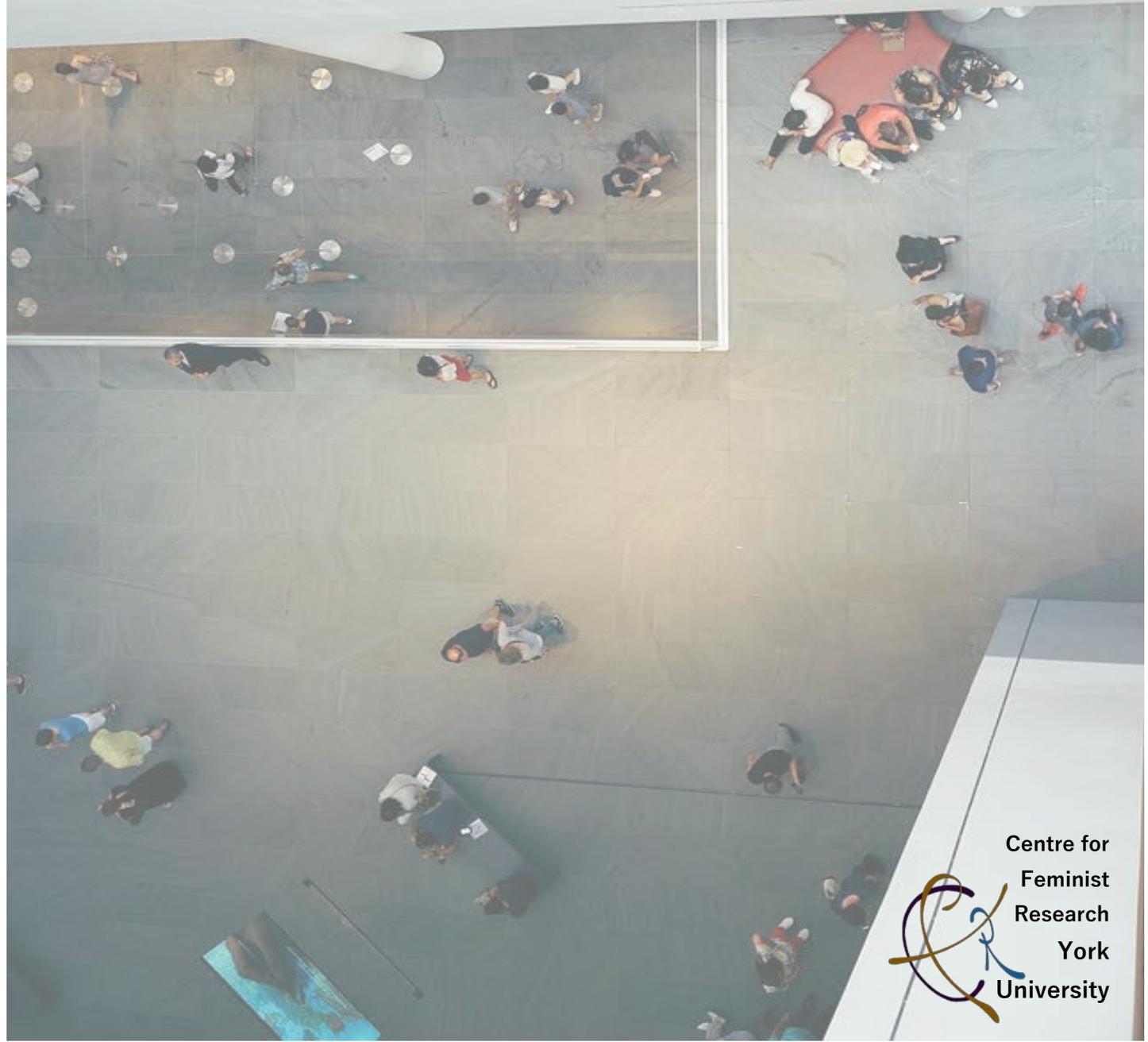




CHALLENGING TRAFFICKING IN CANADA

POLICY BRIEF





CHALLENGING WHAT WE THINK WE KNOW ABOUT HUMAN TRAFFICKING

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 human 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 everyday impact of anti-trafficking interventions and the uptake of the issue by the media, government and the public. Something often overlooked in wider discussions is that much of what is called “human trafficking” involves little more than a struggle by people around the world and in Canada to gain access to social, political and economic security when regular migration channels are restricted and decent-paying jobs are limited. As well, when trafficking is made synonymous with prostitution, sexual labour and sexual violence are conflated. Consequently, what we hear about trafficking via the media or in public debates is often confused, contradictory or simply wrong, while statistics fluctuate wildly and claims about the problems may have little or no supporting evidence. The result? Anti-trafficking policies, laws and actions based on poor definitions and inaccuracies that all too often end up harming those they were intended to help – sex workers, Indigenous peoples, migrant workers, and, particularly, Indigenous, racialized and migrant sex workers.

UNDOING THE HARM

To go beyond sensationalism and heart-rending accounts of violence and to try to prevent more harm, we put together this policy brief, based on evidence and experiences. We draw on recent research undertaken in Canada by recognized (feminist) scholars as well as the expertise of community workers and organizations that are engaged with anti-trafficking around the country. We speak to the complexity of the issue, attempt to correct some of the common mistakes that circulate, and offer what we think are sound recommendations. We hope it offers an antidote to misinformation, exaggeration, and unfounded reports and that it can serve as a guide for people who are genuinely interested in creating a safe, just, and gender-equal world where human rights and dignity are respected for all.

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POWER (Ottawa)
Stella, l'amie de Maimie (Montréal)
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THE CONFLATION OF HUMAN TRAFFICKING WITH SEX WORK

The conflation of sex work and trafficking is prominent in anti-trafficking discourses, policies, and law enforcement practices,¹ and relies heavily on the representation of all sex workers as “victims”.² When sex workers are seen as victims, the demands of sex workers who seek to improve the conditions of their

work are inconsequential as all sex work is considered to be inherently problematic.³ Also, critiques of structural inequalities related to gender, race, and/or class are ignored.⁴ If all commercial sex is considered exploitative and violent, actual instances of violence and coercion no longer stand out. As Chris Bruckert and Colette Parent suggest: If we link the two concepts by stating that ‘prostitution’ is violence, then all of the

¹ For recent analyses of the conflation in Canadian government laws, policies and debates, see for example: Brenda Balek and Darcie Bennett. *Evaluating Canada’s Sex Work Laws: The Case for Repeal*. (PIVOT Legal Society, 2016) and the cluster of essays, “Critical Perspectives on Canadian Anti-Trafficking Discourse and Policy,” eds. Ann De Shalit and Emily van der Meulen. *Atlantis* 37.2.1 (2015).

² Joy Smith. “Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada.” Standing Committee on Status of Women, Parliament of Canada, 2007: 5.

³ Chris Bruckert and Stacey Hannem, “To Serve and Protect? Structural Stigma, Social Profiling, and the Abuse of Police Power in Ottawa,” in *Selling Sex: Experience, Advocacy, and Research in Canada*, eds. Emily van der Meulen, Elya M. Durisin and Victoria Love. (Vancouver, BC: UBC Press, 2013): 297-313.

⁴ Susan Strega et al., “Never Innocent Victims: Street Sex Workers in Canadian Print Media” *Violence Against Women* 20.1 (2014): 6-25.

female sex worker's activities—her relations with both customers and managers—are categorized as violence. We can thus no longer distinguish specific situations as violent or search for solutions; everything is violence.⁵

Stella, l'amie de Maimie elaborates further:

We explain to people that consensual sex work can still involve situations in which sex workers experience exploitative working conditions and/or violence... It is important for us to be able to speak about and fight against the exploitation we may experience at work.⁶

Although anti-trafficking efforts are founded on the desire to “rescue” victims, they often exacerbate the very harms they seek to eradicate, as Leslie Jeffrey explains:

[T]he trafficking mythology... justifies paternalist and criminalizing approaches to the sex-trade, which fail to provide sex-workers with the decent working conditions that they have been demanding. Indeed, such an approach contributes to worsening the conditions for women in the trade because it strengthens the hand of officials without empowering the women themselves. This puts sex-workers at greater risk, for example, by strengthening the

powers of police to raid sex-work establishments, thus pushing the industry further underground and into less and less safe areas.⁷

As well, denying the agency of sex workers by making it impossible to consent to sex work silences the voices of sex workers who challenge the conflation of sex work and trafficking.⁸ Pivot Legal Society adds that the conflation of sex work and trafficking not only ignores the realities of sex workers and the coercive labour practices in other industries, but also diverts funds away from much needed social programs.⁹

One issue of importance for POWER has been how this conflation has had tremendously negative consequences on sex workers and migrant workers in our city and worldwide...The conflation of sex work and human trafficking has been given much weight by political and community leaders... and has been enthusiastically endorsed by police services who then raid sex workers in the name of finding victims of human trafficking when sex workers continually share that police violence and being criminalized is one of their main challenges.¹⁰

⁵ Colette Parent and Chris Bruckert, “The Current Debate on Sex Work” in *Sex Work: Rethinking the Job, Respecting the Workers*, eds. Colette Parent et al., (Vancouver, BC: UBC Press, 2013): 22.

