

**Submission to the Standing Committee on Justice Policy
Regarding Bill 251: Combating Human Trafficking Act, 2021
Legislative Assembly of Ontario**

**Submitted by
The Canadian Alliance for Sex Work Law Reform**

The Canadian Alliance for Sex Work Law Reform is made up of 25 sex worker rights and allied groups across the country majority are run sex workers for sex workers in each of their regions across. We work to protect the rights and safety of people who sell or trade sex, including safety from exploitation and violence. Our member groups represent the experiences of the thousands of sex workers across the country. Sex workers have been organizing to end violence and exploitation, in part caused by laws and policies like Bill 251 for over 50 years. Our member groups have extensive expertise on sex work, exploitation, and the ways that anti trafficking policies are played out on the ground.

We oppose Bill 251. Sex workers are mitigating real individual and state violence every day. Sex workers have the solutions to end exploitation. You need to listen to solutions not just from sex workers who call themselves “survivors”, but from all sex workers who experience violence. Our experiences of violence are often discounted and not included in policies like yours because we use alternative methods to address violence. Because we recognize the HARMS caused by criminalization and more surveillance. When creating policy, you need to consider how this enforcement plays out on the ground – move beyond an ideology.

Our presentation today provides insights from sex workers in our Alliance - predominantly those who experience the heavy hand of law enforcement and policies like Bill 251: Indigenous sex workers, Black sex workers, youth sex workers, and migrant sex workers. It will end with a set of recommendations that can help mitigate violence in sex workers’ lives, that centre community responses and decriminalization of sex work.

CONFLATING HUMAN TRAFFICKING AND SEX WORK HARMS SEX WORKERS

The increase in policy and funding around human trafficking over the past decade has created more violence and exploitation in the lives of sex workers. Bill 251 is yet another mechanism that increases surveillance and unwanted and unsolicited presence of law enforcement in sex workers’ lives

The casual conflation in Bill 251 of sex work with sex trafficking and sexual exploitation generates an expectation of violence in sex workers’ lives, and invites violence into sex workers’ lives – predators are aware

that sex workers are criminalized and avoiding police detection, which signals that they are easy targets and unlikely to report.

When sex work itself is defined as sex trafficking and is seen as an act of force and/or violence (ie., human trafficking) this trivializes actual incidences of violence against sex workers. Anti-trafficking initiatives like Bill 251 increase the policing and monitoring of sex workers and their workplaces (hotels, private residences, online). As a result, sex workers must work in greater secrecy and isolation, increasing vulnerability to violence and exploitation.

Third parties are often mistakenly identified as “traffickers” rather than co-workers, employers or employees, particularly when working with migrant sex workers who often rely on the support of third parties to help organize their work, communicate with clients, offer additional security precautions and/or advertise their services. Black men and black youth are disproportionately targeted as “traffickers”. Sex who also act as third parties have been charged with trafficking offences, even in the absence of exploitation, because they work with other sex workers, or receive material benefits related to services or resources they provided for other sex workers. Anti-trafficking initiatives isolate sex workers from essential third parties as sex workers fear and avoid detection and detention by law enforcement. As a result sex workers’ security and general working conditions are compromised.

Third parties in sex work are regularly charged simultaneously with sex work laws and human trafficking laws – in the context of these cases, already TWICE in Ontario, third parties have contested their charges and the provisions that criminalize sex work have twice been found to be unconstitutional because they cause harm to sex workers. Bill 251 risks the same grounds for unconstitutionality based on the increased vulnerability it causes for sex workers

ANTI-TRAFFICKING POLICIES CAUSE violence in the lives of INDIGENOUS, BLACK, YOUTH, AND MIGRANT SEX WORKERS

Bill 251 emboldens law enforcement agencies across Canada to regularly participate in mass, indiscriminate efforts to identify trafficking victims in the sex industry. These efforts continued to break trust and increase antagonism between sex workers and law enforcement.

Indigenous women who live and work in public space bear a huge brunt of anti-trafficking policies. All Indigenous women who sell or trade sex are assumed to be trafficked, but many do sex work as a means of generating money or resources in a context of poverty.

The assumption that all Indigenous women who sell or trade sex are trafficked ignores the ways that Indigenous women are attempting to earn income and obtain self-reliance, and ignores real issues such as the impact of poverty as a consequence of ongoing colonisation. Indigenous women who sell sex are over-policed for occupying

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public space. Contact with police happens through various channels: when Indigenous women are seen as a criminal and when their surroundings are seen as criminal. Rates of violence increase when Indigenous women are not able to report violence or when they do not have access to safety and protection because they are constantly avoiding detection of law enforcement. Lack of reporting is due to deep-seated stigma within society and within Indigenous communities, in addition to antagonism with police. The consequence of over-policing moves beyond arrest. Over-policing displaces Indigenous sex workers and this displacement has led to isolation, vulnerability to violence and health conditions, abuse and extreme poverty. It also exacerbates already significant barriers to supports and protections, and has made access to police protection and legal systems even more difficult for Indigenous people who sell or trade sex.

