

Migrant Sex Workers' Labour and Employment Rights



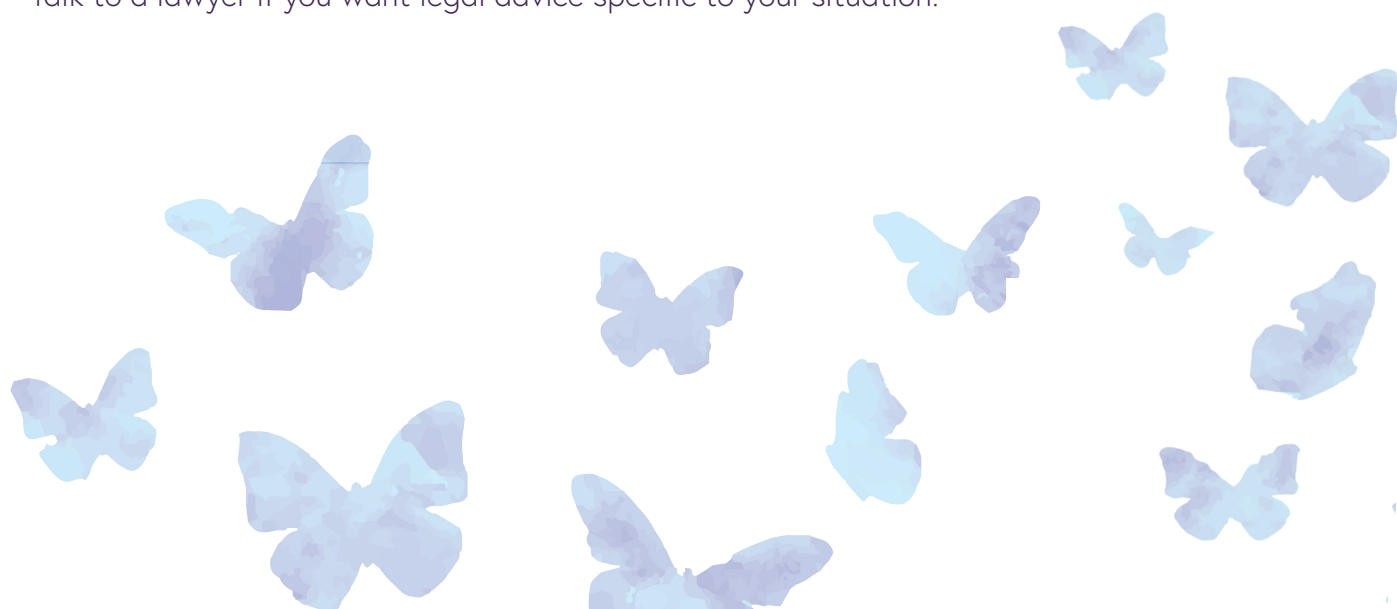
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*Not all people who sell or trade sexual or erotic services identify as sex workers. We use the terms sex work and sex workers to signify the consensual exchange of sexual or erotic services for money, goods or services, and to emphasize the human and labour rights of migrant sex workers.

This document provides general legal information, and does not provide legal advice.

Talk to a lawyer if you want legal advice specific to your situation.



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

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

- deepen their understanding of the complexity and diversity of migrant sex workers' realities;
- be informed of migrant sex workers' numerous and intersecting conflicts with the law and law enforcement;
- more fully understand, analyze and support migrant sex workers in various situations;
- develop their capacity to provide accessible and applied (legal or non-legal) information to migrant sex workers, or to refer them to these resources; and
- be more equipped to support, protect and defend migrant sex workers' labour and human rights.

All of these documents were written and produced with the direct and meaningful participation of migrant sex workers, and reflect the autonomy, knowledge, skill, brilliance and expertise that migrant sex worker communities embody. We hope this document helps you to provide relevant and adequate support to migrant sex workers, and also motivates you to listen to and learn from migrant sex workers themselves. This document is part of a series that addresses migrant sex workers' rights, and the laws that prevent the protection and the realization of their rights:

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

Part 1 - Guide for service providers

Part 2 - Laws affecting migrant sex workers

*Criminal Law and Migrant Sex Workers' Rights
Immigration Law and Migrant Sex Workers' Rights
Municipal Law and Migrant Sex Workers' Rights
Migrant Sex Workers' Labour and Employment Rights*

