

The background features a central white area with the title. Surrounding this are abstract, overlapping shapes in shades of red, pink, and teal. Several pink butterflies are scattered across the design. Text labels like 'community health centres', 'settlement services', 'crisis support centres', 'LGBTQ rights network', and 'legal clinics' are placed within the red shapes.

Upholding and promoting human rights, justice and access for migrant sex workers

Part 1: Guide for Service Providers

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Over the course of the project *Supporting the Human Rights of Migrant Sex Workers in Toronto: Accessing Justice through Legal Information and Services*, the author and contributors developed information and training for service providers and community leaders to more effectively support and defend migrant sex workers' rights and access to justice.

This guide was delivered on October 13th, 2017 as part of a workshop created by Tara Santini and Elene Lam, *Access to Justice: Supporting the Human Rights of Migrant Sex Workers – Legal Training for Service Providers and Front Line Workers*.

Why read this guide?

This document provides information and insight for legal, social, health, community and other service providers, to help develop their capacity to provide relevant, adequate and accessible information and services to migrant sex workers.

We hope to foster service providers' capacity to assist migrant sex workers in navigating the law, developing their options, and accessing complete and accurate information on how to protect themselves and their rights.

The legal and non-legal information within this guide will assist service providers to:

- Deepen their understanding of the complexity and diversity of migrant sex workers' realities
- Be accurately informed of migrant sex workers' numerous and intersecting conflicts with the law and law enforcement
- More fully understand, analyze and support migrant sex workers in various situations
- Develop their capacity to provide accessible and applied (legal or non-legal) information to migrant sex workers, or to refer them these resources
- Be more equipped and informed to support, protect and defend migrant sex workers' labour and human rights

This guide highlights key issues that service providers need to be aware of to effectively support migrant sex workers who access their services, and directs both service providers and migrant sex workers towards resources that adequately provide additional information.

It is part of a series of documents that addresses migrant sex workers' rights, and the laws that prevent the protection and realization of their rights (see *right*).

All of these documents were written and produced with the direct and meaningful participation of migrant sex workers, and reflect the agency, knowledge, skill, brilliance and expertise that migrant sex worker communities embody. We hope this document helps you to provide relevant and adequate support to migrant sex workers, and also motivates you to listen to and learn from migrant sex workers themselves.

This guide provides general legal information, and does not provide legal advice.

Talk to a lawyer if you want legal advice specific to your situation.

Upholding and promoting human rights, justice and access for migrant sex workers

Part 1: Guide for service providers

Part 2: Laws affecting migrant sex workers

- Criminal law and migrant sex workers' rights
- Immigration law and migrant sex workers' rights
- Municipal law and migrant sex workers' rights
- Migrant sex workers' labour and employment rights

Part 3: Legal information for migrant sex workers

Part 4: Q&A for service providers

The series of documents are available at <https://www.butterflysw.org/legal-information-for-services-prov>

section 1

Introduction to migrant sex workers' rights and realities

The term "**migrant sex worker**" refers to a person who has traveled from one place to another (either through formal or informal avenues) and who exchanges sexual services for money, food, accommodation, status or other compensation. Like other forms of work, people make decisions about their career, their work and their life according to their own circumstances, such as economic and social conditions, personal preference and ability, and available opportunities.

Some migrant sex workers make the decision to be involved in sex work to provide for their basic needs, for economic security and/or to move away from other kinds of oppression (e.g. labour exploitation or domestic violence). Some make the decision to be involved in sex work for their own economic advancement, self-actualization, or to pursue their dreams. Their decisions may also be affected by their own personal circumstances, such as their race, class, gender and immigration status.

Migrant sex workers are oppressed, regulated and marginalized by racism, sexism and stigma towards sex work and sex workers. This increases their isolation and the risk of experiencing violence as well as of being in conflict with laws that lead to arrest or deportation. 60% of the migrant sex workers that Butterfly spoke with experienced some form of violence, including violence from perpetrators and from police, and four migrant sex workers were murdered in Ontario between 2013 and 2016. Since 2015, more than 20 migrant sex workers have been arrested, detained and deported from Ontario, as a result of anti-trafficking investigations.

The stigma, marginalization and criminalization associated with sex work and migrant sex workers result in fear of law enforcement and create numerous obstacles that prevent migrant sex workers' access to community services and legal supports and discourage them from disclosing their identity and discussing their situation with other people. Service providers must build trust with migrant sex workers in order to provide support and services. Service providers must also understand the complexity of the legal issues that migrant sex workers face, in order to adequately refer them to legal and other services and supports.

— Written by Butterfly, Asian and Migrant Sex Workers Support Network

"Now, I can meet different people and learn more about Canada than I could working in a food company where I had a very low salary. I have money to support myself, and my family. I am contributing to the economy and to society."

— **May, who works in an indoor apartment.**

"The police officers were very rude; they ordered me to take off my clothes and to show them my underwear, to show whether what I was wearing was too sexy." — **Cindy, who works in a massage parlour.**

"I was locked by chains and weights, on my wrists and legs... I felt like I was being treated as a murder suspect. They did not allow me to make a phone call or contact other people." — **Mimi, who was detained for three months in an anti-trafficking investigation as a suspected victim, then deported.**

People are taught to think of sex work as a crime, a social nuisance, a social inequality, gender violence, sexual exploitation and human trafficking. These perspectives and assumptions do not reflect the realities of many sex workers.¹ When providing services, it is essential to listen to the individual to understand how they experience their reality and what aspect of their circumstances they are looking to address.

Migrant sex workers' realities are unique and diverse. People make the decision to do sex work based on the range of options available to them. The scope of this range differs across individuals and communities depending on their level of privilege and access. Like other kinds of employment, people may do sex work for many different reasons, including generating income to provide for themselves and their families, and accessing the things they need and want.

Migrant sex workers may work with other people or they may work independently. Most sex workers are (cis and trans) women, yet people of all genders or identities may do sex work. People who sell or exchange sexual services may be adults (i.e. over 18) or youth (i.e. under 18). They may work in a variety of locations, including public spaces, strip clubs, massage parlours, apartments, motels/hotels, escort agencies and dungeons. Some sex workers work in a variety of settings at the same time, and some may work in one setting for a certain period and later transition to another. Sex workers who work in public spaces may meet clients in public, and may also meet clients online.

Migrant sex workers have specific and unique needs, including the services they seek. They may need services or information related to their work or working conditions and/or they may need support related to other needs and aspects of their lives. Migrant sex workers may experience multiple and intersecting struggles related to language, legal systems, immigration status, finances, health, safety, racism/racial profiling, sexism, employment conditions and family, among other struggles. These various forms of marginalization are connected.

As a social, legal, health or community service provider, it is imperative to analyze and respond to a migrant sex worker's situation from a human rights and person-centred perspective. To do this, one needs to be aware of their preconceived notions, subjective values and judgments. Focusing on an individual's human rights — which requires respecting their decisions — is the first step to providing services that meet their needs and respond to their actual situations.



Note:

Not all people who sell or trade sexual or erotic services identify as sex workers. We use the terms sex work and sex workers to signify the consensual exchange of sexual or erotic services for money, goods, safety, shelter or services. We also use these terms to emphasize the human and labour rights of migrant sex workers. The terminology that we use may not represent how all sex workers identify. Be aware of and respect how people refer to their own realities.

¹ See Journey of Butterflies 2016, Butterfly, Asian and Migrant Sex Workers Support Network, available at: https://docs.wixstatic.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf
See Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada, Canadian Alliance for Sex Work Law Reform, 2017, available at: <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>

section 2

Providing safe, accessible services to migrant sex workers

1. Migrant sex workers may not disclose any information about their work due to stigma, criminalization and other associated risks.

- Because migrant sex workers face multiple levels of discrimination and fear law enforcement at all levels, service providers must first establish trust to be able to provide effective support and assistance.
- **Many migrant sex workers will not meet a service provider unless they can do so anonymously and confidentially.** Try to provide information, support and services without requiring individuals to disclose their sex work or immigration status — and when possible, without having to identify themselves.
- **If you cannot provide an anonymous and confidential service and guarantee that you will not disclose any information without the person's explicit and informed consent, ensure that you clearly explain these limits of the service you are providing.** Explain what personal information is needed, for what purpose, who can access their file, and in what cases you will/may share information, **before a migrant sex worker discloses any information.**
- Understand the potential risks associated with disclosure, and the difficulties that migrant sex workers face when accessing support and services, due to language barriers, isolation and the risk of discrimination, stigma, detention, arrest and deportation.
- Sex workers may experience stigma from friends, family, community, service providers, law enforcement, members of the public, organizations or governments.
- Sex workers may not disclose information related to their immigration status or their involvement with sex work. However, you can still provide related information as such information may be relevant to other members of their community. Many clients are willing to receive information on behalf of "a friend".
- "Intake questions" related to "occupation" and "income" often isolate sex workers. Ask yourself if these questions are necessary for providing the service the person is seeking at that moment.

