

Municipal Law and Migrant Sex Workers' Rights



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*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 -----



Funded by -----



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The Chinese and Southeast Asian Legal Clinic (CSALC)
www.csalc.ca
St. Stephen's Community House (SSCH)
www.sschto.ca

Funded by:
The Law Foundation of Ontario

Municipal bylaws and their impact on migrant sex workers

This document provides information related to municipal bylaws that are used to regulate, register, and monitor people who own and/or work in indoor commercial workplaces (i.e. massage parlours, spas, body rub parlours and strip clubs).

Indoor workplaces increase migrant sex workers' capacity to control their environment, to implement health and safety practices, and to protect their human rights. However, because sex work is criminalized, it is almost always illegal to openly sell sexual or erotic services in a commercial establishment. For this reason, indoor establishments that may provide sexual or erotic services must conceal these services within other types of businesses.

Prohibiting the sale of sexual services is considered the "exclusive jurisdiction" of the Federal government, as this relates to the criminal law, which is under the control of the Federal government. **In theory, based on this principle of Canadian law, the municipal government – and therefore municipal bylaws – cannot directly prohibit the sale of sexual services.** However, municipal bylaws are legally allowed to regulate businesses, and these bylaws are often used to control and regulate establishments that may offer sexual or erotic services.

Common municipal offences include touching prohibited body areas (e.g. breasts, genitals), being undressed in the workplace, locking/unlocking the door to the room in which the services are performed, or being open to the public beyond legally permitted hours of operation. In practice, these prohibitions may force workers to avoid law enforcement and work in greater secrecy.



Additional municipal and provincial regulations are used to control and displace sex workers who occupy public space. The stated objective of these regulations is often associated with the protection of public health and safety and the deterrence of public nuisance. In practice, however, these regulations are often used as a means of racial and social profiling, and are often arbitrarily and excessively applied by law enforcement officers to displace marginalized individuals from public spaces. Not only do these practices violate individuals' fundamental rights in many instances, but also the fines associated with them often lead to debt as well as imprisonment in some jurisdictions. These harmful and discriminatory practices – such as ticketing targeted individuals for spitting, "loitering" or jaywalking – are discriminatory and further limit the options available to sex workers who are already profiled and targeted, notably migrant, Indigenous, Black, and trans sex workers.

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

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

For more information, see:

Part 2 – Criminal law and migrant sex workers' rights

Part 2 – Immigration law and migrant sex workers' rights

Part 2 – Migrant sex workers' labour and employment rights

The basics of municipal bylaws

a) Municipal bylaws are different in each municipality.

Every city has specific bylaws; it is important that migrant sex workers know what specific bylaws apply to their particular workplace.

b) Municipal bylaws are specific to the type of business registered.

A business may apply to register under a specific category (type of business) depending on several factors, including the municipality in which they are located, applicable zoning restrictions, and the services offered and advertised. The type of category chosen may also reflect an attempt to avoid repressive regulations and enforcement practices.

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



Whether a business explicitly advertises -- or is registered -- as providing erotic or sexual services affects which bylaws apply to the business and staff, and whether workers are at risk of violating immigration regulations. Even with legal permission to work (e.g. work permits), migrant workers who do not have permanent residence or Canadian citizenship cannot legally provide sexual or erotic services due to discriminatory immigration regulations and prohibitions.¹

1. The *Immigration and Refugee Protection Regulations* (IRPR) state that all temporary residents (meaning everyone who does not have Canadian citizenship or Permanent residence) cannot legally work for "an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages." (Ss. 183 (1) (b.1) and 196.1(a) of the IRPR). Further, the following condition is printed on all open work permits: "Condition: Not Valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services." The Ministerial Instructions state, "This condition informs the work permit holder that employment, self-employment, or contract services in this sector are not permissible." www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp

c) Municipal bylaws provide licensing schemes that regulate aspects of the business, such as:

- **Commercial activities:** the kind of services the business may legally offer to the public is limited to those registered with the municipality.
- **Conditions related to services:** e.g., clothing restrictions, prohibition to lock doors or possess and sell alcohol.
- **Licensing eligibility of owners and employed staff:** regulations determine who can obtain a license to register the business, and in some cities, who can obtain a license to work there legally.
- **Location and conditions of the establishment:** zoning bylaws regulate the location and the type of business that can be conducted in certain areas as well as building safety regulations.

d) Eligibility requirements make it difficult or impossible for migrant sex workers to obtain a license:

All business owners need a municipal license. Staff may also need one depending on the municipality. Depending on the business, several barriers may prevent migrant sex workers from obtaining a license, such as:

- Their immigration status:
 - In order to work anywhere, migrant sex workers must have official legal permission to work (e.g. permanent residency, work permit)
 - Even if they have a work permit, because of restrictive and discriminatory immigration regulations they are not allowed to work in locations that provide sexual or erotic services unless they have their permanent residence or Canadian citizenship.
- Identification requirements, criminal record check, medical exam and disclosure;
- Required membership in a professional association recognized by the city;
- Licensing fees.

