

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

Part 2 - Laws affecting migrant sex workers

Criminal Law and Migrant Sex Workers' Rights



Table of Contents

- 1. Harmful impacts of criminalization on migrant sex workers' personal safety**
- 2. Criminal offences related to sex work and associated harms**
- 3. Human trafficking offences, anti-trafficking initiatives, and associated harms**
- 4. Establishing trust between service providers and migrant sex workers**
- 5. Protecting the rights of sex workers living with HIV**
- 6. Criminal offences and immigration status**
- 7. Police powers and migrant sex workers' rights**

*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 or services, and to emphasize the human and labour rights of migrant sex workers.

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.

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

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

- deepen their understanding of the complexity and diversity of migrant sex workers' realities;
- be 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 to these resources; and
- be more equipped to support, protect and defend migrant sex workers' labour and human rights.

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 the 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>

Published October 2017 -----



Chinese Canadian National Council
TORONTO CHAPTER
全加華人協進會(平權會)多倫多分會



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Sections of this document are inspired by and, in some cases, borrowed from legal information documents written and produced by Tara Santini in 2015 for Stella, l'amie de Maimie.

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Partner Organizations:

Chinese Canadian National Council Toronto Chapter (CCNCTO) www.ccnctonto.ca
Butterfly (Asian and Migrant Sex Workers Support Network) www.butterflysw.org
The Chinese and Southeast Asian Legal Clinic (CSALC) www.csalc.ca
St. Stephen's Community House (SSCH) www.sscho.ca

Funded by:

Law Foundation of Ontario

section 1

Harmful impacts of criminalization on migrant sex workers' personal safety

Sex work-specific criminal offences are a key contributor to the violence, stigma and discrimination that sex workers face, for many reasons.

Some perpetrators target sex workers for harm because they know that police are less likely to investigate crimes committed against sex workers. They also know that criminalization makes sex workers less likely to report these crimes, as they are constantly avoiding police for fear of detection, surveillance and apprehension related to the criminal status of their work. Migrant sex workers must also avoid police because of the risk of immigration detention and deportation resulting from numerous regulations, including not only sex work related criminal offences, but also sex work-related and other immigration regulations. As a result, violence against sex workers is exacerbated by sex work-specific criminal offences and immigration regulations.

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 the following documents, available at <https://www.butterflysw.org/legal-information-for-services-prov>:

- *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, Canadian Alliance for Sex Work Law Reform, 2017.
- *Im/migrant Sex Workers, Myths and Misconceptions: Realities of the Anti-Trafficked*, SWAN Vancouver Society, 2015.

CASE STUDY

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 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

Harmful impacts of criminalization on migrant sex workers' personal safety

Criminalizing sex work not only perpetuates stigma and discrimination against sex workers, who are consequently denied access to vital health and social supports, it also prevents sex workers from taking critical steps to protect their human rights and ensure their personal safety.

These steps include communicating with clients, working in association with other people including third parties, and working in organized indoor locations where workers can implement safety measures and have greater control over their environment. These steps are especially important for migrant sex workers, whose vulnerability to violence, stigma and discrimination is amplified by virtue of their newcomer status, and whose ability to work autonomously is complicated by language barriers and unfamiliarity with related laws and regulations.

Violence is one of the many pressing issues that sex workers may face.

It is important to underscore that 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 the pursuit of 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. These existing criminal offences include, but are not limited to, criminal prohibitions against assault, sexual assault, theft, robbery, kidnapping and forcible confinement, extortion, intimidation, criminal harassment, uttering threats of death or physical harm, and trafficking of persons. However, as explained on page 8 of this document, the conflation of sex work with human trafficking and exploitation has led to an overbroad misuse of anti-trafficking laws, which places sex workers at further risk of isolation, marginalization and violence, in addition to detention, surveillance, arrest and deportation.



Decriminalizing sex work by removing all sex work-specific criminal provisions is thus an important first step to address the dangers associated with being criminalized and/or working in a criminalized industry, and to protect, respect and fulfill the human rights of sex workers, including their right to dignity, health, security and equality. This includes the repeal of all criminal offences related to offering, providing, facilitating, obtaining or profiting from sexual services for consideration.²

Removing *Criminal Code* provisions alone cannot overcome many 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, other employment standards and occupational health and safety frameworks need to be applied in the context of sex work.

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

2. See *Criminal Code* ss. 213(1), 213(1.1) and 213(2); s. 286.1(1), s. 286.1(2), 286.1(3), 286.1(4), 286.1(5); ss. 286.2(1)–s. 286.2(6); s. 286.3(1) and 286.3(2); s. 286.4 and s. 286.5(1) and 286.5(2)).

Harmful impacts of criminalization on migrant sex workers' personal safety



Sex workers and allies have been working towards decriminalization in Canada for decades. In December 2013, the Supreme Court of Canada (SCC) released its decision in *Canada (Attorney General) v. Bedford*.³ In 2007, the plaintiffs — three sex workers — challenged several criminal offences related to prostitution. The SCC affirmed that these provisions violated sex workers' right to security of the person under Section 7 of the *Canadian Charter*. The *Bedford* decision was the result of years of sex workers' advocacy and public education efforts, social science research and testimonials. It was a significant step towards decriminalization, but it was short-lived.

After the SCC released its decision, the Conservative federal majority government introduced a new regime of criminalization on December 6, 2014.⁴ These new criminal offences continue to criminalize sex workers as well as their clients and third parties. In theory, the objectives of the new law are to protect sex workers (defined as victims within the law) and promote gender equality.

However, sex workers across the country report⁵ that the criminal framework continues to:

- Prevent sex workers from employing safety measures at work;
- Promote stigma and discrimination towards sex workers;
- Place sex workers in conflict with the law, which impedes the realization of their rights (e.g., to autonomy, privacy, protection from search and seizure);
- Place sex workers in conflict with the law, which creates numerous additional barriers (e.g., limiting access to housing, other forms of employment, and health, social and public safety services).



