

WORKING IN CANADA WITHOUT CANADIAN CITIZENSHIP

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



This document is not, and 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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Our immigration status can impact our ability to work safely.

Criminal prohibitions related to sexual services are the same for everyone in Canada. Certain immigration laws also prohibit sex workers from working. **Different immigration laws apply according to your particular status (e.g. permanent resident, type of visa, refugee applicant, undocumented).**

If you do not have Canadian citizenship: both criminal laws and immigration laws can impact your immigration status and possibly lead to detention, arrest and deportation. Police practices and court procedures may be different depending on the city, region or province.

This document highlights legal issues that impact sex workers health and safety. **For a better understanding of these issues and for strategies to minimize the harmful impacts of the laws, see *Immigration Status and Sex Work*.**

There are different types of laws that regulate sex work:

Criminal law

Immigration law

Municipal laws

These laws are enforced by different kinds of law enforcement officers:

- **Municipal law enforcement:** e.g. Service de Police de la Ville de Montréal; Toronto Police Service; City Inspectors.
- **Provincial law enforcement:** e.g. Sûreté du Québec; Ontario Provincial Police.
- **Federal law enforcement:** e.g. RCMP (Royal Canadian Mounted Police); CBSA (Canadian Border Services Agency). **The CBSA enforces immigration laws and controls immigration detention and deportation.**

No matter what your immigration status, you have some fundamental rights if law enforcement officers come to your workplace. Your rights depend on the context.

If an officer comes to your workplace, ask yourself:

1. **What type of officer are they?** (e.g. city inspector, police, RCMP, CBSA)
2. **Why have they come?** (e.g. inspection, warrant, complaint)
3. **What powers do they have?** (e.g. Can they detain me or only give me a ticket? Can they ask me questions about my immigration status?)
4. **Where are you?** (e.g. commercial business? residence? public space?)

WHO ARE THEY? WHY ARE THEY HERE?

City inspectors can only enforce municipal laws. They cannot detain you. They can inspect things related to by-laws (health and safety, licences, etc.), but they cannot enforce criminal laws or immigration laws. They have no authority to ask about your immigration status. If you break a by-law (you forgot your licence, dress code "violation", etc.) they can give you a ticket (fine). **See *Immigration Status and Sex Work* for more information.**

Police can enforce municipal and criminal laws. In some cities police perform inspections and enforce by-laws.

The police can detain you if:

- **You are committing a criminal offense** (e.g. buying sexual services, receiving a material benefit); OR
- **There is an arrest warrant in your name** (related to a criminal charge or a removal order from immigration).
- **Also, the police can temporarily detain a "witness" to a crime.** So you can be temporarily detained even if you are not charged with a crime. See *Arrest and Detention* for more information.

Immigration officers (CBSA) can DETAIN you if they believe that:

- **You do not have legal immigration status;** or
- **You are breaking an immigration law** (including your conditions); or
- **You might be "inadmissible"** to Canada because of your criminal record or for other "security reasons"; or
- **There is a warrant for you** related to a removal/deportation order; or
- **They cannot identify you.**

WHERE ARE YOU?

Your rights depend on your location (e.g. apartment, massage parlour, hotel, car).

If the police come to your RESIDENCE (e.g. home, apartment, condo) YOU DO NOT HAVE TO LET THEM IN UNLESS:

- They have a warrant; or
- The person who answers the door agrees to let them in; or
- The police have reason to believe that:
 - Someone inside is committing, or about to commit, a crime; or
 - Someone they are looking to arrest is inside; or
 - The life or security of the public or an occupant is threatened.

The police have the right to enter a commercial location without a warrant. But this does not mean that they can do whatever they want. They cannot search the premises without a warrant, but local by-laws may allow them to enter for inspection. 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 threaten someone's safety.

CBSA

CBSA usually only come for a particular reason (e.g. looking for someone in particular, "undocumented workers", "victims of human trafficking"), in which case they may have a warrant.