⁶ Stella, l'amie de Maimie, email message to Hicks, Nov 2015.

⁷ Leslie Anne Jeffrey. “Canada and Migrant Sex-Work: Challenging the ‘Foreign’ in Foreign Policy.” *Canadian Foreign Policy Journal*, 12. 4 (2005): 34.

⁸ Leslie Anne Jeffrey and Gayle MacDonald. *Sex Workers in the Maritimes Talk Back*. (Vancouver, BC: UBC Press 2006).

⁹ Pivot Legal Society, email message to Kempadoo May 25, 2016.

¹⁰ POWER, email message to Hicks, Dec 13, 2015.

⁹ Pivot Legal Society, email message to Kempadoo May 25, 2016.

¹⁰ POWER, email message to Hicks, Dec 13, 2015.



RESTRICTIONS ON MOBILITY

Predictably, most resources spent on ending trafficking have been put into border control measures aimed at uncovering clandestine movements of people and prosecuting smugglers and/or traffickers. The main results of such practices are to make illegalized migrations much more dangerous. Migrants are increasingly being funneled through more precarious routes leading to an unprecedented number of deaths.¹¹

In Canada, the deceptive and/or coercive movement of adults across international or domestic borders has been identified by the RCMP and Government of Canada as a key element of human trafficking and, as such, has become a major site for prevention efforts. These prevention efforts give Canadian Border Services Agency (CBSA) officers more power to turn away migrants at the border if they suspect that the person has been forced. They also create legislation that restricts legal routes of entry into Canada, and allow government authorities to forcibly return homeless and/or transient minors to parents, guardians, or state run homes and Indigenous persons, particularly women and youth, to reserves.¹²

(2005):97

¹² Naomi Sayers. "Story 1, Stories of Migrant Sex Workers." *Report on Migrant Sex Workers Justice and the Trouble with 'Anti-Trafficking': Research, Activism,*

¹¹ Nandita Sharma. "Anti-Trafficking Rhetoric and the Making of a Global Apartheid." *NSWA Journal*, 17.3

What "anti-trafficking" discourse does is strengthen enforcement and policing in our communities and at the borders...we are seeing increased collusion between immigration and law enforcement - i.e., police are racially profiling people who look like immigrants, asking for their immigration documents, and then turning them over to immigration officials. ¹³

Despite public support for several of these measures, those on the receiving end of these prevention strategies often experience them as coercive forms of state violence. Rather than protect, these measures significantly infringe upon a person's human rights, denying them not just physical mobility, which violates Article 13 of the United Nations Universal Declaration of Human Rights, but also economic, class, and social mobility.

The argument for this denial is that it is for protection and prevention. However, this top-down approach is informed by incorrect assumptions and a lack of evidence, and has led to the creation of inaccurate and discriminatory "red flag lists" that some organizations use to assess cases of "trafficking."

The approach flattens the experiences of those targeted and is not informed by the

Art. (2015).

<http://www.migrantsexworkers.com/report.html>

¹³ No One Is Illegal, email message to Pflug-Back, Nov 11, 2015.

needs and motivations of the individuals who are on the move.

Research that focuses on the experiences of international migrants shows that there is frequently a strong need to migrate to find work and support families, but anti-trafficking protection efforts have significantly limited legal migration routes. This results in international migrants needing to use alternative migration strategies, which increases their vulnerability to exploitation. Rather than 'protect' migrants, these kinds of anti-trafficking efforts make migration more dangerous by severely limiting safe migration routes.¹⁴

The world we want is one in which people can move freely without criminalization, without having to pay someone for their passage, without dangerous journeys, without forged papers. THIS and not increased legislation and policing would make people's lives, particularly migrant women's and youth's, safer. ¹⁵

¹⁴ Sharma. "Anti-Trafficking Rhetoric."

¹⁵ No One Is Illegal, email message to Pflug-Back, Nov 11, 2015.



+ COLONIAL VIOLENCE

A significant facet of Canada's anti-trafficking efforts focuses on "domestic trafficking," or trafficking *within* Canada's borders.¹⁶ These efforts frequently focus on and police the movement of Indigenous women and girls across state sanctioned reserve boundaries, most commonly in the form of rural-to-urban migration, and the involvement of Indigenous women in the sex trades.

Ending violence against sex workers is also about ending the violence of colonialism from state systems such as child welfare, social services and the criminal (in)justice system that many of our communities face.

These efforts build on the state constructed link between Indigenous women and sex work that goes back to the 1876 *Indian Act*, which defined Indigenous women in interracial relationships as prostitutes to maintain racial segregation and prevent relationships between Indigenous peoples and the white population.¹⁷ The *Indian Act* also dehumanized Indigenous peoples through constructing a stereotype of them as sexually immoral, criminal, and habitually drunk, which has supported increased police surveillance.¹⁸ As part of the criminal justice system, anti-trafficking legislation furthers the violence of colonialism and gives more funding and power to the police and other state agencies, allowing for further

¹⁶ "SWAN Presents: The Hidden Harms of Anti-Trafficking, Sarah Hunt 1." (blog) <https://www.youtube.com/watch?v=yeavZY90AaI>

¹⁷ Lesley Erickson. *Westward Bound: Sex, Violence, the Law, and the Making of a Settler Society*. (Vancouver, BC: UBC Press, 2012).

¹⁸ Ibid.

criminalization of Indigenous peoples, especially women, due to these negative stereotypes.

Media depictions of Missing and Murdered Indigenous Women and Girls have painted Indigenous women as vulnerable and promiscuous.¹⁹ Indigenous women are seen as naturally susceptible to violence as Indigenous society is portrayed as inherently savage and thus, inherently violent.²⁰ The supposed deviance of Indigenous women has led the criminal justice system to criminalize them rather than meaningfully work towards solutions; to effectively absolve the Canadian state of any responsibility for the generational violence of colonialism or towards those who are Indigenous and sex workers. At the same time, trafficking narratives portray Indigenous women and girls as helpless victims needing to be saved, not knowing any better, or unable to help themselves.²¹ Anti-trafficking efforts further the police power that brings violence to Indigenous women rather than offer them protections or meaningful support services.²²

Painting all Aboriginal sex workers as victims does nothing to empower their situation, and has the damaging effect of stripping them of their agency. Instead, a rights' based framework which focuses

on Aboriginal women's rights to adequate housing, protection from violence, safe transportation, health care, and an acceptable standard of living would go a long way in giving women an actual choice as to whether or not to engage in sex work. While the conditions which lead women to sex work may be exploitative... trying to 'save' adult women from their own lives only continues a legacy of paternalism first introduced by colonial institutions.²³

Anti-trafficking policies attempt to control the presence of Indigenous peoples in the city and further the practice of displacing Indigenous peoples through the policy of returning Indigenous sex workers to the reserve.²⁴ The practice of displacement of Indigenous peoples, both from the reserve and from the city, also has its roots in the *Indian Act* where attempts were made to define the legal category of "Indian" as a way of controlling the population.²⁵ In order to move forward in a way that supports the right of Indigenous peoples to move freely and safely across the country, specialized services must be introduced that speak to the historical and present-day forms of violence that specifically affect Indigenous peoples.²⁶

¹⁹ Caitlin Janzen, Susan Strega, Leslie Brown, Jeannie Morgan, and Jeannine Carrière. "Nothing short of a horror show': Triggering Abjection of Street Workers in Western Canadian Newspapers." *Hypatia*, 28.1 (2013): 142–62.

²⁰ Sarah Hunt. "Decolonizing Sex Work: Developing an Intersectional Indigenous Approach," in *Selling Sex*: 88.

²¹ Sarah Hunt. "Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law." *Atlantis: Critical Studies in Gender, Culture, & Social Justice*, 37. 2 (2015).

²² Shawna Ferris. "Dangerous Order: Globalization, Canadian Cities, and Street-Involved Sex Work." PhD dissertation McMaster University, 2007. Proquest (NR36033).

²³ Sarah Hunt. "Beyond Anti-Trafficking Frameworks: Linkages between Trafficking, Migration, Gender, Labour and Globalisation." *Alliance News* 33 (2010): 29.
[http://www.gaatw.org/publications/Alliance%20News/Alliance News July 2010.pdf](http://www.gaatw.org/publications/Alliance%20News/Alliance%20News%20July%202010.pdf)

²⁴ Janzen et al. "Nothing short of a horror show."

²⁵ Erickson. *Westward Bound*:

²⁶ Jessica Yee. "Supporting Aboriginal sex workers struggles." *Canadian Dimension* 43.1 (2009): 45+.



