

IMMIGRATION STATUS AND SEX WORK

By and for sex workers
Living and working in safety
and dignity



This document should not be taken as legal advice. This is a tool offered to sex workers so that we may improve living and working conditions. This information is not intended to influence anyone to commit illegal acts.

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Immigration law and criminal law are complex. This document does not contain everything you need to know about your specific situation. It provides general information to help you understand these issues better and to encourage you to speak to people you can trust about your particular situation.

Sex workers can have different types of legal immigration status. **This can impact our ability to work safely.**

This document provides information to consider if:

You are in Canada without Canadian citizenship and you offer sexual and/or erotic services.

The criminal laws related to selling sexual services are the same across Canada. However, some laws and legal procedures only apply to people who do not have Canadian citizenship. This information may help you minimize the harmful impacts of these laws.

Police practices, enforcement, and court procedures, may be different in every province. They can even change from one city or region to another. This document was produced in Montreal and procedures might be very different in other areas of Canada.

By law, every person in Canada has certain legal fundamental rights, regardless of immigration status, and every law enforcement officer has limits to their powers.

Notes on language:

- We do not use the term “migrant sex worker” in this document because people define this term differently. For example, some people include permanent residents while others do not.
- People of all genders may work in the sex industry, and people of all genders may be our clients. For simplified reading, we use feminine pronouns when referring to sex workers, masculine pronouns when referring to clients, and feminine and masculine pronouns interchangeably when referring to third parties.

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SEX WORKERS and LAW ENFORCEMENT

Historically, sex workers and the police have had a hostile and antagonistic relationship. **This conflict persists because of criminalization and stigma: by treating sex workers as victims and criminals, and by treating sex work as a social problem.** Police harassment, profiling, and the arbitrary and questionable treatment of people who are marginalized and racialized worsens this relationship.

Sex workers who do not have Canadian citizenship, and sex workers who are racialized, may fear the police at work because we are often targeted by police and risk being questioned, detained, and possibly deported. This fear and the actions that we must take to avoid conflict with law enforcement may have serious negative impacts on our health and safety.

In Canada, selling your own sexual services is ONLY ILLEGAL IF you do so in public next to a school, day care or playground. Selling *your own* sexual services *anywhere else* is NOT a crime. Yet sex workers still fear the police when they are at work because:

- **All clients can be prosecuted for purchasing, or attempting to purchase, our services.** See *Clients and the Law*; and
- **Colleagues who assist and facilitate our work risk being prosecuted for various offences** (e.g. receiving a material benefit, procuring, advertising and participating in the purchase of our services). See *Third Parties and the Law*.

SEX WORKERS and IMMIGRATION STATUS

Sex workers can have different types of legal immigration status. For example, you may:

- Have **Permanent Residence** or be waiting for your permanent residence.
- Have a valid **Tourist or Visitor Permit**.
- Have a valid **Work Permit** (Work visa).
- Have a valid **Study Permit** (Student visa):
 - With or without a work permit.
- Be waiting for your **Sponsorship** to be accepted:
 - With or without a work permit.
- Be a **Refugee Claimant**:
 - With or without a work permit.
- Be **undocumented**. (You don't have legal status):
 - Your permit/visa has expired; or
 - You have not begun any of these procedures; or
 - There is a removal order against you (see p. 16).

In immigration law "visa" and "permit" are the same thing.

Different types of laws that regulate sex work

Immigration laws:

Depending on your immigration status you may or may not be allowed to work anywhere in Canada. You also may or may not be allowed to work for an employer in the sex industry. See p. 8 and 9.

Breaking an Immigration law is not a criminal offense. But you might be detained and be deported (forced to leave Canada). See p. 12-16.

Municipal laws:

Different neighbourhoods or cities may have by-laws that control what businesses are allowed to operate in the area and under what conditions. For example, that all businesses close to the public at 9pm. A by-law may also regulate that no “erotic massage parlours” be legally allowed to operate in the area.

Breaking a municipal by-law is not a criminal offense. But you can receive a fine. After many fines you may be forced to close down or to sell the business. See p. 10-11.

Criminal law:

Criminal offenses make most activities related to sex work illegal. e.g. Setting up appointments with clients for other sex workers, benefiting from another sex worker, advertising another sex worker's services, and buying services from a sex worker. Offenses related to human trafficking are also used to prosecute people who work in the sex industry.

Depending on your immigration status and your sentence, if you are convicted of a crime you may be deported.

Never plead guilty to a crime without knowing the impact on your immigration process. See p. 5.

Different types of law enforcement officers

Municipal law enforcement:

e.g. Service de Police de la Ville de Montréal; Toronto Police Service; city inspectors.

Federal law enforcement:

e.g. RCMP (Royal Canadian Mounted Police); CBSA (Canadian Border Services Agency); CSC (Correctional Services of Canada).

Provincial law enforcement:

e.g. Sûreté du Québec; Ontario Provincial Police.

The CBSA (Canadian Border Services Agency enforces immigration laws (Immigration and Refugee Act and its regulations). CBSA is responsible for dealing with infractions to immigration laws, immigration detention and deportation.

Officers who work for different types of law enforcement agencies have different powers and procedures to follow, and may enforce different laws. For example:

- If there is suspicion that the people you work with are “victims of human trafficking” or are “illegally” in Canada, a federal officer (e.g. CBSA or RCMP) might come to your workplace. The police who usually come to agencies or parlours for “inspection,” however, are municipal police officers or city inspectors.

If an officer comes to your workplace, they must tell you who they are (Do they work for the city, immigration, etc.). Different officers have different authority and this impacts what questions you are legally required to answer, and when you do or do not have to let them into your workplace.

CRIMINAL LAW and SEX WORK

1. Sex workers:

In short, under the current criminal laws, sex workers can only be prosecuted for selling their own sexual services if we do it in public next to a school, day care or playground. Selling your own sexual services *anywhere else* is NOT a crime. See *Communication and the Law*.

Even if you are not committing a crime, the police or CBSA might detain you. Abusive or unlawful detention and arrest by police can still lead to lawful deportation.