Part 3 – Legal information for migrant sex workers

Part 4 – Q&A for service providers

To access the full series of documents : <https://www.butterflysw.org/legal-information-for-services-prov>

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Chinese Canadian National Council
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The Chinese and Southeast Asian Legal Clinic (CSALC)
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St. Stephen's Community House (SSCH)
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Understanding sex work through a labour rights framework:

Migrant sex workers' working conditions

People are taught to think about sex work as a crime, a social nuisance, a social inequality, gender violence, sexual exploitation, and human trafficking. These perspectives do not reflect the realities experienced by many sex workers.¹ Sex work may not be understood as a legitimate form of labour, and people may not understand sex workers' working conditions as representing occupational health, safety and employment concerns, because of assumptions and perspectives that feed public discourse, policy, various cultural and traditional values, and popular culture representations.

Migrant sex workers are concerned with their working conditions and identify the criminal, immigration and municipal prohibitions and enforcement practices related to sex work as key barriers to improving their working conditions and protecting their rights.

Sex workers across the country tell us that, *"In a system that criminalizes sex work, employers and commercial sexual enterprises, any measures that employers take to promote health and safety in the workplace are voluntary, arbitrary and inconsistent. Sex workers are*

*not guaranteed of being advised of hazards such as aggressors posing as clients, or provided with safety protocols when working alone."*²

Removing the criminal, immigration and municipal provisions that prohibit migrant sex workers from protecting their human and labour rights would reduce the number of barriers that prevent their access to existing labour protections and occupational health and safety standards. These labour protections are intended to protect *all workers*, in every labour sector, *regardless of their immigration status*. Health and safety standards are intended to apply to both employees and independent contractors.

Examples from other regions of the world have shown that labour-related health and safety guidelines for sex work are not only possible, but have been successfully implemented, and that exploitation is not inherent to sex workers' workplaces and can be addressed. Removing criminal restrictions related to sex work in these regions has led to human rights protections for non-migrant sex workers. For example, once activities related to sex work were decriminalized in New Zealand in 2003,³ a sex worker was able

to access the Human Rights Review Tribunal, successfully won her claim of sexual harassment against an employer, and was awarded damages.⁴ It is only once sex work is recognized as a legitimate form of labour that sex workers' human and labour rights can be realized.⁵ Although sex work-related activities are no longer prohibited by criminal law in New Zealand, their immigration law continues to prohibit migrants (who require work permits) from working in the sex industry.⁶ Migrant sex workers in New Zealand continue to challenge laws that prohibit migrant sex work and treat migrant sex workers inequitably.⁷

It is only when sex work is not perceived as exploitation that working conditions — including equity and dignity in the workplace — can be recognized and respected.



Understanding sex work through a labour rights framework: Migrant sex workers' working conditions



When some people think of exploitation in the sex industry, they erroneously equate it with acts of violence (e.g., assault, sexual assault, confinement). Sex work is not an act of violence. Acts of violence can occur in the context of sex work, but are not inherent to sex work itself. Violence is more common in industries that are criminalized, as well as in industries where workers are subjected to precarious working conditions and often lack labour protections.

Exploitative working conditions occur in many informal labour industries. The criminalization of some informal labour markets – like sex work – encourages over-regulation via criminal, immigration and other laws that isolate workers, maintain precarious working conditions, and exclude the application of labour protections that could address exploitations at work.

Not every workplace has exploitative working conditions from a labour rights perspective, however, within informal or criminalized labour markets some employers do in fact maintain poor or unfair working conditions. Labour exploitation may involve conditions such as excessive hours of work, low wages, disrespectful behaviour from management, colleagues, and poor working conditions such as poor heating.

When people think of these conditions in the context of (their assumptions related to) sex work, they often associate these conditions with their ideological and moral values, whereas they may not do so when considering other industries.

For example, in the case of sex work, one might associate low wages or excessive hours with exploitation and trafficking, whereas in another industry, such as restaurant and agricultural work, they would view this as a problem of inequitable working conditions which can be improved by stronger labour protections.