As a social, legal, health or other service provider, it is imperative to analyze and respond to a migrant sex worker's situation from a human rights and person-centered perspective.

Sex work has historically been perceived and regulated as a crime and a social problem. Neither of these frameworks responds to migrant sex workers' realities and needs. When providing services and in front-line work, it is essential to listen to the individual to understand how they experience their reality and how they want to improve their situation. In order to do this, one needs to be aware of their preconceived notions, subjective values and judgments. Focusing on the individual's human rights and respecting their decisions is the first step to providing services to migrant sex workers that meet their needs and respond to their actual situations.

3. *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

4. The *Protection of Communities and Exploited Persons Act* (PCEPA), S.C. 2014, c. 25, available at: http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2014_25/page-1.html

5. *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>

Criminal offences related to sex work and associated harms

- **Communicating for sexual services (s. 213 of the *Criminal Code*, or "CC"):** Sex workers are prohibited from communicating in public spaces at or next to schools, playgrounds and daycares, and from stopping a vehicle or impeding pedestrian/vehicular traffic for the purpose of offering, providing or obtaining sexual services. This prohibition prevents sex workers from taking steps to protect themselves (including communicating to establish and consent to terms of exchange and screening prospective clients) and displaces sex workers from familiar areas and supports to isolated areas, which increases their vulnerability to violence. For more information, see *Communication and the Law*: <https://www.butterflysw.org/legal-information-for-services-prov>
- **Purchase of sexual services (s. 286.1 of the CC):** Prohibiting clients from purchasing or attempting to purchase sexual services produces the same harmful outcomes as the prohibition on public communication above. This prohibition also makes it difficult to establish safe indoor spaces because of a reduced ability to screen, and communicate with, clients (who avoid identifying themselves or discussing particulars such as prices and sexual services for fear of surveillance, entrapment, arrest) and increased surveillance of workplaces. Sex workers who work in public space are further isolated and displaced to remote areas as clients avoid detection by law enforcement.

As a result of this infraction, sex workers are *always* involved in a criminal activity when providing their services. Although this may not lead to the arrest or prosecution of sex workers, being involved in a criminal activity severely affects the protection and realization of their rights (e.g. impacts on their rights when engaging with law enforcement, their ability to access and maintain housing, their ability to access and enforce labour protections). Further, a purchasing ban makes no distinction between clients and violent perpetrators. This erroneously frames all clients as violent, and trivializes actual violence when it does occur, further eroding the effectiveness of law enforcement to respond to actual cases of criminal violence. For more information, see *Clients and the Law*: <https://www.butterflysw.org/legal-information-for-services-prov>

- **Receiving a material benefit (s. 286.2 of the CC) and Procuring (s. 268.3 of the CC):** These prohibitions — **which do not require an incidence of exploitation** — criminalize sex workers' personal and professional relationships. These relationships are often necessary to enhance sex workers' safety and improve working conditions. Third party relationships are also typical in most types of businesses or commercial activities. **Third parties may include receptionists, employers, managers, security, bookers, drivers and webmasters, some of whom may also be sex workers.** Many sex workers work with third parties because they cannot or do not want to work alone. Due to language barriers and lack of accessible information about laws and sex work, these services are often essential for migrant sex workers. Criminalizing these relationships results in fewer options for sex workers regarding where and how they engage in sex work, and impedes their ability to improve working conditions.
- **Procuring:** A third party can be charged with procuring whether or not they receive a financial benefit. "Procuring" covers any activity that may facilitate or help a sex worker work, for example communicating with clients and maintaining a workplace.
 - **Material benefit:** This provision does not require that the third party provide a service; simply receiving a material benefit within the context of the sex industry is a criminal infraction.

These prohibitions encourage law enforcement surveillance and raids of sex work establishments, which increase sex workers' isolation, distress and vulnerability to exploitation and violence. For more information, see *Third Parties and the Law* and *Our Friends, Family and the Law*. <https://www.butterflysw.org/legal-information-for-services-prov>

- **Advertising sexual services (s. 286.4 of the CC):** Websites and newspapers advertising sexual services are owned and/or managed by third parties who are criminalized by this offence. This prohibition increases barriers to work independently, to work indoors, and to communicate with clients. Fewer forums for sex workers means fewer opportunities to communicate remotely with clients about conditions such as prices, safer sex requirements and services provided, and to establish security measures, such as gathering information from clients in advance. This prohibition may also make "virtual lounges" where sex workers share information (e.g., information related to problematic clients and aggressors) illegal. For more information, see *Advertising and the Law*. <https://www.butterflysw.org/legal-information-for-services-prov>

section 3

Human trafficking offences, anti-trafficking initiatives, and associated harms

Criminal Code provisions that are specific to sex work are not the only criminal offences that are used to target sex workers. Criminal offences that prohibit *trafficking in persons*⁶ (human trafficking) are also used to criminalize people working in the sex industry. Governments claim that anti-trafficking laws address violence against sex workers, but in practice the use of anti-trafficking laws in the context of sex work requires caution and care. While the purported objective of criminal anti-trafficking provisions is to protect people who are forced to provide labour or services against their will, these laws are often used by law enforcement to target sex work by conflating sex work with human trafficking and exploitation. Overbroad misuse of anti-trafficking laws places sex workers at great harm, including further risk of isolation, marginalization and violence, detention, surveillance, arrest and deportation.⁷

Distinguish sex work from human trafficking

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.⁸ 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 related to human trafficking and therefore not deserving of the same labour protections as other industries.

6. See the following sections of the *Criminal Code*: s. 279.01(1), which criminalizes everyone who "recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation"; s. 279.011(1), which prohibits trafficking of a person under 18; s. 279.02(1), which criminalizes receiving a "financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from" a trafficking offence; s. 279.02(2), which prohibits material benefit from trafficking of a person under 18; s. 279.03(1), which criminalizes, for the purpose of trafficking, concealing, removing, withholding, destroying any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status; and s. 279.03(2), which prohibits withholding or destroying documents in the context of trafficking of a person under 18.