Consider this example: A police officer (not CBSA) arrests your client for purchasing your sexual services. You are with him at the time of his arrest. Legally, the police can temporarily detain you for questioning because you are a “witness” and “victim” to the “crime” (purchasing your services).

- The police ask you to identify yourself and you provide your name. They contact the CBSA who determines that your visa has expired. You are transported to CBSA custody and are eventually deported.
- The police ask you to identify yourself and you refuse. Although you have not committed a crime, the police may use this as reason to arrest you for “obstructing police work” and take you into custody, and contact the CBSA.

Working together:

The box to the right explains the criminal offenses related to assisting sex workers with their work (communicating with clients, arranging meeting with sex workers or negotiating fees, providing security or a reception, advertising sexual services, etc.). Sex workers can be prosecuted for providing these services to another sex worker.

It is not illegal to sell your own sexual services (unless you are in public next to a school, day care or playground). But it is always a crime to help someone else sell sexual services, even if you are also a sex worker.

2. Clients:

All clients can be prosecuted for purchasing, or attempting to purchase sexual services. It is always illegal to buy sexual services, no matter who you are or who is providing the service. A client can be charged for simply trying to obtain a sexual service, even if they never actually receive the service.

- This allows police to interfere with our work and invade our workspaces. The places where we work can still be under surveillance and police interference can be as present as it was under the old laws.
- See *Clients and the Law* for more info.

3. Third Parties:

Third Parties are people who work with sex workers. For example: receptionists, employers or business owners, managers, security, bookers, drivers, webmasters, etc. Sex workers can also be Third Parties when they provide these services for another sex worker.

Third parties can be prosecuted for the following criminal offenses:

- **Receiving a material benefit:** If you work for a business in the sex industry, it is illegal to make any money or other benefit from another sex worker's work.
- **Procuring:** It is illegal to facilitate work for a sex worker. For example, helping sex workers meet clients or make appointments for sexual services, advertising or promoting their sexual services, etc. **You do not have to receive money to be charged with procuring.**
- **Advertising sexual services:** It is illegal to advertise someone else's sexual services.
- **Participating in the purchase of our services:** All clients are criminalized because it is always illegal to purchase – or to try to purchase – someone's sexual services. See *Clients and the Law*. The person who helps sell your sexual services can be prosecuted for participating in this process.

See *Third Parties and the Law* for more info.

Many sex workers work with Third Parties because they cannot or do not want to work alone. **Sex workers often find it safer to work with Third Parties as this may reduce isolation and increase safety.** Other sex workers may prefer to work alone, but need to work with other people to attract clients and make enough money.

Sex workers may work for Third Parties who help organize and manage their work by providing or operating the work space, advertising services, attracting and communicating with clients, etc. Due to language barriers and lack of accessible information about the work sector (e.g. parlour regulations, massage permits, criminal laws, leases, advertising etc.), these services are often essential for many sex workers who do not have Canadian citizenship.

Third Parties and Human Trafficking charges:

Criminal laws against human trafficking existed before 2014. But in 2014, the Federal government introduced Bill C-36. This Bill created new criminal offenses related to sex workers in parallel to new offenses related to human trafficking. This Bill conflates all consensual adult sex work with sexual exploitation and human trafficking, reflecting the belief that all sex work is inherently exploitative and harmful, and all sex workers are victims.

Third Parties who work with sex workers who do not have Canadian citizenship or permanent residence risk prosecution for trafficking offenses as well as offenses related to paid sexual services between consenting adults.

Although sex workers who are not from Canada often need Third Parties to work safely and profitably, new criminal offenses related to Third Parties dramatically increase the number of charges brought against them, as well as the severity of the sentences, including mandatory minimum sentences.

If you do NOT have Permanent Residence: Criminal Offenses

If you have a visa or are waiting for your sponsorship or refugee claim to be accepted, you may become “inadmissible” and be forced to leave Canada if you are found guilty of:

- A criminal offense that MAY be prosecuted EITHER summarily OR by way of indictment; OR

- Two criminal offenses that can ONLY be prosecuted as summary offenses, AND the two offenses result from DIFFERENT EVENTS.

In either of these cases, Immigration Canada may decide you are “inadmissible” and order you to leave Canada.

- You may also be inadmissible if you have been convicted of a crime outside of Canada.

- You can also become “inadmissible” for breaking immigration laws. For example, misrepresenting facts related to your immigration file.

Becoming “inadmissible” means that you lose your immigration status and are ordered to leave Canada. You are usually not allowed to return without special permission. In some cases, you may be able to appeal.

**For more on “inadmissibility” see p. 15.

If you have Permanent Residence: Criminal Offenses

You can lose your permanent residence and you may be deported if you are convicted of a “serious crime” in Canada. A “serious crime” means that:

- Your actual sentence is more than 6 months in prison. E.g., you are found guilty of theft and you receive a sentence of 7 months in prison; OR
- The maximum possible sentence for the offence is 10 years or more in prison. E.g., you are found guilty of “Procuring” or “Receiving a material benefit”, even if your sentence is only a fine or 2 months in prison.

**For more on sentencing see p. 8.

If you are convicted of a “serious crime”, Immigration Canada may decide you are “inadmissible” and order you to leave Canada.

- If you are convicted of a crime that Immigration law does not define as “serious”, you won’t lose your permanent residence but it can still impact your ability to get your citizenship.

- You may also be inadmissible if you have been convicted of a crime outside of Canada.

- You can also become “inadmissible” for breaking immigration laws. For example, misrepresenting facts related to your immigration file.

Becoming “inadmissible” means that you lose your immigration status and are ordered to leave Canada. You are usually not allowed to return without special permission. In some cases, you may be able to appeal.

**For more on “inadmissibility” see p. 15.

Being **DETAINED** by the **POLICE**

Police refers to the municipal or provincial police officers, not the Immigration Enforcement officers (CBSA). Generally, unless a removal order is issued against you, the police cannot arrest you for breaking your immigration conditions or other obligations.

This section refers to detention by police. *Police detention* (detention centres, jail, prison, etc.) and *immigration detention* involve different procedures, tribunals and detention centers.

