

# Fighting Wrongs with Wrongs?

## How Canadian Anti-Trafficking Crusades Have Failed Sex Workers, Migrants, and Indigenous Communities

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### Abstract

Indigenous populations, sex workers, and migrants have been legally, socially, and economically disenfranchised by the Canadian state in a multitude of ways—often in the name of “anti-trafficking.” In effect, state-led anti-trafficking enforcement measures fail to address the root causes of the harms created by past and present colonization, anti-sex work laws, and racist immigration measures and programs. This paper argues that anti-trafficking legislation and policies have been immeasurably harmful towards those they claim to protect.

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### Résumé

Les populations autochtones, les travailleuses du sexe et les migrants ont été privés de leurs droits juridiques, sociaux et économiques par l'État canadien de multiples façons—souvent au nom de la « lutte contre la traite des personnes ». En effet, les mesures d'application de la lutte contre la traite ne parviennent pas à traiter les causes profondes des préjudices créés par la colonisation passée et présente, les lois à l'encontre des travailleuses du sexe et les mesures et programmes d'immigration racistes. Cet article soutient que les lois et les politiques de lutte contre la traite des personnes ont été extrêmement préjudiciables envers ceux et celles qu'elles prétendaient protéger.

Over the last decade, the Canadian government has increasingly focused its attention on the fight to end “human trafficking,” a category that regularly conflates a number of phenomena, such as child sexual abuse, child sex slavery, deceptive or fraudulent hiring practices of migrant workers, abusive working conditions faced by adult sex workers, consensual exchanges of sexual services for money, both unwilling and willing sex migration, debt bondage, threats, coercion, theft or destruction of documents, rape, and kidnapping. According to Public Safety Canada (2012), Indigenous women and youth, migrant women, and women in the sex trade are the most common victims of “human trafficking.” While these communities face high levels of systemic violence, discrimination, and labour abuses, the term “trafficking victim” does not sufficiently capture these realities; instead, it tends to obscure them. More importantly, as this article argues, current state-led anti-trafficking legislation and efforts do not address the needs of those made vulnerable by systemic marginalization and criminalization. Indeed, placing the multifaceted experiences of violence and abuse faced by sex workers, Indigenous women, Indigenous youth, and migrants under the umbrella of “human trafficking” is erroneous and misleading.

Even if well meaning, the oversimplification of rights abuses obscures government complicity in the specific historical and contemporary political realities that have enabled such abuse in the first place. The term “trafficking” itself distracts from distinct, though sometimes overlapping, processes of systemic marginalization, institutional neglect, lack of protection, and labour exploitation—in short, disenfranchisement. While Canada's Conservative government appeared to be combating trafficking, it was, in fact, largely responsible for creating so-called trafficking victims by advancing a political agenda that was hostile to migrants, sex workers, and Indigenous peoples. The *National Action Plan to Combat Human Trafficking*, released by the federal government in November 2012, specifical-

ly noted that marginalized groups are at a higher risk of being trafficked; yet, it does not address current and historical colonialism or the criminal and immigration laws that place people in a rights-vacuum, leaving them vulnerable to labour abuses. This article will detail how state-mandated policies effectively create and maintain legal classifications that relegate people to a structurally exploitable labour pool with little recourse to rights. It will do so by detailing the ongoing colonization of Indigenous communities, the restrictions that make it difficult for migrants to work and live legally in Canada except as temporary labourers, and the laws that criminalize sex work and create a veritable underclass of labourers.

While this article critiques the use of “human trafficking” as an umbrella term for varied experiences of violence and abuse, and exposes the regressive undertones of anti-trafficking legislation, I do not deny the seriousness of forced labour and the sexual or physical abuse experienced by many marginalized people in Canada. The gravity of these injustices and the urgency in combating them cannot be overstated. Yet, acknowledging such realities should not uniformly result in uncritical support for contemporary anti-trafficking efforts. Members of the targeted communities who will be discussed in this paper are rarely considered to be key actors in state-led anti-trafficking campaigns. Such a lack of accountability to affected populations is also common among some church-led, feminist, and lobbyist anti-trafficking campaigns. Sex workers, for example, have criticized women’s groups that mobilize for the abolition of prostitution and trafficking for ignoring sex workers’ voices and experiences. Indeed, there is a wealth of pointed criticism voiced by sex workers and academics against church-based and feminist anti-trafficking rhetoric (Maynard 2012; Grant 2014; Mogulescu 2014). This paper, however, focuses more specifically on state-led and law enforcement applications of anti-trafficking approaches. Despite rarely being meaningfully consulted by policymakers, Indigenous and non-Indigenous sex workers, temporary migrant labourers, undocumented migrants, migrant sex workers, and their allies have taken it upon themselves to define what constitutes trafficking and exploitation for themselves. They have done so, and continue to do so, by combating workplace abuses and systemic marginalization on their own terms and by using available legal mechanisms,

such as labour laws, grassroots community organizing and empowerment, civil codes, and constitutional challenges, to advance their human rights.

### Who is the “Victim of Trafficking?”

Both the *Immigration and Refugee Protection Act* (IRPA) (2001) and the *Criminal Code* (1985) criminalize human trafficking. Section 118 of the IRPA (2001) prohibits the “bringing into Canada of persons by means of abduction, fraud, deception or use of threat of force or coercion.” Similarly, sections 279.01 to 279.04 of the *Criminal Code* (1985), have since 2005, outlawed profiting from the trafficking of adults and youth, destroying identification documents, and those who facilitate trafficking. As such, “every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them” is punishable under law. The seriousness of the offence, from a legal perspective, is demonstrated through a maximum sentence of life imprisonment.

