Submission on *Bill S-235, An Act respecting the National Strategy to Combat Human Trafficking*

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Introduction

Butterfly Asian and Migrant Sex Workers Support Network ("Butterfly") was formed by sex workers, social workers, legal and health professionals to provide support to, and advocate for, the rights of Asian and migrant sex workers. Butterfly was founded upon the belief that sex workers are entitled to respect and human rights. Regardless of their immigration status, Asian and migrant sex workers should be treated like all other workers.

The HIV Legal Network promotes the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, in Canada and internationally. We do this through research and analysis, litigation and other advocacy, public education, and community mobilization. Since our inception, the HIV Legal Network has worked in collaboration with sex workers to defend their human rights.

Our response to Bill S-235

Our organizations acknowledge the urgent need to confront gender-based violence and labour exploitation in Canada — issues which we care deeply about and which we also work to address. However, the *National Strategy to Combat Human Trafficking* ("National Strategy") is not an effective roadmap for this work. This is because the National Strategy is rooted in a nebulous notion of anti-trafficking which encourages conflation with sex work that erodes and undermines each of the National Strategy's pillars, while emphasizing surveillance and law enforcement responses that do nothing to address the structural conditions fuelling vulnerability to abuse. According to the Canadian Alliance for Sex Work Law Reform, of which both Butterfly and the HIV Legal Network are members, the term "human trafficking" is not helpful to understand or address the vast majority of violence and exploitation experienced by sex workers, as it is conflated "with a wide range of other human right violations, criminal offences, targeted violence, socio-economic realities, systemic discriminations and the realities of working without access to the same labour protection as other industries."[1]

Canada has defined human trafficking in federal legislation, which the National Strategy acknowledges. In practice, however, this definition has been deployed to capture everything from intimate partner violence to sex work to sexual assault to labour exploitation. This is evidenced in the examples provided in the National Strategy, where different forms of violence — which are already prohibited offences in the *Criminal Code* (e.g. assault, sexual assault, uttering threats, kidnapping, extortion, criminal harassment) — are defined as human trafficking when the exchange of sexual services is involved. Notably, this occurs in a context when sex workers, and especially migrant, Indigenous, Black, and other marginalized sex workers, have described the routine dismissal by law enforcement of violence they experience, *unless it is reframed as human trafficking*.[2]

When sex work is perceived as uniquely associated with human trafficking, anti-trafficking initiatives become *de facto* anti-sex work initiatives, and sex workers and the people with whom they work are indiscriminately targeted for surveillance and investigation. Migrant sex workers, especially those

[1] Canadian Alliance for Sex Work Law Reform, *Moving Backwards in the Fight Against Human Trafficking in Canada: An analysis of and response to the report of the Standing Committee on Justice and Human Rights*, February 2019.
[2] See, for example, HIV Legal Network, *Perils of Protection: Sex Workers' Experiences of Law Enforcement in Ontario*, 2019.

who are Asian, are often the targets of anti-trafficking policies and practices. They are assumed to be trafficked victims without agency or capacity to make their own life decisions — reproducing racist and sexist stereotype that Asian women are passive and lack agency and self-determination.

At the same time, the *Immigration and Refugee Protection Regulations* (IRPR) prohibit all foreign nationals — including people with valid work permits — from working in "businesses related to the sex trade."[3] This applies to people working for employers as well as people who are self-employed. Migrants working for sex work-related businesses are in automatic violation of their immigration conditions, which is ground for loss of immigration status and deportation. The subsequent fear of detention, arrest, and deportation deters sex workers from seeking help when they or a colleague are subjected to gendered violence, labour exploitation, or other forms of abuse. Those who employ migrant sex workers are also subject to increased surveillance and racial profiling, which has numerous negative impacts on working conditions and health and safety measures.

The IRPR prohibitions against migrant sex work exemplify an anti-trafficking initiative that has resulted in racial profiling and increased surveillance and law enforcement at the federal, provincial, and municipal levels and increased risk of arrests, detention, and deportation of migrant sex workers. This has had devastating impacts on sex workers' health and safety, working conditions, and ability to protect their human rights and resist conditions that foster vulnerability to gendered violence, labour exploitation, and other forms of abuse.

