police officer, no matter whether they are a victim of a crime or not: That is the deciding factor in deportation.”*

a) Discrimination, harassment, and intimidation

Racialized, including Asian, sex workers and trans sex workers reported that they are often the targets of law enforcement who subject them to discrimination, harassment and intimidation.

Trans migrant sex workers on the street are often targeted by police, particularly those whom the police think are immigrants and those who have an accent: *“They can be very mean if you are trans and are a migrant or sex worker on the street and you look very flamboyant, and they want to know who you are.”* (Participant 2)

“A Mexican trans woman was explaining how ... the police ... regularly kind of threaten her and police her in terms of her language, telling her, ‘Why don’t you speak French? You don’t belong here; we’re gonna deport you.’” (Stakeholder 9)

“Definitely was that kind of profiling of Asian and migrant, uh...holistic centre workers by Toronto municipal bylaw enforcement.” (Stakeholder 1)

Stakeholder 9 also provided some examples of how migrant sex workers are discriminated against and intimidated:

“I had a lot of discrimination, a lot of...a lot of, uh, prejudice. ... I’m gonna tell you an anecdote about the way they used to be, not only with me. But many of us, they called us, on the megaphone, you know, the police ... on the street..., such as, ‘Mr. Jack, hey, Mr. Jack, wanted. Please stay away from the street; go back to your room.’”

“You hear the stories of cops who are known to the women who worked on the street. They would use their loudspeaker to call out the legal names of different women to harass them,

to taunt them, to call them by a quote unquote 'male' name to reveal it to anybody in their proximity, potentially to clients as well."

Stakeholder 9 also describe the racial profiling of police:

"Migrant sex workers, all who are racialized, either, like, the cases of [can't distinguish], either Black or Latina, um...like, not Afro-Latina, uh...and who have been arrested by the morality squad, like by undercover police officers and then have their, like, first encounter with law enforcement in Canada and so who have, like, been picked up by a client who was an undercover officer often, um...and uh...then suddenly, we're getting pulled over, all, like, flashing uniformed officers coming to the...the door."

Asian massage parlour workers often face the harassment and profiling of the bylaw enforcement officers:

"– they barge into the room, and because of bylaw provisions that penalize locking rooms, like, you can't lock it without being fined – uh, they can just like come in. They scared the hell out of the worker and the person who was getting massaged, so he left without paying and the...the client also had some stuff underneath the bed that was their – his personal belongings. One of the belongings was, like, a pornographic DVD, and they make the workers put the DVD...like, play the DVD, cause they had a TV or DVD player somewhere in the place, and, like, watch it together. And then they made the worker take the DVD, bring it outside, and destroy it." (Stakeholder 1)

Stakeholder 1 also shared other examples:

"When bylaw enforcement officers came in, they told the female worker to disrobe so they could see if her underwear was, like, sexy, because if the underwear was sexy then that would be inappropriate work attire which was also a bylaw provision that they could issue a fine under. And so those are kind of the – the issues, kind of like the gendered, racialized issues that harassment in the bylaw enforcement kind of way played out, right, and those are maybe the more extreme examples, but they were enough to kind of, like, degrade and make people feel, like, very vulnerable in front of bylaw enforcement."

Migrant sex workers also reported that they do not complain because they fear they will face retaliation:

"The reasons didn't feel comfortable speaking out on it or putting in a legal complaint for fear that bylaw enforcement would just simply, like, do reprisal, right. Like, "you're messing with us, we're gonna give you, like, 10 more tickets on whatever." (Stakeholder 1)

b) Experience of interrogation and investigation

Trans migrant sex workers experience being targeted

Trans sex workers who are migrants or immigrants or have an accent are often searched, stopped, and required to show ID. One trans sex worker explained how trans migrant sex workers are being targeted: *"When you're a trans migrant sex worker on the street, yeah,*

they – they are more suspicious of you because they think that you probably are illegal, that you probably have some other problems, and that you’ve already been researched by the police, and so they stop you, they ask for your card to identify yourself.” (Participant 2)