+ **RACIALIZED VIOLENCE**

Throughout trafficking narratives, it is evident that racial stereotypes largely inform *who* is considered a “victim”: “Women coming from Asian countries are often characterised [sic] as being very passive, very innocent, sweet village girls who don’t know any better.”²⁷ Media reporting on human trafficking and law enforcement efforts have created an implicit link between racialized women and trafficking, resulting in the pervasive and harmful stereotype that racialized migrant women are frequently smuggled across borders and forced to perform horrific sex acts to repay their debts. This narrative is supported by racist and moralizing ideas about Asian women and sex work.²⁸

²⁷ Deborah Brock, Mook Sutdhibhasilip, Kara Gillies and Chantelle Oliver, “Migrant Sex Work: A Roundtable Analysis,” *Canadian Woman Studies*, 20.2 (2000): 84-90.

²⁸ Hayli Millar, and Tamara O’Doherty. *The Palermo*

When the public or the media hear the words, “Asian sex worker” or, “Asian prostitutes” or “Asian massage parlors” it’s very uncritically linked to trafficking, exploitation, and victimization. Very quickly they’re just connected and it’s like they just couldn’t fathom the idea of an Asian woman choosing to do sex work.²⁹

The harm of this is demonstrated by the anti-trafficking investigations and raids conducted by the RCMP, municipal police forces, and the CBSA. These actions overwhelmingly target racialized and migrant sex workers, subjecting them to surveillance, harassment, arrest, detainment, and deportation, even when there is no evidence that the women have experienced abuse and coercion.³⁰

Protocol & Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada (2002-2015). (Vancouver, BC: SWAN Vancouver, 2015): 70.

²⁹ Ibid.

³⁰ Butterfly: Asian and Migration Sex Workers Support

Asian women who do sex work are still perceived to be the default trafficking victim regardless of their citizenship status or length of time in the country. In Vancouver, the most obvious example of punitive anti-trafficking efforts remains the 2006 law enforcement raids of 18 Asian massage parlours that aimed to identify victims of trafficking. Instead, none of the 78 women arrested were reported to be in breach of immigration laws or trafficked. This extensive law enforcement effort should provide a valuable lesson in the dangers of grounding anti-trafficking efforts in ethnic stereotypes.³¹

In 2015, the RCMP reported that Canadian law enforcement agencies had dismantled a national “prostitution ring” and liberated 500 Asian “victims.”³² The women knew they were coming to Canada to perform sex work, although they expected better working conditions. A group of Canadian sex work support organizations called on the RCMP and municipal police to release information about the women, expressing a concern about

Network. “Stop the Harm from Anti-Trafficking Policies & Campaigns: Support Sex Workers’ Rights, Justice, and Dignity.”

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

³¹ Alison Clancey, Noushin Khushrushahi and Julie Ham. “Do Evidence-based Approaches Alienate Canadian Anti-Trafficking Funders?” *Anti-Trafficking Review*. 3 (2014) 1-13. doi. 10.14197/atr.20121435

³² “RCMP Arrest Six for Canada-wide Human-smuggling, Prostitution Ring.” *The Globe and Mail*, April 1, 2015.

whether the women’s human rights were being respected. They did not get a response.

Law enforcement agencies are not concerned with the human rights of these workers. As an Asian migrant sex worker who was caught up in a recent Ontario raid stated:

The police was very rude. They treated us a criminal. My friend was taken away by them -and she was sent home now. They asked me if I am exploited, I told them I was not, they asked me to leave and told me that I was not allowed to work here. They will arrest me if I come back to work again.³³

In response to the government’s plan to spend \$60 million on human trafficking enforcement teams, the Migrant Sex Workers Project wrote:

These raids show us that the new sex work-related laws and trafficking laws are being used as an excuse for human trafficking investigations. We believe that the real purpose of these investigations is racial profiling of non-white migrant sex workers. They are often the ones being investigated, arrested or deported based on the inaccurate perception that everyone they work with or for is exploitative and a trafficker. This is not the case and should not be used as a pretext for racial profiling.³⁴

The constant raids on sex work establishments and deportation practices can render migrant Asian sex workers extremely vulnerable to violence as they will not report

³³ Butterfly. “*Stop the Harm from Anti-Trafficking Policies & Campaigns*”

³⁴ Ibid.

aggressors out of fear of being deported.³⁵

I tell myself “If I was a White woman, this would not be happening to me.”

I feel that from the community as whole, it’s racism, and then the judgment of being a sex worker. I am a minority and I get treated differently.³⁶

Racism informs the treatment of other sex workers as well. As Robyn Maynard, points out, “the police continue to harass and intimidate sex workers, especially Black and Inuit sex workers who sell or trade sex in Montréal.”³⁷

Anti-trafficking continues such legacies.

This racism and xenophobia is part of a larger context of asserting control over women’s bodies, especially Indigenous and Black women, dating back to the era of colonization and slavery.³⁸

³⁵ “About - Migrant Sex Workers.”

<http://www.migrantsexworkers.com/about.html>.

³⁶ Chris Bruckert and Frédérique Chabot. *Challenges: Ottawa Area Sex Workers Speak Out*. (Ottawa, ON: POWER 2010).

³⁷ Niloofar Golkar. “A Roundtable on Sex Work Politics and Prison Abolition: with Elene Lam, Chanelle Gallant, Robyn Maynard and Monica Forrester.” *Upping the Anti 18* (2016).

<http://uppingtheanti.org/journal/article/18-sexworker/>

³⁸ Ibid.



OTHER FORMS OF STATE VIOLENCE

It's useless. Why even report it 'cause nothing's gonna be done.³⁹

The majority of government funding for combatting human trafficking goes to police agencies, including the RCMP.⁴⁰ At the same time, police remain the leading source of violence for sex workers and migrants, especially trans and two-spirited, and

³⁹ Tara Lyons, Andrea Krüsi, Leslie Pierre, Thomas Kerr, Will Small, and Kate Shannon. "Negotiating Violence in the Context of Transphobia and Criminalization: The Experiences of Trans Sex Workers in Vancouver, Canada." *Qualitative Health Research* (2015): 1-9.

⁴⁰ Government of Canada. *National Action Plan to Combat Human Trafficking*. 2012.

Indigenous and other racialized people. As new legislation is introduced, such as the 2014 Protection of Communities and Exploited Persons Act (PCEPA), which effectively increases the number of laws and sentences related to human trafficking, further power is given to law enforcement agencies.⁴¹ From 2014-2015, the RCMP and other police services exercised these powers through the creation and repeated execution of "Operation Northern Spotlight." Touted as a means of outreach to people in the sex industry that "proactively" targeted persons in an effort to "identify and assist them as they might be at risk of human trafficking,"⁴² the Operation

⁴¹ Millar and O'Doherty. *The Palermo Protocol & Canada*.

⁴² Royal Canadian Mounted Police. *Fifth Edition of Operation Northern Spotlight Concludes Successfully*. Oct 18, 2016. <http://www.rcmp-grc.gc.ca/en/news/2016/18/fifth-edition-operation->

was repeatedly experienced by sex workers as a form of intimidation, harassment, and a gross violation of privacy that further entrenched fear and distrust of police services.⁴³

I hope the cops don't come and give me tickets. I hope to have better business. The licensing department discriminates [against] people like us. They find random reasons to punish us. If you don't cooperate, they give you more trouble. We don't dare saying a word, not to mention resisting.⁴⁴

Rather than helping and providing appropriate support for migrants and sex workers, anti-trafficking policies support their increased criminalization, exposing them to violence beyond the police, such as prisons, detention centres and deportation. These efforts also hinder a person's ability to gain different employment due to the criminal record they acquire through their interaction with the criminal justice system and exacerbate the lack of trust between these populations and police.⁴⁵

Ninety-five per cent [of Chinese sex workers surveyed in

[northern-spotlight-concludes-successfully](http://www.nswp.org/news/operation-northern-spotlight-targets-sex-workers-canada)

⁴³ Global Network of Sex Workers Project. *Operation Northern Spotlight Targets Sex Workers in Canada*.

<http://www.nswp.org/news/operation-northern-spotlight-targets-sex-workers-canada>

⁴⁴ "Butterfly Voices." Butterfly: Asian and Migrant Sex Worker Network.

<http://www.butterflysw.org/#!butterfly-voices-/c19gv>

⁴⁵ Karin Galldin, Leslie Robertson, and Charlene Wiseman. "Bedford v. Canada: A Paradigmatic Case Toward Ensuring the Human and Health Rights of Sex Workers." *HIV/AIDS Policy & Law Review* 15.3 (October 2011): 1–14.