The police can **ARREST** and **DETAIN** you if:

- There is an **arrest warrant** in your name for not cooperating with a removal order; or
- If there is an **arrest or committal warrant** in your name related to an ongoing criminal or penal offense; or
- You are in **breach of conditions** related to an ongoing criminal case or criminal sentence; or
- You are **committing a crime** (e.g. receiving a material benefit, obstructing police work).

The police might also **DETAIN** you if:

- **Your client or colleague is arrested and you are a “witness” or/and “victim” of a “crime”** (e.g. purchasing sexual services, receiving a material benefit). Police can request your identity as a witness. If you refuse, they may arrest you for obstructing police work; or
- **They invent a “reason” to arrest you**, for example, obstructing police work or assaulting a police officer.

The officer must tell you what you are being arrested for, or why you are being detained.

- They can't arrest you unless they either formally accuse you of a crime, or have a warrant in your name.
- Being a sex worker, or a perceived sex worker, is not a criminal offense and is not a valid reason for arrest.
- “Helping you” or “Making sure you are alright” is never a valid reason to detain you.

The **BAIL HEARING**

At your bail hearing the prosecutor may argue that you should not be released, because:

- You will likely not come back to court for your next court date; or
- You pose a risk to the safety of the public or a specific victim or witness; or
- You risk committing another crime; or
- The public will lose faith in the criminal justice system because the offence you are charged with, and the context in which it was committed, is considered very severe.

At your bail hearing your lawyer will argue that you should be released because:

- **You can provide a fixed address where you will stay.** If you don't have housing or an apartment you will need to stay with a friend, family, etc. It is possible, but extremely rare, to be released with an address for a shelter.
- **You do not pose a risk to anyone's safety.**
- **You will not commit a crime.**
- **You will respect your conditions.**

To help convince the judge that you should be released:

- **Demonstrate that your situation is stable.** Explain that you have routines and connections to the community (e.g. job, school, volunteer work, medical follow-up, other activities and engagements).
- **Have someone testify to your stability and reliability.** Ask someone – if possible, someone who does not have a criminal record (e.g. an outreach worker, family member, colleague), to come testify that they will ensure you respect your conditions and return for your next court date.
- **Have someone who can provide bail.** Ask someone with “legit” and stable finances – if possible, someone who does not have a criminal record – to bring money to your bail hearing as a guarantee that you will respect your conditions if you are released. If they can't come up with the money, ask them to bring proof that they can come up with it if they need to.

If the prosecutor convinces the judge not to release you, you will be detained until your trial date. You have the right to a trial as soon as possible, but the date depends on the court's availabilities. The trial could be in weeks or months.

If you are arrested for a crime (e.g. receiving a material benefit, procuring), **the police may or may not DETAIN you.**

If you are arrested and **RELEASED**:

- If you are released at any time before your case is closed, you will have conditions and a next court date. **If you miss your next court date the judge can issue a warrant for your arrest. Breaking your conditions can lead to new criminal charges for which you will probably be detained until your trial.**

If you are arrested and **DETAINED**:

- You will appear before a judge the next day, unless it's the weekend. This is when you enter a plea of “not guilty”.
- If you are detained and the prosecutor does not release you at your court appearance, you will have a bail hearing. You have the right to a bail hearing within three days. Only with your consent can the bail hearing be held later than three days after your appearance.

Receiving a SENTENCE

If you are arrested for a criminal offense, several things can happen:

- The prosecutor may not charge you, or may eventually drop the charges because the evidence against you is too weak for them to try to prosecute.
- The prosecutor may charge you, and you may plead “not guilty” and then go to trial.
- The prosecutor may charge you, and at some point your lawyer may try to negotiate with the prosecutor.

You may be found guilty:

- Because you went to trial, and at the end, the judge or jury decided that you were guilty.
- Because your lawyer negotiated an “agreement” with the prosecutor. Meaning that you would plead guilty if the prosecutor agreed on the sentence that would be jointly proposed to the judge.

Whether you lost at trial or decided to plead guilty, if you are found guilty you will receive a sentence.

- The sentence is the consequence or punishment for the crime.
- The sentence may have been negotiated between your lawyer and the prosecutor, or it may be what the judge decides.
- In all cases, the judge has the power to make the final decision in determining your sentence (even if you have an “agreement” with the prosecutor).

DISCHARGE: Impacts on Immigration

Sentencing depends on your specific case and on many factors (your prior criminal record, your current situation, the context of the offence and your arrest, etc.). Your immigration status will also be a factor that can influence your sentence.

If you are found guilty of a crime it is extremely important that you work with your lawyer and try to negotiate a discharge. A discharge is a type of sentence, of which there are two types: an absolute discharge or a conditional discharge.

In immigration law, receiving a discharge (absolute or conditional) is like being found “not guilty,” so you will not lose your immigration status or be deported.

VERY IMPORTANT: DO NOT PLEAD GUILTY unless you don't want a trial and your lawyer has negotiated a discharge with the prosecutor, or you have prepared your file to ask the judge for a discharge.

Permanent Residence: If you are convicted of a “serious crime” (explained on p. 5) – and you don't receive a discharge – you can lose your permanent residence and you may be deported.

Anyone without permanent residence (visa holders, awaiting sponsorship, refugee applicant, etc.): If you are convicted of a crime explained on p. 5 – and you don't receive a discharge – you may be deported.

IMMIGRATION LAWS and SEX WORK

Permanent residents: Once you become a permanent resident **you have the right to work anywhere in Canada.** There is no law that specifically prevents you from working as a sex worker and you cannot lose your permanent residence simply because you are a sex worker. To know when you can lose your permanent residence, see pages 5 and 15.

If you do not have Canadian citizenship or Permanent Residence (e.g. you are a visa holder, refugee applicant, awaiting sponsorship, etc.) you cannot legally work in the sex industry:

- You cannot legally work anywhere in Canada unless you have a work permit (except for some full-time students).

- Even with legal permission to work in Canada (e.g. you have a work permit), you cannot legally work in the sex industry because the *Immigration and Refugee Protection Regulations* (IRPR) state that **you cannot legally work for “an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”**

(Sections 183 (1) (b.1) and 196.1(a) of the IRPR.).

