

This document provides general legal information, not legal advice. Speak to a lawyer if you want legal advice specific to your situation.

If you would like more information about the above, please contact:

Butterfly www.butterflysw.org or the
HIV Legal Network www.hivlegalnetwork.ca

Butterfly's services are available in Chinese, Korean, and English.

For more information:

Canadian Alliance of Sex Work Law Reform
www.sexworklawreform.com


Butterfly: Legal information related to migrant sex workers:
www.butterflysw.org/legal-information-for-services-prov

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The Carceral Web :

Overview of laws affecting migrant sex workers

Who are we?

Butterfly (Asian and Migrant Sex Workers Support Network) and the HIV Legal Network recognize sex work is work and respect the agency of sex workers and migrants. We also recognize the harms caused by criminalization, policing, and laws and policies that discriminate against migrant sex workers. We fight for the dignity, rights, and justice of migrant sex workers.

Why did we produce this info sheet?

Migrant sex workers are affected by laws and policies created by different levels of government (e.g. immigration laws, criminal laws related to sex work and human trafficking, and municipal laws). It is important for migrant sex workers and service providers to know about these laws and their impacts.

This document provides an overview of these laws and illustrates their impact through personal stories shared by migrant sex workers about how they are affected by the laws. Migrant sex workers shared these experiences with Butterfly staff and researchers.

Laws affecting migrant sex workers

Three levels of government in Canada

1. Federal government

- Criminal laws (e.g. Human Trafficking Offences, Sex Work Offences that prohibit communicating in a public place, purchasing, materially benefiting from, procuring and advertising sexual services)
- Immigration laws (e.g. prohibit working in sex work-related industry)

Consequence of conviction:

- Fine, jail or both.
- A criminal record could lead to the removal of your immigration status or the inability to obtain legal immigration status (e.g. become a permanent resident).

2. Provincial governments

- Human trafficking laws

Consequence of conviction:

- Fine, jail or both.

3. Municipal governments

- Licensing bylaws (e.g. regulating strip clubs, massage parlours, body rub parlours)

Consequence of conviction:

- Fine
- May be unable to renew or obtain a municipal license

** Bylaw infractions related to working in a sex work industry (e.g. escort or erotic services) may negatively affect immigration status*



Laws affecting migrant sex work

In Canada, there are three levels of government that have the power to make laws that affect migrant sex work.

1. **The federal government** has the power to make:
 - criminal laws (such as laws prohibiting sex work and human trafficking) and
 - immigration laws (such as laws preventing people who are not Canadian citizens from working in the sex industry).

These laws apply to everyone in Canada.

If you are convicted of a criminal offence, you could get a fine, jail or both. A criminal record could lead to the removal of your immigration status.

2. **Provincial governments** (e.g. Alberta, Saskatchewan, Manitoba, Ontario) have the power to make human trafficking laws in their province. These laws typically allow human trafficking victims to seek protection orders against and compensation from accused traffickers.

If you are convicted of a provincial offence, you could face a fine or jail, or both.

3. **Municipal governments** (e.g. Toronto, Vancouver, Montreal) have the power to make laws to regulate public spaces and local businesses such as massage parlours, body rub parlours, and strip clubs.

If you are convicted of a municipal bylaw offence, you could face a fine and be unable to renew or obtain a municipal license.

**Bylaw infractions related to working in a sex work industry (e.g. escort or erotic services) may negatively affect immigration status*