7. 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, <https://www.butterflysw.org/harm-of-anti-trafficking-campaign->; M. Ditmore, *The Use of Raids to Fight Trafficking in Persons* available at <http://sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf/>; R. Maynard, *Fighting Wrongs with Wrongs? How Canadian Anti-Trafficking Crusades Have Failed Sex Workers, Migrants, and Indigenous Communities*, available at <http://journals.msvu.ca/index.php/atlantis/article/view/3041/>; A. Hill, *How to Stage a Raid: Police, media and the master narrative of trafficking*, available at <http://www.antitraffickingreview.org/index.php/atjournal/article/view/199/>; and L.A. Jeffery, *Canada and migrant sex work: Challenging the 'foreign' in foreign policy*, available at <http://www.tandfonline.com/doi/abs/10.1080/11926422.2005.9673387/>.

- 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.
- When the CBSA or police target what they term 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.⁹ 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 them from supports and services, impede service providers' capacity to provide support, information and services that meet their needs, and does not foster a holistic approach to the protection of migrant sex workers' human rights.



"Many of us are concerned about the issue of human trafficking and want to take action to stop the harm, violence and exploitation that we hear about. Yet to challenge trafficking in Canada today requires a lot more than changes to criminal laws or a passion to change economic and social inequalities and gender injustices. It requires acknowledging sex work as labour as well as a critical assessment of both the every day impact of anti-trafficking interventions and the uptake of the issue by the media, government and the public."

- *Challenging Trafficking in Canada: Policy Brief*, Centre for Feminist Research, York University¹⁰

8. The human trafficking provision in the Criminal Code requires that the victim "fears for their safety" (i.e., by believing "that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service" (s. 279.04 (1)). Experts argue that the "fear for safety" test - and more generally, that a criminal framework - does not recognize the complexities experienced by victims of human and labour trafficking, and is too limited to adequately protect human and labour trafficking victims. See Kaye, J. & Hastie, B. (2015). *The Canadian Criminal Code offence of trafficking in persons: Challenges from the field and within the law*, available at www.kingsu.ca/public/download/documents/33771, and *The Palermo Protocol & Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada (2002-2015)*, available at: <http://icclr.law.ubc.ca/publications/palermo-protocol-canada-evolution-and-human-rights-impacts-anti-trafficking-laws-canada>

9. 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: <https://www.butterflysw.org/harm-of-anti-trafficking-campaign->

10. *Challenging Trafficking in Canada: Policy Brief*, Centre for Feminist Research, York University, 2017

Human trafficking initiatives and harmful impacts on migrant sex workers

Anti-trafficking initiatives, campaigns and policies that conflate exploitation and human trafficking with sex work place migrant sex workers in contact with law enforcement more frequently, often with highly negative consequences for sex workers who avoid law enforcement due to criminal and precarious migrant status.

"Anti-trafficking campaigns often promote misleading messages and statistics that conflate sex work with trafficking (e.g., false claims of "rescuing" potential victims, which increase anxiety, moral panic and racism against racialized migrants and sex workers). [...] The term "trafficking" itself has silenced the voices and agency of people working in the sex industry and obscured public understanding of their experiences. Sex workers' labour and work relationships are frequently framed as "transactional or national organized crime," a view that increases stigma, marginalization and discrimination against sex workers and pushes them further underground. For example, an increasing number of hotels have stopped renting rooms to sex workers, especially migrant and Asian sex workers, with some even contacting the police or the Canada Border Services Agency when they learn a sex worker is working in their hotel. This practice has forced sex workers to work in hazardous environments. Policies that address possible exploitation in the sex industry need a nuanced and more complex rights-based approach rather than one based on fear, in order to actually address the lived realities and challenges of sex workers who are migrant, racialized or young."¹¹

Anti-trafficking provisions are currently employed as a general law enforcement strategy to target sex work and capture third parties working with sex workers¹² These third parties may be mistakenly identified as "traffickers" rather than co-workers, employers or employees, particularly when working with migrant sex workers who often rely on the support of third parties to help organize their work, communicate with clients, offer additional security precautions and/or advertise their services. Sex workers themselves frequently act as third parties for other workers.

Anti-trafficking initiatives isolate sex workers from essential third parties as sex workers fear and avoid detection and detention by law enforcement. As a result sex workers' security and general working conditions are compromised.

11. Brief to the Standing Committee on Social Policy Regarding Bill 96, the *Anti-Human Trafficking Act 2017*, May 2017, Submitted by Butterfly (Asian and Migrant Sex Workers Support Network), Canadian HIV/AIDS Legal Network, Supported by Canadian Alliance for Sex Work Law Reform.

12. See footnote 7.

Human trafficking offences, anti-trafficking initiatives, and associated harms

Aggressive anti-trafficking initiatives have resulted in increased operations and raids of sex workers' workplaces.¹³ **While law enforcement may claim that these initiatives are intended to target clients and third parties, they usually result in the detention, arrest and deportation of migrant sex workers, as immigration regulations prohibit most migrant sex workers from sex work.** Additionally, workers may be charged with a trafficking offence, even in the absence of exploitation, if they work with, receive material benefits from, or assist other sex workers to enter or work in Canada.

These actions create a huge disincentive for sex workers to report exploitative working conditions or violence for fear of repercussions for themselves or for their colleagues, friends or family. Migrant sex workers — including workers who may experience mistreatment — are further marginalized and isolated as a result. Thus, the very people most in need of protection are denied access to the criminal law system.

The following is borrowed from *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: [https:// www.butterflysw.org/legal-information-for-services-prov](https://www.butterflysw.org/legal-information-for-services-prov)

What can you do?