Keep in mind that the Immigration regulation that specifically discriminates against people offering sexual/erotic services is unclear:

- It specifies that: “you cannot work for an employer”. What does this mean for people who work independently?
- It specifies that you cannot offer “erotic massage”, but your visa may read: Not valid for employment in businesses related to the sex trade such as [...] massage parlours [...]. How is a worker to know if an officer will consider her massage parlour “related to the sex trade”? What if you work at a parlour where some workers offer sexual services and others do not?
- It specifies that the employer offers these services “on a regular basis”, but what if workers only offer sexual services to a few regular customers?

NOTE: In Immigration law, “visa” and “permit” are the same thing.

Tourist or visitor permit

- Legally, you are not allowed to work anywhere in Canada if you have a tourist or visitor permit.
- Tourist visas are usually for 6 months. You need to apply for an extension if you want to stay longer.

Work Permit (Work Visa)

- You may have a “closed” work permit that specifies the type of work that you are allowed to do, the employer you can work for, how long you can work, etc. If you have an “open” work permit you can work for any employer *except for an employer in the sex industry.*
- **All temporary residents** (even with an “open” work permit) **CANNOT legally work for “an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”**
- The condition on your visa may read: Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services.
- The term “massage parlour” is more broad than “erotic massage” which is what is written in the Immigration Regulations IRPR.

Study Permit (Student Visa)

- If you are a full time student you may have a work permit or be allowed to work off campus without a work permit.
- **However, all temporary residents (including international students) CANNOT legally work for “an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”**

Applicant for Sponsorship

- While you are waiting for your sponsorship to be accepted, you are waiting for your permanent residence, and you need a work permit to work legally in Canada.
- **However, all temporary residents (including people waiting sponsorship) CANNOT legally work for “an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”**

Refugee Claimant

- If you are a refugee claimant, you need a work permit to work legally in Canada.
- **However, all temporary residents (including refugee applicants) CANNOT legally work for “an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.”**

Massage Parlours

Like any other business, massage parlours are diverse places with diverse workers and services.

- Not all massage parlours are erotic massage parlours: some massage parlours offer sexual services and some do not.
- Not everyone who works at a massage parlour offers sexual services: some workers may offer sexual services while others may not.
- Different workers may offer different sexual services.
- Some workers may only offer certain sexual services from time to time, or only to certain clients.

If your workplace is registered as a holistic, therapeutic, or cosmetic business (offering services such as reflexology, pedicures, acupressure, massage, etc.) **you should be able to defend your right to work there if you are legally allowed to work anywhere in Canada.**

- **BUT if your workplace is registered specifically as a business that regularly offers sexual or erotic services, the IRPR state that you cannot legally work there unless you have your permanent residence or citizenship.**
- The Immigration and Refugee Protection Regulations (IRPR) state that you “cannot work for an employer,” so it is unclear how it would apply if you work in-call in a residential location (like an apartment).

MUNICIPAL LAWS and COMMERCIAL LOCATIONS

(parlours, spas, agencies, etc.)

If you work at a commercial location – a therapeutic or cosmetic spa, holistic massage parlour, or massage parlour that regularly offers sexual services – it is usually regulated by municipal laws.

- **Municipal laws (by-laws) are different in every city and province.** The same by-laws might apply throughout a city or region, or they might be different from one neighbourhood to the next.
- If you work at a commercial location (not a residence, like an apartment), it is important to know what municipal laws apply to the specific neighbourhood where you work.
- Municipal laws are a specific type of law. They are not criminal laws. **If you break a municipal law you cannot be charged for a criminal offense.**

By-laws are municipal laws that regulate what local businesses (e.g. massage parlours) can do legally:

- By-laws may regulate whether all owners and employees must have a licence or permit, how these licences are obtained, what employees can and cannot wear, what time they can open to the public, etc.

In this section the terms “**licence**” and “**permit**” mean **the same thing, and they refer to municipal by-laws** and the workplace (e.g. massage parlour).

- **These licences or permits are different to Immigration-related work permits:** Remember if you do not have Canadian citizenship or permanent residence you cannot legally work anywhere in Canada unless you have an immigration-related work permit, or you are a full-time student and you have permission to work.

Consequences of by-laws

If you break a municipal law, a city inspector or police officer can give you ticket (fine). For example:

- If a city inspector or police come to the massage parlour and ask to see your licence, and if you do not have one or you forgot it at home, they can give you a fine (ticket).

There can be consequences if you do not pay your tickets, or if you receive a too many tickets. For example:

- If a parlour owner gets a certain number of tickets related to the business, they may lose their massage parlour licence and be forced to close and sell the business.
- If a massage practitioner gets too many tickets, they may lose their licence to practice massage.
- Remember that by-laws are not criminal laws. You cannot be taken into custody for breaking a municipal-law. However, in some cities, an unpaid ticket can eventually turn into a “warrant for committal” – which means that in some cities you can be taken to prison for some types of unpaid tickets (For more information, see *Arrest and Detention*).

Do you need a special licence to work?

- Depending on the type of business and the local by-laws, you might need a special licence from the city to work.
- Depending on your immigration status, you may not be able to obtain a licence.
- **If you are not sure of the by-laws in your area, is there someone you can ask about this (e.g. an outreach worker, colleague)?**
- Sometimes employers don't tell the workers if they need a licence, so other workers might not know if you need one.
- Some sex workers who do not want to deal with city inspectors or be registered as a practitioner, may work “in-call” in residential locations (i.e. apartment).
- **If you have a massage practitioner licence or permit (e.g. holistic licence; massage licence, body-rub licence) always remember to bring it to work.**

Enforcement of MUNICIPAL laws (by-laws)

Municipal laws can be enforced by different types of law enforcement officers. In some cities the municipal police perform inspections, in others cities it's done by city inspectors, or both. **It is important to know what kind of law enforcement officer you are dealing with,** because they have different kinds of powers (see p. 3). For example:

City inspectors can only enforce municipal laws.