If you are detained by the CBSA, you have the right to ask to speak with your lawyer. After you identify yourself, you have the right to not say anything more until you speak with your lawyer.

- The officers may or may not respect your right to speak with a lawyer.
- There is no actual policy stating that you must cooperate with CBSA, but if you don't they may become more aggressive and try to pressure you to comply.
- To ensure your right to speak with a lawyer, you may want to respond with a "positive statement." E.g. "Yes, I will cooperate, but I would like to speak with my lawyer first."

- CBSA officers have the right to question you and ask you the same questions over and over again. They are trained to provoke you to talk (make a statement), and convince you that it's in your best interest. If you decide not to make a statement – stay calm, avoid confrontation, and try not to react to anything they do or say.



Speaking to the police = Making a statement

If the police speak to you: you may choose to identify yourself, but you are under no obligation to speak with them. **Anything you say is a statement.** Statements may incriminate you, your colleagues and/or your clients. Police use statements to investigate further and obtain enough evidence to make an arrest.

If you make a statement: you become a witness and your statement becomes evidence. 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 people 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 even when police do not have the power to enter their workplace, because they think this decreases their chances of being raided, detained, arrested or even deported.

See *Immigration Status and Sex Work* for more on detention related to immigration or criminal charges, and for info and strategies related to legal procedures, such as bail hearings, detention review hearings, reasonable alternatives to detention, removal orders and deportation.

If a *removal order or deportation order* is issued in your name, you have been ordered to leave Canada. If you do not leave when ordered, an arrest warrant is issued in your name.

You might be able to fight your deportation 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 is eligible to make these applications.

Discuss the particular facts of your case with a lawyer.

- If you are successful with one of these applications, you may be released with conditions while your application is processed.
- Some people are not interested in staying in Canada. If you are not detained, you might prefer to use the time allowed by the order to prepare your departure, and then leave Canada.

Identifying yourself to law enforcement officers

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

- **CBSA** can detain you if they can't establish your identity (you failed to identify yourself), even if 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** cannot detain you (for identity or anything else).

Some cities have policies that instruct police to provide "access without fear". These "don't ask don't tell" policies may allow potential victims of a crime or non-status migrants not to disclose their identity.

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

- Lying about your identity to a police officer is a criminal offense.
- You are legally required to give your legal name. If you choose to give another name that you regularly use instead, consider the context: Is this a routine check? Are you formally being questioned or detained?
- If you give your legal name and there is an arrest warrant issued in that name (related to a deportation or removal order, or to a criminal charge), the police can arrest and detain you.
- Unless a warrant has been issued, the police cannot arrest you simply because they think that you are breaking an immigration regulation or that you do not have status. They could contact CBSA and report the name you gave them.

CRIMINAL LAW

Selling your own sexual services is NOT a crime in Canada unless you are in public or in public view next to a school, day care or playground. But:

- It is illegal for clients to purchase, or attempt to purchase, our services. See *Clients and the Law*; and
- It is illegal for our colleagues to assist or facilitate our work (e.g. receiving a material benefit, procuring, advertising). See *Third Parties and the Law*.
- **Human trafficking charges** may be used against Third Parties who work with sex workers who do not have Canadian citizenship or permanent residence.

If you do not have Canadian citizenship you can lose your immigration status and be forced to leave Canada (deported) if you are convicted of certain crimes.

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

See *Immigration Status and Sex Work* for more information.

IMMIGRATION LAW

Permanent residents have the right to work anywhere in Canada. There is no specific immigration law that prohibits you from sex working.

If you don't have **Canadian citizenship or permanent residence** (visa holders, refugee applicants, awaiting sponsorship, etc.), **you CANNOT legally work in the sex industry:**

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

- If you work in a holistic, therapeutic or cosmetic business, you should be able to defend your right to work there if you are legally allowed to work anywhere in Canada. **BUT** you cannot legally work at a business that publicizes sexual or erotic services.

See *Immigration Status and Sex Work* for more information.

