

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

## Part 3 - Legal information for migrant sex workers

### Who are migrant sex workers ?

A migrant sex worker refers to a person who has travelled from one place to another (through formal or informal avenues) and who exchanges sexual or erotic services for money, food, accommodation, safety, status or other compensation. They may work in various locations, including massage parlours, strip clubs, apartments, agencies or public spaces. They may have different immigration status. Migrant sex workers' realities are unique and diverse.

If you are a migrant sex worker (and/or provide erotic massage, stripping, escorting or other sexual or erotic services) you need to know:

Like other forms of work, you may make the decision to be involved in sex work based on your own circumstances, social conditions, personal preferences, ability and available opportunities. No matter why you do sex work (e.g., to provide for your basic needs, improve your quality of life, pursue your dreams) your agency, dignity, safety and other rights should be respected and protected.



## You have the right to protect yourself and to access services, support and justice!

This document provides general legal information, and does not provide legal advice. Talk to a lawyer if you want legal advice specific to your situation.

## Understand the laws and know your rights:

You may face intersecting legal issues (municipal, criminal and immigration) that may put you at risk of being investigated, arrested, detained, losing your immigration status (i.e., becoming inadmissible) and deported. It is important for you to understand how the laws may affect you, and to know your rights in order to make a plan!



## How your immigration status may affect you:

Ask yourself — does your immigration status:

- ◇ allow you to stay in Canada?
- ◇ allow you to work legally outside of the sex industry (i.e., work not related to sexual or erotic services), within the limits of your work permit?
- ◇ prohibit you from working in the sex industry (i.e., in a business that provides sexual or erotic services, or doing sexual or erotic work independently)?

### **Citizen**

- ◇ No immigration law prohibits you from working in the sex industry.
- ◇ You may be regulated by municipal by-laws and criminal laws.

### **Permanent residence**

- ◇ No immigration law prohibits you from working in the sex industry.
- ◇ You may be regulated by municipal by-laws and criminal laws.
- ◇ You may lose permanent resident status if you are convicted of a criminal offence.

### **Temporary residence with work permit (Temporary workers)**

e.g., sponsorship or refugee application in process, international student

- ◇ You can work legally outside of the sex industry, within the limits of your work permit.
- ◇ Immigration law prohibits you from working in the sex industry (e.g., strip club, erotic massage, escort service or working independently).
- ◇ You may lose temporary resident status if you breach an immigration regulation or condition (i.e., immigration offence).
- ◇ You may lose temporary resident status if you are convicted of a criminal offence.



Your immigration status may change as a result of a decision or policy made by a department of immigration (e.g., a refugee claimant with temporary resident status may become non-status when she loses her claim or appeal, or fails to comply with a deportation order).



Seek advice from a legal professional if you do not want to lose your immigration status (e.g., because of the impact of a criminal charge), or if you want to apply for legal immigration status.



## Temporary residence without work permit

e.g., tourist visa

- ◇ You generally cannot legally work anywhere in Canada, including within the sex industry.
- ◇ You may lose temporary resident status if you breach an immigration regulation or condition (i.e., immigration offence).
- ◇ You may lose temporary resident status if you are convicted of a criminal offence.

## Without legal immigration status (Non-status)

e.g., undocumented, rejected refugee claim, overstaying visitor visa

- ◇ You cannot legally work anywhere in Canada, including within the sex industry.
- ◇ You need to file an immigration application to stay in Canada legally.
- ◇ You may be deported if you do not file an immigration application.

## What can I do if I am investigated by law enforcement?

☐ Different law enforcement officers (police, municipal inspector and CBSA-immigration) enforce different laws (municipal, criminal and immigration). They have different powers depending on the context (e.g., if you are in a business establishment, a residential apartment or public space). For example, not all officers have the power to search or arrest you, and officers that do have this power can only do so under certain circumstances.

