

# Migrant Sex Workers and Sex Work-Related Laws

Canadian Alliance for  
Sex Work Law Reform

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Canada's new sex work-related laws do not explicitly address migrant sex workers. That said, their stated objective is to "ensure consistency between prostitution offences and the existing human trafficking offences," which means that human trafficking frameworks are being used to understand sex work.<sup>1</sup> Because migrant sex workers can be mistakenly assumed to be "trafficked victims" and because their work can be mistakenly perceived as "sexual exploitation," it is possible that the new sex work-related offences will be used in conjunction with trafficking-related offences as a means to penalize migrant sex workers as well as the third parties working with them.

## Who are migrant sex workers?

It is not always clear how "migrant sex workers" are defined in policy and public discussions. For example, some may understand the term "migrant sex worker" to mean sex workers who are not citizens or permanent residents; that is, sex workers who are legally identified as temporary migrants (e.g. international students, visa holders) or sex workers whose immigration or residency status is undocumented. In Canada, the "migrant sex worker" has also sometimes been used to refer to any sex worker who is not White and/or does not speak English with a Canadian accent.

In any policy or public discussion, it is crucial to be clear about how the "migrant sex worker" is defined. When you use the term "migrant sex worker", are you referring to *anyone* who has travelled to Canada and now works in sex work (including individuals who have since gained citizenship or permanent residency)? Are you using the term "migrant sex worker" to indicate any worker is not White? Are you referring to individuals who may have the right to *enter* Canada but not the right to *work* in Canada (e.g. tourist visa holders)? Are you using "migrant" as a legal label or social label? How "migrant sex workers" are defined and categorized has significant implications for policies and interventions targeting them.

## Who are the third parties that work with migrant sex workers?

Similar to non-migrant sex workers, migrant sex workers may wish to work with third parties to help organize and support their work, to help communicate with clients, or to help advertise their services. Migrant sex workers may find it valuable to work with others who may have more knowledge about the local sex work sector, or the Canadian laws governing sex work (and how to navigate the ambiguity and contradictions within those laws). Yet, current laws make it more difficult for migrant sex workers to keep themselves safe by working with others. The following three sex work-related laws criminalize third parties that work with and assist migrant sex workers:

**Section 286.3 makes it illegal to "procure a person to offer or provide sexual services for consideration."**

**Section 286.4 makes it illegal to "knowingly advertise an offer to provide sexual services for consideration"**

**Section 286.2 makes it illegal to receive any money or other material benefit knowing the benefit is obtained through sex work.**

Third parties working with migrant sex workers may be mistakenly identified as "traffickers" rather than co-workers, employers, or employees of migrant sex workers. As a result, there is a risk that the above offences may be combined with criminal offences related to human trafficking such as:

**Section 279.01, relating to "trafficking in persons"**

**Section 279.02, relating to "receiving material benefit from trafficking"**

**Section 279.03, relating to "withholding or destroying documents to facilitate trafficking"**

Third parties might also be charged under section 118.1 of the *Immigration and Refugee and Protection Act*, which makes it an offence for third parties to arrange for the illegal entrance of migrant sex workers to Canada by means of abduction, fraud, deception, force or coercion (actual or threatened).<sup>2</sup>

<sup>1,2</sup> Bill C-36, *Protection of Communities and Exploited Persons Act*, 2nd Sess., 41st parl, Canada, 2014.

**Because it is difficult to prosecute and convict individuals for trafficking offences, third parties may be more commonly charged with sex work-related offences. The ambiguity of sex work-related criminal offences can end up capturing a range of people and behaviors that are not exploitative. As a result, migrant sex workers may continue to face economic and situational risks if the people they work with are criminalized.**