- They can ask about and inspect things regulated by the by-laws (health and safety standards, licences, etc.).
- They cannot ask you about your immigration status.
- If you break a municipal by-law (you forget your licence at home or they say your clothes do not conform with the by-laws, etc.) they can give you a ticket(s) (fines).
- They cannot enforce criminal laws, but they can ask about your services if the by-laws regulate what services you can and cannot offer.
- Do you know what services your employer is legally allowed to offer to the public?
- Don't say more than you need to. If they ask additional questions about your work that go beyond what is regulated by the by-laws, you do not need to answer or engage.

Police officers can enforce municipal and criminal laws.

- In some cities, police are responsible for inspections and enforcing by-laws (giving tickets).
- Police can always enforce the criminal law and arrest someone who is committing a criminal offense (e.g. buying sexual services, receiving a material benefit).

Enforcement and officers' discretion: Every officer interprets the law differently

- Many municipal and criminal laws are vague and so officers have a lot of discretion. This means that they can interpret and enforce the law in extremely different ways.
- Some police officers and municipal inspectors are respectful and open-minded: They don't give workers a hard time and they try to ensure everyone's safety.
- Other police officers directly harass and intimidate workers: They may enjoy enforcing their authority; controlling, objectifying, and seeing how far they can push people; or their ideas and behaviours may be based on racist and victimizing stereotypes that they have never confronted or questioned. This harassment and intimidation may increase stress and fear in the workplace related to law enforcement.

When police or inspectors come to our workplace, most of the time no one is arrested or taken into custody for criminal or immigration reasons. Most of the time they question staff and employers, rummage around the workplace, at times harass and intimidate staff and clientele, and make disrespectful or threatening comments or behaviours. These behaviours towards us, and our workplace, are a violation of our dignity and are produced by racism and sexism, and are made worse by language barriers.

This is why it is important that we know what our rights are, so that we can protect ourselves and consider our options when responding to the situation.

ENFORCEMENT of IMMIGRATION LAWS

Being **DETAINED** by the CBSA

The CBSA (Canadian Border Services Agency) officers enforce immigration laws and immigration detention. They are Immigration Enforcement officers, not municipal or provincial police officers.

This section refers to Immigration detention.

Immigration detention and *Police detention* (jail/prison) involve different procedures, tribunals and detention centres.

CBSA officers have very broad powers and discretion. They can DETAIN you if they have reason to believe that:

- You do not have legal immigration status; OR
- You are breaking an immigration law (including your immigration conditions); OR
- There is a warrant issued in your name related to a removal order or deportation order (see p. 16); OR
- They cannot identify you.

Generally, only a CBSA officer can arrest you for breaking your immigration conditions. But if an arrest warrant is issued in your name related to a deportation order or for failing to cooperate with a removal order, a local police officer or a CBSA officer can detain you and transfer you to CBSA custody.

The CBSA can detain you until your “detention review hearing” if they believe that:

- You are a danger to public security; OR
- You are a flight risk (meaning you will not show up for your Immigration hearing); OR
- Your identity cannot be established; OR
- You might be “inadmissible” to Canada because of your criminal record or other “security reasons” (see p. 15).

The **DETENTION REVIEW HEARING**

These procedures take place before a Member (Commissioner) of the Immigration and Refugee Board (IRB).

If the CBSA detains you until your review hearing:

- You have a **detention review 48 hours after the detention.**
- If you remain detained, the next detention review is **7 days after your 48-hour detention review.**
- If you remain detained again, after that, you have a detention review **every 30 days.**

At your “detention review hearing,” the CBSA may argue that you should remain detained for any of the four reasons listed at the bottom of the box to the left. However you may be released if you can provide a “reasonable alternative to detention.” In practice, the “detention review hearing” is similar to a “bail hearing” (see p. 6).

In order to be released, you need to convince the Commissioner to release you according to a “reasonable alternative to detention”:

- Your lawyer will argue that you should be released as you are not a “flight risk” and you will show up for your next hearing or removal.
- The decision often depends on whether someone can provide money as a guarantee that you will respect the conditions of your release. The person who pays the money must also promise to ensure that you respect your conditions (They will call CBSA if you break your conditions, ensure that you show up for removal, etc.).

If you are not released, you remain detained until you are removed from Canada or until your next detention review hearing.

Stigma and discrimination towards sex workers and sex work are common among the general population, including the police, CBSA, and other decision makers. Stigma, racism, sexism and other forms of discrimination may also impact the way immigration officials treat you, your file, and removal proceedings.

You may be able to fight your removal from Canada by making one of the following applications:

- **A refugee claim;**
- **A pre-removal risk assessment (PRRA);**
- **A claim on Humanitarian and Compassionate grounds (H&C) and an application for a stay of removal.**

Not everyone may be eligible to make these applications. You need to discuss the particular facts of your case with a lawyer. For more, see p. 16.

If you are successful in making one of these applications, you may be released with conditions while your application is processed.

Things to prepare in advance in case you are detained

Thinking about detention can be very stressful. Hopefully this will never happen to you. Planning ahead and speaking to someone you can trust can be very helpful if ever you are detained.

Once you are detained you have very few opportunities to speak to people who can help you. You will also have your personal belongings taken from you (everything in your pockets, your bag, your cell phone). So it is helpful to have a plan *before* you are detained.

If you were detained, is there someone:

- Who has a key to your apartment and could get your clothes, money, important papers, medications, etc.
- Who would bring money (“financial guarantee” or “bail”) to the detention centre, court or tribunal?
- Who would come to the court/tribunal and testify on your behalf at a bail hearing or detention review hearing?
- Who can help you get a lawyer - an immigration lawyer or a criminal defence lawyer?
- Do you know an outreach worker that can make phone calls for you and help you organize your situation?

Create a kind of buddy system:

- If you were detained, do you know someone who would help you out, and can you talk to them in advance about the possibility of detention, whether they would help, strategies?
- It is very useful to discuss these things in advance because once you are detained your communications will be monitored. You can always speak to your lawyer in private. But if you speak to anyone else your conversation can be monitored and can be used as evidence against you.

So it is helpful if someone already understands your situation, and has a list of the names and numbers of people they would need to call if you were detained. This way if you are detained you can communicate with them, without giving many specific details when your conversation is monitored.

If there are people you could call if you were detained, **do you know their phone numbers by heart?** You will probably not have access to your cell phone or papers in detention.