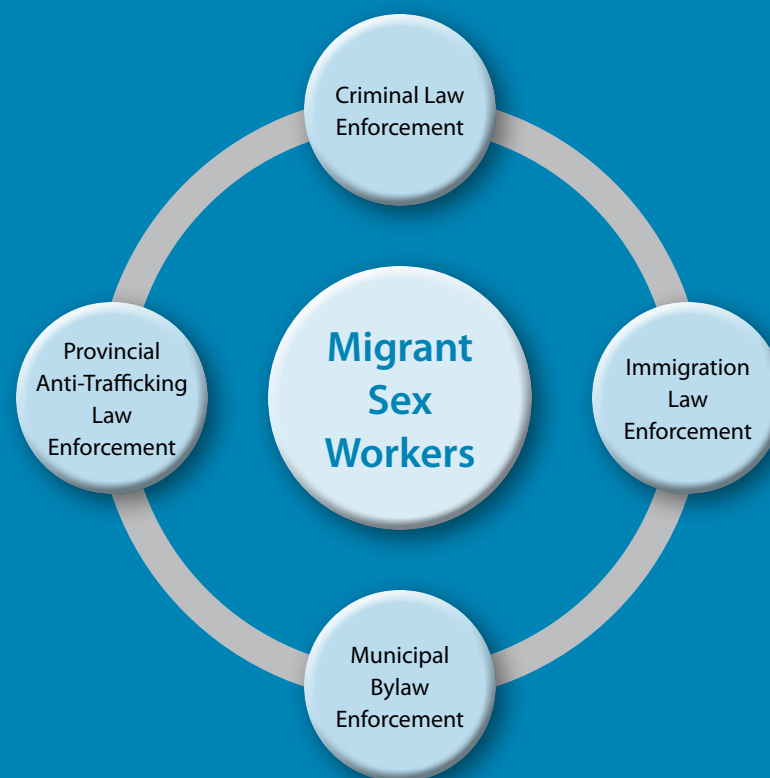
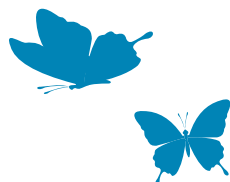


Figure 1: Migrant sex workers face intersecting laws and law enforcement which violate their human rights and endanger their safety

** This document focuses on laws that directly involve law enforcement. Other laws (e.g. family laws and tenancy laws) which affect migrant sex workers are not included.*

Source: Judy Fudge, Elene Lam, Sandra Ka Hon Chu, Vincent Wong (2021) Caught in the Carceral Web: Anti-trafficking laws and policies and their impact on migrant sex workers.

FEDERAL LAWS

A Criminal Code offences

Human trafficking offences

The *Criminal Code* prohibits:

- **human trafficking**, defined as recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control, direction or influence over the movements of a person, “for the purpose of exploiting them or facilitating their exploitation” (s. 279.01(1) of the *Criminal Code*).
- **materially benefiting** (e.g. earning money or other compensation) from human trafficking (s. 279.02(1) of the *Criminal Code*).
- **withholding or destroying travel or identification documents** (s. 279.03(1) of the *Criminal Code*).



Luisa's Story

Luisa was a sex worker for more than 10 years but stopped working after falling chronically ill. She started to refer her old clients to other sex workers and helped those who could not speak English to answer the phone and to advertise. Luisa was arrested as a trafficker and charged with both sex work and trafficking criminal offences. Since she had been supporting her family with her income, her assets and those of her family members were seized. She was also banned by financial institutions from using their banking services.

Sex work offences

The *Criminal Code* also prohibits:

- **impeding traffic or pedestrians or communicating in a public place** next to a school ground, playground or daycare centre, for the purpose of offering, providing or obtaining sexual services (s. 213 of the *Criminal Code*);
- **purchasing** or attempting to purchase sex in any place and at any time (s. 286.1(1) of the *Criminal Code*);
- **materially benefiting** (e.g. earning money or other compensation) from sexual services (s. 286.2(1) of the *Criminal Code*);
- **procuring** sexual services, defined as recruiting, holding, concealing or harbouring a person who offers or provides sexual services for consideration, or exercising “control, direction or influence over the movements of that person” (s. 286.3(1) of the *Criminal Code*); and
- **advertising** sexual services (s. 286.4 of the *Criminal Code*).

Prohibitions on material benefit, procuring and advertising (i.e., the “third party” offences), could capture any person who provides services to, manages or associates with sex workers. These parties include drivers, bookers, translators, webmasters, business owners, managers, receptionists, accountants, and other colleagues.

Chai's Story

Chai is a trans sex worker who works on the street. She is a refugee claimant from South America. The police often harass her and have used a loudspeaker to call her deadname. She was charged with impeding traffic. Chai thought this was a traffic offence and pleaded guilty. Now Chai has a criminal record and is worried that this record will affect her application for permanent residency.