☐ If you are not charged with a criminal or municipal offence, these investigations may still lead to an immigration investigation, and may result in arrest, detention and deportation.

☐ Some migrant sex workers have reported that law enforcement officers sometimes harass them and abuse their power. If an officer comes to your workplace it is important to know:

- ◇ their purpose for being there
- ◇ what they are investigating
- ◇ the limits of their powers
- ◇ what your rights are

☐ **Make a plan for yourself before you encounter law enforcement!**

☐ Please read *Who is Who? How to identify law enforcers*, Butterfly [http://docs.wixstatic.com/ugd/5bd754\\_7b5cf4f264634ba3baa334b82b2d0352.pdf](http://docs.wixstatic.com/ugd/5bd754_7b5cf4f264634ba3baa334b82b2d0352.pdf)

## Criminal laws:

- You cannot be arrested for a criminal offence for selling your own sexual services unless you do so in certain public areas (e.g., near daycares, schools or playgrounds, in cars in public places).
- You may be charged with a criminal offence (related to sex work or even human trafficking) if you act as a third party (e.g., an employer or manager) and receive material benefits, "procure," or advertise. You may lose your immigration status if you are convicted.
- Even if you are not charged with a criminal offence, the investigation may lead to an immigration investigation.

## Immigration laws:

- Depending on your immigration status, immigration laws may prohibit you from working in the sex industry in Canada.
- If you do sex work, you may face CBSA-immigration investigation and risk being detained and deported.
- You may need to seek legal and social service support to help you apply for immigration status (e.g., permanent resident application, Temporary Residency Permit (TRP) or an application on Humanitarian & Compassionate Grounds (H&C)).
- 'Access Without Fear' policies: In some cities, you may be able to seek help from city or police services without disclosing your immigration status.

## Municipal laws:

- If you work in a licensed business (e.g., strip club, massage parlour, escort agency), you may be required to comply with municipal by-laws and have a municipal license to work.
- Municipal by-laws are different in every city. It is important to know the by-laws related to your workplace, and to know what information you need to provide during a municipal investigation (e.g., you are not required to provide information about your immigration status).

**How do  
different  
laws  
affect you?**

# What can you do if you face violence or are in an exploitative situation?

- ◇ Like other jobs, you may have good days and bad days at work. Sex work does not involve violence – but you may experience violence, or be at risk of violence, while working in the sex industry.
- ◇ You should be protected from violence like every member of society. However, some migrant sex workers may fear that they are not able to seek help from law enforcement and other service providers because of the discrimination and stigma that they face, the criminalization of sex work, as well as the potential risk of arrest and deportation.
- ◇ If you experience labour exploitation, you are protected by employment and labour laws even if you are not legally allowed to work in Canada or you are undocumented.
- ◇ You may want to contact a sex workers' rights organization or/and other organizations to help you access support and advocate for your rights.
- ◇ You may want to ask the organization to refer you to a reputable immigration lawyer or legal clinic to find out what impact taking action may have on your immigration status.
- ◇ You should also talk to your service providers about your concerns related to disclosing your identity and/or information being shared with other services providers and law enforcement. It is important to discuss this **before** you disclose information, consent to sharing information with others, or sign any form. **Remember, you have the right to object to the sharing of your information — including sharing information among service providers. Some organizations are not able to provide anonymous and confidential services. Ask in advance whether this is possible.**

Know your Rights! Make a plan for yourself!



# If you are a service provider and/or offer social or legal services:

Tips for Service Providers

## **1) Recognize the difficulties and risks that migrant sex workers face if they disclose information about their immigration status or involvement with sex work.**

As migrant sex workers face multiple levels of marginalization and fear of law enforcement, service providers must first establish trust with them to be able to provide support and assistance. It is always an individual's choice whether to disclose their occupation or immigration status.