Policing of Ontario Street in Montreal has a long history, where trans sex workers have been pushed over the years out of the red-light district. The police have supported its gentrification:

“The neighbourhood started to get more condominiums, more buildings, more commercial things, and more condominiums, so the people coming to live in the neighbourhood started to complain to the police. So, the police came very strong against us back in 2010 because this bar used to be very popular back in the beginning of the year 2000. By 2010, they started getting tougher, up until they closed the bar in 2014.” (Participant 2)

Investigation of Asian massage parlours and businesses

Asian workers in massage parlours are targeted by bylaw enforcement. The workers reported that they are not only concerned about over investigation and receiving tickets, but also worried about their workplace being shut down:

“They would be in this kind of other subsection that would be severely targeted and surveilled by and ticketed by municipal bylaws.” (Stakeholder 1)

“They never knocked at the door when they came. They just opened the door and came in, and they asked me to show them my license. I think it is rude to the clients.” (Participant 4)

The aim of investigations is often shutting down the business: *“It just shut down several years ago now, so 5 years ago, um...there was substantial evidence of the police very proactively seeking to shut the bar down.” (Stakeholder 9)*

7) Web of criminalization: Different laws are being used to charge migrant sex workers

Stakeholder 3 reported that migrant sex workers face a “matrix of criminal law, immigration law and municipal bylaws that kind of counter every space and limit the space of legality.”

“So, there’s all of these legal systems and policies that are claiming the sort of protectionist mandate but are really just exacerbating the harms.” (Stakeholder 3)

“And I think what the laws do, is they force them to either try and hide their work even more, and also means that every day they go to work, they’re worried that they may end up either having a client busted or having their place of work shut down.” (Stakeholder 5)

Bylaws are often used to target massage parlours. Anti-trafficking laws and third-party laws are also used to target Asian migrant sex workers who work indoors. Immigration laws are used to target migrant sex workers with temporary residence status:

“And so that's kind of where the criminal law kind of plays in with the immigration law. If you have temporary status, even if it's valid, if you're engaging in sex work then you're violating the immigration law, right, so then you're now out of status and you can be deported, and that's how a lot of folks – basically, an anti-trafficking raid was converted into an anti-migrant raid, and a lot of folks ended up being arrested, detained, thrown into immigration detention.” (Stakeholder 1)

Trans people are targeted by the police through different laws, such as laws prohibiting obstruction of justice, traffic laws, immigration laws, and municipal bylaws, to charge and deport them.

Participant 2 stated, *“But yeah, they’re still coming around the area, and they’re always looking for some, how do you say that, how I can say that – some situation where they can find us guilty.”*

Police officers often use bylaws and traffic infractions to target migrant sex workers, who may or may not be criminally charged at the same time. Participant 2 discussed being charged: *“I got arrested for solicitation. I was arrested for standing at the corner and just passing by a red light at four o’clock in the morning. They came out of nowhere and stopped me because they said I was crossing on a red light. It was winter, and nobody was on the street, but they gave me a ticket as well. They were very rough, very – very insistent to get rid of us from the street back then.”*

The joint enforcement of bylaws and criminal and immigration laws, especially in the context of a human trafficking investigation, also gives the police and CBSA officials powers to enter workplaces without a warrant:

