



**TRAFFICKING
SIGNALS:**



KNOW THE LAWS



KNOW YOUR RIGHTS

WHY DO I NEED TO KNOW THIS?

When interacting with women who have irregular immigration status who do sex work in Canada, police often do not differentiate between consensual sex work and human trafficking. Even if you are not being trafficked, it is important to know the laws around human trafficking and how the laws affect you. It is important to know your rights and how to respond and interact with police if they ask you if you are being “forced”.

Laws

Migrant sex workers might work with third parties such as co-workers, drivers, receptionists, employers, or others who help support their work, communicate with clients, and advertise their services. There are laws in the Criminal Code that target third parties who work with and support migrant sex workers.

Prostitution Laws

Section 286.3 makes it illegal to “procure a person to offer or provide sexual services for consideration.”

This law makes it illegal to persuade or cause someone to sell sexual services.

Section 286.4 makes it illegal to “knowingly advertise an offer to provide sexual services for consideration.”

This law applies to people who advertise the sale of another person’s sexual services in the newspaper, on websites, or in other locations. People are **ONLY** allowed to advertise the sale of their own sexual services.

Section 286.2 makes it illegal to receive any money or other material benefit knowing the benefit is obtained through someone else’s sex work.

It is illegal for someone to earn money by owning, managing, or working for a massage parlour or escort service, if the money is not from the sale of their own sexual services.

This law means that sex workers, including migrant sex workers, may be prosecuted when they work with, gain material benefits from, or assist other migrant sex workers to enter or work in Canada.

Individual sex workers can hire people (drivers, accountants, receptionists, etc.) as long as those people offer their services on the same terms and conditions they offer them to everyone else. This means that people you hire cannot charge

you more money for their services than they would charge anyone else, or create special rules just because you are a sex worker. People you hire also cannot counsel or encourage you to provide sexual services.

Immigration & Refugee Protection Regulations

In addition to criminal laws, the Immigration & Refugee Protection Regulations (IRPR) may impact you. The IRPR prohibit temporary residents (e.g., temporary workers, students, visitors, out of status, application in process) from working “with an employer who, on a regular basis, offers strip tease, erotic dance, escort services or erotic massages.” **Sections 183(1)(b.1), 196 (1), 200 (3) (g.1) and 203(2) combine to ban all temporary residents from doing sex work.** Any contact with law enforcement, even as a victim of a crime, carries the risk of deportation.

The above offences may be combined with criminal offences related to human trafficking, such as:

Human Trafficking Laws

Section 279.01, relating to “trafficking in persons”.

This offence makes it illegal to recruit, transport, transfer, receive, hold, conceal a person, exercise control or influence over the movements of a person for the purposes of exploiting them or facilitating their exploitation. It doesn’t matter if you consent to your work. You might still be considered a victim trafficking.

Section 279.02, relating to “receiving material benefit from trafficking.”

This prohibits anyone from receiving a financial or other material benefit for the purpose of exploiting someone or trying to exploit them.

Section 279.03, relating to “withholding or destroying documents.”

It is illegal to withhold or destroy a person’s travel documents or documents that establish their identity (like passports and other ID), in order to exploit or try to exploit that person.

Section 279.04 relating to “exploitation.”

Defines exploitation as causing a person to provide, or offer to provide, labour or services by engaging in conduct that could reasonably be expected to cause the person to believe that their safety, or another person’s safety, would be threatened if they did not provide or offer to provide the labour or service. You do not need to actual be afraid for your safety for the police to think you may have been exploited.

What does this mean for me?

It is good to know what the laws say and what your rights are. Even though you are not 'forced' in any way to work or do not feel you a victim, law enforcement may think you are trafficked. Here are a few situations you may encounter in which police may think you are trafficked.

Is it okay to give my boss my passport?

It is best to keep your passport and ID with yourself or in another safe place rather than give it to your boss. Even if you think your boss can keep your documents safe, you should always have control over your passport and any other ID and never let anyone else keep it.



But what if there are a lot of robberies?

Can I give my passport to my boss for safekeeping? Or what if my boss asks for my passport when I arrive at the airport?

There can also be legal consequences for your boss having your passport. Even if you have consensually given your boss your passport, the police and Canada Border Services Agency (CBSA) may think that you are a victim of trafficking, which can have immigration and even criminal consequences for you. When police and CBSA suspect individuals have been trafficked, it can result in people being arrested, put in jail, or deported from Canada, whether or not they are victims of trafficking.

The human trafficking provision in s. 279.04 of the Criminal Code requires that the victim believe that their safety would be threatened if they fail to provide or fail to offer to provide the labour or service. If your boss has your passport, the police may use this as evidence to prove that you are being threatened, forced, and trafficked, even if you feel you are not.