Service providers must understand and integrate the following into their work to provide safe and accessible services to migrant sex workers:

1. Migrant sex workers may not disclose any information about their work due to stigma, criminalization and other associated risks.
2. Never disclose any information without the person's explicit and informed consent.
3. If a person discloses that they sell or exchange sexual or erotic services, engage with the same approach as you would if you were discussing other kinds of work.
4. Respect migrant sex workers' rights and decisions, and focus on what matters to them.
5. Recognize and respect the diversity of migrant sex workers and their ways of working.
6. Understand that sex work is not human trafficking and that sex workers are not victims.
7. Understand the many laws and enforcement practices that impact migrant sex workers.
8. Recognize how racism affects sex workers and consider such reality in the provision of services.

- Be open, but do not assume that all marginalized women (e.g. trans, racialized, migrant, homeless) are sex workers, and do not ask invasive or unrelated questions in order to decipher whether someone may sell sexual services.
- Ask open-ended questions, and remain non-judgmental, informed and available.
- Your organization's position, environment and visual cues may communicate whether your services counter stigma and discrimination towards sex work and sex workers.
- Remind the person that their client record is their file: they have the right at any time to see all information and documentation kept in their file, to receive a copy, and when possible to withdraw their file.

2. *Never disclose any information without the person's informed and explicit consent.*

- **Our experience working with migrant sex workers tells us that it is essential that service providers do not contact anyone, or disclose any information concerning an individual, without the explicit and informed consent of the person affected.²** Informed consent requires that you discuss—in advance—all possible negative consequences with the individual concerned.
- Informed consent applies to anyone, including a person that you think may be a victim of violence and/or human trafficking.
- This means that service providers should not contact the police, other law enforcement agencies, or any other service provider or social service institution without the explicit and informed consent of the individual concerned.
- Many service providers work directly for or with various government branches, including law enforcement or other departments that report to law enforcement. Even in instances where certain service providers or institutions may not report directly to government, disclosing any information within the organization may still pose various risks if there are no established internal procedures and practices that ensure anonymity and personal safety.
- **Disclosing information without the person's informed and explicit consent may lead to harmful consequences, such as:**
 - involuntary/unwanted involvement with law enforcement and legal systems;

² This recommendation not to contact or disclose information without the informed and explicit consent of the person affected does not constitute legal advice. It is the pragmatic and political position that we take based on experience working with marginalized and/or policed communities, who are often at greater risk of conflict with discriminatory laws and human rights abuses when faced with law enforcement.

Niki became homeless after she ran away from her abusive partner. Lucy took care of Niki and let her stay at her apartment, where they worked together. One day, Niki was robbed and assaulted by a perpetrator at the apartment. They hesitated to call the police because they were worried that they would have a "problem". However, their neighbour had heard Niki screaming earlier and called the police because she was concerned that someone was being trafficked. A policeman arrived, did not allow them to leave, and called the Canada Border Services Agency (CBSA). Niki and Lucy were arrested. Niki was arrested because she lost her immigration status when her application for refugee status was rejected, and was prohibited from working in Canada. Lucy was arrested because she was suspected of trafficking. The police suspected Lucy was a trafficker because she advertised for Niki and helped her to transfer money to her home country.¹

CASE STUDY

¹ This story was collected by Butterfly as part of the project "Behind the Scenes of anti-trafficking investigation," which interviewed migrant sex workers who were arrested and deported between 2015 and 2017.

- criminal and immigration investigations, detention, arrest and deportation;
- destroying the possibility of trust with service providers, pushing migrant sex workers away from supports and services, further isolating them and deterring them from contacting service providers in the future.
- Service providers may have a variety of obligations (e.g. legal, ethical and professional obligations, internal organizational policies) that at first glance may seem to be in potential conflict with this recommendation. **If you cannot provide an anonymous and confidential service, and if you cannot guarantee that you will not disclose any information without the person's explicit consent, ensure that you clearly explain what personal information is needed, for what purpose, who can access their file, and in what cases you will/may share information, before a migrant sex worker discloses any information.**
- This does not mean that you cannot support and intervene in a crisis situation. It does mean that as a service provider you have an ethical obligation to focus on your client's self-determined interests, to respect their autonomy and decisions, and to obtain their consent in order to take the best possible action.
- Refer clients to supports within the community that provide services to sex workers and to migrant communities, such as Butterfly. Having access to these supports will help a person make an informed decision about their situation. See page 31 for resources.
- If you know or recognize someone through your work at another organization, or from anywhere else, do not apply that information in the treatment of their file.

3. If a person discloses that they sell or exchange sexual or erotic services...

- **Remember to focus on the reason the person came to see you.** Your subjective values, assumptions and ideologies associated with sex work may lead you to be distracted, to pathologize the person, to judge them, or to attribute inappropriate weight or attention to this aspect of their life. This may deter the person from continuing the conversation and accessing services in the future.
- Migrant sex workers are often disrespected and not heard, and their needs may be unmet as a result of service providers' judgment, assumptions, imposition of values and lack of professionalism. **Because of these behaviours, sex workers may decide that disclosing information involves too much risk or that the available services are irrelevant to their needs.** As a result, they may not want to continue the conversation or access services in the future.
- If someone mentions that they do sex work: do not assume what this involves, why they mentioned it, or that it is a problem for them.
- **Engage with the same clarity, objectivity and non-moralistic approach that you would if you were discussing other types of work.**

People's options and decisions may be constrained by many factors, such as their immigration or health status, poverty, racism, sexism, colonialism and transphobia. **No matter how limited or broad a person's range of options may be, every person has the right to autonomy and self-determination, and every service provider has an obligation to respect this right.** Service providers must take extra care to ensure they do not contribute to stereotypes of victimization and barriers to access that migrant sex workers face.

Respecting migrant sex workers' decisions includes respecting their right to work, as well as other decisions about their lives (e.g. how they use their money, their relationships, their personal goals). Be sure that you are helping them achieve **their** goals, not what you think you would want if you were in their situation.

- Do not limit migrant sex workers' experiences and needs within a certain narrative (e.g. sexual exploitation, human trafficking, "happy hooker"). Doing so limits service providers' understanding of the diversity of migrant sex workers' lives and realities, and the complexities of their needs and concerns.
- Let the person tell you how they perceive and experience their situation, and be careful not to make assumptions.
- Assist and support them by informing their analysis of their situation and developing options with them.

4. Respect migrant sex workers' rights and decisions, and focus on what matters to them.

- **Understand migrant sex workers' realities and needs as they describe them to you: what they identify as the problem or situation they need support with, and what support and/or outcome they seek.**
- If possible, use the same terms that they use to describe their situation. Use terms that respect their dignity and other rights, and that reflect their reality as they have defined it.
- Analyze and support migrant sex workers from a rights-based approach, not from an ideological approach. For example, if they are experiencing violence at work, address the violence without pressuring them to leave sex work because you think sex work is ideologically wrong.
- Although you may introduce information or resources that you think are relevant and useful to them, let them guide the analysis of their situation and their needs.
- Recognize and respect the person's autonomy and value: defer to the person as the leader and expert of their life and their decisions.

5. Recognize and respect the diversity of migrant sex workers and their ways of working.

- Migrant sex workers are incredibly diverse and brilliant. Like other people, they have diverse and various needs.
- They may need services or information related to their work or working conditions, or/and they may need support related to other needs and aspects of their life.
- Migrant sex workers may experience multiple and intersecting struggles related to language, legal systems, immigration status, finances, health, safety, racism/racial profiling, sexism, employment conditions and family, among other struggles. These various forms of marginalization are connected.
- As with other employment, people do sex work for many reasons, such as generating income to provide for themselves and their families, and accessing things they want or need.
- As with other employment, some sex workers enjoy their work, some do not, and some are indifferent. Either way, if someone decides to sex work, this needs to be respected as a valid option.



6. Understand that sex work is not human trafficking and that sex workers are not victims.

Remunerated, consensual sexual services (i.e. sex work) must not be confused with human trafficking. Human trafficking involves a form of physical or psychological force or coercion in addition to exploitation. Exploitative working conditions are a reality that migrant workers may face in the context of precarious immigration status, poverty, racial discrimination, inaccessible channels of regularized migration, and inability to legally access decent paying jobs. Migrants in many different industries may experience poor working conditions, particularly migrants involved in precarious work and/or informal and poorly regulated industries (e.g., agriculture, restaurant, textile, sex work, grocery stores, construction). Yet people who do not recognize sex work as a legitimate form of labour mistakenly define sex work as inherently exploitative and/or as related to human trafficking and therefore not deserving of the same labour protections as other industries.