“And one of the sneaky things with that is that a municipal officer can gain entry to a place of work in order to check out whether they're meeting their licensing requirements without a warrant. Now, if they decide, oh, it's gonna be dangerous, I better bring a lot of police officers, that police officer gets there, the whole danger of having to get a warrant and he can go right into the massage parlour. And then what you see is you see the use of tickets and petty enforcement being used to shut these massage – shut body rub parlours down. So...I'd say within the city, it's mainly police, and also municipal officers. The one other place you'd see immigration enforcement is if a police officer picks up a woman migrant, let's say who's working in the sex trade. They can call immigration and tell immigration and then CBSA gets involved and...and usually will deport the woman.” (Stakeholder 5)

a) Harms from anti-trafficking investigations

Male and trans sex workers are not often targeted by anti-trafficking investigations, despite law enforcement and some anti-trafficking organizations claiming that anti-trafficking investigations are aimed at protecting and rescuing sex workers. However, the Asian migrant sex workers interviewed said that they were being targeted in investigations:

“Poor foreign women must be rescued because are being perceived as ‘not [knowing] what’s good for them’ or being lured or forced into it.” (Stakeholder 6)

“Usually, what’s happening is these sorts of raids on massage parlors, health-enhancement centres and micro-brothels, are based on the idea that migrant sex workers must be trafficked. And those [ideas] are based on the really racist and stereotypical understandings of who migrants are, which really deny personal agency – you know, of migrants who, you know, to me, are really strong people who made a decision to migrate to a country, usually specifically to do sex work, and maybe they weren’t coming to do sex work, and they ended up doing it.” (Participant 8) Participant 8 also discussed how she was initially treated as a victim, but in a later investigation she was treated as a criminal.

Joint enforcement investigations often give extensive powers to law enforcement over migrant sex workers. Anti-trafficking investigations often result in ticketing, eviction, harassment, surveillance, arrest and deportation. As a result, migrant sex workers become more isolated, which increases their vulnerability and risk of violence and worsens their working conditions.

Participant 5 reported that when she worked in a massage parlour, she was worried that she would be arrested and deported. She decided to move to a small town to work as an escort, even though she had a much safer experience working in massage parlours than escorting.

Participant 6 was investigated by the police and by bylaw enforcement officers. She was asked if she was being controlled and had someone controlling her. The police and bylaw officers called the CBSA. The CBSA officers gave her a warning, asked her to leave, and did not allow her to come back to work. She was terrified and traumatized:

“Four big guys were standing around me. They did not allow me to leave that little room for almost two hours. I was then asked for my immigration documents. I showed the police my work permit and told them I had legal status and was allowed to work. They did not even allow me to sit and kept me standing for those whole two hours. Then, I heard the police was calling the CBSA, and three police officers continued to interrogate me.”

“I was so frightened and so frustrated that I did not know what I could do. I did not know what happened. I was being asked many questions, such as why I came to Canada and why I worked in a massage parlour. Overwhelmed and insulted, I eventually started to cry. I repeated to the officers that I wasn’t doing anything illegal. When the border agency officials arrived, they saw my student ID and work permit. They continued to interrogate me and would not allow me to leave or make a telephone call.” (Participant 6)

Participant 5 also shared her experiences:

“We had four women in an apartment. A woman opened the door. Many people came in. She thought, ‘Oh my God.’ There were two plain-clothes police officers at the front, two

uniformed police officers, and more. There were seven or eight officers in total. They did not say much. They said that we were prostitutes and asked us to pack up and get into the car.” She was deported after being detained for a month.

Participant 5 reported she had worked in different countries and cities, including New Zealand, Ireland, England and Dubai after she was deported. Yet, she still likes Canada most. However, she cannot return to Canada because she has been banned from returning to Canada after being given a deportation order for engaging in sex work while in Canada.

b) Administrative decision on deportation

Migrant sex workers can be deported quickly without any judicial process, for violating immigration laws and regulations.