If a law enforcement officer tries to take you into custody:

- They must tell you what you are being arrested for, or why you are being detained.

Before they take you anywhere:

- Ask if you can have few minutes to get your things.
- They may say that you don't need to, that they are not taking you for long, that you will be back soon, etc. **No matter what they say, try to persuade them to give you a few minutes** (e.g. you need your *woman things*, medication, jacket, to use the bathroom).

Before you leave, try to get:

Warm clothes, coat, glasses, etc.

Your medication, inhaler, hormones, etc.

Your money

Your legal, medical or other important documents

Phone numbers of people you will need to contact

If a law enforcement officer is taking you into custody (arrest or detention), try to give the following information to someone you know before they take you away. If you can't, give this information to the person you call later:

- Who detained you? (What type of law enforcement officer, their name, their badge number, etc.)
- Why are you being detained? (Immigration reasons, criminal charge, etc.)
- Do you need a translator? Did you ask for one? (It is very important to get translation, but remember that unless you speak both languages you cannot know that the translator is providing accurate and unbiased information).
- Where are they taking you? (Location, address)
- Can you call a lawyer? Can your lawyer meet you somewhere?

If you are detained and you are able to call someone, try to give them the following information:

- Where are you being detained? (Location?)
- Are you in Immigration detention or police detention?
- What type of officer brought you in (SPVM? RCMP? CBSA? Etc.)
- What name did you give the officers?
- What date of birth did you give them?
- Are they moving you somewhere else?
- Do you have a bail hearing or detention review hearing? When? Where?
- Do you need them to call other people for you (outreach worker, immigration lawyer, criminal lawyer, friend, etc.)
- Do you need them to bring something? Money for the hearing? Warm clothes? Medicine? When and where do they need to bring it?

Losing your Immigration Status: “Inadmissibility”

Becoming “inadmissible” means that:

- CBSA reported you to the Immigration Division, a tribunal of the Immigration and Refugee Board (IRB).
- CBSA produced an “inadmissibility report” related to your immigration file and sent it to the Immigration Division.
- The Immigration Division reviewed the report and decided that you are “inadmissible”.
- You may or may not be detained during this process.

If the Immigration Division decides you are inadmissible:

- You lose your immigration status and are ordered to leave Canada. (See p. 16 for more on removal orders and deportation orders).
- You are usually not allowed to return to Canada without special permission.
- In some cases, you may be able to appeal.

You can become inadmissible for many reasons, such as:

- Breaking an Immigration law (conditions);
OR
- Being found guilty of a crime in Canada;
OR
- Being found guilty of a crime outside of Canada.

BREAKING AN IMMIGRATION LAW:

If you do not have Canadian citizenship, certain immigration laws apply to you.

If you have a visa or are waiting for your sponsorship or refugee claim to be accepted, you can become “inadmissible” and be forced to leave Canada if you break your immigration obligations. For example, if the CBSA claim:

- You are **working in the sex industry**; or
- You are **working anywhere without a valid work permit**; or
- You are **misrepresenting or withholding facts relevant to your immigration file**.

Even if you have permanent residence, certain immigration laws still apply to you:

- You can become “inadmissible” if you break your immigration obligations. For example, if CBSA claims that you have misrepresented or withheld facts relevant to your immigration file, or if you are convicted of a crime.

Generally, only a CBSA officer can arrest you for breaking your immigration conditions. But if an arrest warrant is issued in your name related to a removal order or deportation order, a local police officer can detain you. (See p. 16).

BEING FOUND GUILTY OF A CRIME:

- If you are found guilty of a crime and you do not receive a discharge at sentencing, you may become inadmissible.
- Please see p. 5 and 7 to know when you can become inadmissible and be deported for being convicted of a crime in Canada, and for information on discharges.
- **You may also be inadmissible if you have been convicted of a crime outside of Canada.**

Removal Orders and Deportation Orders

Deportation means that you are forcefully removed from Canada (you are deported).

If a removal order or deportation order is issued in your name, it means that the Canadian government has ordered you to leave Canada.

- They are both orders to leave Canada, but they are different procedures and they are enforced differently.
- **CBSA** officers enforce removal orders and deportation orders.

The order may allow you to stay in Canada for a certain number of days before you are forced to leave.

- If you are not detained, and you do not leave when you are ordered to, an arrest warrant is issued in your name.

Stigma and discrimination towards sex workers and sex work are common among the general population, including the police, CBSA, and other decision makers. "Stigma, racism, sexism and other forms of discrimination may also impact the way immigration officials treat you, your file, and removal proceedings.

Should I stay or should I go?

Once you are ordered to leave Canada, if you want to stay, there is a very small possibility that you might be able to fight the deportation.

For example, you might be able to stay if you can prove that there is a danger or risk to your safety if you return to the country that you left. Your safety may be in danger due to many factors, including discrimination and violence related to your sexual identity, sexual orientation, religious or political beliefs or belonging to a cultural or social group.

You may be able to fight your removal from Canada by making one of the following applications:

- **A refugee claim;**
- **A pre-removal risk assessment (PRRA);**
- **A claim on Humanitarian and Compassionate grounds (H&C) and an application for a stay of removal.**

Not everyone may be eligible to make these applications. You need to discuss the particular facts of your case with a lawyer. These applications take many months to process, so it may only be an interesting option to people who are not detained. The basic costs are usually covered by legal aid.

Some people may not be interested in staying in Canada. If you are not detained, you might prefer to use the time allowed by the order, and then leave Canada.

Anti-Trafficking Policy and Sex Work

Sex work is usually defined in law as exploitation. Although sex workers may experience violence and exploitation, we do not experience or perceive sex work as exploitation. Violence, abuse and exploitation are not part of our job.

Laws and policies often conflate all consensual sex work with sexual exploitation. As such, all sex workers who come to Canada to work are defined as victims of sexual exploitation. **This assumption conflates all situations, whether or not "force, abduction, fraud or coercion" exists, and assumes that all sex workers – particularly sex workers from other countries – have no agency.**

This racist and victimizing assumption is reinforced by some sex workers and employers within the sex industry, as well as by some health care and social service providers.