Sex workers often rely on the support of third parties and family members to help organize their income, communicate with clients, access safer workplaces or additional security precautions, or advertise their services. As well, sex workers themselves frequently act as third parties for other workers. Sex workers have been charged with trafficking offences even in the absence of exploitation because they work or associate with other sex workers or receive material benefits related to services or resources they provided for other sex workers.[4] For example, Butterfly members have reported cases in which migrant sex workers asked friends to help with translation, answer phone calls, and provide other forms of assistance so they could avoid paying high agency fees. However, these friends were arrested during human trafficking investigations. Although they were not charged with human trafficking offences, they faced other criminal charges, putting their permanent resident status at risk and exposing them to possible deportation. These experiences demonstrate how anti-trafficking enforcement can criminalize mutual support, solidarity, and community care, while creating fear and insecurity among migrant communities, including those who have already obtained permanent residency.

Police and the Canada Border Services Agency (CBSA) have conducted periodic investigations and raids of sex workers' workplaces in the name of anti-trafficking investigations, even when there is no evidence of labour exploitation, violence or other abuse. These often lead to highly negative

[3] Government of Canada, *Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation*, September 16, 2014. Available at https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/protecting-workers-abuse-exploitation.html.

[4] J. Kaye & B. Hastie (2015) "The Canadian Criminal Code Offence of Trafficking in Persons: Challenges from the Field and within the Law," *Social Inclusion*. 3(1): 88-102; J. Kaye (2017) *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women* (University of Toronto Press: Toronto, ON); H. Millar & T. O'Doherty (2020). "Racialized, Gendered, and Sensationalized: An Examination of Canadian Anti-Trafficking Laws, their Enforcement and Their (Re)presentation," *Canadian Journal of Law and Society*, 35(1): 23-44.

consequences for sex workers who avoid law enforcement due to precarious immigration status, in addition to conflict with numerous criminal and municipal sex work related laws. Law enforcement may assert that these initiatives are intended to "protect" sex workers and target clients and third parties, but they often result in the detention, arrest, and deportation of migrant sex workers. Migrant sex workers tell us that when they are interrogated by law enforcement, they have two options: either they denounce their work, identify as victims, and possibly avoid detention and deportation, or they admit that they are making decisions and working to provide for themselves, in which case they will be fined, detained, and potentially deported.

The threat of detention and deportation reduces sex workers' options and pushes them into precarious working conditions, increases their vulnerability to labour exploitation and violence, and deters them from seeking supports, including state protection, if they do experience abuse. Anti-trafficking initiatives, in addition to sex work prohibitions and the constant presence, surveillance and interrogation by law enforcement deter sex workers from reporting exploitative working conditions or violence for fear of repercussions for themselves or for their colleagues, friends or family. In light of these impacts, sex workers and their personal and professional contacts are further compelled to isolate themselves from law enforcement. This creates barriers to implementing health and safety practices at work that protect migrant sex workers' rights and promote their personal safety. Migrant sex workers — including workers who may experience mistreatment — are further marginalized and isolated as a result.

Moreover, when sex work itself is defined as a form of violence, exploitation or trafficking, this trivializes actual incidences of violence and exploitation against sex workers and grossly inflates statistics, encouraging law enforcement to surveil the lives of already criminalized communities. This conflation obscures responses to real structural problems of targeted violence, poverty, homelessness, and lack of access to housing, health care, and education.

Specific concerns with each pillar of the National Strategy

Empowerment

The current National Strategy mandates the provision of "increased funding for community-led empowerment programs to help address some of the root causes of human trafficking as well as harms experienced by victims and survivors." While we support funding for community-led programming, many VAW or gender-based violence organizations and anti-human trafficking organizations associate sex work with trafficking and label the work that sex workers do as exploitation. Current anti-human trafficking programming, for example, force sex workers to identify as human trafficking victims to receive support. Programs framed as "exit" or "anti-exploitation" do not recognize the decisions and lived realities of people working in the sex industry — violating their agency and autonomy. For some people, sex work can be a way of resisting violence and labour exploitation and a means to realize greater agency, autonomy, and control over their working conditions and lives.

As scholars have noted, funding dollars directed toward anti-trafficking initiatives can *de facto* encourage organizations to reframe their existing clients' experiences as human trafficking to bolster their program metrics, even when those clients may instead describe their labour market

participation in other terms.[5] This labelling of sex workers' experiences as exploitation or trafficking means that sex workers are not offered non-judgemental and relevant services, and much of the labour exploitation or violence that sex workers do experience goes unaddressed because it is not recognized.

Programs need to instead address structural issues, such as those related to poverty, homelessness, discrimination, health, and education. These initiatives should be led by people *in* the community for people in the community, rather than framed as "anti-human trafficking programs". It is imperative to provide more opportunity for communities and to confer rights to all people, rather than package concerns around "human trafficking" with measures that do not provide or ensure access to inclusive social supports.