- When sex work—the sale or exchange of consensual sexual services—is seen as exploitation, actual cases of exploitation in the workplace are not recognized, and workers are prevented from improving their conditions and accessing labour protections. See *Part 2 - Migrant Sex Workers' Labour and Employment Rights*.
- When sex work—the sale or exchange of consensual sexual services—is seen as an act of force and/or violence (e.g. human trafficking, sexual assault, sexual abuse, sexual exploitation and violence against women and girls), this trivializes actual incidences of violence against sex workers, denies sex workers their right to autonomy and invalidates sex workers' consent. See *Part 2 - Criminal Law and Migrant Sex Workers' Rights*.
- When the CBSA or police target what they term as trafficking and sexual exploitation, the people most frequently harmed are sex workers. CBSA and police routinely target sex workers in order to "protect them," which often translates into arrest, removal and/or detention.³ See *Part 2 - Immigration Law and Migrant Sex Workers' Rights*.

Human trafficking is of great concern to many service providers, yet conflating human trafficking with sex work, or focusing solely on human trafficking and imposing this framework onto migrant sex workers, can have extremely harmful effects for migrant sex workers. An approach that assumes that sex work is inherently exploitative limits service providers' understanding of the diversity of migrant sex workers' lives and realities, and the complexities of their needs and concerns. It also obstructs migrant sex workers' access to protection from other kinds of violence. As a result, it may isolate migrant sex workers from supports and services, limit service providers' capacity to provide support, information and services that meet migrant sex workers' needs, and prevent a holistic approach to the protection and realization of migrant sex workers' human rights.

An approach that assumes that sex work is inherently exploitative limits service providers' understanding of the diversity of migrant sex workers' lives and realities, and the complexities of their needs and concerns.

3 See *Stop the Harm from Anti-Trafficking Policies & Campaigns: Support Sex Workers' Rights, Justice, and Dignity* by Elene Lam (Butterfly, Asian and Migration Sex Workers Support Network), in collaboration with Migrant Sex Workers Project, Maggie's, Canadian HIV/AIDS Legal Network, STRUT and No One Is Illegal, available at: www.butterflysw.org/harm-of-anti-trafficking-campaign-

7. Understand the many laws and enforcement practices that impact migrant sex workers.

- Legal systems and law enforcement can simultaneously be tools of protection as well as tools of oppression.
- Even if you specialize in an area of law, it is essential to understand the interplay of criminal, immigration and municipal laws that regulate migrant sex workers and sex work in order to provide effective support.
- Understand and question the political and moral objectives, ideologies and forces underpinning current legislation and funding law enforcement initiatives.
- Understand the actual impacts of these laws on migrant sex workers' lives and rights.
- Be comfortable with the idea of not knowing, and be motivated to learn more. **Discuss and learn from migrant sex workers and people who work directly with them, as well as from other service providers and/or legal professionals.**
- Assist and support migrant sex workers by informing their analysis of their situation and developing their options with them.
- If you provide legal information to sex workers, ensure it is accurate, complete and accessible.
- Consider and discuss non-legal aspects essential to their situation.
- Understand the reality of dealing with law enforcement without legal representation or protection. Staying silent and calling a lawyer may not always be an option.
- In addition to providing information about their rights, discuss how they may attempt to protect their rights and interests in real situations to reduce the risks of detention, interrogation, arrest and deportation.
- **Legal systems are only one of the tools that people may use to deal with their situation. Think creatively, collaboratively and beyond the framework and limitations of the law.**
- Refer to other legal and non-legal resources. Remind the person that there are additional resources and supports available, and provide them with relevant contact information, should they choose to seek additional support.





8. Recognize how racism affects sex workers and consider such reality in the provision of services.

Sex workers and law enforcement are situated in a hostile and antagonistic relationship. In addition to the criminalization and stigmatization that may negatively affect all sex workers, racist law enforcement practices and policy lead to the over-policing, over-surveillance, investigation, detention and arrest of individuals from racialized, migrant, Black and Indigenous communities.

- Racialized communities are stigmatized by law enforcement and policy makers and misrepresented as "organized crime rings."
- Racialized sex workers are stigmatized, misrepresented and labelled as "victims." This label is accepted and further imposed by the public based on the racist and sexist view that racialized women (e.g. Asian women) are ignorant, passive, helpless and lack all agency and self-determination.

These racist and oppressive views underpin current anti-trafficking initiatives and policies, and increase the risk and prevalence of racial profiling, detention, and overall marginalization of migrant, racialized and Indigenous individuals and communities. The federal police force (RCMP), local police forces and the Canada Border Services Agency (CBSA) have conducted periodic investigations and raids in the name of anti-trafficking investigations, even when there is no evidence of human trafficking, exploitation or coercion.⁴ Police or the CBSA may detain migrant sex workers even if they are not committing a crime, and abusive or unlawful detention and arrest by police can still lead to lawful deportation.⁵

For more on how migrant and Indigenous sex workers experience racial discrimination, see *Canadian Alliance for Sex Work Law Reform submission to the United Nations Committee on the Elimination of Racial Discrimination, 93rd Session, List of Issues Prior to Reporting: Canada's Compliance with the Convention on Elimination of All Forms of Racial Discrimination*, available at:

www.sexworklawreform.com/cerd-93/

⁴ See *Challenging Trafficking in Canada, Policy Brief*, Centre for Feminist Research, York University, 2017, available at: <http://cfr.info.yorku.ca/files/2017/06/Challenging-Trafficking-in-Canada-Policy-Brief-2017.pdf>

⁵ *Brief to the Standing Committee on Social Policy Regarding Bill 96, the Anti-Human Trafficking Act 2017*, Butterfly (Asian and Migrant Sex Workers Support Network) Canadian HIV/AIDS Legal Network, May 2017, available at: http://docs.wixstatic.com/ugd/5bd754_70135cbd5d344b7d81548cd91cb082d9.pdf

section 3

Criminal law and migrant sex workers' rights

As service providers working with migrant sex workers, it is important to understand how sex work-specific criminal offences, as well as anti-trafficking criminal offences and initiatives, negatively impact sex workers' rights. These criminal offences and related law enforcement practices:

- contribute to the violence that sex workers face by preventing them from taking critical steps to protect their human rights and ensure their personal safety;
- drive sex workers into precarious working conditions while simultaneously preventing workers from accessing labour and employment protections;
- equip law enforcement to raid and invade migrant sex workers' workplaces, which may lead to their detention, interrogation, surveillance, arrest and deportation, in addition to possible harassment and other rights violations by law enforcement;
- contribute to the stigma associated with sex work, to discrimination and disdain towards sex workers, and to related harmful consequences (e.g. targeted violence, extortion, loss of housing or other employment); and
- deter sex workers from accessing supports and services, including police protection and vital health and social supports, should sex workers choose to seek support if they do experience exploitation or violence.

Whatever your personal views about sex work, you have a professional and ethical responsibility to protect migrant sex workers' personal safety and to uphold their human rights, which involves:

- protecting sex workers' personal information and never disclosing this information without their informed and explicit consent;
- respecting the agency and decisions of migrant sex workers; and
- educating yourself about organizations, communities and resources that provide vital supports and strategies to migrant sex workers.

Depending on the services that your organization provides, upholding and promoting sex workers' safety and human rights may also include:

- learning about the specific implications of laws and law enforcement practices that affect migrant sex workers' rights, such as their right to safety, security, equality and autonomy;
- educating yourself about the scope of law enforcement officers' powers, migrant sex workers' rights, and legal and non-legal responses to the abuse of power.



Complete criminal law document available at:
www.butterflysw.org/legal-information-for-services-prov

The current criminal law in Canada makes the following activities illegal:

- Sex workers are prohibited from communicating in a variety of public spaces, and from engaging with pedestrian/vehicular traffic, for the purpose of providing sexual services.
- All potential clients are always prohibited from obtaining, or attempting to obtain, sexual services.
- Third parties (e.g. an agent, manager, receptionist, boss) are prohibited from advertising sex workers' services, from receiving any profit ("material benefit") from their services, and from facilitating their work in any way ("procuring"). **These infractions do not require any incident of exploitation.** For more information, see: *Part 2 - Criminal Law and Migrant Sex Workers' Rights*.

These criminal offences prevent sex workers from taking critical steps to protect their human rights and ensure their personal safety. These steps include:

- communicating with clients and consenting to the conditions of engaging in sexual activity;
- screening clients and communicating with clients remotely;
- working in association with other people—including third parties—rather than in isolation;
- working in organized indoor locations where workers can implement safety measures and have greater control over their environment.

These safety measures are especially important for migrant sex workers, as their vulnerability to violence, stigma and discrimination is amplified by precarious immigration status, and their ability to work autonomously is complicated by language barriers and unfamiliarity with related laws and regulations.

