

Migrant Sex Workers and Sex Work-Related Laws

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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 prostitution.¹ Because migrant sex workers are often identified as “trafficked victims” and because their work is often referred to as “sexual exploitation,” it is not uncommon for the new sex work-related offences to be used in conjunction with other trafficking-related offences as a means to target migrant sex workers as well as the third parties supporting or working with them.

Who are migrant sex workers?

Migrant sex workers are individuals who have moved from one place to another—often across an international border—to work in the sex industry. They may have different immigration status. Oftentimes, it is their immigration status that prevents them from obtaining legal residence and employment. While those who migrate may know that they will be working in the sex industry, they are often unaware of the working conditions they will face upon arrival. Their ability to negotiate satisfactory working conditions is limited due to their illegal immigration status.

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

It is not uncommon for migrant sex workers to work with third parties to help organize and support their work, to communicate with clients, or to advertise their services. Indeed many migrant sex workers cannot work without third parties because of their legal status, language barriers, discrimination, or lack of financial and social resources. The following three sex work-related laws target third parties that work with and support 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 are sometimes identified as “traffickers” rather than co-workers, employers, or employees of migrant sex workers. As a result, the above offences are often 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).

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

Because it is more difficult to prosecute and convict individuals for trafficking offences, third parties are more commonly charged with sex work-related offences. Sex work offences capture a range of people and behaviors that are not always exploitative. As a result, migrant sex workers continue to face economic and situational risks.

What is the impact of these laws on sex workers?

- Sex workers, including migrant sex workers, are not able to work in legal establishments. The need to work underground to avoid investigation and prosecution increases their vulnerability to exploitative working conditions. They may not be able to report the violence against them.
- Sex workers' physical and economic security is threatened when sex work establishments are raided in order to arrest third parties.
- Although the federal government 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.
- 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 migrant 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 work permits or official immigration status. 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 though migrant sex workers may be simultaneously identified as victims of 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) often result in the targeting of racialized migrant sex workers, whether they are experiencing exploitation or not.

What's wrong with anti-trafficking initiatives?

Anti-trafficking initiatives wrongfully equate the presence of migrant sex workers in Canada with sexual exploitation and trafficking. While sex workers and other workers may work in exploitative working conditions it doesn't mean they are trafficked.

Anti-trafficking initiatives are harmful to migrant sex workers as they involve investigation, violent raids, arrest, detainment, "rescue" and "rehabilitation", and often deportation. To avoid this, sex workers are forced to work underground—or stop working altogether—which diminishes their capacity for

economic empowerment and their ability to negotiate safer working conditions with third parties.

Under the guise of addressing exploitation, anti-trafficking laws and policies promote racism and anti-immigration, without addressing bad working conditions and racism experienced by racialized sex workers and sex workers of colour. As anti-trafficking laws and policies criminalize both sex work and migration, racialized and sex workers of colour are specifically targeted.

What is a best practice approach to counter trafficking?

Criminal justice models are not supportive models for migrant sex workers. Support and information can, however, be provided to migrant sex workers so that they can improve their working condition and report or seek help from other sex workers or community organization.

Canada Border Services Agency should not be involved in trafficking investigations and municipal police and RCMP

should not investigate people's immigration status during trafficking related investigations. This increases invisibility and vulnerability of migrant sex workers.

Adopting a made-in-Canada-New Zealand decriminalization model makes it easier for sex workers and others to report incidents of exploitation.

In 2003, New Zealand decriminalized adult sex work under its Prostitution Reform Act. The legislation has demonstrated:

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.²

An Above-Ground Sex Trade Makes it Easier to Monitor for Trafficking: Criminalization creates an antagonistic relationship between sex workers and police. When the sex industry is pushed further underground, trafficking becomes even more difficult to monitor and combat. The New Zealand model encourages an above-ground sex trade where venues are monitored for compliance with 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 meaningfully addressed.

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 better able to obtain police assistance in dangerous situations.³

² 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).

³ Gillian Abel. *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (Wellington, NZ: Ministry of Justice, 2008).