1. Recognize that sex work is work and eliminate discrimination against sex workers. Support sex workers' rights, and justice, and the right not to be "rescued".
2. Support peer-led models so that the sex work community can connect with others and assist in cases of exploitation and abuse. Stop using criminal and immigration laws to address sex workers' migration and review anti-trafficking policies with sex workers' organizations to develop measures that are rights-based and supportive to the community.
3. Help workers to prepare collective and personal plans for how to deal with investigations, detention and arrest.
4. Urge the federal government to repeal the *Protection of Communities and Exploited Persons Act* (PCEPA), which endangers sex workers' lives, health and safety.
5. Urge the government to stop raids, detentions and deportations of sex workers. CBSA should never be involved in anti-trafficking investigations as it compromises the safety and livelihood of migrant sex workers.

Migrant sex workers tell us that when they are interrogated by law enforcement, they have two options: either they denounce their work, identify as victims and possibly avoid detention and deportation, or they admit that they are autonomously making decisions for themselves and working to provide for themselves, in which case they will be detained and/or deported:

"Mimi was working as an escort. She had a tourist visa. A police officer conducted an online search for Asian sex workers, as he suspects that they may be trafficked. Mimi was targeted and found in an anti-trafficking investigation. She was suspected of being a trafficked victim and was detained by immigration. While detained, chains and weights were locked onto her wrists and legs. She was interviewed by police officers and by the CBSA. 'The officer asked me if I was being controlled, being forced, or if anyone had help me come and work in Canada. I told the officer that I did it voluntarily. I am over forty years old and I know what I am doing.' She was detained in jail by immigration authorities for two months."¹⁴

CASE STUDY



What can politicians do?

"Politicians should focus instead on developing an anti-trafficking model which provides support to people at risk of exploitation rather than employs law enforcement as the method of protection. They should invest in social supports such as social assistance, housing support and child care support, as well as sex worker-led services to prevent conditions that allow exploitation to occur. In particular, safe supports, employment and educational opportunities are needed for Indigenous and racialized youth, lesbian, gay, trans, Two-Spirit and gender non-conforming youth, and youth who use drugs, who are overrepresented among homeless youth who sell or exchange sexual services. Finally, politicians must address the tangible human rights abuses that a person might face in the sex industry, such as precarious labour rights, domestic violence, physical violence and other forms of systemic oppression."¹⁵

For more on criminal offences related to trafficking in persons and the impacts on sex workers, see the following documents available at <https://www.butterflysw.org/legal-information-for-services-prov>:

- *Harms of trafficking*, Butterfly
- *Immigration Status and Sex Work*, Stella and Butterfly, 2015.
- *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, Canadian Alliance for Sex Work Law Reform, 2017.
- *Im/migrant Sex Workers, Myths and Misconceptions: Realities of the Anti-Trafficked*, SWAN Vancouver Society, 2015.
- *Challenging Trafficking in Canada, Policy Brief*, Centre for Feminist Research, York University, 2017.

13. <https://www.theglobeandmail.com/news/british-columbia/sex-worker-advocates-call-for-end-to-bc-police-sting-operations/article35584381>
<http://www.straight.com/news/933756/open-letter-decries-police-posing-sex-worker-clients-repressive-operation-northern>
https://www.vice.com/en_us/article/a3d3xz/canadian-sex-workers-are-sick-of-being-impersonated-by-cops

14. This story was collected by *Butterfly* as a 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. www.butterflysw.org

15. 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

Establishing trust between service providers and migrant sex workers

"Treating all sex workers as real or potential victims of sex trafficking denies the agency, sexual autonomy and capability of sex workers. Not only does it isolate sex workers from the criminal justice system, but assuming that all racialized women who sell or trade sex are trafficked can result in unwelcome discriminatory and stigmatizing scrutiny that leaves many sex workers unwilling to be forthright with service providers. As a result, sex workers do not have access to quality health care and social services and are more likely to isolate themselves from the broader community."¹⁶

Because migrant sex workers face multiple levels of marginalization and a profound fear of law enforcement at all levels, it is essential that service providers first establish trust to then 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 (legal or non-legal) without requiring individuals to disclose their sex work or immigration status, and when possible, without having to identify themselves.**

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.¹⁷ 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.¹⁸

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. All of this may also lead to unexpected criminal or immigration investigations and other harmful consequences for migrant sex workers.

16. *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, Canadian Alliance for Sex Work Law Reform, p. 44, 2017, <http://sex-worklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>.

17. Butterfly's Presentation on 2017 Provincial OAITH - Leaving no one behind – Expanding our reach on gender-based violence approaches, available at <http://www.oaith.ca/train/2017-provincial-training-day.html>

Establishing trust between service providers and migrant sex workers

It is essential to build bridges with community organizations that work directly with migrant sex workers and offer services based on a human rights and person-centered approach.

These organizations will help you understand the nuanced complexities of migrant sex workers' needs and realities in order for you to be able to analyze their situation, to develop possible options with them, and to refer them to other appropriate and adequate supports.

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;
- 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 obligations (e.g., legal, ethical and professional obligations, internal organizational policies) that may seem at first glance to be in potential conflict with the recommendation to not disclose information without the person's informed and explicit 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.**

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. Additionally, we encourage you to 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 **Part 1 – Guide for service providers** for a list of community organizations and supports.

As a service provider, it is imperative that you analyze and understand migrant sex workers' situations from a human rights and personal safety lens. This means moving away from a focus on criminality and morality, and appreciating the human rights and needs of the person to whom you are providing a service.

You must be aware of all risks to their personal safety — including possible consequences related to your actions as a service provider. You should be aware that your client could be investigated as a potential criminal in violation of offences related to sex work and/or trafficking, even when there may be no evidence of exploitation or coercion. It is important that service providers understand that reporting to or seeking assistance from law enforcement is one option, but not the only option available.

18. This recommendation not to contact or disclose information without the informed 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 that are often at greater risk of conflict with discriminatory laws, as well as risk of human rights abuses when faced with law enforcement.

Protecting the rights of sex workers living with HIV

People living with HIV face the threat of the criminal law 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.