“If they catch you working in the sex trade you've broken – you've broken the regulations and you're inadmissible to Canada.” (Stakeholder 5)

“Immigration process is a civil process. And in these cases, actually, the decision’s usually being made by an immigration officer and then possibly a senior immigration officer. So, it's not even in front of a tribunal of any sort. In fact, the party that wants to deport you is the party that decides whether it's deporting you.” (Stakeholder 5)

After migrant sex workers are arrested, removal orders may be issued, and they may be deported. Some workers may seek a stay of their removal order. However, they are often detained in jail or a detention centre during the immigration process. Many workers are not allowed bail because they are involved in a criminal investigation or because CBSA believes they will be deported quickly:

“The issue wouldn't be that I was breaking criminal law but that I was breaking the conditions of my work permit. So, the idea is that it's simply an administrative infraction...with no, like, there's no court process, there's no judicial process. It's literally, like, a bureaucrat makes a decision on your case and can very quickly deport you.” (Participant 1)

“So, they'll haul the client to 14 Division, then CBSA will show up at 14 Division, pick up the client and bring them out to the enforcement centre. And then that's usually when they get a chance to call their counsel. And then the way it works is that if you're removable from Canada, they have the power, if they think that you're not likely to show up for your removal, they have the power to detain you. And a lot of these cases, the removals happen very, very quickly unless the person faces danger in their country of origin. So, a lot of these cases, what you see is that the women, it's almost impossible to get them out, because CBSA argues, well, we're gonna have them on a plane in a week or two. So, what you end up doing is often negotiating to assist with that removal so it can happen as quickly as possible.” (Stakeholder 5)

Stakeholder 5 explained how he helps migrant sex workers get out of jail and leave Canada quickly because many of them would not be granted bail:

"I actually have helped clients, unfortunately, a lot of cases, there's not much that can be done. And so, a lot of what I've ended up doing is helping negotiate to get them deported as quickly as possible, so we can get them out of jail."

He further explained:

"[A migrant sex worker said] I'm not going to do that process of the pre-removal risk assessment, and I'm willing to go right away" it's usually pretty quick. It's usually, like, within a week." (Stakeholder 5)

If migrant sex workers receive a removal order, they must leave Canada. They will be banned from entering Canada for one year if an exclusion order is issued and permanently barred from entering Canada if a deportation order is issued. However, it may be very hard for migrant sex workers issued with a removal order to return to Canada even after the ban period has elapsed because of their previous record of involvement in the sex industry and misrepresentation of their work.

c) Negative impacts of a criminal record

A criminal record can have significant effects on the lives of migrant sex workers. A criminal record can lead to inadmissibility to Canada, the loss of immigration status and deportation, and it may prevent migrant sex workers from obtaining temporary status, permanent residency or citizenship. Migrant sex workers' other rights, such as the right to change their name or gain access to health services and employment, are also affected.

Participant 2 explained the impact of having a criminal record on migrant sex workers' immigration status:

"And so, like, a lot of people that I worked with in the earlier 2000s, um...are now living with criminal records that, in some cases date back, like, 5, 10, 15 years, sometimes even longer, and who are still facing substantial challenges in accessing permanent residency or, in some cases citizenship, which then has serious repercussions on the rest of their lives."

Many trans migrant sex workers acquired criminal records when working on the street and faced aggressive police surveillance. Some trans migrant sex workers have lost their immigration status and have been deported.

"Somebody who was stripped of her permanent residency, she's lived here, and this is common, like, she, you know, she's lived here since she was a child. She's in her 20s. She was a street environment-based sex worker. Um...she was under a lot of scrutiny and surveillance as a racialized trans woman sex worker and a drug user. Um, yeah, she ended up with a substantial criminal record." (Stakeholder 7)

Participant 2 stated, *“I was having so many bad situations with the police, and I couldn’t – but I did get a criminal file, so a judge in Quebec stopped me from getting my citizenship.”* She also told the story of another worker: *“That’s the reason why they didn’t give her any chance to stay as a landed immigrant. So, they threw it out to Canada, they sent it back to. And actually, she was killed.”*