1. *Journey of Butterflies* 2016, Butterfly, Asian and Migrant Sex Workers Support Network, available at: https://docs.wixstatic.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf
2. *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, Canadian Alliance for Sex Work Law Reform, 2017, p.49, available at: www.sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf
3. *New Zealand Prostitution Reform Act, 2003*, available at: www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html
4. *Sex Workers Equally Protected from Sexual Harassment as Other Workers – Says New Zealand Case*, Oxford Human Rights Hub, 2014, available at: <http://ohrh.law.ox.ac.uk/sex-workers-equally-protected-from-sexual-harassment-as-other-workers-says-new-zealand-case/>
5. *A Guide to Occupational Health and Safety in the New Zealand Sex Industry*, 2004, available at: <http://www.worksafe.govt.nz/worksafe/information-guidance/all-guidance-items/sex-industry-a-guide-to-occupational-health-and-safety-in-the-new-zealand/sexindustry.pdf>
6. Article 19 of the *New Zealand Prostitution Reform Act, 2003*, available at: www.legislation.govt.nz/act/public/2003/0028/latest/DLM197871.html
7. *Occupational Health and Safety of Migrant Sex Workers in New Zealand*, Roguski, M., 2013, available at: www.communityresearch.org.nz/wp-content/uploads/formidable/Roguski-2013-OSH-of-migrant-sex-workers-in-NZ.pdf

Criminal, immigration and municipal prohibitions do not address exploitative working conditions

Current prohibitions related to sex work do not actually address labour exploitation rather, such prohibitions cause harm to sex workers and prevent redress for exploitative working conditions. These harms include:

- creating precarious working conditions and increased vulnerability to exploitation and violence;
- placing workers in conflict with the law and with law enforcement;
- contributing to the violence, stigma and discrimination that workers face;
- preventing workers from taking critical steps to protect their human rights and personal safety;
- putting workers at risk of interrogation, surveillance, detention, arrest and deportation;
- deterring workers from seeking supports and services, including state protection if they do experience exploitation or violence, including vital health and social supports.



Because of numerous conflicts with the law and their fear of law enforcement, understanding migrant sex workers' realities and rights within a labour framework offers additional options and perspectives that may actually be helpful to them. **Understanding their labour rights as a service provider may help you understand their lived realities, as well as social and work-related relationships, which in turn may help in developing more options with your client.**



section 3

The complexities of migrant sex workers' realities and relationships

Migrant sex workers are strong, creative and resourceful. They develop communities and networks that help support their needs, while also mitigating risks associated with law enforcement and disclosure related to their immigration status or their employment.

Migrant sex workers are incredibly diverse and have different degrees of opportunity to create such networks of support and reduce their isolation. Community support and outreach organizations, such as Butterfly, work to support migrant sex workers facing challenges and obstacles related to isolation and language barriers. These barriers exist for many migrant workers and are multiplied by the criminal and immigration prohibitions specific to sex work, and additional levels of stigma and discrimination.

The dynamic and creative ways migrant sex workers build networks involve, in part, creating relationships with people who can provide various forms of support. This includes people who can help them move to Canada and find a place to live, who can help them work and make money, or provide a ride to the grocery store or to medical appointments.

People who support sex workers with many aspects of their lives may also support them with their work. For example, they may facilitate communication with clients, organize appointments, advertise their services, own or maintain their workplace, or provide transportation. **We refer to these diverse individuals that facilitate sex workers' labour as "third parties."** Criminalizing and prohibiting these relationships and the work of people who support and facilitate sex workers' work, contributes to the uninformed assumption that all sex workers' employers are violent and exploitative.

Migrant sex workers have very complex relationships with third parties (e.g. agent, manager, receptionist, boss): they may be friends, members of the same communities, and an important network and support for the worker. These relationships are particularly important as migrant sex workers may be isolated due to their newcomer status, language barriers, and legal and social discrimination. Although the criminal law prohibits third parties from advertising sex workers' services and from facilitating their work in any way, **many third parties are key contributors to the protection of migrant sex workers' rights** – not only in terms of establishing safety measures, but also in terms of facilitating their capacity to work, provide for themselves and improve their quality of life.

If a migrant sex worker is having problems with a third party —

her employer, for instance, —it is important to consider options that do not involve law enforcement, regardless of the nature of the problem. Service providers who perceive sex work as a crime may assume that contacting police will help the worker. However, involving law enforcement often does not resolve their issue, and may result in additional problems for the worker including risk of detention, interrogation and deportation.

Migrant sex workers' experiences are complex and may be quite different to non-migrant experiences.

As service providers, keep an open mind when listening and learning about migrant sex workers' realities, experiences and relationships, and do not limit your intervention to your own assumptions and experiences.