Toronto and Vancouver] stated that law enforcement would not be a strategy they would use to seek assistance.⁴⁶

SWAN's survey of Chinese sex workers in Toronto and Vancouver demonstrates this lack of trust in law enforcement, with respondents citing fear of arrest as a primary reason for not reporting workplace violence to the police.⁴⁷

Cops drive you far away and then they beat us up. They drive us to Orleans at two or three in the morning and they make us walk back. There are no buses. They make you walk back from the woods. The next day, you see the same cops and they don't say anything. If you say something, they arrest you for obstruction.⁴⁸

The practice of "starlight tours," whereby the police pick up individuals, drive them to another location and drop them off to find their own way back, is disproportionately applied to Indigenous people and has been condemned by Amnesty International.⁴⁹ The recent accusations by Indigenous women against the Quebec police force highlight the continuation of these practices.⁵⁰

These accusations fit with Bruckert and Hannem's assessment that Indigenous sex workers belong to a "marked group that is subject to risk management practices."⁵¹ It is the "role and actions of the state, the police,

⁴⁶ Zi Teng and SWAN Vancouver. *Chinese Sex Workers in Toronto and Vancouver*. (Vancouver, BC: SWAN Vancouver, 2015): 28.

⁴⁷ Ibid.

⁴⁸ Bruckert and Chabot. *Challenges*.

⁴⁹ Ibid.

⁵⁰ "Aboriginal Women's Claims of Sex Abuse Under Investigation." *CBC News*. Oct 22, 2015.

⁵¹ Bruckert and Hannem. "To Serve and Protect?"

and social service agencies that create and allow the conditions that create violent situations for [Indigenous sex workers] to begin with.”⁵² The further funding given to police through anti-trafficking policy supports the continuation of these abuses.

In Canada, migrant worker programmes involve being tied to the importing employer; low wages, often below the official minimum, and long hours with no overtime pay; dangerous working conditions; crowded and unhealthy accommodation; denial of access to public healthcare and employment insurance, despite paying into the programmes; and being virtually held captive by employers or contractors who seize identification documents.⁵³

Temporary Foreign Worker Programs (TFWP) sanctioned by the Government of Canada tie migrant workers to one employer and keeps the workers in situations where they are exceptionally vulnerable to exploitation and abuse.⁵⁴ And yet, these state-

sanctioned programs are one of the few legal ways in which working class migrants can legally, albeit temporarily, enter Canada. As the anti-trafficking efforts built into the Immigration and Refugee Protection Act (IRPA) work to prevent a variety of other means of safely entering Canada, be it for work, family reunification, or to place a refugee claim, migrants looking to enter Canada find few safe, legal avenues.

For those who enter through alternative means, including refugees seeking asylum, border policing leads to many migrants being incarcerated upon arrival. This incarceration is a form of violence administered by the state.⁵⁵ The consequence is that for those wanting to enter Canada legally, the options are few and there is little guarantee that their rights will be respected. For those that cannot afford to navigate an increasingly expensive and very restricted Canadian immigration system, their ability to enter Canada through official channels is limited. Entering thus requires other methods, such as acquiring the aid of other people who are then immediately criminalized as smugglers or “traffickers.”⁵⁶ It also cruelly places refugees and other migrants in the position of choosing life and illegality or death.

“Moreover, migrants experience the most harm in government sanctioned work programmes

⁵² Native Youth Sexual Health Network. “Indigenous Peoples in the Sex Trade – Speaking for Ourselves.” *Incite!* (blog). July 15, 2011. <https://inciteblog.wordpress.com/2011/07/15/indigenous-peoples-in-the-sex-trade-%E2%80%93-speaking-for-ourselves/>

⁵³ Harsha Walia. “Transient Servitude: Migrant Labour in Canada and the Apartheid of Citizenship.” *Race & Class*, 52.1 (2010): 71-84.

⁵⁴ See Faye Faraday, *Profiting from the Precarious: How Recruitment Practices Exploit Migrant Workers*. (Metcalf Foundation, 2014) and the 2016 film by Min

Sook Lee *Migrant Dreams* that documents the experiences of migrant agricultural workers as indentured labourers under Canada’s TFWP. <http://www.migrantdreams.ca/>

⁵⁵ Carrie Dawson. “Refugee Hotels: The Discourse of Hospitality and the Rise of Immigration Detention in Canada.” *University of Toronto Quarterly*, 83.4 (2014): 826-846. DOI: 10.3138/utq.83.4.826

⁵⁶ Robyn Maynard. “Sex Work, Migration and Anti-Trafficking: An Interview with Nandita Sharma” *Briarpatch* 39.4 (2010): 28–31. <https://briarpatchmagazine.com/articles/view/sex-work-migration-anti-trafficking>

where jobs are often underpaid, work is precarious, living conditions largely unregulated, and employer abuse rampant. When living conditions are provided by employers, the potential exists for all kinds of physical, sexual and financial abuse.”⁵⁷

We are aware of the provisions of the Canadian Criminal Code related to human trafficking, the sections of the Immigration and Refugee Protection Act (IRPA) related to human trafficking, and the various International Treaties. However, short of what the federal government publishes on the Citizenship and Immigration Canada website, we know little to nothing about what constitutes “anti-trafficking” policies on Federal, Provincial or municipal levels, and even less about their intended application and enforcement. What we do experience is police practices and enforcement of criminal and immigration legislation...often under the façade of human trafficking “investigations.”⁵⁸

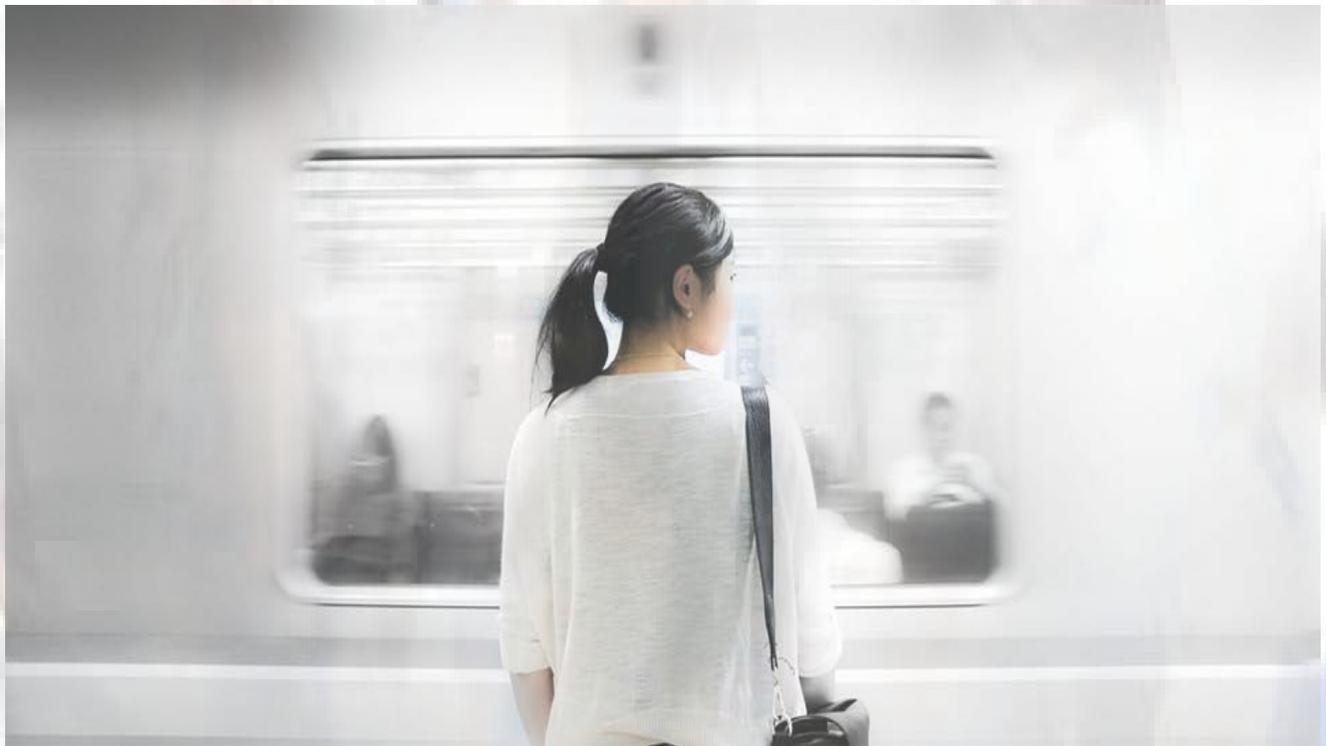
Anti-trafficking efforts have not resulted in tangible support or safety for migrants, Indigenous women, sex workers, and other vulnerable persons. Instead, these efforts have led to a rapid increase in the ways that such persons can come into punitive contact with the criminal justice system and an ever-increasing number of restrictions on who can legally reside in Canada. They also tend to depoliticize systemic processes of disenfranchisement.⁵⁹

Having worked in the field for many years, Stella, l’aime de Maimie, in Montréal concludes that “anti-trafficking” interventions amount to little more than the enforcement of immigration policies and the criminalization of the sex industry.