The conflation of human trafficking and sex work

Since 2009, close to two-thirds (63%) of all human trafficking police reports have also involved a sex work offence, while more than one-third (34%) of human trafficking charges actually laid are done with sex work offences, primarily those related to materially benefiting from others' sexual services, procuring or advertising.¹ **Sex work is not human trafficking.**

B Immigration offences

Section 36 of the *Immigration and Refugee Protection Act (IRPA)* renders all people in Canada without citizenship “inadmissible” and vulnerable to removal of immigration status, detention, and deportation, if that person is:

1. convicted or pleads guilty and receives a prison sentence of more than 6 months for an offence. This is possible for any human trafficking offence or the sex work offences of purchasing, material benefit, procuring or advertising; or
2. convicted of or pleads guilty to an offence with a maximum prison sentence of 10 or more years, regardless of the actual sentence. This is possible for the human trafficking and materially benefitting from human trafficking offences, and the sex work offences of material benefit or procuring.²

Section 118 of the *IRPA* also prohibits a person from knowingly organizing “the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.”³ Between January 1, 2006 and July 13, 2020,

the Canadian government recorded a total of eight charges laid under section 118 of the *IRPA*, with zero convictions.⁴ This data suggests that anti-trafficking investigations rarely uncover “traffickers” in the context of cross-border migration.

*The Immigration and Refugee Protection Regulations (IRPR)*⁵ and Ministerial Instructions also prohibit migrant sex work in three ways:

1. *IRPR* section 183(1)(b.1) prohibits all temporary residents (i.e. visitors, students and workers) from sex work.⁶ Ministerial Instructions elaborate that all temporary residents are prohibited from working in any capacity (e.g., even as a janitor, cook, security guard, receptionist or dancer) in the sex industry, regardless of how they are authorized to work.⁷
2. *IRPR* section 196.1 prohibits even temporary residents who otherwise have authorization to work from working in the sex industry.⁸ This means that temporary residents who otherwise are legally allowed to work cannot be employed in sex work-related industries without risking revocation of their immigration status and deportation.
3. *IRPR* section 200(3)(g.1) states that immigration officers “shall not issue a work permit to a foreign national” if they intend to “work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”⁹ This means that immigration officers are barred from issuing new work permits — even open work permits — for migrant workers who may find work in sex work-related industries.



¹ Adam Cotter, *Trafficking in persons in Canada*, 2018, Juristat, June 23, 2020.

² *Immigration and Refugee Protection Act*, SC 2001, c. 27, s. 36 [IRPA].

³ The definition of trafficking in the *Criminal Code* hinges on exploitation, whereas the definition of trafficking in the *IRPA* centres on using fraud, deceit etc. to bring someone into Canada.

⁴ Freedom of Information Request to Canadian Border Services Agency, on file with authors. There were 23 open investigations recorded in the CBSA system. The system of recording did not identify cases where CBSA referred suspected human trafficking cases to Canadian police agencies.

⁵ *SOR/2002-227* at ss 183(1)(b.1), 196, 200(3)(g.1).

⁶ *IRPR*, s 183(1)(b.1).

⁷ *Citizenship and Immigration Canada, Operational Bulletin 567: Protecting foreign nationals from the risk of abuse and exploitation (14 February 2014)*, archived online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operationalbulletins-manuals/bulletins-2014/567-february-14-2014.html>> [OB 567].

⁸ *IRPR*, ss 196, 196.1.

⁹ *Ibid*, s 200(3)(g.1).

Siu Yu's Story

Siu Yu does out-call in a hotel. She came from Asia with a tourist visa. One day, a police officer masquerading as a client set up a date with her. After he arrived, five other police officers showed up, entered her room, and handcuffed her. The officers told her not to be afraid as they came to protect her. They asked Siu Yu whether she was controlled or trafficked, and if anyone helped her to advertise or answered the phone for her. After taking a picture of her ID and seizing all her money and her phone, the police left.