Things to prepare in advance in case you are detained

Planning ahead and speaking to someone you trust beforehand is very helpful, because once you are detained:

- **You will have very few opportunities to speak to people.**
- **You will have your personal belongings taken from you** (contents of your pockets, bag, cell phone). **If there are people you could call, do you know their phone numbers by heart?**
- You can always speak to your lawyer in private, but **your conversations with anyone else can be monitored and can be used as evidence against you.** If someone already understands your situation and has the names and numbers of the people they need to call, you can **communicate without giving specific details when your conversation is monitored.**

If you are detained, is there someone:

- With a **key to your apartment** who 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 **could contact an immigration lawyer** or a **criminal lawyer?**
- An **outreach worker?** Do they know your legal name?

If an 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, try to persuade them to give you a few minutes to get your things (e.g. you need your “woman things”, medication, jacket, to use the bathroom).

Before you leave get:

- Warm clothes, coat, glasses, makeup, etc.
- Money
- Medication, inhaler, hormones, etc.
- Legal, medical or other important documents
- Phone numbers of people you will need to contact

Try to give the following information to someone before they take you away. If you can't, give it to the person you call later:

- **What name and date of birth did you give the officers?**
- **Who detained you?** (Type of officer: SPVM, RCMP, CBSA; Their name, badge number, etc.)
- Why are you detained? (e.g. immigration, criminal charge)
- Where are you detained? (Location, address)
- Are they moving you somewhere else?
- Do you have a “bail hearing” or “detention review hearing”? When? Where?
- Who they should call (e.g. outreach worker, immigration or criminal lawyer, friend)? Can your lawyer meet you somewhere?
- Do you need them to bring something? Money for the hearing? Clothes? Medicine? When and where do they need to bring it?
- You have the right to a translator: Do you need one? Did you ask?

Contact us for more info or support:

Stella
2065 Parthenais Street (North of Ontario Street)
Suite 404, Montreal (QC) H2K 3T1
Frontenac Metro
www.chezstella.org
Phone : (514) 285 – 8889
We accept collect calls from people who are detained or incarcerated.
We offer services in English and French



butterfly

Asian and Migrant
Sex Workers Network

Email : cswbutterfly@gmail.com
Website : butterflysw.org
Phone : (416) 906 – 3098

We offer services in Chinese and English

OTHER DOCUMENTS AVAILABLE IN THIS SERIES

- I. ADVERTISING AND THE LAW
- II. THIRD PARTIES AND THE LAW
- III. CLIENTS AND THE LAW
- IV. OUR FRIENDS, FAMILY AND THE LAW
- V. COMMUNICATION AND THE LAW
- VI. ARREST AND DETENTION
- VII. POLICE POWERS: IN-CALL AND OUT-CALL
- VIII. IMMIGRATION STATUS AND SEX WORK
- IX. WORKING WITHOUT CANADIAN CITIZENSHIP

Questions to ask yourself in advance

- Are you legally allowed to work in Canada?
- Are you legally allowed to work for an employer who offers sexual or erotic services?
- Do you know how working in the sex industry can impact your particular immigration status?
- Do you need a special type of licence (e.g. massage) from the city to work? (This is different than an immigration permit).
- Do you work at a place that publicly announces sexual or erotic services? Do you know what services your employer can legally offer to the public?
- Do you know what municipal laws (by-laws) apply to your workplace?
- Do you know what criminal laws and immigration laws might apply to the services you provide?



- Do you know if there are raids or investigations happening in your area?
- Do you know the different law enforcement officers' uniforms and badges (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 when you do not have to let officers enter your workplace without your permission?
 - Do you know what to say when you don't want to invite them in?
- Do you tend to panic or say too much under pressure? If so, what is your strategy for keeping calm?
- What will you do or say if an officer comes? 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? Do you provide them with opportunities to learn about their rights, laws and regulations that affect them, local law enforcement, etc.? **Good working conditions are in employers and employees best interests.**

- Is there someone you can contact for more information about your situation, potential risks and safety strategies?
- Do you know any sex worker or allied organizations that may provide you with more information or support?