My boss offered to pick me up from the airport, is this okay?

The police and CBSA may use this as evidence that you are a victim of trafficking.

What rights do I have when speaking with police officers?

You have a right to remain silent whenever you are speaking with you a police officer. That means you do not have to answer any questions or tell the police

your name. The main exception is if you are driving a car, and the police pull you over – you must give the police your licence, car registration and insurance documents. If you are a passenger in the car, you do not have to tell the police your name or show ID. If you are on a bicycle, you must show the police your ID if they ask for it.

You also have a right to know whether you are under arrest, and why you are under arrest or being detained. If you have been detained or arrested, you have a right to speak to a lawyer without delay.

Being questioned by police can be intimidating. Challenging police authority by not answering their questions may escalate a situation. In this case, less is more (i.e. cooperate but provide limited information when answering questions).

What if I set up a date, and when the date shows up, it is a police officer not a client?

You cannot be arrested for a criminal offence for selling your own sexual services. However, if the police think that you are breaking an immigration law (e.g. working without status), or that you do not have status, the police can arrest you or report you to CBSA.

If an officer shows up to your residence, ask them their purpose for being there and what they are investigating. You have a right to privacy in your home and you do not need to let them inside. Police officers usually cannot enter your residence without a warrant, unless they have permission or believe that there are urgent circumstances that require police presence inside (e.g. if they believe that someone is being seriously harmed or might be killed, they think evidence is being destroyed, or public safety is at risk). “Urgent circumstances” is interpreted very broadly by police. If the police have a search warrant, you must let them inside.

Do undercover police have to identify themselves before entering a residence?

No.

Can you ask an officer to leave once they have entered?

Yes, unless they have a warrant. But if you’ve consented to the police entering your home, in practice it will be very difficult to get them out, even after you withdraw that consent.

How would I know if the police have a warrant? Are they required to tell me?

If the police have a search warrant, they are required to show it to you. If they don't show it to you, it is within your legal rights to request to see it and verify the information on the warrant. The police should knock and tell you why they are there (i.e. that they have a warrant). If the police believe that there is evidence being destroyed or someone inside is being harmed, they might not knock first and can even break down the door.



You should make sure the information on the warrant is correct, including the name and address. The warrant will also say who signed it, and the place, date, and time they signed it. If the warrant contains incorrect information, you can ask them to leave but you should not try to stop them from entering your home. When police have a warrant, they can use reasonable force to enter your home or the property. Stopping a legal search can result in a charge of obstruction.

Do I have to give my real name to the police?

If you choose to identify yourself, you must give your real name to the police. Lying about your name or address to a police officer is a criminal offence under S. 129 of the Criminal Code, known as “obstructing justice”.

Police officers have the power to arrest someone if they believe that the person has given them a fake name. The police can also report a person to CBSA without arresting them, if the police believe the person does not have immigration status in Canada, or that they are breaking an immigration law.



If you do identify yourself, you do not have to say anything else. If the police continue questioning you, ask the officer if you are under arrest or being detained. Be polite and try to keep calm. Ask, “am I under arrest?” If the police say no, ask “Am I free to leave?” If the police keep asking you questions, say you would like to speak to a lawyer before you answer any of their questions.

What should I say to the police when they ask me if I am being trafficked or “forced” to do sex work?

If you have already identified yourself to the officers, and they keep asking you questions, you do NOT need to answer them. You can ask the officers, “Am I being detained or am I free to go?” Tell them you want to speak to a lawyer

before you answer any of their questions. Eventually they will either arrest you or they will let you go.

Remember, anything you say or do will be evidence and it may be used to incriminate you, your colleagues, or your clients.

If you say that you are not being trafficked or “forced”, the police may think that you are a trafficker. Remember, if you choose to say something, less is more.

Based on interactions reported to SWAN, police do not take no for an answer. They may come back multiple times to ask if you are forced and/or ask you if you want to be an informant to give them information about other workers and/or bosses. If this happens, continue to ask: “Am I being detained?”

Do I have to give my phone number to the police?

You do not have to give your phone number to the police, however, based on the interactions reported to SWAN, police will not take no for an answer.

What if I am working at home?

It is not illegal for you to do sex work in your own home if you have immigration status that allows you to work (i.e. permanent residency/Canadian citizenship). Even if you are working at home you have a right to privacy. Police officers cannot enter your home unless they have a warrant, they intend to arrest someone specific inside your residence, they have reason to believe someone inside your residence is committing a criminal offence, or there is a risk to public safety.