⁵⁷ Canadian Council for Refugees, email message to McFadyen December 3rd, 2015. See also: <http://ccrweb.ca/en/trafficking-forced-labour>; Faraday *Profiting from the Precarious*; Annette Sikka. *Labour Trafficking in Canada: Indicators, Stakeholders, and Investigative Methods*. Report No.42 (Ottawa: Public Safety Canada, 2013).

⁵⁸ Stella, l’amie de Maimie, email message to Hicks, Nov 2015.

⁵⁹ Robyn Maynard, “Fighting Wrongs with Wrongs: How Canadian Anti-Trafficking Crusades Have Failed Sex Workers, Migrants, and Indigenous Communities.” *Atlantis* 37.2 (1): 47.



+ YOUTH

The consensus that we as youth have the ability to make our own decisions, even if options are limited, is not there, and often our decisions are either not listened to, or they are second-guessed. In our society we are rarely consulted, when in fact we are the people most impacted by any decision.⁶⁰

⁶⁰ JJ. "We Speak for Ourselves: Anti-Colonial and Self-Determined Responses to Youth People Involved in the Sex Trade." *In Selling Sex*: 74-81.

Youth, particularly girls, are at the centre of current anti-trafficking initiatives and discourses. In the name of these initiatives, youth who exchange or sell sex in Canada are subjected to various types of "secure care" legislation, which have been widely criticized for infringing upon the civil liberties of youth. These initiatives fail to meet the needs of youth and actively deter youth from accessing support services.⁶¹

While the secure care policies vary across the seven provinces where they exist, their

⁶¹ Steven Bittle. When Protection is Punishment: Neoliberalism and Secure Care Approaches to Youth Prostitution. *Canadian Journal of Criminology*, 44.3 (2002): 317-350.

ideologies are consistent and echo trafficking narratives and their inherent problems.⁶² Youth who sell or exchange sex are considered to be victims of sexual exploitation who require state protection - a presumption of victimhood established in the 1984 *Badgley Report*, which remains a “definitive and official source of data on the sexual abuse of children and youths in Canada”.⁶³ Or as Alberta’s secure care legislation, the *Protection of Sexually Exploited Children Act (PSEC)*, states, “children engaged in prostitution are victims of sexual abuse and sexual exploitation and require protection.”⁶⁴

The Alberta legislation grants police officers and child protection workers the power to forcibly detain young people if they suspect that they are “engaging in prostitution or attempting to engage in prostitution.”⁶⁵ The confinement can then be extended if the minor refuses to stop engaging in or attempting to engage in the sale or exchange of sexual services.⁶⁶

In addition to infringing upon the civil liberties of youth, the secure care legislation’s logic of “protecting through punishment”⁶⁷ actively

marginalizes youth who sell or exchange sex. For some, the risk of involuntary detainment serves as a deterrent from accessing much needed social services, including reporting victimization to police. The Civil Liberties Association of British Columbia supports this concern by stating that, “forced treatment may permanently drive away individuals from ever voluntarily seeking help.”⁶⁸

Government sponsored programs such as *Tracia’s Trust: Manitoba’s Sexual Exploitation Strategy* miss the mark by focusing on the increased criminalization of clients, increasing public awareness and developing oppressive exit strategies for youth. These programs do not address the needs of youth who exchange or sell sex, such as accessing non-judgemental support services, meeting them where they are, respecting their rights to self-identify, and respecting their agency by not forcing them into state care. The inadequacy of these types of programs is articulated by a former youth sex worker, “When I’ve needed support...it was rarely available. And when it was available, it wasn’t the right kind of support”.⁶⁹

What this comes down to is many of the organizations and agencies that use selected narratives about youth involved in the sex trade, use them to advance their own ideological agendas of making themselves feel better for ‘helping the less fortunate’ or wanting to work with so-called marginalized communities. That is, in the name of ending youth exploitation they themselves are

⁶² *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*. Statutes of Saskatchewan, 2002, Chapter E-8.2.

<http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/e8-2.pdf>. See also the Department of Justice report: *Youth Involvement in Prostitution: A Literature Review and Annotated Bibliography* (Ottawa, ON 2015) http://www.justice.gc.ca/eng/rp-pr/cj-jp/vj-ij/rr01_13/p211.html

⁶³ Department of Justice, *Youth Involvement in Prostitution*.

⁶⁴ *The Protection of Sexually Exploited Children Act*. Statutes of Alberta, 2000, Chapter P-30.3. <http://www.qp.alberta.ca/documents/Acts/P30P3.pdf>, preamble

⁶⁵ *Ibid.* Section 2

⁶⁶ *Ibid.* Section 3.4(a).

⁶⁷ Bittle. “When Protection is Punishment.”

⁶⁸ British Columbia Civil Liberties Association. *The Secure Care Act: The Devil is in the Details*. 2000 <https://bccla.org/news/2000/07/the-secure-care-act-the-devil-is-in-the-details/>

⁶⁹ JJ. “We Speak for Ourselves.”

appropriating the experiences of youth. However, they don't recognize that these very efforts are so oppressive.⁷⁰

Secure care type legislation and the anti-trafficking policies that support them completely ignore the complex structural factors and inadequate social supports that contribute to youth participating in commercial sex and the exploitation they may experience. It denies the agency of youth while also obscuring the broader socioeconomic and other factors that affect them. The placement of youth at the centre of the “trafficking problem” exacerbates the negative effects of secure care type legislation and is counter intuitive to the purported goal of ensuring the safety of youth who sell or exchange sex as well as the safety of “trafficking victims.”

⁷⁰ Ibid.



ERASURE, SILENCING AND DENIAL OF AGENCY

Interventions around human trafficking often rely on omitting the experiences of entire groups or collapses those experiences and homogenizes disparate groups of people.⁷¹ Male sex workers, migrants, youth, and trans persons in particular also experience a lack of representation in policy making at the government level. Sometimes they face erasure in research and they are often denied any agency. In addition, the victim discourse infantilizes, “in that it equates racialized, Indigenous, and sex working women with children, negating their resourcefulness and resilience and their ability to negotiate complex situations.”⁷²

Organizational and government policies often focus on what is at times arbitrarily defined as “sex trafficking,” while ignoring broader issues of forced non-sexual labour. Examples of “non-sexual labour trafficking” affect migrant workers of all genders, especially under the Temporary Foreign Worker Program, and relate to other labour recruitment and migration issues.⁷³

⁷¹ Rose, Ava. “Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement.” *Atlantis*, 37.2 (2015).

⁷² Maynard. “Fighting Wrongs with Wrongs?” 42.

⁷³ Faraday. *Profiting from the Precarious*, 5

IMPACTS ON MIGRANTS

Migrants are perhaps the most overrepresented population when it comes to “sex trafficking.” Migrant workers are always racialized and experience additional issues around poverty, housing, and access to health services. Concerns around the denial of agency are particularly significant. Law enforcement agencies, government funded anti-trafficking organizations, and other organizations that focus on sex work tend to define trafficking broadly, often portraying migrant sex workers as helpless victims and as having no agency or voice.

Law enforcement agencies will often deport individuals viewed as victims of trafficking, harming the same populations they claim to be helping by ignoring or collapsing the varied migrant experiences into singular stereotypes. While coercion and physical violence may take place, the experiences of migrant workers are nuanced, with many making choices based on need, understanding what their new life may entail and what may be required of them.⁷⁴

⁷⁴ Butterfly. “Stop the Harm from Anti-Trafficking Policies & Campaigns”

IMPACTS ON MEN

“Sex trafficking” and sex work are commonly associated with “women and girls.” Although there is a lot of discussion about male sex workers in Canadian and international research, the men often lack representation and regularly express feelings of being absented from dominant discourses and debates on sex work.⁷⁵ Additional issues faced by male sex workers include assumptions around sexual orientation and stigmas that surround the male sex industry due to “Western society’s negative views of sexuality in general and homosexuality in particular.”⁷⁶ This kind of erasure often results in male sex workers avoiding or not being aware of services available to them.

Men aren’t supposed to be prostitutes. I’m sure you could go to the library and look up a book on prostitution and find it only discusses women.⁷⁷

Information on male migrant workers’ issues relating to employment standards, health and labour is readily available.⁷⁸ However, insights into the coercions and violence they

⁷⁵ Ibid.

⁷⁶ Todd G. Morrison and Bruce W. Whitehead. “‘Nobody’s Ever Going to Make a Fag Pretty Woman’: Stigma Awareness and the Putative Effects of Stigma Among a Sample of Canadian Male Sex Workers.” *Journal of Homosexuality* 53.1-2 (2007): 208. doi:10.1300/j082v53n01_09.

⁷⁷ Michel Dorais. *Rent Boys: The World of Male Sex Workers*. (Montreal: McGill-Queen’s University Press: 2005): 208.