The law on HIV non-disclosure subjects sex workers living with HIV to an additional layer of scrutiny, stigma, discrimination and criminalization, as well as the possibility of extortion from those who are aware of a sex worker's HIV-positive status. Even if they are not violating any sex work-related criminal offences, and even in situations where there is little to no risk of HIV transmission, sex workers may be vulnerable to prosecution for not disclosing their HIV-positive status to a client. **That is why it is essential to maintain the confidentiality of a person's health status, including their HIV-positive status.** Failing to uphold a person's confidentiality will undermine the trust between patients and their counselors, and expose people living with HIV to considerable harm.

For more information, see the following documents available at <https://www.butterflysw.org/legal-information-for-services-prov>:

- *HIV Disclosure to Sexual Partners: Questions and Answers for Newcomers*, Canadian HIV/Aids Legal Network
http://www.aidslaw.ca/site/wp-content/uploads/2015/10/Discl-NewcomerQA_2015-ENG.pdf (English)
<http://www.aidslaw.ca/site/discl-newcomers-qa-chinese/?lang=en> (Chinese).
- *HIV Disclosure and the Law: A Resource Kit for Service Providers*, Canadian HIV/Aids Legal Network
<http://www.aidslaw.ca/site/hiv-disclosure-and-the-law-a-resource-kit-for-service-providers/?lang=en>.

Criminal offences and immigration status

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.**
- **Becoming *inadmissible*** means that a person loses their immigration status and is ordered to leave Canada. Depending on what type of **removal order** they face, they may not be allowed to return to Canada without special permission.
- **For more information, see: Part 2 - Immigration Law and Migrant Sex Workers' Rights.**

Migrant sex workers must be informed of all possible consequences of a criminal 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 immigration law advice before deciding how to proceed with their criminal file.** If you are not convinced that the worker's criminal lawyer is consulting with an immigration lawyer, they should contact one directly, or you could do so with their informed consent.

For more information on immigration status, sex work and "inadmissibility", see the following documents available at <https://www.butterflysw.org/legal-information-for-services-prov>:

- *Immigration Status and Sex Work*, Stella and Butterfly, 2015.
- *Working Without Canadian Citizenship*, Stella and Butterfly, 2015.

For more information on immigration consequences related to a criminal conviction, including loss of eligibility to make a refugee claim, to sponsor a family member, or to apply for citizenship, see:

- *Immigration consequences of criminal dispositions and sentencing*, Legal Aid Ontario.

Police powers and migrant sex workers' rights

- a) Police power to enter migrant sex workers' workspaces (commercial/residential)
- b) Migrant sex workers' right to silence (statements)
- c) Police power to detain migrant sex workers
- d) Police power to arrest migrant sex workers
- e) Police power to search in the process of detention or arrest
- f) Police power in relation to seizures in the process of detention or arrest
- g) Complaints: reporting abuse of powers

The following sections address police officers' powers, and not the powers of immigration or municipal officers.

See *Part 2 - Immigration Law and Migrant Sex Workers' Rights* for information on immigration officers' powers.

See *Part 2 - Municipal Law and Migrant Sex Workers' Rights* for information on municipal officers' powers.

Migrant sex workers often do not receive clear and accessible information about the different roles and powers that distinguish law enforcement agencies. This lack of information and clarity can lead migrant sex workers to experience profound stress and disorientation about the powers that different law enforcement agencies wield, as well as their rights to leave and to remain silent. This is compounded by language barriers and unfamiliarity with legal rights. It is important for sex workers 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 if they are detained or arrested, why they are under detention or arrest.

Sex workers and the police are situated in a hostile and antagonistic relationship. In addition to the criminalization and stigmatization that negatively affects 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 in media as "organized crime rings."
- Racialized sex workers are misrepresented, stigmatized 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.¹⁹ 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.²⁰

For more on how migrant and Indigenous sex workers experience racial discrimination: The 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: <https://www.butterflysw.org/legal-information-for-services-prov>

Public mechanisms that help address racial profiling for individuals:

- Human Rights Legal Support Centre: www.hrlsc.on.ca
- Ontario Human Rights Commission: www.ohrc.on.ca

Policy responses to racial profiling:

- Ontario Anti Racism Directorate: www.ontario.ca/page/anti-racism-directorate

Legal and ethnolinguistic clinics that may offer support related to racial profiling:

- The Chinese & Southeast Asian Legal Clinic: www.csalc.ca
- The African Canadian Legal Clinic: www.aclc.net



19. *Challenging Trafficking in Canada: Policy Brief*, Centre for Feminist Research, York University, 2017

20. 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. http://docs.wixstatic.com/ugd/5bd754_70135cbd5d344b7d81548cd91cb082d9.pdf

a) Police power to **enter** migrant sex workers' workspaces (commercial/residential):

If the police come to their residence (home, apartment, condo) or their hotel/motel room, migrant sex workers have the right to an expectation of privacy, and have no obligation to let the police enter, unless:

- the police have a warrant; or
- the person who answers the door agrees to let them in; or
- the police have reason to believe that:
 - someone inside is committing, or about to commit, a criminal offence; or
 - someone specific who they intend to arrest is inside; or
 - the life or security of the public, or of an occupant, is threatened

In these cases, if migrant sex workers do not identify themselves they may be arrested for obstruction. **They are not obliged to answer any other questions.**

If the police approach a migrant sex worker in a motel/hotel bar or lobby:

- It is as if they are in a public place, and they have no obligation to speak with the police unless the police have grounds to believe:
 - they have committed a criminal offence; or
 - there is a current warrant for their arrest.
- Migrant sex workers can ask if they are under arrest. If the police say no, they can say they wish to leave and walk away. Being a sex worker, or a perceived sex worker, is not a criminal offence.
- Note: the police can arrest someone for simply "causing disturbance" (e.g., screaming or being drunk in, or near, a public place).