8) Recommendations from Migrant Sex Workers and Stakeholders

a) Decriminalize sex work

“If we could decriminalize sex work; allow sex workers access to worker protections, like labour standards and occupational health and safety regulations, those kinds of things; and give them the ability to organize themselves so that they can negotiate with, like, municipal governments and health authorities, then things would be a lot better.” (Participant 8)

b) Repeal immigration prohibitions on sex work

“Basic advocacy and calls for law reform and policy reform by trans people are a means of being able to navigate the world with greater safety, without risk of violence and harm. Of course, having identity documents does not resolve a lot of the overarching structures of racial violence, of, you know, misogynist violence, of how capitalism functions, but nonetheless, for the everyday – for everyday life, this is essential.” (Stakeholder 2)

c) Capacity building and resistance

Stakeholder 3 stated that migrant sex workers need *“to build”, their collective power. And so, what I mean by that is both their own personal knowledge and access to information – um, accessible, applied information about the legal systems that they’re facing, about the legal systems that discriminate against them and oppress them.*

VI. Conclusions and Recommendations

The findings of our study accord with the findings of the studies that were summarized in the literature review in Part IV. The carceral web of laws that was mapped in Part III, in conjunction with various intersecting forms of identity-based discrimination, shape migrant sex workers' interactions with law enforcement and their lived experiences more broadly. Our study highlights the impact of the carceral web of laws targeting human trafficking on migrant workers without permanent residence status. The immigration regulation prohibiting migrants without permanent residence from working in the sex industry is particularly pernicious because it is unaccountable; unlike criminal proceedings, immigration enforcement matters are adjudicated as civil matters and lack similar due process protections, despite the often severe impact of the threat of deportation on migrant workers. The fear of deportation has a huge impact on the health and welfare of migrant sex workers. The immigration regulations and their enforcement demonstrate the enduring role that racialized hierarchies play in making some migrants particularly vulnerable to exploitation. This carceral web also has a disproportionately detrimental impact on trans migrant sex workers.

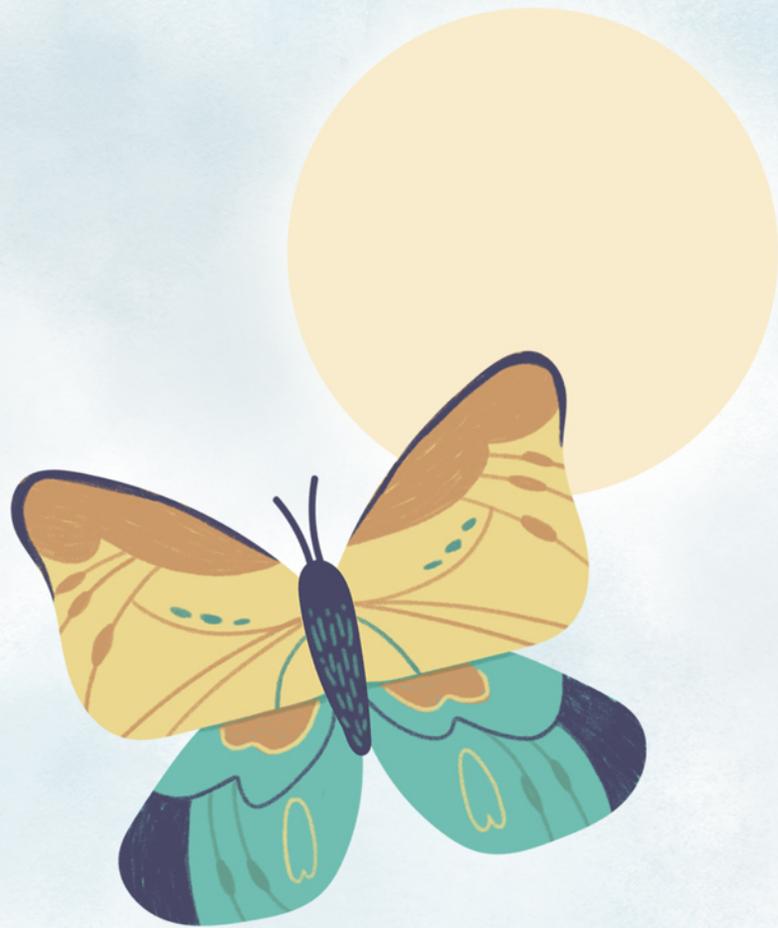
Not only does this web of carceral laws and policies render migrant sex workers less likely to report crimes perpetrated against them, but migrant sex workers are also compelled to take steps to evade police and other law enforcement bodies for fear of detection, surveillance and apprehension related to the criminal status of their work and/or their precarious immigration status. In turn, migrant sex workers become increasingly susceptible to targeted violence by predators who know they have no effective recourse to state protection, given the vulnerability of their legal status and criminalization of their work. Rather than protecting the human rights of migrants and other communities who may be vulnerable to labour exploitation, existing laws, policies and law enforcement measures intended to combat human trafficking have stoked moral panic surrounding sex work, intensified profiling of sex workers and racialized communities, and profoundly threatened the safety, security and well-being of migrant sex workers. This coercion is cloaked by the prevailing narrative about human trafficking that informs Canada's current immigration and criminal laws.