A few weeks later, another police officer contacted her. He told Siu Yu that they wanted to help women who are being controlled. He told her that she does not need to be afraid because working in the sex industry is not wrong or illegal in Canada, and they are just trying to protect women at risk. Siu Yu refused to answer his questions and asked to leave, but the officer did not let her leave and asked her to cooperate. He promised to help her get permanent residency if she provided information about her boss. Three hours later, a woman in plainclothes came and told Siu Yu that she was part of the support team and there to help her. Siu Yu told the woman that she was working in a hotel voluntarily by herself. She did not realize that the woman was also a police officer.

The police used what Siu Yu said as evidence that she had been working illegally in Canada, and that she had lied to immigration. Siu Yu was deported after being detained for three months. Upon reviewing the police statement, she learned that she had been investigated because hotel staff suspected some women in the hotel had been trafficked and called an anti-trafficking hotline. The NGO running the hotline shared the concern with the police.

Mona's Story

Mona moved to Canada 10 years ago. Two years after she arrived, she lost her immigration status because she ran away from her partner, who was her sponsor. Mona and her co-worker, Lucy, were robbed and assaulted at their workplace in an apartment building by perpetrators who were known to target sex workers. Their neighbour heard someone screaming and called the police. When the police arrived, Mona and Lucy reported that they had been robbed and assaulted. Instead of investigating the robbery and assault, the police investigated Mona and called the immigration authorities. Mona was arrested and deported.

Lucy, who has permanent residency status, was taken to the police station after the assault. A police officer asked Lucy to call her husband to pick her up. When her husband Tom arrived, an officer told him that Lucy is a sex worker. The officers assumed that Lucy's husband was a trafficker because Lucy could not speak English and Tom does not have a job. After being released, Lucy and Tom remained worried and stressed about being charged with criminal offences.

The police and the neighbour informed building management that Lucy was doing sex work in the apartment and Lucy was evicted. She could no longer work there, and none of her guests could enter the building. Building management also demanded that Lucy pay compensation for the remaining six months on the lease because she was legally responsible for ending the lease as she had used the apartment for "criminal activity" (sex work).



C Provincial anti-human trafficking laws

Several provinces in Canada have developed their own human trafficking strategies and/or laws, many of which feature similar provisions.

- In 2012, Manitoba passed *The Child Sexual Exploitation and Human Trafficking Act*, a law that allows victims of human trafficking to seek a “protection order” that requires alleged traffickers to stay away from victims and gives victims the right to sue alleged traffickers for compensation.¹⁰
- In 2020, Alberta passed the *Protecting Survivors of Human Trafficking Act*, a law that also allows victims of human trafficking to seek a “protection order,” gives victims the right to sue alleged traffickers for compensation, and created a provincial human trafficking awareness day (February 22).¹¹
- In 2021, Saskatchewan passed *The Protection From Human Trafficking Act*, a law that also allows victims of human trafficking to seek a “protection order” and gives victims the right to sue alleged traffickers for compensation.¹²
- In 2017, Ontario passed the *Anti-Human Trafficking Act*, a law that also allows victims of human trafficking to seek a “protection order,” gives victims the right to sue alleged traffickers for compensation, and created a provincial human trafficking awareness day (February 22).¹³ In 2021, Ontario also passed the *Combating Human Trafficking Act, 2021*, increasing surveillance powers for police and ministerially appointed inspectors.¹⁴ These inspectors are given very broad investigative powers to investigate human trafficking.



D Municipal bylaws

Across Canada, municipal bylaws give another set of powers to law enforcement officers to monitor behaviour and people in public spaces where sex work can occur (e.g. for activities that officers perceive to be “causing a disturbance” or “loitering”), and ensure establishments where sex work may occur (such as strip clubs, massage parlours, holistic centres or body rub parlours) abide by many restrictions that supposedly address health and safety and public nuisance issues. For example, Toronto bylaw offences regulating holistic centres and body rub parlours include:

- Restrictions on operating hours;¹⁵
- Clothing restrictions;¹⁶
- Restrictions on locked doors;¹⁷
- Advertising restrictions;¹⁸
- Specifications for washrooms and showers;¹⁹
- “Clean and in good condition” requirements for mats;²⁰
- Camera restrictions;²¹
- Receipt and record requirements;²² and
- Substantial financial penalties for violations of any bylaws.