## What is the impact of these laws on sex workers?

- Sex workers' physical and economic security is threatened when sex work establishments are raided by law enforcement in order to arrest third parties.
- Although the federal government has claimed that the new laws would not be used against sex workers, migrant sex workers have been disproportionately arrested and detained under the offences listed above.<sup>3</sup>
- Sex workers, including migrant sex workers, may be prosecuted under the offences related to third party benefits and trafficking when they work with, gain material benefits from, and assist other sex workers to enter or work in Canada.
- The Canada Border Services Agency (CBSA) may arrest and deport migrant sex workers who do not have legal permission to work in Canada. Sex workers who receive Departure Orders must leave voluntarily within 30 days. Failure to do so may result in forcible removal from the country, even if sex workers are simultaneously identified as victims in the investigation.
- Migrant sex workers who are identified as victims of human trafficking can be given a special Temporary Resident Permit (TRP) from Citizenship and Immigration Canada (CIC) which is valid for up to 180 days and may be reissued. Migrant sex workers who are granted a TRP do not have to testify against traffickers but they may have to leave Canada when their permits expire.
- Partnership investigations between Royal Canadian Mounted Police (RCMP), municipal bylaw enforcement, and the Canada Border Services Agency (CBSA) can often result in racial profiling or the targeting of racialized sex workers or any sex worker who is not perceived to be a 'local'.

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<sup>3</sup> E.g. McIntyre, C. (2015, May 13). Migrant sex workers caught up in Ottawa sting facing deportation, further exploitation: activists. National Post. Retrieved from <http://news.nationalpost.com/news/canada/migrant-sex-workers-caught-up-in-ottawa-sting-facing-deportation-further-exploitation-activists>

## What's wrong with anti-trafficking initiatives?

Anti-trafficking initiatives can often wrongfully equate “migrant sex work” with trafficking. Anti-trafficking initiatives can potentially increase the vulnerability of sex workers if initiatives are grounded in invasive investigations, punitive raids, arrest, detention, “rescue” and “rehabilitation”, and deportation. Under the guise of addressing exploitation, anti-trafficking laws

and policies may also promote racism and anti-immigration, by assuming that all non-White or non-Western sex workers are in Canada illegally and should be deported. Such approaches make it more difficult to rectify exploitative working conditions and racism experienced by racialized sex workers and sex workers of colour, including some migrant sex workers.

## What is a best practice approach to counter trafficking in sex work?

Sex workers rights organizations and community organizations have working to develop sex worker-centred and community-based approaches to better working conditions and assist sex workers who have been trafficked.

As long as sex work remains criminalized under Canadian criminal law, criminal justice models will not be supportive models for migrant sex workers. As stated above, the merging of law enforcement and immigration enforcement initiatives results in overpolicing and can increase the vulnerability of migrant sex workers, for example, when law enforcement are tasked with policing administrative immigration status.

Decriminalizing sex work (i.e. removing criminal sanctions against sex work), as adopted in New Zealand, makes it easier for sex workers and others to report incidents of exploitation, including trafficking. In 2003, New Zealand decriminalized adult sex work under its Prostitution Reform Act. Evaluation of the legislation found:

**No Evidence of Trafficking of Migrant Women in the Sex Trade: Following the new law, large-scale investigations by police and immigration authorities found no evidence of the trafficking of migrant women into the New Zealand sex industry.<sup>4</sup>**

**A Decriminalized Sex Work Sector Makes it Easier to Detect Trafficking: Criminalization creates an antagonistic relationship between sex workers and police. When law enforcement are perceived as a risk for sex workers, reporting trafficking becomes even more difficult. The New Zealand model encourages a sector where venues adhere to occupational health and safety guidelines. This in turn increases communication and collaboration between sex workers and the police—a necessity if trafficking is to be successfully countered.**

**Increased Ability to Report Coercive or Abusive Third Parties to Police: New Zealand’s laws have empowered sex workers to press charges and successfully sue the third parties who have attempted to extort, coerce, or sexually harass them. Additionally, a post-decriminalization survey of 772 sex workers indicates that the vast majority of sex workers feel empowered to obtain police assistance in dangerous situations.<sup>5</sup>**

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4 US State Department, *Trafficking in Persons Reports: New Zealand Country Narrative, 2003–2013*; M. Roguski, *The Occupational Safety and Health of Migrant Sex Workers in New Zealand* (Wellington: New Zealand Prostitutes Collective, 2013).

5 Gillian Abel. *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (Wellington, NZ: Ministry of Justice, 2008).