The ideology that underpins current sex-work specific criminal offences assumes that:

- all commercial sex work is inherently violent and exploitative, and as such it must be prohibited, criminalized and treated as a social problem;
- all people who sell or exchange sexual services are victims of male violence;
- all people who purchase sexual services are perpetrators of exploitation and violence;
- all people who work with sex workers (e.g. bosses, managers, bookers, receptionists) are perpetrators of exploitation and violence; and
- all commercial sex work is forced, and therefore interconnected with human trafficking.

Third parties

The term "**third parties**" refers to the diverse and multiple individuals that may facilitate sex workers' labour (e.g. people who communicate with clients and organize appointments, people who own or maintain a workspace, people who assist with transportation or other services). Third parties in the context of sex work are often assumed to be violent and exploitative. As in all informal or criminalized labour markets, some third parties do maintain poor or inequitable working conditions. On the other hand, many third parties are key contributors to the protection of migrant sex workers' rights. They may implement safety measures, and may increase sex workers' capacity to work, to provide for themselves and to improve their quality of life. For this reason, the outright criminal prohibition of all third parties is misguided and harmful to migrant sex workers.



Our experience working with migrant sex workers tells us that this ideology does not represent the diversity of migrant sex workers' perspectives, realities and experiences.⁶

- Many migrant sex workers do not identify as victims, and experience this perspective as a violation of their dignity and agency.
- Sex workers who experience violence and are victimized want this victimization recognized as something separate from their sex work (e.g. separate to the acts to which they consented).
- Many sex workers believe that criminalizing clients and third parties does not actually protect or promote their rights, but in practice prevents them from improving their working conditions, and encourages law enforcement practices that are harmful rather than supportive.
- Many sex workers do not perceive their work as a crime or a social problem, and experience this perspective as harmful to their security, to the improvement of their working conditions, and to the value of their work.

Violence against sex workers

Violence is one of the many pressing issues that sex workers may face. **However, violence is not inherent to sex work, nor is it the only pressing issue concerning sex workers' human rights.** Sex workers can and do mitigate violence in their lives and work, and **criminal offences that prohibit acts of violence must apply should sex workers choose to seek police protection and pursue criminal charges against aggressors.** These non-sex work-specific criminal offences (e.g. assault, theft, threats) prohibit violence and exploitation inflicted upon anyone—including sex workers—regardless of the context in which the violence occurs. In contrast, sex work-specific offences isolate sex workers from law enforcement and discourage reporting, as migrant sex workers attempt to avoid law enforcement due to criminal and precarious migrant status.

- Criminal offences that are not specific to sex work and that prohibit violence and coercion include assault, sexual assault, theft, robbery, kidnapping and forcible confinement, extortion, intimidation, criminal harassment, uttering threats of death or physical harm, and trafficking of persons.
- These criminal offences may provide migrant sex workers with protection from violence, whereas sex work-specific offences prevent the implementation of safety measures, promote stigma and discrimination against sex workers, and authorize law enforcement practices that may lead to detention, interrogation, surveillance, arrest and deportation of sex workers.

Across the country, sex workers have reported a constant police presence, social and racial profiling, harassment, surveillance, arrest and detention that result from criminalizing sex work. At the same time, sex workers do not have adequate access to state protection from violence. See:

- **Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada, Canadian Alliance for Sex Work Law Reform, 2017**

<http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>

- **Im/migrant Sex Workers, Myths and Misconceptions: Realities of the Anti-Trafficked, SWAN Vancouver Society, 2015,**

<http://swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf>

For more information on the limits of law enforcement officers' powers, migrant sex workers' rights when faced with law enforcement, and strategies for protecting their rights and minimizing harms, see: *Part 2 - Criminal Law and Migrant Sex Workers' Rights*.

⁶ Journey of Butterflies, Butterfly (Asian and Migrant Sex Workers Support Network, 2016, available at: https://docs.wixstatic.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada, Canadian Alliance for Sex Work Law Reform, 2017, available at: <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>

Decriminalization of sex work

Sex workers' rights organizations and other human rights organizations argue for the decriminalization of sex work, which means to remove sex work-specific criminal provisions.⁷ This is an important first step to address the dangers associated with being criminalized and/or working in a criminalized industry, and to protect, respect and fulfil the human rights of sex workers, including their right to dignity, autonomy, equality, health, safety and security. Removing criminal provisions alone cannot overcome all of the barriers that migrant sex workers face. In addition to a commitment from government institutions and law enforcement to non-discrimination, access to resources, anti-racist practice and an end to social and racial profiling, employment standards and occupational health and safety frameworks need to be applied in the context of sex work. See *Part 2 - Migrant Sex Workers' Labour and Employment Rights*.

7 Amnesty International Policy on state obligations to respect, protect and fulfill the human rights of sex workers. May 2016. www.amnesty.org/en/documents/pol30/4062/2016/en/

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CHANGE, Women's Rights Organization Applauds Amnesty International Recommendation to Decriminalize Sex Work, August 11, 2015. www.genderhealth.org/media_and_publications/press_releases/P10/

UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, Report on the 14th session, UN General Assembly, agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>



Protecting the rights of sex workers living with HIV

People living with HIV face the threat of criminal prosecution for not disclosing their HIV status before sex, even when there is little or no risk of HIV transmission. The misuse of the criminal law is often done in the name of public health, but there is no evidence that criminalizing HIV non-disclosure works to prevent HIV transmission. Rather, HIV criminalization:

- undermines effective public health initiatives;
- creates a false sense of security that the law can protect people from HIV infection;
- contradicts the message that every person is responsible for their own sexual health;
- and leads to human rights abuses by increasing the stigma and discrimination faced by people living with HIV.

For more information, see: *HIV Disclosure to Sexual Partners: Questions and Answers for Newcomers*:

www.aidslaw.ca/site/hiv-disclosure-to-sexual-partners-qa-for-newcomers/?lang=en
(English)

www.aidslaw.ca/site/discl-newcomers-qa-chinese/?lang=en
(Chinese)

HIV Disclosure and the Law: A Resource Kit for Service Providers:

<http://www.aidslaw.ca/site/hiv-disclosure-and-the-law-a-resource-kit-for-service-providers/?lang=en>

section 4

Immigration law and migrant sex workers' rights

Migrant sex workers' immigration status affects whether they are legally allowed to work in Canada, what kind of work they can do, and for which employer they can work.

Migrant sex workers can have the following types of immigration status. They may:

- **Have permanent residence:** They can work almost anywhere and for any employer in Canada (with some exceptions for work involving high-level security).
- **Have a valid tourist/visitor visa:** They generally cannot legally work anywhere in Canada – not for an employer or independently.
- **Have a valid work visa:** They can work legally in Canada in some cases. There are two types of work visas: Open work visas allow the person to work for most employers, and closed visas specify the employer for whom the person can work. However, even with an open work visa, migrant workers are specifically prohibited from working in the sex industry (see page 18).
- **Have a valid student visa:** They may or may not have legal permission to work. Even if they do have legal permission to work, immigration law prohibits them from working in the sex industry (see page 18).
- **Be waiting for their sponsorship to be accepted:** They may or may not have legal permission to work. Even if they do have legal permission to work, immigration law prohibits them from working in the sex industry (see page 18).
- **Be a refugee claimant:** They may or may not have legal permission to work. Even if they do have legal permission to work, immigration law prohibits them from working in the sex industry (see page 18).
- **Be non-status (undocumented):** They do not have any legal immigration status and cannot legally work anywhere in Canada – not for an employer or independently.

Immigration status is often precarious and can change quickly. Some migrant sex workers may not have legal status or attempted to initiate any immigration procedures. Other migrant sex workers may have status one day and lose that status the next day (e.g. become undocumented) as a result of time or a decision from Immigration Canada.



Complete immigration law document available at:
www.butterflysw.org/legal-information-for-services-prov

Losing status, inadmissibility, detention, deportation

Becoming **inadmissible** means that a person loses their immigration status and is ordered to leave Canada. Whether or not they are allowed to return to Canada without special permission depends on what type of removal order they face.

Migrant sex workers may become "inadmissible" for several reasons, including if:

- They have breached an immigration condition or regulation (e.g. they work in the sex industry or misrepresent this fact to immigration authorities).
- They have been convicted of a crime that leads to "criminal inadmissibility" (e.g. they are convicted of procuring or receiving a material benefit), inside or outside of Canada.
- They otherwise lose their status (e.g. their visa expires or their refugee application is rejected).

Migrant sex workers incur numerous additional risks that may lead to loss of immigration status and deportation, due to the multiple and contradictory laws that discriminate against sex workers.

These laws include specific immigration regulations, criminal offences, and municipal regulations that directly target sex workers and sex work. Criminal and municipal investigations that arise from these laws may lead to immigration consequences for migrant sex workers, even when they are not charged with a criminal or municipal offence.