While these bylaws differ from jurisdiction to jurisdiction, municipalities require all business owners and operators to obtain a municipal license (which can be revoked) to operate their business. Depending on the municipality, staff may also need to obtain a municipal license to work in a business.²³

¹⁰ Manitoba, *The Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. c. C94.

¹¹ Alberta, *Protecting Survivors of Human Trafficking Act, 2020*, c. P-26.87.

¹² Saskatchewan, *The Protection from Human Trafficking Act, SS 2021*, c. 23.

¹³ *Anti-Human Trafficking Act, 2017*, SO 2017, c. 12.

¹⁴ S.O. 2021, c. 21

¹⁵ *City of Toronto, by-laws, C 545-183, Hours of Operation*, online: https://www.toronto.ca/legdocs/municode/1184_545.pdf.

¹⁶ *Ibid*, C 545-185(B).

¹⁷ *Ibid*, C 545-177(I) and 545-343.

¹⁸ *Ibid*, C 545-180.

¹⁹ *Ibid*, C 545-177 and 545-345.

²⁰ *Ibid*, C 545-177(E) and 545-345(N).

²¹ *Ibid*, C 545-358.

²² *Ibid*, C 545-173 and 545-376.

²³ Tara Santini & Elene Lam, *Municipal Law and Migrant Sex Workers' Rights*, October 2017, online: www.butterflysw.org/legal-information-for-services-prov.

In many municipalities, bylaws and bylaw enforcement of massage parlours, holistic centres and body rub workplaces appear to conflate sex work with crimes and human trafficking.²⁴

Bylaw enforcement can be carried out either by specific municipal bylaw enforcement officers or by local police forces (see Butterfly resource “Who is Who”²⁵). Where there are municipal officers, they (and not the police) typically spearhead bylaw enforcement. However, the two forces may collaborate in certain circumstances, such as during joint human trafficking raids targeting massage parlours. Penalties for bylaw contraventions can be very expensive, with different sets of fines for individuals and for corporations. In Toronto, for example, fines commonly range between several hundred dollars to \$2,000 for bylaw violations, although fines can be as high as \$25,000 for individuals and \$50,000 for corporations.

Blue's Story

Blue is an international student from Asia working in a massage parlour, where investigations have increased because of political pressure from anti-trafficking organizations. Municipal bylaw enforcement officers told Blue that she was not allowed to work in a massage parlour unless she was a Registered Massage Therapist or had a body rub license. They issued Blue a ticket for offering illegal body rub services. They also told her that they would report her to the immigration authorities if they saw her again. Blue is afraid that her student visa will be cancelled because of immigration regulations prohibiting sex work. Her work permit states that she is not allowed to work in any business related to the sex trade, such as strip clubs or massage parlours.

There is also an increasing use of exclusionary licensing and zoning requirements for industries that are perceived as sex work-related. Exclusionary zoning restrictions can present significant safety and accessibility concerns for workers that increase their vulnerability. For instance, Toronto's 2013 zoning bylaws (Zoning By-Law 569-2013) resulted in Body Rub Parlours being subject to the city's strictest zoning requirements, allowing them only in “Employment Industrial Zones” (reserved for businesses such as manufacturing, warehouse storage and shipping terminals) and treating them similarly to propane storage facilities and crematoria.²⁶ These zones are in sparsely populated and isolated areas of the city that remain virtually empty and unlit in the evening.

Migrant sex workers face a complex intersection of criminal, immigration, anti-trafficking and municipal laws. It is important to learn about these laws and how they are enforced to understand how they may affect you and to help defend your human rights.

²⁴ For example, similar bylaw frameworks can be found, *inter alia*, in Hamilton, Richmond Hill, Mississauga, Markham, Ottawa, London, and Newmarket.

²⁵ Butterfly, *Who is who: How to identify law enforcers*, 2017, online: www.butterflysw.org/legal-information-for-services-prov

²⁶ *City of Toronto Zoning By-Law*, Volume 1, 2013, By-Law 569-2013, Chapter 60.