⁷⁸ Sikka, *Labour Trafficking in Canada*: 24

face, such as in the case of the 19 Hungarian men who were considered trafficked as construction labourers, are few. This represents a risk and danger for workers in non-feminized work environments. Consequently, identifying coercions and violations in migration, recruitment, and employment processes that affect men is difficult and services for them are hard to ascertain.⁷⁹

Men in forced or coercive labour practices face problems similar to their female counterparts but may not identify or be identified as victims. Sexual assault is less of a concern for men, as they are often provided group housing, which diminishes one-on-one access to potential victims by perpetrators. Additionally, inspectors from provincial Employment Standards or Occupational Health and Safety departments may aid workers, although “workers must also have a reasonable fear for their safety should they choose to leave the employment (under the Criminal Code offence) or have been brought into the country with promises of working conditions significantly better than what exists (under the IRPA offence).”⁸⁰ Men may also appear less fearful for a number of reasons, including gender stereotypes, preconceived ideas of how fear may be expressed, and limited concern of reprisal from an employer. Nevertheless, in sex work and other labour sectors, intense exploitation, violence and coercion occurs regularly, irrespective of gender.

⁷⁹ Ibid., 22

⁸⁰ Ibid., 9-10

IMPACTS ON TRANS AND GENDER NON-CONFORMING INDIVIDUALS

Trans persons experience erasures and silencing in nearly all forms of sex work and trafficking interventions. Though research on them exists, and sex work organizations nearly always include trans workers as part of their mandates, little social science research exists that discusses the broad barriers that trans sex workers face or whether trafficking (in any definition) is an issue for this population. However, trans and gender non-conforming individuals experience stigma, violence, and a lack of social support, which have been associated with mental health issues such as “anxiety, depression, suicidality, and substance misuse.”⁸¹ This results in unemployment, poverty, high suicide rates, instances of physical and verbal abuse, greater difficulty accessing healthcare, and higher levels of structural violence and social isolation than found in the general population.⁸² All of these contribute to trans persons being overrepresented in working conditions considered more “at risk,” such as street work, engaging in risky sexual behaviour, and generally being ignored or underserved by social

⁸¹ Tonia Poteat, Andrea L. Wirtz, Anita Radix, Annick Borquez, Alfonso Silva-Santisteban, Madeline B. Deutsch, Sharful Islam Khan, Sam Winter, and Don Operario. “HIV Risk and Preventive Interventions in Transgender Women Sex Workers.” *The Lancet* 385 (2015): 274-286.

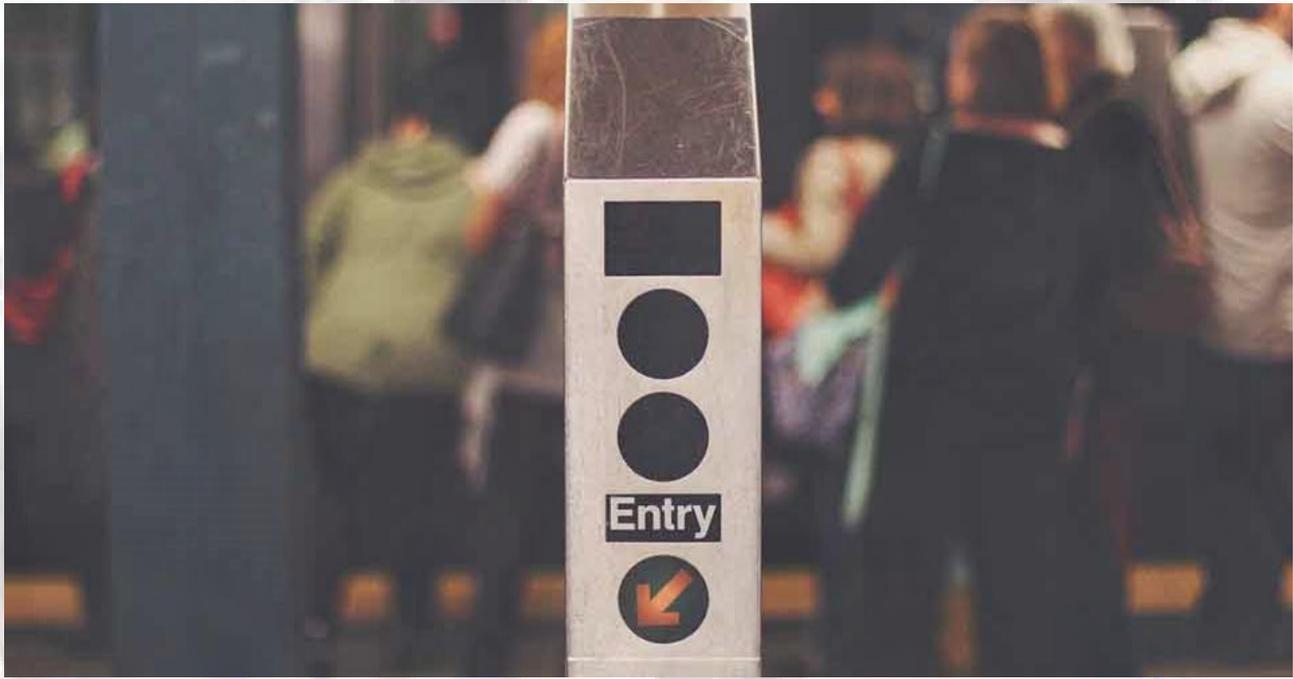
⁸² Tara Lyons, Kate Shannon, Leslie Pierre, Will Small, Andrea Krüsi and Thomas Kerr. “A Qualitative Study of Transgender Individuals’ Experiences in Residential Addiction Treatment Settings: Stigma and Inclusivity.” *Substance Abuse Treatment, Prevention, and Policy* (2015):10-17. doi 10.1186/s13011-015-0015-4.



safety nets available to nearly all other people in Canada. Trans persons are erased not just discursively, but very literally from our communities and society.

Veronica D. was a 24 year-old migrant sex working trans woman from Mexico living in Toronto. In July 2014, she killed herself after facing unbearable difficulties with her immigration status and housing. Veronica's death highlights the ways that migrant sex workers face a web of barriers in getting the support they need to survive and thrive.⁸³

⁸³ "About - Migrant Sex Workers."
<http://www.migrantsexworkers.com/about.html>.



REINFORCEMENT OF THE STIGMATIZATION OF SEX WORKERS

Trafficking discourses further ingrain and worsen stigmatization for sex workers.⁸⁴ Anti-trafficking discourses commonly maintain that prostitution is inherently problematic and victimizing. Conflicting narratives create a dichotomy of identities in sex work: a worker is either a criminal or a victim. Both constructions support the stigmatization of sex workers and further restrict their access to rights.

These harmful trafficking narratives also contribute to a flattening of experience among racialized populations, migrants, Indigenous communities, and youth. As long as prostitution-related activities remain criminalized and highly stigmatized, (migrant) sex workers will remain vulnerable to abuse and deportation, with no recourse to labour law