If the police come to a person's commercial location (parlour, agency, strip club):

- **The police have the right to enter without a warrant.** This does not mean that they can do whatever they want.
- Regulations — such as municipal bylaws — give the police the power to enter for an "inspection" but the same bylaws also limit the questions the police can ask and what they can inspect.
- **Municipal bylaws and provincial laws do NOT give the police the power to search people, their personal bags, coats, etc.**
- Although municipal bylaws and provincial laws do not give officers unlimited power to search the premises, they do give officers the power to search areas related to municipal or provincial laws (e.g., to look in the fridge to check for alcohol; to look in cupboards or through work supplies to inspect equipment; to look around the building to verify for fire safety).
- See page 22 for more on search powers.

b) Migrant sex workers' right to silence (statements)

Service providers must understand that maintaining the right to silence without incurring harmful consequences is nearly impossible for migrant sex workers in many contexts. One example is when police enter a workplace under the guise of municipal inspection. **Therefore, it is important that you discuss with migrant sex workers their right to silence, as well as the possible consequences of speaking to police.**

Important things to discuss with migrant sex workers about speaking with police:

- Sex workers can identify themselves, but **anything else that they say will be considered a statement**. Some sex workers may have and use several names. When deciding what name to use, know that lying about one's identity to a police officer is a criminal offence.
- Statements are used to help the police investigate further and obtain enough evidence to make an arrest. **Sex workers' statements may be used to incriminate them, their colleagues and/or their clients.**
- **Once they make a statement, they become a witness and their statement becomes evidence.**
- Once they have made a statement, they can be ordered to appear in court to testify.
- Under municipal law, the police have the right to inspect their workplace and ask for their massage and/or parlour permits. However, if the police ask questions about their work that goes beyond what is regulated by the bylaws, they are not obligated to answer. They don't need to say more than necessary.
- **Planning in advance what they will and will not say to police may help them minimize the harmful effects of the laws that regulate sex work.**
- Police are legally allowed to lie to them to encourage them to talk — in other words, to make a statement.
- Police are trained to provoke them and make them talk. They will try to convince them that it's in their best interest to do so. **Their silence cannot incriminate them, but their statement might.**
- **If they are arrested, the police must stop questioning them once they ask to speak to a lawyer.** But once they have actually spoken to a lawyer (usually on the phone), they can be questioned again, and can be asked the same questions over and over again.

c) Police power to **detain** migrant sex workers

Detention is the opposite of the ability to walk away when interacting with police. It can be physical or psychological. If you are detained or arrested, you have the right to call a lawyer before speaking to police.

- Simply being a sex worker is not a criminal offence.
- While law enforcement officers' may believe they are personally offering someone assistance or being helpful, "helping" a sex worker is never a valid reason for an officer to detain a sex worker.
- The police may *temporarily* detain a sex worker if their client or colleague is arrested (e.g., for purchasing sexual services or receiving a material benefit), as a "witness" to, or "victim" of, a crime.

Generally, *unless* a removal order (which orders a person to leave Canada) is issued against a migrant sex worker, the **police** are usually not mandated to arrest people for immigration infractions— but in practice they do take people into custody on this basis. While the police may insinuate that they have the power to question a sex worker about their immigration status (and stall someone with a line of questioning about this), this is the clear responsibility of the **CBSA**, which deals with infractions to immigration laws, immigration detention and deportation. **If the police come to a workplace to enforce municipal regulations (or without any clear purpose), staff and management are not required to provide any information about their immigration status.**

Similarly, **city inspectors** (who can only enforce municipal laws) **do not have the power to detain a sex worker in any context, or to ask for any information about their immigration status**, but they may insinuate that they do, and they may attempt to stall a sex worker while contacting the CBSA or police. This stalling tactic has created confusion and concern for migrant sex workers, who may not be aware of the distinct roles and responsibilities of different law enforcement agencies and are consequently uncertain about when they have the legal right to leave.

For more information, see:

Part 2 - Municipal Law and Migrant Sex Workers' Rights
Part 2 - Immigration Law and Migrant Sex Workers' Rights

d) Police power to arrest migrant sex workers

The police can arrest a migrant sex worker in any of the following circumstances:

- There is an arrest warrant in their name for not cooperating with a removal order;
- There is an arrest warrant in their name related to a criminal offence, and, in some cities, if there is a committal warrant related to a municipal/provincial offence (e.g., a ticket);
- They are committing a crime or they are in breach of a condition related to a criminal charge or sentence. In some cases, refusing to cooperate with the police may result in an arrest for obstructing police work.

Upon arrest, migrant sex workers have the right to understand the charge against them with the assistance of an interpreter, if needed.



Sex workers need access to legal information that explains their rights in relation to law enforcement, including when they have a right to leave a place and/or walk away. See the following documents available at <https://www.butterflysw.org/legal-information-for-services-prov>:

- *Immigration Status and Sex Work*, Stella and Butterfly, 2015
- *Working in Canada without Canadian Citizenship*, Stella and Butterfly, 2015.
- *Comic: Who is Who?*, Butterfly.
- *Police Powers: In-call and Outcalls*, Stella, 2015.
- *Arrest and Detention*, Stella, 2015.
- *Migrants Know Your Rights!*, No One Is Illegal.

e) Police power to search in the process of detention or arrest



Given the power that police have to search a suspect's cell phone, **it is important for sex workers to think about the information they keep in their phone**, including:

- 1) what contacts and names they register in their phone;
- 2) the content of their texts or emails; and
- 3) any additional information or photos that could be considered evidence of a criminal offence, including offences related to sex work.

When police conduct a search, they must state their reason for doing so. There are 4 types of searches :

1. Warranted searches: When police arrive at a location with a search warrant, they must show the warrant to the occupant so that the occupant can understand why they are entering the premises.

2. Warrantless searches ("in plain view"): In most cases, searches without a warrant are not valid unless **items are in plain view or the individual consents to being searched**.

- If sex workers' belongings (e.g., cell phone) are not in plain view and are kept in a personal, private space (e.g., bag or personal locker), in most cases the police have no legal power to obtain or search their belongings without a warrant.
- **Knowing when a search is not legal may help sex workers resist an illegal search** (e.g., if an officer without a warrant insists on seeing a sex worker's cell phone that is not in plain view, they can say, "no, it is private").