Efforts to resist punitive anti-trafficking policies are met with unsubstantiated claims that these actions are crucial to stamp out a flourishing, sinister industry. Despite an arsenal of coercive laws and increased policing, surveillance and inspection powers, the number of trafficking victims detected and convictions for trafficking offences have been very low. However, instead of creating a doubt concerning the need for such a thick and wide web of coercive anti-trafficking laws and policies, low detection and conviction rates are dismissed on the basis that human trafficking is a "hidden" crime. In turn, "uncovering" this hidden crime is used to justify an increase in expenditures devoted to policing and surveillance.

By contrast, sex workers have described how these laws have led to extraordinary surveillance and unjustified criminal charges, particularly within migrant sex work communities, as well as against third parties in the absence of evidence of exploitation. Although the humanitarian rationale of protecting vulnerable migrants from human trafficking is used to justify the

immigration regulations prohibiting migrants without permanent residence status from working in the sex industry, our findings indicate that these regulations, in fact, make them more vulnerable to exploitation and other abuse. The following recommendations have been developed with the goal of protecting migrant workers who work in the sex industry from exploitation.

1. Repeal immigration regulations (e.g., ss. 183 (1) (b.1) and 196.1(a) of the *Immigration and Refugee Protection Regulations*) and ministerial orders pertaining to migrants without permanent status working in the sex industry and ease work permit restrictions for all temporary foreign workers.
2. Repeal all the sex work-specific criminal offences, including the offences in the *Protection of Communities and Exploited Persons Act* criminalizing sex workers, third parties and clients. To address violence and exploitation in the sex industry, use existing criminal laws of general application, including but not limited to criminal prohibitions against assault, sexual assault, theft, robbery, kidnapping and forcible confinement, extortion, intimidation, criminal harassment, uttering threats of death or physical harm.
3. The CBSA and IRCC should provide disaggregated data (e.g. by place of origin, gender, race and ethnicity) and publicize the numbers of migrants who are denied entry or deported as a result of the immigration prohibitions.
4. 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.
5. Immediately cease law enforcement raids and intrusions into sex workers' workplaces, and cease detention and deportation of migrant workers, including migrant sex workers.
6. Ensure that CBSA is never involved in anti-trafficking investigations and raids.
7. Reallocate human trafficking resources to settlement, health, legal and social services for migrant workers and other groups who are most at risk of experiencing labour exploitation.
8. 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. Ensure that a labour and human rights analysis is used to examine and evaluate all existing and future laws and policies with respect to human trafficking.
9. Provide migrants, irrespective of their immigration status, with access without fear to all municipal, provincial and federal services, rights and protections.
10. Enact a single-tier immigration status that affords all immigrants with full and permanent status.



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