To address MMIW, police, government and social service agencies need to understand the role of criminalization in why Indigenous women go missing and are murdered.

Human trafficking charges are also laid against members of Indigenous communities. These charges are often the result of criminalization of relationships and over-policing and lead to the disproportionate incarceration of Indigenous communities. Indigenous men are often captured under third party laws and defined as traffickers, but are often important relationships. Negating Indigenous women's agency and limiting their realities within the discourse of trafficking deflects from recognizing and understanding the numerous ways a colonial state reproduces violence, injustices and other harms against Indigenous women — including displacement, homelessness, poverty, racism, inequality, and barriers to accessing to services, supports and resources.

A limited framework of trafficking to understand violence against Indigenous women has resulted in prioritizing and funding law enforcement strategies that increase over-policing and underprotection of Indigenous women. Governments need to instead invest in peer-led programs that allow Indigenous people selling or trading sex to exchange knowledge and support each other.

Anti-trafficking initiatives and policies that conflate exploitation/human trafficking with sex work also increase migrant sex workers' exposure to violence and exploitative working conditions. Precarious immigration status, and the federal and municipal criminalization of sex work provide reason for migrant sex workers to avoid law enforcement and CBSA at all costs. Law enforcement often use measures like Bill 251 to target migrant sex workers for arrest, detention, and deportation. This threat of detention and deportation pushes sex workers into precarious working conditions, increases their vulnerability to exploitation and violence, and deters them from seeking supports, including state protection, if they do experience exploitation or violence. Anti-trafficking initiatives like Bill 251 therefore increase migrant sex workers' vulnerability by encouraging isolation to avoid detection and create disincentive for sex workers to report exploitative working conditions or violence for fear of repercussions for themselves or for their colleagues, friends or family. This also creates barriers to implementing health and safety practices at work that protect migrant sex workers' rights and promote their personal safety.

Racist and oppressive views underpin current anti-trafficking initiatives and policies: They function as racial profiling tools used to detain and exclude migrant and racialized individuals and communities. Racialized communities are stigmatized by law enforcement and policy makers and misrepresented as “organized crime rings.” Migrant sex workers – particularly workers who are Asian – are assumed to be trafficked victims without agency or capacity to make their own life decisions. This reproduces the racist and sexist view that racialized women are ignorant, passive, helpless and lack all agency and self-determination.

Increasing the presence of law enforcement in the lives of youth is especially dangerous for youth who sell or trade sexual services. Current anti-trafficking measures designed to protect youth who sell or trade sex cause the same harms to youth as they do to sex workers over 18.

Anti-trafficking initiatives facilitate exploitation, by driving both youth and those involved with them away from police, social services, and other supports.

Human trafficking charges are often laid against youth themselves, most often young Black youth. Communities that youth create when they have fled families, group homes and other institutions are often falsely targeted as traffickers.

Addressing exploitation and violence in the lives of youth requires an integrated and nuanced rights based approach, rather than those based in protectionism, fear and stigma.

This committee has been misquoting unfounded statistics of youth entering into the sex industry at an average age of 13 years old, and have been attempting to discredit witnesses by suggesting that they support youth exploitation. This “average” was struck down in Bedford V. Canada because it was eventually discovered that the statistic was inappropriately extrapolated from a study conducted in 1999 that only involved youth and did not include any adult sex workers. More recent studies cite average age of entry was 24-years-old (see research from Cecilia Benoit). Despite this, unfounded statistics about very young girls continue to be circulated. What’s important to understand about youth is that they need supports, and law enforcement distances youth from supports

Black communities are also disproportionately targeted by anti-trafficking policies and practices. Black sex workers are under protected and overpoliced – whenever police is operating under human trafficking they are further alienating Black sex workers experiencing violence. Black sex workers are targeted for violence, and are seen as disposable. Black trans women, especially, experience extremely high rates of violence.

Victims of human trafficking are often constructed as “white”, and black men and women are often constructed as pimps and aggressors; Black sex workers are categorized as accomplices to violence, not victims of violence. This reinforces the already existing antagonistic treatment of Black communities.

When a community is overpoliced, everyone in that community is affected.

Important to note that most of the anti-trafficking money today is the same pockets of funding and police practices that were designated for “street gangs” – when the public realized how problematic this was, this money was translated into human trafficking policies and practices; similarly in other provinces like Quebec when police were unable to find “underage sex workers” within their mandate, they changed their mandate to “anti-trafficking” to be able to continue receiving funding.