The *Immigration and Refugee Protection Act and its Regulations (IRPR)* contain many provisions to prohibit migrant sex workers' involvement in the sex industry, even for individuals who are otherwise legally authorized to work in Canada and who autonomously decide to do sex work. **Everyone who does not have Canadian citizenship or permanent residence (e.g. "temporary resident" or "foreign national") is prohibited from doing sex work because:**

- The IRPR prohibits **all temporary residents** from legally working for employers offering striptease, erotic dance, escort services or erotic massages.⁸
- **All work permits contain the following condition:** "Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services." At the same time, the Ministerial Instructions provide, "This condition informs the work permit holder that employment, self-employment, or contract services in this sector are not permissible."⁹

Criminal inadmissibility: Immigration status and criminal offences

Sex workers may find themselves in conflict with criminal law due to the criminal offences related to sex work.

The immigration consequences of pleading guilty and/or being convicted of a criminal offence depend on a person's immigration status. Whether conviction can lead to "criminal inadmissibility" and deportation depends on the specific criminal offence, the specific sentence that the person receives, as well as the person's immigration status. See *Part 2 - Immigration Law and Migrant Sex Workers' Rights*.

Migrant sex workers must be informed of all possible consequences of a conviction on their immigration status before making decisions related to a criminal charge. **It is imperative that criminal lawyers advise clients of all possible consequences and ensure they receive independent immigration law advice before deciding how to proceed with their file.**

⁸ Ss. 183 (1) (b.1) and 196.1(a) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227)

⁹ *Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation*, Government of Canada, available at: www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp

As a result, migrant sex workers who do not have their permanent residence or Canadian citizenship and who exercise their right to work and support themselves by doing sex work are automatically in breach of multiple immigration regulations. This includes immigration regulations that prohibit them from doing sex work or working for a business that may provide sexual or erotic services, as well as immigration regulations related to misrepresentation.

Immigration detention and the CBSA

CBSA officers enforce immigration laws, immigration detention and deportation. They have very broad powers and discretion. **CBSA officers can DETAIN someone if they have reason to believe one of the following:**

- The CBSA officer cannot confirm the person's identity;
- The person does not have legal immigration status;
- The person committed an immigration offence (e.g. breaking an immigration law or condition); or
- There is a warrant issued in their name, related to a deportation order.

If a migrant sex worker is arrested by the CBSA:

- They may be **released** after arrest, on terms and conditions; or
- They may be **detained** in custody until their "detention review hearing," if the CBSA decides that:
 - The person is a danger to the public (e.g. they have a criminal record); or
 - The person is a flight risk (e.g. they will not show up for their immigration hearing or for removal); or
 - The CBSA officer can't confirm the person's identity.

Generally, only a CBSA officer can arrest someone for committing an immigration offence. But if an arrest warrant is issued in their name, a police officer can detain them and transfer them to CBSA custody. **When someone is detained/arrested by CBSA, they have the right to contact a lawyer and seek legal advice before answering questions.** Otherwise, unlike criminal law, people do not have the right to silence when they are in immigration detention.

See Part 2 - Immigration Law and Migrant Sex Workers' Rights for additional information on:

- CBSA powers, detention review hearings, and things migrant sex workers should watch out for.
- Things migrant sex workers can prepare in advance if they may be at risk of detention.
- The importance of community support and how to find it.
- Finding a lawyer and tips for lawyers to provide adequate services to migrant sex workers.
- Criminal inadmissibility and losing immigration status.
- Human trafficking initiatives and impacts on migrant sex workers.
- Victims of human trafficking and Temporary Resident Permits.
- Sanctuary cities and access without fear policies.
- Factors for migrant sex workers to consider when deciding whether to try to stay or to leave Canada.

section 5

Municipal law, indoor workplaces and migrant sex workers' rights

Municipal laws regulate businesses. These regulations ("bylaws") have many impacts for migrant sex workers who work together in organized indoor commercial workplaces. Indoor workplaces increase migrant sex workers' capacity to control their environment, to implement health and safety practices, and to protect their human rights. However, because sex work is criminalized, it is almost always illegal to openly sell sexual or erotic services in a commercial establishment. For this reason, indoor establishments that may provide sexual or erotic services must conceal these services within other types of businesses.

Municipal bylaws cannot directly prohibit the sale of sexual services, but they can prohibit conduct such as exposing or touching certain body parts (e.g. breasts, genitals), wearing certain clothing or being undressed in the workplace, locking or unlocking doors to rooms where services are performed, and opening massage parlours to the public at certain hours. These prohibitions may cause workers to avoid law enforcement and work in greater secrecy.

The constant presence, surveillance and interrogation by city inspectors and police officers lead to numerous practices that violate migrant sex workers' rights. Along with anti-trafficking initiatives, sex work related criminal offences, and immigration regulations that prohibit migrant workers from working in the sex industry, **municipal law enforcement creates barriers to the implementation of health and safety practices that protect migrant sex workers' rights and promote their personal safety.**

Enforcement of these regulations is used as a means to monitor and deter sex work and sex workers—particularly migrant sex workers—and to regulate who is legally permitted to work in Canada and in the sex industry. As a result, these regulations and practices limit migrant sex workers' options in accessing different types of work, working conditions and environments.



Sex workers and public space

Additional municipal and provincial regulations are used to control and displace sex workers who occupy public spaces. In practice, these regulations are often used as a means of racial and social profiling, and are often arbitrarily and excessively applied by law enforcement to displace marginalized individuals from public spaces. These practices often violate individuals' fundamental rights, and the fines associated with them often lead to debt as well as imprisonment in some jurisdictions. Harmful and discriminatory practices – such as ticketing targeted individuals for spitting, "loitering" or jaywalking – are discriminatory and further limit the options available to sex workers who are already profiled and targeted, notably migrant, Indigenous, Black, and trans sex workers.



Complete *municipal law* document available at:
www.butterflysw.org/legal-information-for-services-prov

Municipal bylaws are different in each municipality: It is important that migrant sex workers know what specific bylaws apply to their particular workplace.

Municipal bylaws are specific to the type of business registered: A business may apply to register under a specific category (type of business) depending on several factors, including the municipality in which they are located, applicable zoning restrictions, the services offered and advertised, and avoidance of repressive regulations and enforcement practices.

- Some categories explicitly offer to provide sexual or erotic services (e.g. strip clubs, adult entertainment establishments, body rub parlours and escort services).
- Some categories do not explicitly offer to provide sexual or erotic services, (e.g. massage parlours, spas and personal wellness centers) but may offer these services. At the same time, many workplaces registered as these types of businesses do not offer sexual or erotic services. In addition, individual workers may or may not offer erotic services, or may only offer certain erotic services, or may only provide these services to certain clients.

Municipal bylaws and licensing schemes regulate aspects of the business, like:

- the kind of services the business may legally offer to the public;
- clothing restrictions, prohibitions related to locking doors or the possession of alcohol;
- who can obtain a license to register the business, who can obtain a license to work if required, and who can work there legally;
- the types of businesses allowed in specific areas of the city; and
- building safety regulations.

If the municipality requires that workers obtain a license, eligibility requirements may make it difficult or impossible for migrant sex workers to obtain a license.

- All business owners will need a municipal license. Whether employees need one depends on the municipality.
- Depending on the type of business, there are several barriers that may prevent migrant sex workers from obtaining a license, such as their immigration status, identification documents and requirements, criminal record and health checks, licensing fees and required membership in a professional association recognized by the municipality.
- Depending on the type of business and local law enforcement practices, workers who are able to obtain a license may still face multiple risks associated with the criminalization of sex work and associated sexism, stigma and discrimination.

Whether a business explicitly advertises—or is registered—as providing erotic or sexual services affects which bylaws apply to the business and staff, and whether workers are at risk of violating immigration regulations. Even with legal permission to work (e.g. work permits), migrant workers who do not have permanent resident status or Canadian citizenship cannot legally provide sexual or erotic services due to discriminatory immigration regulations and prohibitions (see page 18).

Each municipality may have different law enforcement practices:

City inspectors and/or municipal police officers may enforce municipal regulations. The type of law enforcement officer determines the scope of the officer's powers, and the scope of the workers' legal obligations to respond to them.

When officers enter the workplace to enforce municipal bylaws, their powers have limits:

Workers need to be properly informed of the bylaws that apply to their workplace and to them individually, as well as the powers of city inspectors and police officers who enter their workplaces. This information is necessary to comply with these regulations when possible, to minimize the risks associated with unavoidable conflicts with regulations, and to attempt to resist, prevent or minimize risks associated with law enforcement officers' unlawful behaviours and practices. For example, migrant sex workers need to know that:

- **If an officer comes to their workplace**, they have a right to know who they are (e.g. whether they work for the city, the CBSA or police) and what is the purpose of their visit.
- If an officer determines that someone is in violation of a bylaw, they can only issue a ticket.
- **A city inspector (bylaw officer) can only enforce municipal bylaws** (e.g. licenses, health and safety). They can only inspect and ask questions about these issues.
- **City inspectors do not have the power to:**
 - detain or arrest anyone on premises, regardless of their immigration status;
 - enforce immigration or criminal laws;
 - question people about their immigration status; or
 - search people or their personal belongings.