Because most sex workers do not have the means to come to Canada legally; because Canadian laws and policies do not view sex work as a legitimate job but rather as an illegal and immoral activity; and because immigration laws specifically prevent sex workers from working in the sex industry when they come to Canada, some sex workers are vulnerable to difficult and unsafe working and living conditions. This vulnerability is reinforced – rather than reduced – by the criminalization of sex work and restrictive policies on immigration.

Citizenship Immigration Canada (CIC) summarizes the *UN Trafficking Protocol's* definition of trafficking as "the recruitment, transportation, transfer, harbouring or receipt of persons, **by improper means, such as force, abduction, fraud or coercion, for an improper purpose, such as forced or coerced labour, servitude, slavery or sexual exploitation.**"

In theory, CIC (Citizenship Immigration Canada) recognizes the difference between human trafficking and human smuggling.

- “Human trafficking” means that the person was coerced, intimidated, lied to, etc. by the “traffickers.”
- “Human smuggling” means that the person did not have the means to migrate legally, and so they gave their consent to “smugglers” to help them illegally migrate.

In both cases, the person may have come to Canada under extremely difficult and poor conditions. But the difference is fundamental – in one case the person has been forced against their will or consent, and in the other the person has exercised some degree of agency.

In policy, CIC (Citizenship Immigration Canada) specifies that specifies that human trafficking and human smuggling “require different responses from authorities.” In practice, the government and law enforcement constantly conflate trafficking and smuggling in relation to the illegal migration of women, and specifically of sex workers.

Sex workers who do not perceive themselves as victims, and/or do not perceive their work as exploitation, are punished – rather than supported – by the criminal and immigration legal systems.

This stigma associated with sex work and migration, and the sexist and racist assumption that all sex workers who are racialized – or who do not have Canadian citizenship – are victims, play a role in all legal proceedings, including immigration proceedings.

Temporary Resident Permit and Human Trafficking

A consultation between CIC (Citizenship Immigration Canada) and partner law enforcement agencies may occur when a person self-identifies as a victim of human trafficking. **If someone identifies as “a victim of human trafficking”, they might get a special Temporary Resident Permit (TRP) from the CIC** that is valid for 6 months (with possibility of renewal).

According to CIC (Citizenship Immigration Canada) you do not have to testify against the accused “traffickers”. But “participating in an investigation or prosecution, or otherwise assisting authorities” is one of the criteria for issuing, and renewing, the TRP.

According to CIC (Citizenship Immigration Canada), when determining whether someone may be a victim of human trafficking, the officer should consider whether:

- Their recruitment was fraudulent or coercive, and for the purposes (actual or intended) of exploitation; or
- They were coerced into employment or other activity; or
- The conditions of employment or any other activity were exploitative; or
- Their freedom was restricted.

According to CIC (Citizenship Immigration Canada), the officer may issue the Temporary Resident Permit (TRP) so that the victim can:

- Consider their options (whether to return home, or to assist in the investigation or criminal proceedings against the person accused of trafficking);
- Help authorities investigate and prosecute;
- Recover, get counselling, treatment, etc. and allow victims time to make informed decisions.

INTERACTING with LAW ENFORCEMENT OFFICERS AT WORK

No matter what your immigration status is, you still have some fundamental rights if law enforcement officers come to your workplace. Your rights depend on the context: Where are you, and what type of officer are you dealing with? Understanding your work context may help you understand what you are – and are NOT – legally required to do, or say.

Where are you? (What type of workplace: residential apartment, massage parlour, hotel, etc.):

- Are you working in a residential apartment or house? Is there a residential lease between a landlord and a tenant? Do you know who is on the lease? Unless the police have a warrant, you usually can tell them that they cannot come into the apartment or house (see p. 21).
- Are you working in a commercial parlour or agency? Is there a business sign on the door? Is the business advertised or registered on-line? Does a company pay the rent? (see p. 21).

What kind of officers are you dealing with? Why have they come, and what is their authority? (City inspector, police, RCMP, CBSA, etc.)

- For example, is this a city inspector coming to inspect the parlour and check for licences? They only have the authority to ask you for your massage licence (not your immigration papers), and if you don't have your licence they can only give you a ticket (see p. 10-11).

Identifying yourself to law enforcement officers

If you are working in a commercial location, the police and city inspectors can ask to see your licence. If you don't have a licence, they can still ask you for your name.

- **CBSA officers can detain you if they cannot establish your identify (meaning that you have failed to identify yourself) even when you are not accused of a crime.**
- **Police can only detain you for failing to identify yourself if you are committing a criminal offense.**
- **City inspectors can only give you a ticket for failing to identify yourself.**

If the police ask you to identify yourself, know that:

- Lying about your identity to a police officer is a criminal offense.
- If you give your legal name to the police, and there is an arrest warrant issued in your name (related to a deportation or removal order, or to a criminal charge), the police can arrest you and take you into custody.
- If the police think you are breaking an immigration regulation or that you do not have status, they cannot arrest you for this. They could contact CBSA and report the name you gave them.
- Sometimes people give the name that they use everyday instead of their legal name. The consequences may depend on the context: Are the police talking with you during a routine check or are you formally being questioned or detained?

People who do not have Canadian citizenship, and particularly people who work in the sex industry, experience discrimination, stigma and harassment on a daily basis. So some people are scared to speak to law officers even when they are not in conflict with the law.

- Language barriers and unfamiliarity with our legal rights can make it difficult to stay calm and to not worry or be intimidated when officers come to our workplace.
- You have the right not to be intimidated and harassed. You also have the right to your privacy and dignity, and to not say more than you need to.
- Planning in advance what you will and will not say if the police or other law enforcement officers enter your work place might help you stay calm. Discussing strategies with your colleagues in advance might also help.
- If you do not have legal status or legal permission to work, or you forgot your papers at home, remember that it may just be a routine visit. Police may question or even harass workers, rummage through things, and even give you a ticket, but it may not escalate into a problem related to immigration.

If the CBSA come to your workplace

The CBSA usually do not perform spot checks of any kind. They will usually only come to your workplace if they have a particular reason, in which case they will most likely also have a warrant. e.g., if they are looking for someone in particular; if have reason to believe that there are “undocumented workers”; if they believe there are “victims of human trafficking”.