Prevention and Protection

Under these pillars, the National Strategy requires the Government of Canada "to increase public awareness of human trafficking, and build capacity in strategic areas to prevent human trafficking from occurring in Canada and internationally"; support organizations that "provide critical services to victims and survivors," and coordinate "Canadian law enforcement outreach operations to proactively identify potential victims of human trafficking."

Notably, following the introduction of Canada's 2012 *National Action Plan to Combat Human Trafficking* and the National Strategy, provincial and municipal governments developed policies and enforcement initiatives that targeted sex work and Asian massage parlours. For example, in 2012, more than 100 Asian massage parlours in York Region were reportedly shut down, despite no trafficking victims being identified. Butterfly has also documented concerns about excessive investigations, racial profiling, abuses of law enforcement power, and initiatives aimed at shutting down Asian massage parlours in Toronto, Hamilton, and Newmarket. According to Butterfly's community accounts, these enforcement initiatives have negatively affected more than 2,000 Asian women, resulting in workplace closures, loss of livelihoods, increased surveillance, and the displacement of workers into more precarious, isolated working conditions. Rather than protecting migrant women, these approaches can further criminalize their workplaces, undermine their safety, and increase their vulnerability to exploitation and violence.

As noted above, sex work is often framed as or associated with human trafficking, or more generally, as an inherent form of exploitation or violence against women. This frustrates attempts to meaningfully confront gender-based violence and labour abuse. Increasing public surveillance of a misunderstood phenomenon that is ill-defined merely increases harms towards sex workers without actually preventing abuse.

Alongside the problematic framing of sex work as a form of human trafficking regardless of circumstances, there is a parallel framing of labour exploitation within the sex trade as human trafficking. Workers in many different sectors may experience poor working conditions, particularly people in precarious work and/or informal industries (for example, agriculture, hospitality, garment, sex work, construction). Exploitative working conditions and other forms of abuse are realities that sex workers may face in the context of poverty, racism, precarious immigration status, colonization, and many other factors that lead to the inability to legally earn an adequate income. The failure to

[5] A. De Shalit, *Neoliberal paternalism and displaced culpability: Examining the governing relations of the human trafficking problem*. Doctoral dissertation, Toronto Metropolitan University, 2021.

recognize sex work as a form of labour or income generation prevents the application of employment standards, occupational health and safety protections, and human rights laws to sex work. In many contexts, these would be more effective and appropriate anti-exploitation measures than the blunt and often harmful anti-trafficking laws.

When sex workers are seen as victims, the demands of sex workers who seek to improve the conditions of their work are inconsequential as all sex work is considered inherently problematic.[6]

Prosecution

Canada's human trafficking laws have a long history of effectively being anti-sex work laws.[7] Between 2010 and 2020, more than 2,000 incidents of *Criminal Code* human trafficking offences were reported by police services in Canada, almost 90% of which were reported after the passage of the *Protection of Communities and Exploited Persons Act* (PCEPA) in 2014.[8] Frequently, people accused of human trafficking are also charged with third party sex work offences.[9] Since 2009, for example, 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.[10] Notably, the *Criminal Code* definition of human trafficking mirrors the *Criminal Code* definition of "procuring"— the primary difference being the purpose element related to exploitation.

Trafficking detection tools used by police, health and social service providers, and customer service providers define signs of trafficking to include signs of stigmatization, precarious, and "illegalized" immigration status and fear of arrest, detention and deportation. Many sex workers display these signs not because they are working against their will, but because sex work takes place in a criminalized context, and workers who do not have permanent residence may be deported for sex work involvement even in the absence of criminal charges. The increasing demand for service providers to "identify" trafficking victims leads to sex workers isolating themselves from important services to avoid invasive and potentially harmful questions and disclosure. Law enforcement and social service focus on sex workers, regardless of their circumstances, dilutes and diverts resources away from actual victims of gendered violence and labour exploitation both within and outside the sex trade.

Scholar Katrin Roots has documented how third parties in Canada have long been thought to be associated with exhibiting control over sex workers through violence, threats, and psychological manipulation, and how police script sex workers' stories, pressuring them to take on the "victim of trafficking" label despite sex workers' rejection of this label.[11] Those who receive a profit from the

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[6] C. Bruckert and S. Hannem, "To Serve and Protect? Structural Stigma, Social Profiling, and the Abuse of Police Power in Ottawa," in *Selling Sex: Experience, Advocacy, and Research in Canada*, eds. Emily van der Meulen, Elya M. Durisin and Victoria Love. (Vancouver, BC: UBC Press, 2013): 297-313.