The history and practice behind these policies cannot be ignored -- these prohibitionist arguments are recycled ways of reintroducing repression of marginalized and racialized communities in different forms

RECOMMENDATIONS FOR A HUMAN RIGHTS BASED APPROACH TO ADDRESS EXPLOITATION AND VIOLENCE

The most successful ways to end violence and exploitation is to listen to the people who are mitigating it every day in a context of criminalization and targeted violence.

Sex worker-led organizations know how to directly provide services that are safe, relevant and accessible to other sex workers. They hold the knowledge and experience, and trust from sex workers to best determine *what* services sex workers need, and *how* these services should be implemented.

In addition to scrapping Bill 251 in its entirety we have three recommendations:

Recommendation #1: Invest in community initiatives run by and for people working in the sex industry that are non-directive and based in human rights.

Sex workers are in constant contact with people working in the sex industry and are best placed to support sex workers who are experiencing human rights violations, including exploitation and trafficking. Because of profound stigma, in addition to fear of law enforcement, discrimination, violence and exclusion, sex workers are more likely to turn to sex workers and sex worker organizations for support.

Sex worker-led human rights organizations understand how systemic injustices prevent sex workers from accessing the supports required to resist the conditions that increase our vulnerability to violence and exploitation and we know what we need to do to combat these injustices.

Sex worker-led organizations know how to directly provide services that are safe, relevant and accessible to other sex workers. They hold the knowledge and experience to best determine *what* services sex workers need, and *how* these services should be implemented.

Recommendation #2: Invest in community initiatives that are non-directive, not focused on “exit” and based in a human rights approach, not a morality approach, that address structural issues related to poverty, homelessness, education. These initiatives should be led by people in the community, for people in the community.

As explained above, community-led initiatives are best informed to provide concrete and relevant supports to community members who are experiencing, or who are vulnerable to, violence and exploitation. These supports should include actions to:

- Invest in Indigenous community initiatives, migrant sex worker community initiatives and youth-based initiatives that are seeking to address homelessness, poverty, and provide services directed by sex workers;
- Implement harm reduction approaches that require authorities to use the least intrusive approach towards communities with an emphasis on preserving their community and upholding their rights;
- Recognize that apprehension, detention and involuntary rehabilitation are often experienced as antagonistic and often traumatic;
- Recognize that returning youth to their family of origin may not be in their best interest, particularly for those who are abused or experiencing violence in those families — alternative living arrangements must be considered in those situations;
- Implement approaches that are sensitive to the realities and needs of Indigenous youth;
- Implement measures and services that support and empower young people;
- Provide adequate training to police, prosecutors and other law enforcement officers about the differences between sex work and human trafficking; and
- Re-envision and re-create “tool kits” intended to “spot trafficking victims” – create guidelines for support in consultation with communities.

Recommendation #3: Remove laws that create antagonistic relationships between sex worker communities/actors and law enforcement and/or that mandate or otherwise encourage law enforcement to monitor sex workers and work spaces. This includes:

- Decriminalization of sex work by removing all sex work provisions introduced through the *Protection of Communities and Exploited Persons Act*;
- Remove specific immigration regulations and work permit conditions that prohibit migrant women from working in the sex industry;
- Stop investing \$ in more police powers, raids, detentions and deportations of sex workers;

Recommendation #4: Recognize that sex work is work and support sex workers' rights, and justice, and the right not to be "rescued".

It is only when sex work is not perceived as exploitation that sex workers' human rights – including their personal safety and working conditions – can be recognized and respected.

Alliance member organizations include: Action santé travesti(e)s et transsexuel(le)s du Québec (ASTT(e)Q); ANSWERS Society; BC Coalition of Experiential Communities (BCCEW); Butterfly Asian and Migrant Sex Work Support Network; HIV Legal Network; Émissaire; Maggie's Toronto Sex Workers' Action Project; Maggie's Indigenous Sex Work Drum Group; PEERS Victoria; Projet L.U.N.E.; Prostitutes Involved Empowered Cogent Edmonton (PIECE); PACE Society; Rézo, projet travailleurs du sexe; Safe Harbour Outreach Project (S.H.O.P); SafeSpace London; Sex Workers' Action Program Hamilton (SWAPH); Sex Professionals of Canada (SPOC); Sex Workers' Action Network of Waterloo Region (SWAN Waterloo); Sex Workers of Winnipeg Action Coalition (SWWAC); Sex Workers United Against Violence (SWUAV); Shift Calgary, HIV Community Link; Stella, l'amie de Maimie; SWANS Sudbury; SWAN Vancouver; and SWAP Yukon.