When a migrant sex worker shares their story with you, considering their labour issues may provide useful insights. **If a migrant sex worker comes to you with an issue related to their working conditions, understand their reality as a worker, rather than imposing your own assumptions about sex work.** Their options, and the consequences of these options, are limited and complicated due to the many prohibitions specific to sex work. Nevertheless, trying to understand their labour from a migrant workers' point of view is helpful.

section 4

Migrant Workers' Labour and Employment Rights

- We use the term migrant sex worker to refer a person who has traveled from one place to another (through formal or informal avenues) and who exchanges sexual or erotic services for money, food, accommodation, status or other compensation.
- Migrant sex workers' immigration status can vary, and they may use a variety of terms to describe their status.
- Migrant workers may have non-permanent immigration status: e.g., Temporary Foreign Worker, Seasonal Agricultural Worker, Caregiver or Undocumented Worker.
- **In theory, ALL workers in Ontario have certain employment rights and protections, including undocumented, non-status workers.**
- Ensure that you explore with migrant sex workers the possibility of using labour protections and labour policy as one option to respond to their situation.

 Every person working in Ontario has the rights protected by the following laws, even if they do not have legal permission to work in Canada:

- The Employment Standards Act, Occupational Health and Safety Act, Human Rights Code and Workplace Safety and Insurance Act are meant to cover all workers in Ontario regardless of their immigration status.
- Institutions like the Ministry of Labour, Workplace Safety and Insurance Board and the Human Rights Tribunal, that uphold and protect labour rights, are not supposed to share information with immigration authorities and other federal authorities.

CASE STUDY

Dorothy works in a strip club. She does not have the documents required to work legally, and her boss pays her in cash every week. However, after she refused to serve a client, her boss refused to pay her salary and fired her. Her boss had previously demonstrated racist practices in the workplace. Dorothy did not want to call police, but she did want to be paid her salary for the hours she had worked. She contacted a workers' rights organization and they informed her that she had the right to her salary and to employment benefits, even if she does not have legal status (undocumented). A staff member of the workers' rights organization helped her advocate and negotiate with her boss, and as a result he eventually paid Dorothy her salary. She also joined a sex workers' organization and developed relationships with other sex workers, who helped her learn more about the situation in Canada and in the sex industry. She was also able to find employment in another strip club with better working conditions.⁸



All migrant workers therefore have rights to:

- A minimum wage;
- Breaks, rest periods and maximum hours of work;
- Overtime pay, public holiday pay and vacation pay;
- Termination notice/pay;
- Protections from reprisals;
- Health and safety protections in the workplace;
- Refuse dangerous work;
- A workplace free from discrimination, under the Human Rights Code;
- Workers' compensation for workplace injuries; and
- If valid immigration status, access to employment insurance.

However, in practice, migrant workers face significant barriers to the protection and realization of their labour and employment rights. These barriers include:

- Constant fear of authorities and threat of detention, arrest and deportation, including:
 - fear of meetings and hearings with the Ministry of Labour or other boards or tribunals;
 - fear of reprisal from employers who could inform the CBSA (Canada Border Services Agency) of their status, potential immigration violations, and how (e.g., where and when) to locate them;
- Fear of information sharing amongst different government and law enforcement departments;
- Fear of being excluded from future employment;
- Vulnerability caused by temporary status and the condition of a closed work permit tying the worker to one employer;
- Linguistic and cultural barriers, literacy issues, issues related to travel and isolation;
- Lack of supports, inability to access support and information regarding their rights.

Migrant workers and advocacy groups have been struggling for basic workplace protections for a very long time in Ontario.⁹ Just as migrant workers have rights to the above mentioned legal protections, so do migrant sex workers.

Migrant sex workers face additional barriers to the protection and realization of their labour and employment rights, such as:

- Severe stigma surrounding sex work;
- Difficulty in accessing community, settlement, health, government and legal services due to stigma and other risks associated with disclosure of their work;
- Criminalization of sex work, which results in fear and avoidance of police and all other law enforcement, in addition to immigration authorities;
- "Criminal inadmissibility" immigration provisions, which may lead to deportation if convicted of a criminal offence related to sex work;
- Immigration regulations that prohibit migrant sex workers who do not have permanent resident status or Canadian citizenship from working in the sex industry, which may lead to deportation;
- Potential consequences of criminal and immigration prohibitions specific to sex work, which include criminal and immigration investigations, law enforcement raids targeting sex workers' workplaces, surveillance, interrogation, detention and deportation of other sex workers and colleagues.
- For more information see:
 - *Part 2 – Criminal law and migrant sex workers' rights*
 - *Part 2 – Immigration law and migrant sex workers' rights*

Even though it can appear impossible in the current immigration and criminal landscapes for migrant sex workers to enforce their labour rights, it is still very useful for sex workers to be properly informed and aware of these rights. Sex work covers a vast range of services and may be provided in various locations and venues, including in contexts where it is hidden from public view and/or from listed services (e.g., massage parlours, adult entertainment establishments and spas). The spectrum of legality/criminalization that applies to different contexts may vary, and this may influence a sex worker's capacity or decision to attempt to enforce their labour and employment rights.