protection or other basic rights.⁸⁵

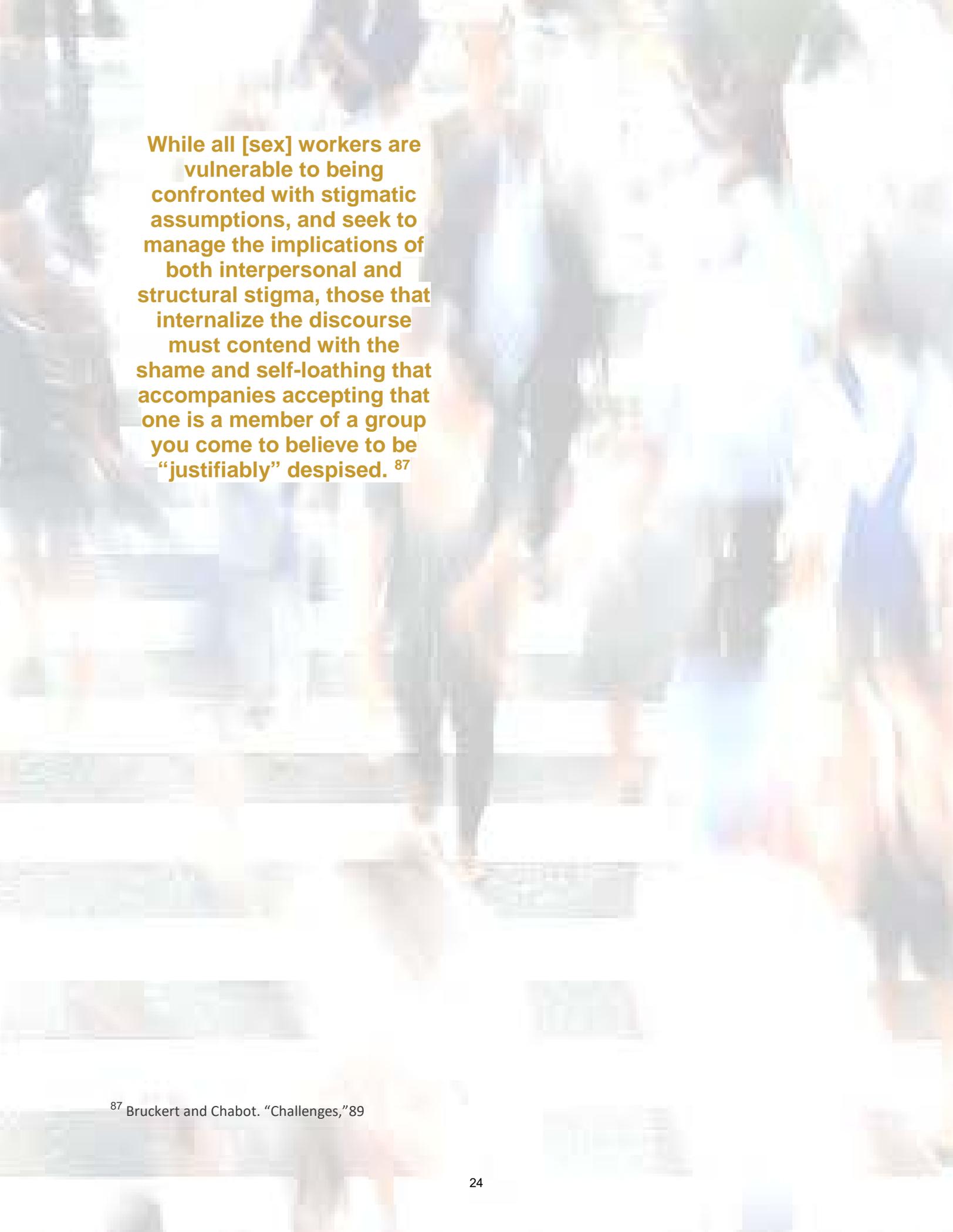
Indigenous sex workers speak of the shame caused by stigmatization of sex work preventing them accessing social services and feeling the need to hide their sex work from their family:

As an Aboriginal sex worker, I have no support. It is such a shameful thing where I come from. It's a shameful issue. There is an Inuit Friendship Center here in Ottawa but I wouldn't ask for help there because it is shameful. It would make a difference if there was an outreach worker who would also be Inuit.⁸⁶

⁸⁴ Jeffrey. "Canada and Migrant Sex-Work,"35

⁸⁵ Brock et al. "Migrant sex work".

⁸⁶ Ibid., 97



While all [sex] workers are vulnerable to being confronted with stigmatic assumptions, and seek to manage the implications of both interpersonal and structural stigma, those that internalize the discourse must contend with the shame and self-loathing that accompanies accepting that one is a member of a group you come to believe to be “justifiably” despised. ⁸⁷

⁸⁷ Bruckert and Chabot. “Challenges,” 89



+ WORKING CONDITIONS AND LABOUR

I think bosses should be accountable to their workers, so I think there should be laws that make bosses accountable to their workers... I think there should be laws- not criminal laws, but labour laws.⁸⁸

⁸⁸ Kara Gillies. "A Wolf in Sheep's Clothing: Canadian Anti-Pimping Law and How it Harms Sex Workers," in *Selling Sex*: 269-278.

Too often when we hear the word "trafficking" our conversations are limited to discussing sex work rather than labour rights and working conditions. This is rooted in the inaccurate and harmful conflation of sex work with human trafficking, which consistently prevents anti-trafficking efforts from supporting both the human rights of persons in situations of exploitation and strategies for meaningful change.

By avoiding discussions of labour rights and working conditions, policy makers ignore the harms of criminalization and the significant flaws within Canada's own migrant worker programs that make migrant workers vulnerable to labour exploitation.⁸⁹ They are also able to pass increasingly discriminatory and limiting

⁸⁹ Aziz Choudry and Adrian A. Smith (eds). *Unfree Labour? Struggles of Migrant and Immigrant Workers in Canada*. (Oakland, CA: PM Press, 2016); Faraday. *Profiting from the Precarious*.

restrictions on existing legal employment options.

For example, in 2012 the government abolished migrant work visas for exotic dancers.⁹⁰ Prior to this legislative change to the Immigration and Refugee Protection Act (IRPA) migrant workers had been recognized as legitimately existing and working within the sex industry. In making this change, rather than support the labour rights of migrant dancers, the government put many migrant workers both at risk of harm and out of work. Significantly, this decision was a government response to pressure from anti-trafficking organizations and did not include any consultation with migrant workers. The elimination of the exotic dancer work visa is but one example of a growing trend towards restricting the rights and opportunities of temporary migrant workers. The lowering of a migrant workforce cap for employers using the TFWP after June 2014, which followed the elimination of the 'Four-in-Four-out' rule, is another example.⁹¹

Programs such as the TFWP tie migrant workers to a single employer, restrict worker mobility, and provide minimal oversight of working conditions.⁹² As campaigns and research focused on migrant agricultural workers, such as

⁹⁰ Parliament of Canada. *Legislative Summary of Bill C-10: 10 Amendments to the Immigration and Refugee Protection Act (Vulnerable Foreign Workers)*. 2012.

http://www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c10-10&Parl=41&Ses=1.

See also Citizenship and Immigration Canada.

<http://www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp>

⁹¹ <http://www.immigration.ca/temporary-foreign-worker-program-four-four-rule-abolished/>

⁹² Faraday. *Profiting from the Precarious*; Kerry Preibisch and Jenna L. Hennebry. "Buy Local, Hire Global: Temporary Migration in Canadian Agriculture," in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (Montreal - Kingston: McGill-Queen's University Press, 2012): 48-72.

the Justicia for Migrant Workers Harvesting Freedom campaign,⁹³ demonstrate, migrant workers facing exploitation and labour rights violations have minimal legal protection in Canada and are forced to choose between speaking up and losing their employment, staying in an exploitative situation, or finding another employer knowing that they will lose their legal status in Canada.⁹⁴

For migrants working in the sex trades, labour protections are entirely absent, replaced instead by a multitude of ways in which their work is criminalized through municipal bylaws and the Criminal Code. This criminalization prevents migrant sex workers from accessing legal protection and increases their vulnerability to exploitation, since reporting their employer would result in their own deportation and loss of employment.⁹⁵

The illegalization of and lack of labour rights for migrant workers outside the sex trades, the criminalization of migrant workers in the sex trades, and the criminalization of municipal sex workers all run counter to the goal of supporting the human rights of workers and supporting persons in exploitative situations - goals that are supported by Amnesty International, the World Health Organization, the Global Alliance Against Trafficking in Women, UNAIDS, and the Supreme Court of Canada's decision in *Canada v. Bedford*.⁹⁶ Criminalization

⁹³ For more information, see:

<https://harvestingfreedom.org/>

⁹⁴ Karl Flecker. *Canada's Temporary Foreign Worker Program (TFWP): Model Program - or Mistake?*

(Canadian Labour Congress, 2011); Evelyn Encalada Grez, "Vulnerabilities of Female Migrant Farm Workers from Latin America and the Caribbean in Canada." *FOCAL Policy Brief* (April 2011).

⁹⁵ Jeffrey. "Canada and Migrant Sex-Work."

⁹⁶ Amnesty International. *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*.

<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>. World Health Organization. *Guidelines:*

discourages people from seeking help and from establishing peer support networks. If we are genuine in our desire to end exploitation, we must support the human and labour rights of migrant workers, sex workers, and migrant sex workers.

**WE WANT
RIGHTS
NOT
RESCUE**

Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries.

http://www.who.int/hiv/mediacentre/feature_story/sti_guidelines/en/. Global Alliance Against Traffic in Women. *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (Bangkok: GAATW, 2007)

http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf; Global Alliance Against Traffic in Women. *What's the Cost of a Rumour: A guide to sorting out the myths and facts about sporting events and trafficking* (Bangkok: GAATW, 2011);

<http://www.gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf>;

UNAIDS. *The Gap Report 2014*.

http://www.unaids.org/sites/default/files/media_asset/06_Sexworkers.pdf; UNAIDS *Much more support needed in the AIDS response for sex workers*.

<http://www.unaids.org/en/resources/presscentre/featurestories/2014/july/20140723sexwork>; Canada (Attorney General) v. Bedford. Supreme Court Judgements, 2013. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>.



RESEARCH ISSUES

As numerous researchers, NGOs, and international organizations have demonstrated, there are no reliable statistics on human trafficking. Instead, there exists an abundance of unsubstantiated statistics and poor estimates. Bolstered by highly emotional language and a desire to be positioned globally as a humanitarian nation,⁹⁷ the skewed evidence does significantly more harm than good as it is regularly used to support the criminalization and stigmatization of marginalized populations.