If you are detained by the CBSA, you have the right to ask to speak with your lawyer. Once you have identified yourself you have the right to not say anything more until you speak with your lawyer. However:

- The officers may deny you your right to speak with a lawyer, or they may respect it.
- Although there is no actual policy that states that you must cooperate with CBSA, if you do not cooperate they may become more aggressive towards you and try to pressure you further.
- **If you want to ensure your right to speak with a lawyer, you may want to respond with a “positive statement” while trying to ensure your right.** For example: “Yes, I will cooperate, but I would like to speak with my lawyer first.”

Remember that CBSA officers:

- Have the right to question you, and they can ask you the same questions over and over again.
- They are trained to provoke you and get you to talk (make a statement). They will try to convince you that it’s in your best interest to do so.
- If you decide not to make a statement until you speak with a lawyer – stay calm, avoid confrontation, and try not to react to anything they do or say.

Speaking to the police = Making a statement

If you are approached by the police:

You can identify yourself, but you have the right to say nothing else, and anything else that you say will be considered a statement.

Statements may be used to incriminate you, your colleagues and/or your clients. They are used to help the police investigate further and obtain enough evidence to make an arrest.

Once you make a statement to the police **you become a witness and your statement becomes evidence.** Once you have made a statement **you can be ordered to appear in court and testify against the people they arrest (e.g. your colleagues or clients).** This is one of the reasons why some sex workers do not speak to police.

Some sex workers panic and say more than they need to because they fear staying silent makes them look guilty. **Your silence cannot incriminate you, but your statement might.**

Some workers speak with police to try to avoid problems. Even when police do not have the authority to come into a workplace, some workers allow them in and talk with them because they think this decreases their chances of being raided, detained, arrested or even deported.

If POLICE (not CBSA) come to your workplace and you want to leave:

Ask them if you are under arrest.

If the police do NOT tell you that you are under arrest or are being detained:

- Stay calm, explain that you understand you are not under arrest or being detained, and tell them you want to leave. You can leave the workplace.
- **If you are not working** (you might be waiting for a friend to finish work, checking out their services, coming to get a massage, etc.), **there should be no reason why you should not be allowed to leave.**

See page 11 to understand when the police can detain you. Try to stay verbally and physically calm so that they have no excuse to arrest you (e.g. obstructing police work, assaulting a police officer, etc.)

If you are detained by the police, they must stop asking you questions once you ask to speak to a lawyer. But once you have spoken to a lawyer (usually on the phone):

- The police have the right to question you - they can ask you the same questions over and over again.
- The police are legally allowed to lie to you to get you to talk (make a statement). They are trained to provoke you and to make you talk. They will try to convince you that it's in your best interest to do so.
- If you decide not to make a statement do not react to anything the police do or say - **stay calm, avoid confrontation, and remain silent.**

If POLICE (not CBSA) come to your RESIDENCE (home, apartment, condo):

The police cannot legally enter a residence without a warrant, **unless the person who answers the door agrees to let them in OR if the police have reason to believe that:**

- Someone inside is committing, or about to commit, a criminal offence; or
- Someone they are looking to arrest is inside; or
- The life or security of the public, or of an occupant, is threatened.

In these cases, if you do not identify yourself (legal name, address, date of birth) the police might arrest you for obstructing their work. You're not obliged to answer any other questions they might ask.

Otherwise, the police have no right to enter a residence.

- If you are working in an apartment or house, and the police come to your door without a warrant – AND none of the exceptions above apply – YOU DO NOT NEED TO LET THEM IN OR ANSWER THEIR QUESTIONS.
- When there is no legal duty to identify yourself, it is your choice. Many police officers will give you a hard time if you refuse to give your ID or your name, but some may respect your legal right not to identify yourself.

If POLICE (not CBSA) come to your COMMERCIAL workplace (parlour, agency, strip club):

The police have the right to enter a commercial property without a warrant. This does not mean that they can enter and do whatever they want.

- Regulations – such as municipal by-laws – give police the power to enter for “inspection” (see p. 10-11).
- **Breaking a by-law is not a criminal offense: The police can give you a ticket but they cannot arrest you.**

It is important to be familiar with the by-laws that apply to your indoor location.

By-laws do not permit a search of the premises, but they may allow the police to enter:

- To look around the building to verify for “fire safety”; or
- To look inside cupboards or through work supplies to ensure the equipment satisfies health and safety standards.

There are limits to what the police can do. For example:

- **By-laws do NOT give the police the power to search you, your bag, your coat, your phone, etc.** If you are not under arrest, the police cannot search you without a warrant, unless they think you have a weapon and pose a threat to someone's safety. If you are under arrest, the police can also search you to preserve evidence.

Questions to ask yourself in advance

- Do you know what the different law enforcement officers' uniforms and badges look like (city inspectors, municipal police, federal agents)?
- For the each type of officer: Do you know what questions you DO and DO NOT have a legal obligation to answer?
- For the each type of officer: Do you know if they can legally come into your workplace without your permission? Do you know when you do not have an obligation to let officers into your workplace without your permission?
- Do you know what to say when you do not want to invite officers into your workplace?
- Do you know what your legal rights are if you encounter law enforcement agents? Is there someone you can contact to get more information and have a better understanding of your situation?
- Do you tend to panic or say too much under pressure? If so, what is your strategy for keeping calm?
- Do you know how working in the sex industry can impact your particular immigration status?
 - Is there someone you can contact to get more information and have a better understanding of the potential risks and safety strategies?
- What will you do or say if an officer comes to your workplace? Can you discuss these situations with any colleagues (employees or employers)?
- If you are an employer: Do you provide good working conditions for your employees? Do your employees know their legal rights? Have you provided them with opportunities to learn about their rights, the laws and regulations that affect them, local law enforcement, etc.? **Good working conditions are in employers and employees best interests.**
- Do you know any sex work or allied organizations that may provide you with more information or support?



CONTACT US FOR MORE INFO OR SUPPORT

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We accept collect calls from people who are detained or incarcerated.

We offer services in English and French

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We offer services in Chinese and English



Asian and Migrant Sex Workers Network