3. "Pat down" searches: **If the person is detained**, the police can only pat down or frisk the person if the police believe they **pose a serious threat to the safety of the officer or the public**. A pat down search means they can only pat the outside of your clothes to see if you are armed with a weapon.

4. Searches "incident to arrest": **During an arrest, police are permitted to search a suspect, including their cell phone and other devices**. But the search needs to be done promptly upon arrest, "tailored to its purpose," meaning in most cases searching only recent emails, texts, photos and the call log, and the police must take detailed notes of what they examined and how they examined it.²¹ **A search "incident to arrest" does not include the police's ability to search other parts of that individual's property, unless they have a warrant** (e.g., if an individual is arrested in a car, the police do not have a right to go through the contents of the car unless they have a warrant or unless the car itself was seized as evidence).

21. R v. Fearon, [2014] 3 SCR 621, 2014 SCC 77.

f) Police power in relation to seizures in the process of detention or arrest

Police may seize property (including a cell phone or money) that is the subject of a warrant, as well as anything that may reasonably be connected with a criminal offence.²² If someone's property is seized with a warrant, they can request that the police officer provide them with a copy of a report identifying the property seized and where it is being held.

Police can seize anything without a warrant if they believe on reasonable grounds that:

- It was obtained by committing a criminal offence;
- It was used in the commission of a criminal offence; or
- It will provide police with evidence of a criminal offence.²³

If property is seized without a warrant, accused individuals can follow up with the officer in charge to see if the property can be returned. However, the item will not be returned if it was seized as evidence.

Police do not have the right to seize property where there are no grounds for believing that it is connected with an offence.²⁴ Still, police or the CBSA may illegally seize and search property such as a cell phone, often while they have temporarily detained a sex worker.

When sex workers are taken into detention — whether in immigration or criminal detention — their possessions are temporarily seized. Sex workers' phones are taken from them while they are in detention, and they may not be able to access their contact list:

- If they need to access their phone for a number to contact a friend, relative, outreach worker or lawyer, they can ask duty counsel, who may be able to facilitate access when the individual is first brought to court from the police division. *Duty counsel* are criminal lawyers who work for Legal Aid Ontario to assist unrepresented individuals.
- **Sex workers should keep in mind that an officer is often present when their phone is accessed, so it is important that they do not to keep any images or correspondence that could result in criminal liability.**

In all cases, it is very important to remember phone numbers of potential sureties (individuals who can assist with bail) and other key contact information.

If someone must deposit a passport as a condition of their bail, they should **photocopy the important pages of their passport** to assist with renewing their visa. If an individual needs access to their property as part of bail (such as a passport), they should follow up with the officer in charge or Duty Counsel located at the court where their criminal matter is proceeding.

22. *Criminal Code*, s. 489(1). To obtain a warrant for "proceeds of crime" (which could include money obtained or derived as a result of the commission of a criminal offence), a judge must be satisfied that there are reasonable grounds that there is property in respect of an offence alleged to have been committed. See *Criminal Code* 462.32(1).

23. *Criminal Code*, s. 489(2), R.S.C. 1985, c. C-46.

24. *Welch v. Gilmour* (1955), 111 C.C.C. 221 (BCSC).¹

- **All items seized** — with or without a warrant — **should be recorded by an officer**, and this information (e.g., officer's notebook, property log) should be included in an accused's "disclosure package." Community organizations have reported that items seized by law enforcement often "go missing." **Requesting a record of the property seized may be a useful strategy for sex workers when trying to track down seized items.**
- Usually, an accused person will only have their property returned once their case is closed. Even at the completion of a case, items may not be returned. **Individuals may seek redress through the independent police complaint process or through a lawsuit against the police.**
- *Under Ontario's Civil Remedies Act (2001), the government may seize money even when a person is not charged or convicted of a crime, if the money is considered to be "proceeds of an unlawful activity."*²⁵

Remedies for Illegal Search and Seizure

Understanding one's rights regarding search and seizure can be helpful when dealing with police. Knowledge of a person's rights can assist a sex worker if charged with an offence or help form the basis for a civil suit for damages (i.e., monetary compensation) against the police for potential misconduct. **After interacting with the police, it is a good idea to make dated and detailed notes regarding one's experience. Cases may proceed many months after the initial interaction with police.**

In the criminal law context, when the police exceed their powers regarding search and seizure, this can result in the evidence being excluded at trial or a stay of proceedings based on inappropriate police conduct. **If you think your rights have been violated, it is important to seek legal advice.**

If migrant sex workers do interact with law enforcement, the following information may be useful if ever they are accused, detained, or want to make a complaint. It may be more difficult to remember details later on, so take notes as soon as possible after the event:

- Where and when did the event take place?
- Who were the officers? What did they say or do?
- What was searched, when/how did the search occur, was anything seized? Was anything damaged?
- Was any person searched? How were they searched and where? By who?
- Was anyone injured? If anyone was injured, or if anything was damaged, take photographs.
- Was anyone detained? If so, were they offered an interpreter?
- Were they taken or held anywhere? If so, what were the conditions?

CASE STUDY

Dona was arrested and the police seized CAD 50,000 from her, which included the money she brought to, and earned in, Canada, as well as a necklace. Her phone and other personal belonging were also seized. She was not able to make any phone calls as she did not have the phone numbers of her friends or family. She was deported after being detained for three months. She could not get her money or belongings back as the police told her that no record was found related to her property.²⁶

25. Ontario *Civil Remedies Act* s. 3(1).

26. This story was collected by *Butterfly* as a 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. www.butterflysw.org



Sanctuary cities and 'Access Without Fear' policies

Some cities are officially designated 'sanctuary cities' (e.g., Toronto, Hamilton, Vancouver).²⁷ This means that the municipal government has adopted an 'Access Without Fear' policy, which is meant to apply to all city officials to ensure that all residents can access all city services and city-administered services (such as shelter services) without fear of immigration consequences, regardless of their immigration or documentation status. These policies attempt to modify intake procedures to account for the fact that accessing public services often requires documentation that people without status may not have, and the fact that requiring individuals without status to provide identifying information may isolate people from accessing services because of the risk of detection and deportation.