Municipal bylaws and licensing schemes equip law enforcement with legal powers to regularly enter sex workers' workplaces. As a result, the frequent presence of city inspectors and police officers in the workplace causes great stress and uncertainty for migrant sex workers, and creates barriers that prevent businesses from establishing equitable and safe working conditions that promote and protect sex workers' personal safety.

There are barriers to accessing legal advice and representation related to municipal bylaws and tickets. Legal representation for tickets is not usually covered by legal aid, and many migrant sex workers are not able to pay for a private lawyer. Migrant sex workers who can pay for a lawyer may decide not to, as the amount of the ticket is usually less than the cost of legal representation. Additionally, they may decide to not contest the ticket to avoid exposure to stigma and discrimination throughout the court process.

See **Part 2 - Municipal Law and Migrant Sex Workers' Rights** for more information on:

- City inspectors' powers and police officers' powers.
- Officers asking for licenses and personal information.
- Consequences of breaking a municipal bylaw.
- The interplay of the various laws that regulate and prohibit sex work and negatively impact migrant sex workers' rights.

section 6

Migrant sex workers' labour and employment rights

Sex work may not be understood as a legitimate form of labour, and people may not understand sex workers' working conditions as representing occupational health, safety and employment concerns, because of assumptions and perspectives that feed public discourse, policy, law enforcement practices, various cultural and traditional values, and popular culture representations.

Migrant sex workers are concerned with their working conditions and identify the criminal, immigration and municipal prohibitions and enforcement practices related to sex work as key barriers to improving their working conditions and protecting their rights. Sex workers across the country tell us, "In a system that criminalizes sex work employers and commercial sexual enterprises, any measures that employers take to promote health and safety in the workplace are voluntary, arbitrary and inconsistent. Sex workers are not guaranteed of being advised of hazards such as aggressors posing as clients, or provided with safety protocols when working alone."¹⁰

Removing the criminal, immigration and municipal provisions that prohibit migrant sex workers from protecting their human and labour rights would reduce the number of barriers that prevent their access to existing labour protections and occupational health and safety standards. These labour protections are intended to protect all workers, in every labour sector, regardless of their immigration status. Health and safety standards are intended to apply to both employees and independent contractors.

It is only once sex work is recognized as a legitimate form of labour that sex workers' human and labour rights can be realized.¹¹

It is only when sex work is not perceived as exploitation that working conditions—including equity and dignity in the workplace—can be recognized and respected.

Exploitative working conditions occur in many informal labour industries. The criminalization of some informal labour markets – like sex work – encourages over-regulation via criminal, immigration and other laws that isolate workers, maintain precarious working conditions, and exclude the application of labour protections that could address exploitations at work.

When some people think of exploitation in the sex industry, they erroneously equate it with acts of violence (e.g. assault, sexual assault, confinement). **Sex work is not an act of violence.** Acts of violence can occur in the context of sex work, but are not inherent to sex work itself. Violence is more common in industries that are criminalized, as well as in industries where workers are subjected to precarious working conditions and often lack labour protections.

¹⁰ Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada, Canadian Alliance for Sex Work Law Reform, 2017, p.49, available at: <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>

¹¹ A Guide to Occupational Health and Safety in the New Zealand Sex Industry, 2004, available at: www.worksafe.govt.nz/worksafe/information-guidance/all-guidance-items/sex-industry-a-guide-to-occupational-health-and-safety-in-the-new-zealand/sexindustry.pdf



Complete labour rights document available at:
www.butterflysw.org/legal-information-for-services-prov

Not every workplace has exploitative working conditions from a labour rights perspective, however, within informal or criminalized labour markets some employers do in fact maintain poor or unfair working conditions. Labour exploitation may involve conditions such as excessive hours of work, low wages, disrespectful behaviour from management or colleagues, and poor working conditions such as poor heating. When people think of these conditions in the context of (their assumptions related to) sex work, they often associate these conditions with their ideological and moral values, whereas they may not do so when considering other industries. For example, in the case of sex work, one might associate low wages or excessive hours with exploitation and trafficking, whereas in another industry, such as restaurant and agricultural work, they would view this as a problem of inequitable working conditions which can be improved by stronger labour protections.

Migrant workers' labour and employment rights

- Migrant workers may have non-permanent immigration status: e.g. Temporary Foreign Worker, Seasonal Agricultural Worker, Caregiver or Undocumented Worker.
- We use the term **migrant sex worker** to refer a person who has traveled from one place to another (through formal or informal avenues) and who exchanges sexual or erotic services for money, food, accommodation, status or other compensation.
- Migrant sex workers' immigration status can vary, and they may use a variety of terms to describe their status.
- **In theory, ALL workers in Ontario have certain employment rights and protections, including undocumented, non-status workers.**
- Ensure that you explore with migrant sex workers the possibility of using labour protections and labour policy as one option to respond to their situation.

Every person working in Ontario has the rights protected by the following laws, even if they do not have legal permission to work in Canada:

- The *Employment Standards Act*, *Occupational Health and Safety Act*, *Human Rights Code* and *Workplace Safety and Insurance Act* are meant to cover all workers in Ontario regardless of their immigration status.
- Institutions like the Ministry of Labour, Workplace Safety and Insurance Board and the Human Rights Tribunal, that uphold and protect labour rights, are not supposed to share information with immigration authorities and other federal authorities.



All migrant workers therefore have rights to:

- A minimum wage;
- Breaks, rest periods and maximum hours of work;
- Overtime pay, public holiday pay and vacation pay;
- Termination notice/pay;
- Protections from reprisals;
- Health and safety protections in the workplace;
- Refuse dangerous work;
- A workplace free from discrimination, under the *Human Rights Code*;
- Workers' compensation for workplace injuries; and
- If valid immigration status, access to employment insurance programs and benefits.

However, in practice, migrant workers face significant barriers to the protection and realization of their labour and employment rights. These barriers include:

- Constant fear of authorities and threat of detention, arrest and deportation, including:
 - fear of meetings and hearings with the Ministry of Labour or other boards or tribunals;
 - fear of reprisal from employers who could inform the CBSA (Canada Border Services Agency) of their status, potential immigration violations, and how (e.g. where and when) to locate them;
- Fear of information sharing amongst different government and law enforcement departments;
- Fear of being excluded from future employment;
- Vulnerability caused by temporary status and the condition of a closed work permit tying the worker to one employer;
- Linguistic and cultural barriers, literacy issues, issues related to travel and isolation;
- Lack of supports, inability to access support and information regarding their rights.



Additional barriers

Migrant sex workers face additional barriers to the protection and realization of their labour and employment rights, such as:

- Severe stigma surrounding sex work;
- Difficulty in accessing community, settlement, health, government and legal services due to stigma and other risks associated with disclosure of their work;
- Criminalization of sex work, which results in fear and avoidance of police and all other law enforcement, in addition to immigration authorities;
- "Criminal inadmissibility" immigration provisions, which may lead to deportation if convicted of a criminal offence related to sex work;
- Immigration regulations that prohibit migrant sex workers who do not have permanent resident status or Canadian citizenship from working in the sex industry, which may lead to deportation;
- Potential consequences of criminal and immigration prohibitions specific to sex work, which include criminal and immigration investigations, law enforcement raids targeting sex workers' workplaces, surveillance, interrogation, detention and deportation of other sex workers and colleagues.

Even though it can appear impossible in the current immigration and criminal landscapes for migrant sex workers to enforce their labour rights, it is still very useful for sex workers to be properly informed and aware of these rights. Sex work covers a vast range of services and may be provided in various locations and venues, including in contexts where it is hidden from public view and/or from listed services (e.g. massage parlours, adult entertainment establishments and spas). The spectrum of legality/criminalization that applies to different contexts may vary, and this may influence a sex worker's capacity or decision to attempt to enforce their labour and employment rights.

For more information:

- See Part 2 - *Criminal Law and Migrant Sex Workers' Rights*.
- See Part 2 - *Immigration Law and Migrant Sex Workers' Rights*.