Depending on the type of business and local law enforcement practices, workers with a license may still face risks due to the criminalization of sex work and associated sexism, stigma and discrimination.

e) Each municipality may have different law enforcement practices.

Monitoring and enforcement of municipal bylaws may be conducted by city inspectors or municipal police officers. It is important that migrant sex workers know which kind of law enforcement officer they are faced with, as this determines the scope of the officer's powers and the scope of the workers' legal obligations to respond to them. See suggested resources on page 7.

The basics of municipal bylaws

Some cities are officially designated "sanctuary cities" (e.g. Toronto, Hamilton, Vancouver).² 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, regardless of their immigration or documentation status. "Sanctuary city" policies direct city officials to not inquire about an individual's immigration status, or deny non-status residents access to services, or share personal or identifying information with immigration authorities (such as the Canadian Border Services Agency- CBSA) unless they are required to so do by law. However, as police forces in certain instances have not applied these policies (e.g. Toronto police force), even in "sanctuary cities," questioning individuals and information sharing between departments may in fact still take place.³

f) When a law enforcement officer enters the workplace to enforce municipal bylaws, their powers have limits.

City inspectors or police officers requesting licenses and personal information:

- Staff, management and owners are required to have their license with them in the workplace at all times.
- If workers are required to hold a license and they do not have the license on them, they may receive a ticket.
- If workers are required to hold a license and they do not have one, the employer may receive a ticket and demerit points.
- Staff and management must provide their name, address and license, upon an officer's request.
- Staff and management are not required to provide a police officer or a municipal bylaw officer with any information about their immigration status.

City inspectors:

- A municipal inspector (bylaw officer) can only enforce municipal bylaws (e.g., licenses, health and safety). They can only inspect and ask questions about these specific issues.
- If they determine that someone is in violation of a bylaw, they can only issue a ticket.
- They have no power to detain anyone on the premises.
- They cannot enforce immigration laws or criminal laws.

Police officers:

- A police officer can issue a ticket for violating a bylaw, but they can also criminally charge and arrest management, staff and clientele for illegal activities related to sex work.
- Police have the power to detain individuals if they are accused of, or involved in, a crime, or if there is a warrant in their name related to a criminal or immigration matter.
- **Anything that staff or management say to a police officer becomes an official statement which may be used as evidence against workers, colleagues and/or clients.**

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

3. 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, available at: http://www.nyerson.ca/content/dam/rcis/documents/RCIS%20Working%20Paper%202017_1GHudsonFinal%20.pdf

See *Often Asking, Always Telling: The Toronto Police Service and the Sanctuary City Policy*, No One Is Illegal-Toronto, November 2015, available at: www.rabble.ca/sites/rabble/files/often_asking_always_telling_-_kredits_dec_1.pdf
See *Cops 'duty bound' to report illegal immigrants: Report*, Toronto Sun, Artuso, A., March 16, 2017, available at www.torontosun.com/2017/03/16/cops-duty-bound-to-report-illegal-immigrants-report

Law enforcement practices and associated harms

It should not fall on migrant sex workers to educate officers about their respective rights and obligations, or to protect themselves from state abuse and discrimination.

That being said, many law enforcement officers often feel entitled to enter any given workplace at any time, to ask questions of anyone present, to enter any area, search any space, and insinuate that they can detain an individual without having the legal power to do so.

In addition to language barriers, sexism, racism, and being in potential conflict with numerous laws, migrant sex workers may be unsure of their own legal rights and the limits to an officer's powers. Migrant sex workers often do not receive clear and accessible information about the different roles and powers that distinguish law enforcement agencies (i.e. municipal bylaw inspectors and police officers). This lack of information and clarity – which is complicated by the troubling reality that those agencies intentionally contribute to this confusion⁴ – can lead migrant sex workers to experience profound stress and disorientation about the powers that different law enforcement agencies wield. It may also interfere with their right to leave and their right to remain silent.