These policies direct city officials to not:

- **inquire about an individual's immigration status;**
- **deny non-status residents access to services; or**
- **share personal or identifying information with immigration authorities (such as the CBSA) unless they are required to do so by law.**

Police forces in certain instances have not applied the policy (e.g., the Toronto Police Service)²⁸ and therefore even in 'sanctuary cities,' these forms of inquiry and information sharing between departments may still take place.²⁹

While this policy is not applied consistently in Toronto, migrant sex workers may want someone who has legal status and whom they trust to inquire about specific municipal services before they attempt to access the service.



Complaints: Reporting abuse of powers

"Some police officers and municipal inspectors are respectful and open-minded: They don't give workers a hard time and they try to ensure everyone's safety. Other police officers directly harass and intimidate workers: They may enjoy enforcing their authority; controlling, objectifying, and seeing how far they can push people; or their ideas and behaviours may be based on racist and victimizing stereotypes that they have never confronted or questioned. This harassment and intimidation may increase stress and fear in the workplace related to law enforcement.

When police or inspectors come to our workplace, most of the time no one is arrested or taken into custody for criminal or immigration reasons. Most of the time they question staff and employers, rummage around the workplace, at times harass and intimidate staff and clientele, and make disrespectful or threatening comments or behaviours. These behaviours towards us, and our workplace, are a violation of our dignity and are produced by racism and sexism, and are made worse by language barriers. This is why it is important that you know what your rights are, so that you can protect yourself and consider your options when responding to the situation."³⁰

27. Toronto City Council's January 31, 2017 statement reaffirming Sanctuary City <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM24.23>

28. See *Cops 'duty bound' to report illegal immigrants: Report*, Toronto Sun, Artuso, A., March 16, 2017, <http://www.torontosun.com/2017/03/16/cops-duty-bound-to-report-illegal-immigrants-report>.

Historically, migrant sex workers have had difficulty with the police, and are hesitant to make a complaint about police abuse for numerous reasons.

Law enforcement must be accountable to the public and there are systems in place to attempt to monitor and redress abuse of power.

All people — including sex workers who are not residents of Ontario — have the right to file a complaint about police policies, services and conduct.

Service providers should inform sex workers of their rights and the limits of different law enforcement officers' powers. This information may contribute to migrant sex workers' empowerment and may help them negotiate with law enforcement and avoid, prevent or minimize police harassment or abuse.

To make a complaint about police policies, services and conduct, there are two options:

1. The first option — "Local Resolution" — is best suited for issues such as, dealing with personal property *other than money*, or failure to treat or protect someone equitably. A complainant should go to the police station within 30 days of the incident to discuss the issue in person, where they must be willing to provide their contact information, discuss what took place, suggest what they think would be an appropriate resolution, and be prepared to agree to a final resolution and sign a form saying the complaint has been resolved. Possible solutions often include a face-to-face conversation with the officer involved.³¹

2. The second option is to file a complaint with the Office of the Independent Police Review Director (OIPRD), an arm's-length agency of the Ontario government staffed by civilians that is responsible for receiving, managing and overseeing public complaints about the police in Ontario (e.g. Ontario Provincial Police, not the RCMP). Any member of the public can file a complaint, but they must be willing to include their personal information and information about the incident, which can be obtained by the officer or police service identified in the complaint. The complainant can submit a complaint form online or in print (by fax, mail, scan, email or in person at the OIPRD or a police station). You may want to consult with a lawyer or legal clinic for further information regarding an OIPRD complaint.

For more information, see *Police Powers*: <http://mtcsalc.org/en/publications/police-powers/>.

29. See (No) Access T.O.: A Pilot Study on Sanctuary City Policy in Toronto, Canada, G. Hudson et al., RCIS Working Paper No. 2017/1, February 2017, http://www.ryerson.ca/content/dam/rcis/documents/RCIS%20Working%20Paper%202017_1GHudsonFinal%20.pdf; *Often Asking, Always Telling: The Toronto Police Service and the Sanctuary City Policy*, No One Is Illegal-Toronto, November 2015 http://rabble.ca/sites/rabble/files/often_asking_always_telling_-_kredits_dec_1.pdf.

30. *Immigration Status and Sex Work*, p. 34, by Stella and Butterfly, 2015, <http://chezstella.org/wp-content/uploads/2015/12/Immigration-Status-and-Sex-Work.pdf>.

31. Office of the Independent Police Review Director, available at: <http://www.oiprd.on.ca/EN/PoliceServices/Pages/Local-Resolution.aspx>

Service providers working with migrant sex workers must understand the impacts of sex work-specific criminal offences and anti-trafficking laws on migrant sex workers. Criminal investigations that arise from these laws may lead to the deportation of migrant sex workers, even when they are not charged with a criminal offence.

These prohibitions have the harmful impact of placing migrant sex workers in conflict with the law and with law enforcement, while they do not provide support or redress for migrant workers facing exploitative working conditions.

- These laws contribute to the violence, stigma and discrimination that sex workers face, and prevent them from taking critical steps to protect their human rights and ensure their personal safety.
- The threat of detention and deportation drives sex workers into precarious working conditions, increases their vulnerability to exploitation and violence, and deters them from seeking supports and services, including state protection and vital health and social supports, if they do experience exploitation or violence.
- Workers who do seek support may be investigated as potential criminals in violation of offences related to sex work and/or trafficking, even when there is no evidence of exploitation or coercion.

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/unwanted 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 may seem at first glance to be in potential conflict with the recommendation to not disclose information without the person's informed and explicit consent. **If you cannot provide an anonymous and confidential service, and if you cannot guarantee the person 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.