Inform yourself to be able to understand:

- ◇ the complexity and diversity of migrant sex workers' lived experiences;
- ◇ the impacts of the law and of law enforcement on migrant sex workers;
- ◇ the challenges and difficulties migrant sex workers face in accessing supports and services due to language barriers, isolation and the risk of discrimination, stigma, arrest and deportation.

**(Please read: *Upholding and promoting human rights, justice and access for migrant sex workers Part 1 - Guide for service providers.*)**

Be creative! Remember to focus on why the person came to see you. Develop support and services that do not require the people who come to you to identify their work or immigration status.

## **2) Confidentiality & Anonymity**

Disclosing information related to sex work or immigration status to law enforcement or other service providers may lead to migrant sex workers' unwanted/involuntary involvement with law enforcement and legal systems, including unexpected criminal and immigration investigations, detention, arrest, deportation and other harmful consequences.

Disclosing information without the explicit and informed consent of the person affected may destroy the possibility of trust and drive migrant sex workers away from the support or service, further isolating them and deterring them from contacting service providers or accessing supports or services in the future.

Many migrant sex workers will not meet a service provider unless they can do so anonymously. It is important to clearly explain your or your organization's limits related to anonymity and confidentiality before asking migrant sex workers to disclose any information.

### 3) Recognize that sex work is not human trafficking, and migrant sex workers are not victims

Human trafficking is of great concern to many service providers. **However, 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.

People who do not recognize sex work as a legitimate form of labour mistakenly define sex work as inherently exploitative, and do not distinguish the sale or exchange of consensual sexual services from human trafficking, sexual assault, sexual abuse, sexual exploitation and violence against women and girls. This often leads to campaigns, policies and law enforcement practices that do not distinguish between exploitation and sex work.

**In recent years, aggressive anti-trafficking initiatives have resulted in increased operations and raids of sex workers' workplaces. While law enforcement may claim these initiatives are intended to target clients and third parties, they usually result in the detention, arrest and deportation of migrant sex workers.**

Migrant sex workers are incredibly diverse and brilliant. Understand migrant sex workers' realities and needs as they describe them to you.

Whatever your personal views about sex work, you have a professional and ethical responsibility to protect and uphold migrant sex workers' rights to dignity, health, autonomy, equality, safety and security.



## Useful Information:

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

To access the series of documents: <https://www.butterflysw.org/legal-information-for-services-prov>

Butterfly, Asian and Migrant Sex Workers Support Network <https://www.butterflysw.org/resources>

Stella, l'amie de Maimie: [www.chezstella.org/en/guides-infosheets/](http://www.chezstella.org/en/guides-infosheets/)

Canadian Alliance for Sex Work Law Reform:  
[www.sexworklawreform.com](http://www.sexworklawreform.com)

Community Legal Education Ontario [www.cleo.on.ca](http://www.cleo.on.ca)



## Getting help:

Butterfly (Asian and Migrant Sex Workers Support Network):  
416-906-3098 [butterflysw.org](http://butterflysw.org)

Chinese Canadian National Council Toronto Chapter (CCNCTO):  
416-596-083 [www.ccnctoronto.ca](http://www.ccnctoronto.ca)

St. Stephen's Community House: 416-925-2103 [www.sschto.ca](http://www.sschto.ca)

The Chinese and Southeast Asian Legal Clinic (CSALC):  
416-971-9674, Ontario toll free: 1844-971-9674 [www.csalc.ca](http://www.csalc.ca)

Legal Aid Ontario: 416-979-1446/1800-668-8258  
<http://www.legalaid.on.ca/en/>

Assaulted Women's Helpline: 1-866-863-0511/ 1-866-863-7868  
(Ontario toll free) [www.awhl.org](http://www.awhl.org)

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All of these documents were written and produced with the direct and meaningful participation of migrant sex workers, and reflect the autonomy, 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 document is part of a series that addresses migrant sex workers' rights, and the laws that prevent the protection and realization of their rights:

## **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**

To access the full series of documents:  
<https://www.butterflysw.org/legal-information-for-services-prov>