Criminal, immigration and municipal prohibitions do not address exploitation, and do not provide support or redress for migrant sex workers facing exploitative working conditions. Rather, they may lead to harmful outcomes for migrant sex workers as they:

- place workers in conflict with the law and with law enforcement;
- contribute to the violence, stigma and discrimination that workers face;
- prevent workers from taking critical steps to protect their human rights and ensure their personal safety;
- create the threat of detention and deportation and drive workers into precarious working conditions, increasing their vulnerability to exploitation and violence;
- prevent workers from accessing labour and employment protections;
- deter workers from seeking supports and services, including state protection, vital health and social supports, if they do experience exploitation or violence.

As a result, migrant sex workers are very hesitant to seek support or services, or disclose any personal or work-related information. **Service providers should never contact or disclose information to law enforcement or other service providers without the explicit and informed consent of the individual concerned.** This applies to any person that you think may be a victim of violence and/or human trafficking. Informed consent requires that you discuss **in advance** all possible negative consequences with the individual concerned.

Disclosing information without the person's informed and explicit consent may lead to harmful consequences, such as:

- involuntary involvement with law enforcement and legal systems;
- criminal and immigration investigations, detention, arrest and deportation;
- destroying the possibility of trust with service providers, pushing migrant sex workers away from supports and services, further isolating them and deterring them from contacting service providers in the future.

Service providers may have a variety of obligations (e.g. legal, ethical and professional obligations, internal organizational policies) that at first glance may seem to be in potential conflict with the recommendation to not disclose information without the person's informed consent. **If you cannot provide an anonymous and confidential service, and if you cannot guarantee that you will not disclose any information without their consent, ensure that you clearly explain these limits of the service you are providing.** Explain what personal information is needed, for what purpose, who can access their file, and in what cases you will/may share information, **before a migrant sex worker discloses any information.**

Whatever your personal views about sex work, you have a professional and ethical responsibility to protect migrant sex workers' personal safety and to uphold their human rights. Empowering yourself with knowledge of migrant sex workers' human rights—and sharing this knowledge with your clients who are migrant sex workers—are critical steps in fulfilling your professional and ethical responsibility to your clients, advocating for migrant sex workers' rights and access to justice, and promoting migrant sex workers' right to dignity, health, autonomy, equality, safety and security.

Impact of immigration status on migrant sex workers

See Part 1: Upholding & promoting human rights, justice & access for migrant sex workers: a guide for services providers available at www.butterflysw.org/legal-information-for-services-prov

	Canadian citizenship	Permanent Residence (PR)	Temporary Residence: May or may not have legal permission to work in Canada (i.e. a valid work permit/visa). Legal permission to work in Canada may be available to a person being sponsored, claiming refugee status or an international student. A person will not have legal permission to work in Canada if they have a tourist or visitor permit, or are waiting for a work permit. In all cases, temporary residents are not allowed to work in the sex industry.	Non-status/ undocumented: In all cases, not allowed to work in the sex industry.
			With legal permission to work in Canada:	
What may be the consequences if a sex worker is charged with a criminal offence? (i.e. infractions in the Criminal Code)	<ul style="list-style-type: none"> Arrest, detention, prosecution Conviction, imprisonment, fine Criminal record 	<ul style="list-style-type: none"> Arrest, detention, prosecution Conviction, imprisonment, fine Criminal record If convicted, may become inadmissible (lose permanent residence and be deported), depending on the specific offence and sentence. This includes most of the sex-work related offences (e.g., receiving a material benefit, procuring sexual services). 	Without legal permission to work in Canada: <ul style="list-style-type: none"> Arrest, detention, prosecution Conviction, imprisonment, fine Criminal record If convicted, may become inadmissible (lose temporary residency and be deported). 	<ul style="list-style-type: none"> Arrest, detention, prosecution Conviction, imprisonment, fine Criminal record If convicted, will likely be deported
Is a sex worker subject to any immigration law that prohibits them from doing sex work? (i.e. immigration condition or prohibition in the Immigration and	No. <ul style="list-style-type: none"> Immigration prohibitions to working in the sex industry do not apply. 	No. <ul style="list-style-type: none"> The specific immigration prohibition related to working in the sex industry does not apply to PR. However, PR may become inadmissible 	Yes. <ul style="list-style-type: none"> Individuals with temporary residence who do not have a valid work permit cannot legally work anywhere in Canada, including any workplace that is registered as, advertises or provides sexual or erotic services. 	Yes. <ul style="list-style-type: none"> If a sex worker is undocumented, they cannot legally work anywhere in Canada, including any workplace that is registered as, advertises or provides sexual or erotic services.

Refugee Protection Regulations).	(i.e., lose their permanent residence and be deported) for breaching other immigration requirements related to their status (e.g., misrepresenting facts to the CBSA) or if convicted of a criminal offence.	<ul style="list-style-type: none"> • They may become inadmissible and be deported for work in the sex industry or for other immigration offences (e.g. misrepresenting facts to an immigration officer). • Possible right of appeal for a removal order or deportation order. • If they are found inadmissible, they are prohibited from returning to Canada within a period of time without specific permission. 	<ul style="list-style-type: none"> • They may become inadmissible and be deported for work in the sex industry or for other immigration offences (e.g. misrepresenting facts to an immigration officer). • Possible right of Judicial Review for a removal order or deportation order. • If they are found inadmissible, they are prohibited from returning to Canada within a period of time without specific permission. 	<ul style="list-style-type: none"> • If they do, they may be deported. • Possible right of Judicial Review for a removal order or deportation order. • If they are found inadmissible, they are prohibited from returning to Canada within a period of time without specific permission.
<p>Is a sex worker subject to any municipal regulations that impact their ability to work in a commercial business?</p> <p>(i.e. city bylaws and license requirements)</p> <p>**Municipal officers cannot arrest or detain anyone, even if they are working in Canada illegally.</p>	<p>Yes.</p> <ul style="list-style-type: none"> • Some businesses (e.g. escort, massage, strip club) are regulated by municipal bylaws that may require workers to obtain specific licenses. • Municipal law enforcement can issue fines or revoke licenses for bylaw offences (e.g. failure to comply/acquire the relevant license, touching certain body parts of the client). 	<p>Yes.</p> <ul style="list-style-type: none"> • Some businesses (e.g. escort, massage, strip club) are regulated by municipal bylaws that may require workers to obtain specific licenses. • Individuals with immigration work permits are prohibited from working in businesses related to sex work (e.g. strip clubs or body rub parlours), and they are not able to obtain those licenses. • They may be allowed to obtain licenses for businesses that do not provide sexual or erotic services (e.g. holistic centers or wellness centers). But if sex work occurs on those premises and police or immigration enforcement get involved, this could create problems for them. • Municipal law enforcement can issue fines or revoke licenses for bylaw offences (e.g. failure to comply/acquire the relevant license, touching certain body parts of the client). • Record of investigation or conviction record might be used against a worker, as proof of breaching immigration conditions. • Municipal officers could report a worker's name, or report the business, to the police or to immigration, potentially resulting in arrest, detention or/and deportation. 	<p>Yes.</p> <ul style="list-style-type: none"> • They are not able to obtain the required licenses to work in any business, whether or not related to providing sexual or erotic services. • Municipal officers could report a worker's name, or report the business, to the police or to immigration, potentially resulting in arrest, detention or/and deportation. • Record of investigation or conviction record might be used against a worker, as proof of breaching immigration conditions. 	<p>Yes.</p> <ul style="list-style-type: none"> • They are not able to obtain the required licenses to work in any business, whether or not related to providing sexual or erotic services. • Municipal officers could report a worker's name, or report the business, to the police or to immigration, potentially resulting in arrest, detention or/and deportation. • Record of investigation or conviction record might be used as evidence that may affect their ability to get immigration status in the future.

For more information see *Immigration Status and Sex Work, Stella and Butterfly*, available at: <http://chezstella.org/wp-content/uploads/2015/12/Immigration-Status-and-Sex-Work.pdf>.