"Sex workers are afraid to make a claim against an employer for fear of arrest, scrutiny, or deportation, they are deprived of legal remedies and vulnerable to labour exploitation. Indeed, in this context the threat of potential criminal charges, deportation, and/or public 'outing' can be used by unscrupulous third parties to control sex workers. Exploitation can include such things as: non-payment of wages or fees, the requirement that workers pay unreasonable fees and fines to management, expectations that workers will provide uncompensated cleaning or receptionist services, and unsafe or unhygienic working conditions. In order to address this exploitation, sex workers need access to employment standards mechanisms and other human rights remedies, including access to police protection, criminal justice redress, occupational health and safety protections, and the ability to advocate for themselves without fear of recrimination. These vital rights can only be realized if sex workers' labour is decriminalized."¹⁰

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

9. For more information, please contact the Workers' Action Center: www.workersactioncentre.org/about-us/how-we-work/

10. *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, Canadian Alliance for Sex Work Law Reform, 2017, p.32, available at: www.sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf

The fact that existing prohibitions force sex work to take place in some form of secrecy affects sex workers' ability to access labour protections and to improve their working conditions. Because businesses cannot explicitly state the sexual services that they offer, the services and conditions cannot be clearly communicated, and clear and explicit contracts cannot be established between staff and management or between workers and clients. This makes it much more difficult for employers to maintain clear and equitable working conditions or provide workers with labour protections.

Criminal, immigration and municipal prohibitions do not address exploitation, and do not provide support or redress for migrant sex workers facing exploitative working conditions. Rather, they may lead to harmful outcomes for migrant sex workers as they:

- place workers in conflict with the law and with law enforcement;
- contribute to the violence, stigma and discrimination that workers face;
- prevent workers from taking critical steps to protect their human rights and ensure their personal safety;
- create the threat of detention and deportation and drive workers into precarious working conditions, increasing their vulnerability to exploitation and violence;
- prevent workers from accessing labour and employment protections;
- deter workers from seeking supports and services, including state protection, vital health and social supports, if they do experience exploitation or violence.

Our experience working with migrant sex workers tells us that it is essential that service providers do not contact anyone, or disclose any information concerning an individual, without the explicit and informed consent of the person affected. ¹¹ This applies to any person that you think may be a victim of violence, exploitation and/or human trafficking. Informed consent requires that you discuss — in advance — all possible negative consequences with the individual concerned.

Disclosing information without the person's informed and explicit consent may lead to harmful consequences, such as:

- involuntary/unwanted involvement with law enforcement and legal systems;
- criminal and immigration investigations, detention, arrest and deportation;
- destroying the possibility of trust with service providers, pushing migrant sex workers away from supports and services, further isolating them and deterring them from contacting service providers in the future.

If you cannot provide an anonymous and confidential service, and if you cannot guarantee that you will not disclose any information without their informed consent, ensure that you clearly explain these limits of the service you are providing. Explain what personal information is needed, for what purpose, who can access their file, and in what cases you will/may share information, **before a migrant sex worker discloses any information.**

Whatever your personal views about sex work, you have a professional and ethical responsibility to protect migrant sex workers' personal safety and to uphold their human rights. Ensure that you explore the possibility of using labour protections and policy with migrant sex workers as one option to respond to their situation, and that you provide them with community and legal resources to further develop these options. **Empowering yourself with knowledge of migrant sex workers' human rights — and sharing this knowledge with your clients who are migrant sex workers — are critical steps in fulfilling your professional responsibility to your clients, and promoting migrant sex workers' right to dignity, health, autonomy, equality, safety and security.**

11. This recommendation not to contact or disclose information without the informed and explicit consent of the person affected does not constitute legal advice. It is the pragmatic and political position that we take based on experience working with marginalized and/or policed communities, who are often at greater risk of conflict with discriminatory laws and human rights abuses when faced with law enforcement.