[7] For example, Canada's first immigration legislation banned Chinese sex workers, while international trafficking conventions which Canada have ratified prohibited procuring sex work and brother-keeping.

[8] S. Conroy and D. Sutton, *Trafficking in persons in Canada, 2020*, Canadian Centre for Justice and Community Safety Statistics.

[9] See, for example, Peel Regional Police, "Project Pacific: Results of Collaborative Human Trafficking Investigation," May 31, 2023. Online: Media Releases - Peel Regional Police (peelpolice.ca).

[10] A. Cotter, *Trafficking in persons in Canada, 2018*, Juristat, June 23, 2020.

[11] K. Roots, *The Human Trafficking Matrix: Law, Policy and Anti-Trafficking Practices in the Canadian Criminal Justice System*, PhD dissertation, June 2018.

sexual labour of others are misconstrued as parasitic, exploitative, and misogynistic, rooted in a stereotype of the third-party manager as a 'pimp' — an often-racialized image of a predatory male who exploits women. According to Jeffrey and MacDonald, despite some sex workers' provision of a more nuanced account of the role of third parties as protectors and intimate partners, police and prosecutors have continued to insist that 'pimping' was a major problem, focusing their attention on racialized men.[12] In particular, Black men have been framed as 'pimps' and traffickers who exploit their own intimate and business partners, and Roots' research shows that young, poor, and racialized men are the primary targets of anti-trafficking efforts in Canada.[13]

In conversations with law enforcement, Butterfly and the HIV Legal Network have been consistently told that any third-party involvement with sex workers suggests exploitation that warrants investigation. As a result, Butterfly members have been charged with third party sex work offences (i.e. prohibitions on procuring, advertising, and materially benefiting from sex work) for merely assisting with client communication, scheduling, advertising, and screening.

As Statistics Canada describes, the increase in police-reported incidents could "be the result of enhanced efforts by police to detect, investigate and lay or recommend human trafficking charges,"[14] fueled by high-profile anti-human trafficking campaigns such as "Operation Northern Spotlight," a yearly initiative undertaken by the RCMP, the Ontario Provincial Police and numerous other police forces that has involved police posing as clients and targeting sex workers in their workplaces. Yet, there is strong evidence that policing is ineffective in combating violence or labour exploitation and supporting those who have been abused. While some law enforcement may be motivated in these scenarios by a desire to "rescue" victims of human trafficking, sex workers have opposed such measures as ineffective at best, and a profound violation of their human rights in most cases.[15]

Anti-trafficking investigations have been found to negatively affect racialized, migrant, and Indigenous sex workers who are wrongly perceived as being involved in trafficking because of their perceived "vulnerabilities"; this, in turn is used to justify the surveillance and interventions of law enforcement because they are more susceptible to exploitation and must be saved. In a 2018 report produced by Butterfly, many sex workers reported their experiences of human rights violations at the hands of investigators.[16] Migrant sex workers were subjected to inhumane and degrading treatment, arbitrary arrests and detention, and false evidence was used against them to justify their ongoing detention (in some cases, for as long as three months). While in the custody of anti-trafficking investigators, many reported experiencing harassment and discrimination. Some migrant sex workers were prevented from accessing legal representation and support, and many lost their immigration status and were deported. In another 2018 study by Butterfly of Asian migrant massage and holistic centers in Toronto, more than one-third reported having been abused or harassed by bylaw enforcement or police officers during anti-trafficking investigations.[17] Out of 61 workers

[12] LA Jeffrey and G. MacDonald, *Sex Workers in the Maritimes Talk Back*, 2006 (UBC Press. Vancouver. BC).
[13] Roots, *ibid*.
[14] S. Conroy and D. Sutton, ibid.
[15] See, for example, Canadian Alliance for Sex Work Law Reform, *Press Release: Operation Northern Spotlight,* October 2018. Online: https://sexworklawreform.com/press-release-operation-northern-spotlight-october-2018/.
[16] E. Lam, *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*, Butterfly, Toronto, April 2018. Online: https://www.nswp.org/sites/nswp.org/files/behind_the_rescue_june_2_butterfly.pdf.
[17] E. Lam, *Survey on Toronto Holistic Practitioners' Experiences with Bylaw Enforcement and Police*, Butterfly, Toronto, May 2018. Online: https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf.

surveyed, the study found no instances of trafficking or forced labour. As a result of these experiences, most of the massage and holistic center workers surveyed reported that they were less likely to seek help from law enforcement in future.