Workers need to be informed of the specific bylaws that apply to their workplace and to them individually, as well as the powers of city inspectors and police officers who enter their workplaces. This will help to prevent violations of these regulations wherever possible, to minimize the risks associated with unavoidable conflicts with these regulations, and to attempt to resist, prevent or minimize the risks associated with law enforcement officers' unlawful behaviours and practices.

For example, migrant sex workers need to know that:

- If an officer comes to their workplace, they have a right to know who they are (e.g., whether they work for the city, the CBSA or police force).
- City inspectors do not have the power to:
 - detain or arrest people – regardless of their immigration status;
 - interrogate or question people regarding their immigration status;
 - search people or their personal belongings.

Sex workers need to have access to legal information that explains the limits of the different officers' powers as well as their rights in relation to law enforcement, including when they have a right to leave.

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

- Immigration Status and Sex Work, Stella and Butterfly
- Working in Canada without Canadian Citizenship, Stella and Butterfly
- Who is Who?, Butterfly

4. See *Journey of Butterflies 2016*, Butterfly, Asian and Migrant Sex Workers Support Network, available at: https://docs.wixstatic.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf

5. See footnote 4.

The Consequences of Breaking a Municipal Bylaw

- Being found guilty of a municipal bylaw does not lead to a criminal record, but it does result in fines and demerit points, which can eventually lead to the revocation or non-renewal of a license.
- While enforcing municipal laws, officers may access migrant sex workers' identification and other personal information without a warrant.
- This information may be shared with various government departments and may lead to criminal or immigration investigations.⁵
- If a fine/ticket is issued, the infraction can be contested in court.
- If the person who received the ticket does not show up for their court date, or does not send someone to represent them, they will be automatically found guilty.
- If they have concerns about a language barrier, an interpreter will be provided. They have the right to request and be provided with an interpreter.
- Legal representation is not required during any part of the legal process. However, if they have concerns about a language barrier or the matter is serious, it is advisable that they attend court with a lawyer or a paralegal.
- If the police or bylaw officer does not show up for court, the ticket may be dismissed, or the prosecutor may be willing to reduce the penalty.
- If they proceed to trial, they will have an opportunity to ask the police officer questions and they may call witnesses to support their position.
- If they are convicted at trial, they may appeal the conviction. They should seek the advice of a lawyer to determine whether they have grounds to appeal the decision.
- Paying fines may be a condition for maintaining or gaining permanent resident status in some cases.



Tickets and imprisonment: Although the scope of this document is limited to the municipal regulation of indoor workspaces, municipal and provincial laws are also used as a tool to profile and ticket sex workers occupying public spaces. In some cities, if people do not deal with or pay these tickets, they eventually lead to a "warrant for committal," which means that if they are stopped by police they can be taken to jail to "pay off the ticket". This is not an ongoing practice in all cities, but the power to issue a warrant for committal still exists under the Ontario Provincial Offences Act.

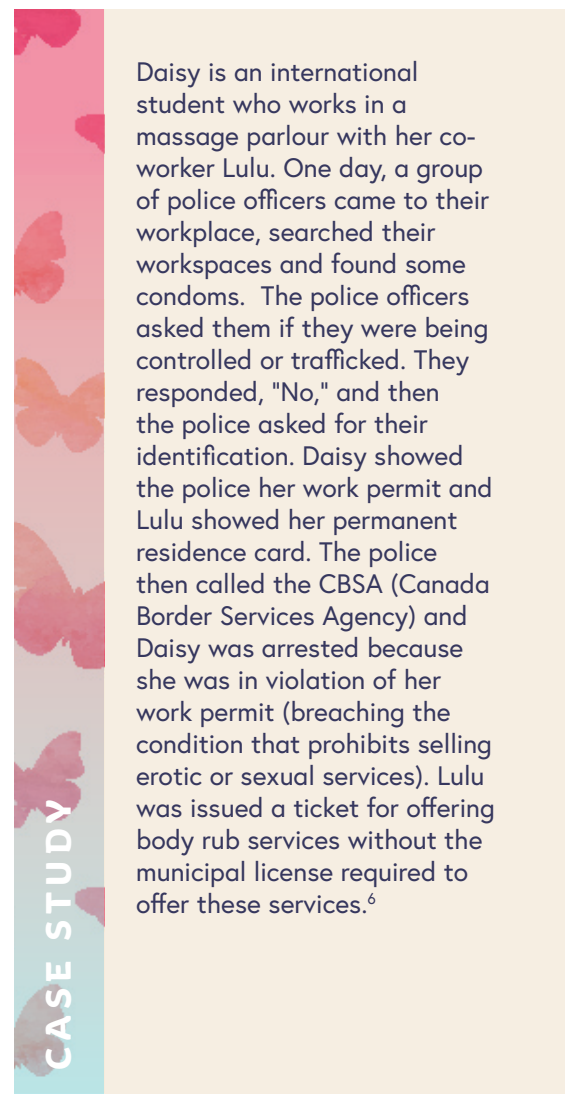
Note there are several problems with accessing legal advice and representation related to municipal bylaws and tickets. *Legal representation for tickets is not usually covered by legal aid, and many migrant sex workers are not able to pay for private counsel. Migrant sex workers who can pay for counsel may decide not to, as the amount of the ticket is usually less than the cost of legal representation. Additionally they may decide to avoid the stigma and discrimination associated with the court process.*