Do I have to answer questions about my immigration status?

You have a right to remain silent, even if the police are asking about your immigration status. If a police officer continues to ask questions about your immigration status, politely ask if you are being detained.

Based on interactions reported to SWAN, being evasive about your immigration status will prompt police to call CBSA.

If you do choose to answer questions about your immigration status, and the police think that you are breaking an immigration law (e.g. working without status), or that you don't have status, the police can arrest you or report you to CBSA.

What if the police tell me that I am under arrest or being detained?

The officer must tell you why you are being arrested or detained. You can earn money from the sale of your own sexual services. This is not a valid reason for arrest (unless your immigration status prohibits you from working in Canada). If the police say that they are detaining you to “help you” or “make sure you’re safe” this is NOT a valid reason. At this point, insist on calling a lawyer.

It is a good idea to memorize a lawyer’s number as your phone may be confiscated.

When can the police detain me?

The police can detain you with or without a warrant if:

- You are committing a criminal offence
- The police have reasonable grounds to believe that you have committed a crime
- There is a warrant issued for your arrest anywhere in Canada (including an immigration warrant)

Can the police detain or arrest me for immigration status?

Unless a removal order (i.e. order for a person to leave Canada) has been issued against you, the police generally do not arrest people for immigration infractions BUT, in practice, they may take people into custody on this basis.



What happens once I am detained by the police?

If you are detained or arrested, you have the right to:

- Be told why you are being detained or arrested
- Be searched in a reasonable manner
- Remain silent
- Call a lawyer before speaking to police

Do not resist if the police try and arrest you. Resisting arrest can result in further criminal charges.

If you have questions or concerns about any of this information, please contact SWAN.



IDENTIFYING LAW ENFORCERS



RCMP ROYAL CANADIAN MOUNTED POLICE



Role: The RCMP is a national police force of Canada and is responsible for enforcing federal laws, mainly criminal laws. They may even enforce immigration or municipal laws. The RCMP are responsible for investigating human trafficking cases and sex work-related cases.

The RCMP are not immigration officers. Unless a removal order (i.e. order for a person to leave Canada) has been issued against you, the police generally do not arrest people for immigration infractions BUT, in practice, they may take people into custody on this basis.

They cannot arrest you because you are a sex worker or are seen as a sex worker. However, the RCMP may arrest you if they think you are a trafficker, agent, or a manager of other sex workers.

Uniform: hat with gold stripe, gold stripe on dark blue pants, grey shirt. May show up in plain clothes.



IDENTIFYING LAW ENFORCERS



VPD VANCOUVER POLICE DEPARTMENT



Role: The VPD is a municipal police force in the city of Vancouver. The VPD enforce criminal law, other federal laws, provincial law, and municipal by-laws. The VPD are responsible for investigating human trafficking cases and sex work-related cases.

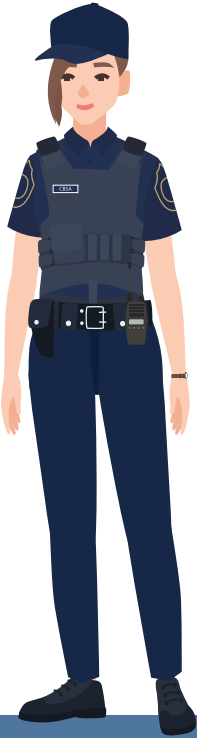
The VPD are not immigration officers. Unless a removal order (i.e. order for a person to leave Canada) has been issued against you, the police generally do not arrest people for immigration infractions BUT, in practice, they may take people into custody on this basis, or report you to CBSA.

They cannot arrest you because you are a sex worker or are seen as a sex worker. However, the VPD may arrest you if they think you are a trafficker, agent, or a manager of other sex workers.

Uniform: Dark blue shirt and pants. Shoulder badge on shirt that says “Police Vancouver.” May show up in plain clothes.



IDENTIFYING LAW ENFORCERS



CBSA CANADIAN BORDER SERVICES AGENCY



Role: The CBSA are immigration enforcement officials. They have wide reaching powers which means that they can arrest you if they have reason to believe that you don't have status or have overstayed, or if they can't identify you or suspect that you're breaking immigration law. If the CBSA suspects that you don't have immigration status, they can ask you to show your documents (passport, work permit). They may also ask you if you are working in Canada and other information such as your date of entry, birthday, address, etc. The CBSA have the power to arrest you if they believe that you don't have immigration status or that you breached an immigration law in Canada.

Uniform: Dark Blue shirt and pants. Officers may wear a baseball cap and/or jacket with "CBSA" on the back. May show up in plain clothes.

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