In a 2019 study authored by the HIV Legal Network, law enforcement interventions provided "extraordinary control over sex workers' lives" and threatened a host of *Charter*-protected rights, including their rights to work, privacy, equality and non-discrimination, security of the person, health, freedom of expression, freedom of peaceful assembly, freedom from unreasonable search and seizure, and freedom from arbitrary detention and imprisonment.[18] As sex workers shared, over-policing, over-surveillance, arrest, and deportation from human trafficking initiatives have deepened antagonism between law enforcement and sex workers. This has had the effect of isolating sex workers from mainstream supports, and made sex workers more vulnerable to violence, exploitation, and other human rights violations — further alienating sex workers from police in actual situations of violence or exploitation because of their past negative experiences of human trafficking investigations.

Conclusions

Legislating the existing National Strategy will entrench policy approaches that have prioritized policing over structural responses to gender-based violence and labour exploitation, and continue to harm marginalized communities, especially sex workers, migrant workers, and Indigenous, Black, and racialized peoples. Therefore, we **oppose giving statutory force to *the National Strategy to Combat Human Trafficking* through Bill S-235, as doing so will entrench an anti-human trafficking framework that will continue to target and harm sex workers, without meaningfully addressing the root causes of gender-based violence and labour exploitation.**

To that end, we recommend that the Standing Senate Committee on Human Rights take the follow steps:

1. **Oppose Bill S-235 and instead require a substantive review and overhaul of the *National Strategy to Combat Human Trafficking* that includes the meaningful involvement of sex workers, including migrant, Indigenous, and Black sex workers, and sex workers currently working in the industry and targeted by law enforcement**. Sex workers, as people situated within the industry who have been singled out both as trafficking victims and as harbourers of trafficking victims, are vital to discussions and efforts to address gender-based violence, labour exploitation, and other abuse. Sex workers and sex worker rights organizations are in constant contact with people working in the sex industry and are best placed to support sex workers and provide services that are safe, relevant, and accessible to other workers experiencing human rights violations.

2. **Adopt a human rights-based approach to gendered violence and labour exploitation that centers labour rights, migrant rights, and sex workers' rights** and addresses the numerous structural barriers including poverty, precarious immigration status, and lack of access to affordable housing, health, and social services that contribute to the risks of violence, labour exploitation, and other abuse.

[18] HIV Legal Network, ibid.

- **Reframe funding initiatives so that they are not dependent on "human trafficking" frameworks and invest in community initiatives led by Indigenous, Black, and migrant sex workers**, that also seek to address homelessness, poverty, systemic racism, xenophobia, whorephobia, and colonialism, and provide services directed by sex workers. Anti-trafficking services (including most "victim funds") are a barrier to sex workers getting support. They often require sex workers to identify as "victims of human trafficking" or to "exit" sex work. This Committee needs to review existing anti-trafficking policies and programs that conflate or associate sex work with human trafficking, and revise policies to remove assumptions that sex work is a form of trafficking or sexual exploitation. In this vein: recognize sex work as work and invest in addressing labour exploitation and improving working conditions for sex workers.

- **Provide migrants, irrespective of their immigration status, with access without fear to all municipal, provincial, and federal services, rights and protections**.

- **Support non-carceral forms of safety**, including decent and affordable housing for all, and community-based anti-violence programs geared toward preventing gendered violence and supporting survivors.

- **Invest in Indigenous community initiatives, migrant worker community initiatives, and youth-based initiatives** that furnish people with networks of community support that undercut the precarity and vulnerability that place people in vulnerable situations.

- **Decriminalize sex work by repealing all sex work-specific criminal offences**, including those in the *Protection of Communities and Exploited Persons Act* (PCEPA). If any part of sex work itself is criminalized, sex workers are unable to access services and protections to prevent and address gender-based violence or labour exploitation.

- **Repeal regulations in the *Immigration and Refugee Protection Regulations* that prohibit sex work** and immediately cease law enforcement raids and intrusions into sex workers' workplaces and cease detention and deportation of migrant workers involved in sex work, including migrant sex workers. Instead, sex workers should be able to access rights, support and services without fear, stigma, surveillance or the risk of criminalization.

- **Ensure full and permanent immigration status for all in Canada, without exception.**