To note: Immigration status is often precarious and can change quickly—migrant sex workers may have status one day and lose their status the next as a result of the passage of time or a decision from Immigration Canada.

resources

Additional information for sex workers and service providers

Migrant sex workers need to access to legal information resources that describe the limits to different officers' powers, as well as their rights in relation to law enforcement. Here are a few:

- **Comic: Who is Who?**, Butterfly
http://docs.wixstatic.com/ugd/5bd754_7b5cf4f264634ba3baa334b82b2d0352.pdf
- **Immigration Status and Sex Work**, Stella and Butterfly, 2015
www.chezstella.org/wp-content/uploads/2015/12/Immigration-Status-and-Sex-Work.pdf
- **Working in Canada without Canadian Citizenship**, Stella and Butterfly, 2015
www.chezstella.org/wp-content/uploads/2015/12/Working-In-Canada-Without-Canadian-Citizenship.pdf
- **Migrants Know Your Rights**, No One Is Illegal
www.toronto.nooneisillegal.org/knowyourrights
- **Butterfly, Asian and Migrant Sex Workers Support Network**
www.butterflysw.org
- **Stella, l'amie de Maimie**
www.chezstella.org/en/guides-infosheets/
- **Canadian Alliance for Sex Work Law Reform**
www.sexworklawreform.com
- **Community Legal Education Ontario**
www.cleo.on.ca/en/resources-and-publications/pubs?language=en&field_legal_topic_tid_i18n=91
- **Upholding and promoting human rights, justice and access for migrant sex workers.** To access the series of documents: www.butterflysw.org/legal-information-for-services-prov

Legal support and information

Organization	Contact	Services
Chinese & Southeast Asian Legal Clinic (CSALC)	416-971-9674 / 1-844-971-9674 www.csalc.ca	Legal support to low income, non-English speaking people in Chinese, Vietnamese, Cambodian and Laotian communities across Ontario
Legal Aid Ontario (LAO)	416-979-1446 / 1-800-668-8258 www.legalaid.on.ca	Legal aid services to financially eligible individuals in criminal, family and immigration law
Barbra Schlifer Commemorative Clinic	416-323-9149 www.schliferclinic.com	Legal representation, professional counselling and multilingual interpretation to women who have experienced violence
Ontario Women's Justice Network	www.owjn.org	Legal information and referrals to women in Ontario experiencing violence
Downtown Legal Services, University of Toronto	416-934-4535 www.downtownlegalservices.ca	Free legal assistance to low income communities
Community & Legal Aid Services Programme (CLASP), York University	416-736-5029 www.osgoode.yorku.ca/community-clinics/welcome-community-legal-aid-services-programme-clasp	Community and legal aid services for people with legal problems who cannot afford a lawyer
HIV & AIDS Legal Clinic Ontario (HALCO)	416-340-7790 / 1-888-705-8889 www.halco.org	Free legal services for people living with HIV or AIDS in Ontario
Community Legal Education Ontario (CLEO)	416-408-4420 www.cleo.on.ca	Legal resources and publications in a variety of languages and formats and a directory of community legal clinics
Family Law Education for Women	www.onefamilylaw.ca	Family law publications in different languages
LSUC Lawyer Referral Service	www.lsuc.on.ca/lrs/	Online referrals for lawyers and paralegals, they provide free 30-minute consultations

Sex workers' rights organizations offering direct services in Toronto

Organization	Contact	Services
Butterfly (Asian and Migrant Sex Workers Support Network)	416-906-3098 www.butterflysw.org	24/7 hotline, outreach, training, health and legal information and support, crisis and emergency support (e.g. when migrant sex workers are arrested or detained)
Maggie's (Toronto Sex Workers Action Project)	416-964-0150 www.maggiestoronto.ca	Services and support (sexual health, work safety, workshops, legal information, counselling and advocacy, social gathering and work tips)

Community-based health and social services

Organization	Contact	Services
Community Health Centres	www.aohc.org/find-a-centre	Community-based health care for people of all ages who need health care assistance at home
211 Ontario	211 / 1-888-340-1001 www.211ontario.ca	24-hour telephone referral services for all types of social services; online resource to locate community and social services across Ontario
Ontario Council of Agencies Serving Immigrants (OCASI)	416-322-4950 www.ocasi.org	Umbrella organization of community agencies that serve immigrants and refugees
St. Stephen's Community House (SSCH)	416-925-2103 www.sschto.ca	Multiservice community centre with housing and homeless services, settlement and more; sexual health services for migrant sex workers
FCJ Refugee Centre	416-469-9745 www.fcjrefugeecentre.org	Refugee protection, settlement services and education, including shelter for women and their children

Crisis supports and shelter

Organization	Contact	Services
Assaulted Women's Helpline	1-866-863-0511/ 1-866-863-7868 (TTY) www.awhl.org	24/7 hotline, outreach, training, health and legal information and support, crisis and emergency support (e.g. when migrant sex workers are arrested or detained)

A note from the project coordinator

The project *Supporting the Human Rights of Migrant Sex Workers: Accessing Justice through Legal Information and Services* is a partnership of the Chinese Canadian National Council Toronto Chapter (CCNCTO), Butterfly (Asian Migrant Sex Workers Support Network), St. Stephen's Community House (SSCH) and the Chinese & Southeast Asian Legal Clinic. These organizations work together towards the common goal of promoting justice and human rights for migrant sex workers through information sessions and trainings for service providers and community leaders.

We would like to acknowledge Tara Santini, the project's legal advisor, for her commitment and generosity in sharing her time. She has dedicated countless hours to this project to develop training materials, coordinate the working group and provide legal training. Tara authored this Guide and is the co-author and editor of this project's series, *Upholding and promoting human rights, justice and access for migrant sex workers*. The project would not have been as successful without her contributions.

We would also like to thank all the individuals and organizations who provided invaluable contributions to this project. The steering committee members, who consistently provided guidance and advice throughout the project; the working group, who helped to produce training materials; the participants who contributed during the consultation; and the other volunteers who provided various other forms of support.

Finally, and most importantly, we would like to thank the migrant sex workers who shared their experiences with us. Their experiences allowed us to understand how to better educate various service providers, and society in general, in order to create a more supportive community. We dedicate this guide to all the migrant sex workers who are courageously fighting for their rights and justice.

This project is made possible with the funding from the *Connecting Communities Program* of the Law Foundation of Ontario.

Supporting the Human Rights of Migrant Sex Workers in Toronto: Accessing Justice through Legal Information and Services is not merely a legal training project. It is an important project to bring migrant sex workers, legal professionals and service providers together to promote the safety, justice and human rights of migrant sex workers.

Elene Lam, Project Coordinator

Supporting the Human Rights of Migrant Sex Workers in Toronto: Accessing Justice through Legal Information and Services

Author: Tara Santini

Tara Santini is a Montreal-based lawyer, educator and legal trainer working to increase organizations' and individuals' capacity to create relevant, accessible, and adapted services for marginalized individuals and communities. In addition to training legal, social, health and other service providers, she provides legal and rights workshops specifically for criminalized individuals and communities facing intersecting realities and systems. This guide and other work is inspired in large part by her extensive work with *Butterfly*, *Asian and Migrant Sex Workers Support Network*, the *Canadian Alliance for Sex Work Law Reform*, and *Stella, l'amie de Maimie*.

Author: Elene Lam

Elene Lam (LLM, LLB, MSW, BSW) is the Founder and Executive Director of Butterfly (Asian and Migrant Sex Workers Support Network) and Migrant Sex Workers Project (MSWP). She has been involved in the sex work, gender, migrant and labour movement and activism for more than 17 years.

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- Chase Lo (CCNCTO) (Jan- Aug 2017)
- Elene Lam (Butterfly)
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Chinese Canadian National Council Toronto Chapter (CCNCTO)

Phone: 416-596-0833 **Web:** www.ccnctoronto.ca

The Chinese Canadian National Council Toronto Chapter is an organization of Chinese Canadians in the City of Toronto that promotes equity, social justice, inclusive civic participation, and respect for diversity.

Butterfly (Asian and Migrant Sex Workers Support Network)

Phone: 416-906-3098 **Web:** www.butterflysw.org

Butterfly is an Asian and Migrant Sex Workers Support Network, which is formed by sex workers, social workers, legal and health professionals and founded upon the belief that sex workers are entitled to respect and basic human rights. Butterfly believes that migrant sex workers should access justice, safety and dignity. It provides 24/7 hotline, outreach, trainings, leadership building, health and legal informational and support. It also provides crisis and emergency support, e.g. when migrant sex workers are arrested or detained.

St. Stephen's Community House (SSCH)

Phone: 416-925-2103 **Web:** www.sschto.ca

St. Stephen's Community House is a unique, community-based social service agency that has been serving the needs of Kensington Market and other neighbourhoods in Toronto since 1962. We are dedicated to making our communities stronger, happier and healthier. With more than 100 staff and the support of almost 550 volunteers, our nine locations offer services for more than 25,200 people a year and address the most pressing issues in our community: hunger, homelessness, unemployment, isolation, conflict, violence, HIV and AIDS, youth alienation and integration of immigrants.

The Chinese and Southeast Asian Legal Clinic (CSALC)

Phone: 416-971-9674 **Ontario toll free:** 1844-971-9674 **Web:** www.csalc.ca

The Chinese and Southeast Asian Legal Clinic (CSALC) is a community based legal clinic funded by Legal Aid Ontario which provides free legal services to low income, non-English speaking clients from the Chinese, Vietnamese, Laotian and Cambodian communities in Ontario. CSALC empowers the communities we serve through public legal education. In addition, CSALC has been involved in test case litigation, organizing grassroots campaigns, and making numerous submissions to all levels of government and to international human rights bodies to advance the rights of our clients and the broader communities of disadvantaged groups.





Upholding and promoting human rights, justice and access for migrant sex workers

Part 1: Guide for Service Providers