The interplay of the various laws that regulate and prohibit sex work

In addition to consequences related to municipal bylaws offences, migrant sex workers face multiple risks associated with criminal and immigration infractions related to sex work, as well as sexism, racism, discrimination and stigma associated with sex work. As a result, migrant sex workers avoid detection from law enforcement, which increases their isolation and reduces their access to legal, health and safety services, and other resources.

Municipal regulations and enforcement practices – in conjunction with the criminal offences and immigration regulations related to sex work – impose harmful conditions on migrant sex workers, such as:

- Increasing and facilitating the presence of law enforcement in the workplace, including police who may enter under the guise of a municipal inspection in order to perform criminal investigations without a warrant, resulting in the possible detention, arrest and deportation of migrant sex workers.
- Facilitating reporting and collaboration between law enforcement departments, including CBSA, resulting in the possible arrest, detention and deportation of migrant sex workers.
- Prohibiting clear communications between staff and clientele regarding screening, services and conditions associated with the provision of services, resulting in confusion, tension and violating the fundamental right to explicitly and clearly communicate consent to sexual activity.



CASE STUDY

Daisy is an international student who works in a massage parlour with her co-worker Lulu. One day, a group of police officers came to their workplace, searched their workspaces and found some condoms. The police officers asked them if they were being controlled or trafficked. They responded, "No," and then the police asked for their identification. Daisy showed the police her work permit and Lulu showed her permanent residence card. The police then called the CBSA (Canada Border Services Agency) and Daisy was arrested because she was in violation of her work permit (breaching the condition that prohibits selling erotic or sexual services). Lulu was issued a ticket for offering body rub services without the municipal license required to offer these services.⁶

6. 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

- Prohibiting clear communication among staff and management regarding services, safety and working conditions.
- Prohibiting workers from effective access to and promotion of occupational health and safety information and supplies, including safer sex materials.
- Prohibiting workers from locking the door while they are delivering services, which may prevent workers from protecting themselves from robbery or assault.
- Requiring identification and documented information that puts individuals at risk of surveillance and arrest due to criminalization and restrictive immigration regulations (e.g. requiring clients to provide/register their identity; requiring bills and receipts to be itemized).
- Constant psychological stress and insecurity experienced by staff, resulting from the actual or potential invasion of law enforcement in the workplace.



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

Current anti-trafficking initiatives also lead to joint enforcement operations and investigations that have very harmful consequences for migrant sex workers. In Spring 2015, the Ottawa Bylaw Services joined up with the Ontario Police Human Trafficking Unit and the Canada Border Services Agency (CBSA), and conducted a series of raids on local massage parlours. These raids resulted in the deportation of 11 migrant sex workers, and there was no evidence of exploitation or human trafficking in any locations that were raided.⁷ This is one example of the harmful consequences resulting from raids – framed as anti-trafficking initiatives – to sex workers' workplaces.

Municipal law enforcement may lead directly to a fine, demerit points, or revocation of a individual or business license. It may also indirectly lead to criminal charges, breach of immigration conditions, detention, arrest and deportation. Migrant sex workers can contact Butterfly and other legal clinics if they have concerns about this issue or if they want more information or support.

Butterfly:

416-906-3098 / www.butterflysw.org

Chinese and Southeast Asian Legal Clinic:

416-971-9674 / www.csalc.ca

7. <http://www.ohscanada.com/eleven-women-face-deportation-following-human-trafficking-investigation-in-ottawa/>
<http://www.cbc.ca/news/canada/ottawa/sex-workers-further-victimized-by-deportations-groups-say-1.3069626>
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