The unreliability of trafficking evidence is noted by law enforcement agencies, such as the Royal Canadian Mounted Police (RCMP).⁹⁸ A 2010

report on human trafficking commissioned by the Government of Manitoba clearly explains why reliable data do not exist:

The number of trafficking victims within Canada remains unknown. The RCMP offered an estimate in 2004, but it has since rescinded it and currently offers no new estimate in its place because of the difficulty of accurately estimating Canada's human trafficking problem. This difficulty is compounded by the fact that some non-governmental organizations claim that all prostitution constitutes sex trafficking. The dearth of reliable information about trafficking is particularly acute with respect to labour trafficking. There are no thorough reports on labour trafficking in Canada and very few interviewees

⁹⁷ Katrin Roots and Ann De Shalit. "Evidence that Evidence Doesn't Matter: Human Trafficking Cases in Canada." *Atlantis* 37.2 (2015): 65-80.

⁹⁸ RCMP. *Project SAFEKEEPING, an assessment of domestic human trafficking for sexual exploitation in*

Canada. October 2013. <http://www.rcmp.gc.ca/ht-tp/publications/2013/proj-safekeeping-eng.htm>

could provide concrete information on what Canada's labour trafficking problems might be.⁹⁹

Created without methodologically sound or rigorous research, these statistics and estimates have a direct impact on the allocation of resources, enforcement patterns, and perceptions of human trafficking, sex work, and migration. This makes the need to critically examine the origins of "trafficking" statistics and discourses of utmost importance.

According to Prostitutes of Ottawa/Gatineau Work, Educate and Resist (POWER):

A powerful example [of research issues] is the publication of Conservative MP Joy Smith's report, the *Tipping Point*, which presents data that was rejected by the Supreme Court of Canada for poor methodology as the basis of her call for intervention by the Government.¹⁰⁰

⁹⁹ Nicole A. Barrett. *An Exploration of Promising Practices in Response to Human Trafficking in Canada*. (Vancouver, BC: Federal/Provincial/Territorial Forum of Status of Women Senior Officials, 2010).

¹⁰⁰ A substantial portion of *The Tipping Point* report, <http://freethem.ca/wp-content/uploads/2014/02/The-Tipping-Point-MP-Joy-Smith-Full-Report-FEB-12-2014.pdf>) was based on research by Melissa Farley, Janice Raymond, and Richard Poulin. The research and testimony of Farley, Raymond, and Poulin was found by Justice Himel of the Ontario Superior Court of Justice to inaccurately conflate prostitution with human trafficking, to be methodologically unsound, and to contain both inflammatory language and sweeping generalizations. See: <http://www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html>, s.352-356. The Supreme Court of Canada upheld this evaluation: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>, s.49-56). Nevertheless, both Joy Smith and the report were given considerable weight during the hearings regarding Bill C-36, now

This is not to negate the experiences of those who experience exploitation, forced labour, and other abuses. Rather, it is to draw attention to how inaccurate claims actually create barriers to solving the issue of "trafficking." When the causes and scope of the problem are misrepresented, it is difficult to find effective solutions. Instead, inaccurate information fuels moral panics, shapes public opinions, and informs policy and legislation. This often results in significant harm for populations that are already diversely stigmatized and marginalized, via increased surveillance, racial profiling, and over-policing - such as sex workers, Indigenous communities, and racialized and migrant workers.¹⁰¹

Major research on coercion and violence in migration and work is needed, this is clear. However, in order to contribute to a solution instead of creating new sources of harm for already marginalized people, research must be grounded in sound data and in the experiences and perspectives of sex workers, Indigenous peoples, migrants, and, particularly, Indigenous, racialized, and migrant sex workers.

the *Protection of Communities and Exploited Persons Act*.

¹⁰¹ Elene Lam. "The Birth of Butterfly: Bringing Migrant Sex Workers' Voices into the Sex Workers' Rights Movement." *Research for Sex Work*, 15 (2016). <http://www.nswp.org/sites/nswp.org/files/The%20Birth%20of%20Butterly%2C%20Elene%20Lam%20-%202016.pdf>

+ RECOMMENDATIONS

1. END THE CONFLATION OF HUMAN TRAFFICKING AND SEX WORK

- Recognize sex work as a legitimate form of labour
- Amend, repeal, or retract existing legislation, bylaws, government policies, and government policy documents that equate human trafficking with sex work
- Distinguish between cases of forced labour, forced migration, and sex work in all discussions, policies, bylaws, and regulations regarding human trafficking
- Acknowledge distinctions between child abuse and youth sex work, and between violence against women and sex work

2. STOP THE PERPETUATION OF RACIALIZED AND COLONIAL DISCOURSES IN POLICY AND LEGISLATION

- Remove race-based targeting of migrants and Indigenous persons through policing and surveillance practices such as carding and police reporting to CBSA
- Create an oversight committee comprised of persons with a diversity of lived experiences to review and write recommendations regarding existing policy and legislation
- Ensure that media and policy documents do not use images that promote racialized or ethnic stereotypes
- Guarantee equal access to culturally appropriate, non-judgemental support and health services

3. DECREASE STATE VIOLENCE TOWARDS MARGINALIZED PERSONS

- Repeal laws that criminalize sex work
- Rely on existing regulations and laws regarding labour, violence, discrimination, and health and safety to support the rights and well-being of all workers
- Eliminate racial profiling and over-policing of Indigenous communities
- Cease all raids on sex work and suspected sex work establishments
- Redirect anti-trafficking funding to non-judgemental, peer-led support services.
- Cease the practice of deporting migrant workers
- Provide non-judgemental and accessible health care services to all workers regardless of status and occupation and ensure that these services are accessible without the employer's involvement
- Ensure that non-judgemental support services are openly and freely available to sex workers and ensure that these services are not contingent on a worker exiting the sex industry
- Provide direct funding for poverty alleviation measures, such as increasing access to social assistance, providing safe and affordable housing, and increasing provincial child care benefits
- Put in place an “Access Without Fear” policy for all federal, provincial, and municipal services to combat marginalization and isolation for people with precarious status and to provide support.

5. STOP THE ERASURE AND SILENCING OF MARGINALIZED WORKERS

- Recognize the voice and experience of sex workers, migrant workers, and migrant sex workers and demonstrate this recognition by directly involving these workers in the development of policies that affect them
- Create industry specific independent oversight committees by and for workers that are accessible to and will advocate for workers
- Fund organizations and support services that are by-and-for sex workers, migrant workers, and migrant sex workers
- Establish more dialogue within provincial and federal levels of government about how they can work with sex workers and not just to enforce the laws

6. SUPPORT THE NEEDS OF MARGINALIZED YOUTH

- Immediately cease the forced detainment of youth in the name of protection
- Recognize that foster care, group homes, and the homes of guardians are not necessarily safe spaces and find alternative housing arrangements that youth consent to
- Treat youth not as victims but as persons in need of appropriate, non-judgemental support systems
- Ensure that policies and programs that affect youth are developed through meaningful consultation with youth
- Fund safe housing for LGBTQ, non-status, Indigenous, and other marginalized youth
- Fund peer-to-peer community outreach and appropriate support services for homeless youth

7. ELIMINATE RESTRICTIONS ON MOBILITY

- Honour Sanctuary City policies
- Stop the deportation and detention of migrant workers
- End the repatriation of migrant workers on medical grounds
- Prohibit the forced placement/removals of people to their home country/reserve or familial home/safe houses
- Provide exploited workers and potentially forced migrants with immediate access to temporary residence permits and appropriate support services
- Give migrant workers a say in determining immigration policies
- Expand access to Permanent Residency by:
 - Removing caps on permanent residence applications for caregivers
 - Guaranteeing that migrant workers arrive with permanent residency rights
 - Allowing spouses and children to accompany migrant workers

9. SUPPORT SAFE WORKING CONDITIONS AND LABOUR RIGHTS

- Decriminalize sex work
- Develop health and safety regulations in consultation with workers
- Ensure access to collective bargaining for sex workers, migrant workers, and migrant sex workers
- Ratify and implement the UN's *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* and the International Labour

- Organization's *Domestic Workers Convention*
- Make changes to the Temporary Foreign Worker Program with the goal of supporting equal labour and migration rights for all workers, including:
 - Open work permits that are not dependent upon an employer
 - Expanding eligibility criteria so that all migrant workers can access federally funded support services for newcomers to Canada
 - Enforcing the prohibition on recruiting fees and requiring recruiters to be monitored and registered
 - Providing all workers with access to federally-funded free language training programs
 - Involving workers in the negotiations of their contracts

10. SUPPORT METHODOLOGICALLY SOUND RESEARCH AND EVIDENCE-BASED POLICY

- Increase funding to and support for collaborative research with the community
- Create paid opportunities for persons from the community to direct and consult on research and policy development that affects them
- Disaggregate data on sex work and migrant labour according to gender identity, sexual orientation, ethnicity, and status

ONLY RIGHTS CAN STOP THE WRONGS