In practical terms, however, what trafficking does and does not encompass is highly contested. The Conservative federal government’s 2012 *National Action Plan to Combat Human Trafficking* (hereinafter *Action Plan*) envisions trafficking as a broad cross-section of injustices, including profiting from the sexual slavery of women and children (women and children are not often discussed as distinct groups); coercive working conditions for migrants; controlling, manipulating, and threatening romantic partners; kidnapping; and the withholding of identity documents. It is worth noting that, prior to the addition of the offence of human trafficking to the *Criminal Code* in 2005 and to IRPA in 2002, the specific injustices listed in the *Action Plan* were already criminalized under other *Criminal Code* and IRPA sections. Although trafficking is described as a highly prevalent and urgent issue, the *Action Plan* does not provide any sourced numerical data; rather, it states that the number of victims in Canada is impossible to assess (Public Safety Canada 2012). In 2008, the Royal Canadian Mounted Police (RCMP) estimated that eight hundred foreign nationals were falling prey to human traffickers annually, although they have since withdrawn that number (CBC News 2008) and have not yet provided a new estimate. The crime of human

trafficking, as it is described both in the *Action Plan* and in the predominant discourse on trafficking in Canada and internationally, is highly gendered; it is primarily understood to affect women and girls and to be of a sexual nature. While sexual exploitation is not explicitly defined in the *Action Plan*, the Conservative government described prostitution as sexual exploitation in its 2011 election platform, which provides insight into how it has confused and conflated sex work and exploitation.

In a similar vein, in November 2013, the Conservative Party of Canada passed a motion at its policy convention that conflated human trafficking and the purchase of sex. Calling for “a specific plan to target the purchasers of sex and human trafficking markets through criminalizing the purchase of sex,” the Conservative Party rejected the possibility of decriminalizing sex work by sensationally stating that “human beings are not objects to be enslaved, bought or sold” (Wingrove 2013, n.p.). Given the absence of distinctions made, one can deduce that sex work and forced sexual labour are the same phenomenon. Indeed, former Conservative Member of Parliament Joy Smith (ardent anti-trafficking and anti-prostitution crusader) equates them quite explicitly and was quoted in the *Montreal Gazette* saying: “90 per cent of prostitutes are ‘lured’ into the sex trade and become victims who are ‘held captive by beatings’ and ‘have no place to go’” (Kennedy 2014a). While it has not been applied or enforced through criminal law, the ideological conflation of trafficking and the sex trade informed Conservative policy initiatives. This was the case despite the fact that sex workers around the world and in Canada, as well as UN Women and UN AIDS, have insisted that equating sex work and trafficking is harmful to both sex workers and victims of trafficking: “The conflation of consensual sex work and sex trafficking leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights. Furthermore, failing to distinguish between these groups infringes on sex workers’ right to health and self-determination and can impede efforts to prevent and prosecute trafficking” (UN Women 2013, 1).

In addition to the problematic connotations, the *Action Plan* also names specific at-risk populations, such as “Aboriginal women, youth and children, migrants and new immigrants, teenaged runaways, chil-

dren who are in protection, as well as girls and women” (Public Safety Canada 2012, 6). In several sections, it frames the majority of trafficking victims as members of Indigenous communities, suggesting that Indigenous and Inuit peoples must be specifically targeted by anti-trafficking prevention and enforcement efforts. Despite the lack of data and sources, migrants, Indigenous peoples, and those involved in the sex trade—especially adult women and children within these groups—are portrayed as the face of trafficking (victims) in Canada. Their vulnerability and designation as “at-risk” seem to exist in a vacuum, as if these groups place themselves at-risk, rather than being systemically disenfranchised and made vulnerable to state and economic violence and abuse. Additionally, this victimizing discourse is infantilizing, in that it equates racialized, Indigenous, and sex working women with children, negating their resourcefulness and resilience and their ability to negotiate complex situations.

### **Misleading Representations, Problematic Definitions**

Trafficking is predominantly regarded as forced sexual labour, yet evidence suggests that it most often involves other forms of labour, such as agricultural and domestic work (International Labour Organization 2012). The *Action Plan*, however, makes the unsubstantiated claim that the sexual exploitation of women and girls is the most common manifestation of trafficking in Canada (Public Safety Canada 2012). The Canadian Council for Refugees (2012a) has pointed out that government officials, especially former MP Joy Smith, tend to base these claims on numbers included in a report produced by the United Nations Office on Drugs and Crime (2009), which suggests that 79 percent of human trafficking cases involve forced sexual exploitation. However, these same government officials tend to ignore “that the same report also states that this figure may be a misrepresentation because forced labour is less frequently detected and reported” (CCR 2012a, 23). Indeed, the International Labour Organization (2012), a United Nations agency, documents that, of the 20.9 million forced labourers around the world in 2012, 4.5 million (22 percent) were victims of forced sexual exploitation, whereas 14.2 million (68 percent) were victims of forced labour exploitation in agricultural, manufacturing, construction, and domestic work

industries. In Canada, these industries often employ temporary foreign workers.

Despite well-funded efforts to combat it, sensational depictions of trafficking, which focus on child sex slavery rings or large numbers of migrant women forced into sexual slavery, have yet to be authenticated. For instance, the *Action Plan* itself states that, as of April 2012, there have only been twenty-five human trafficking criminal convictions (Public Safety Canada 2012). This suggests that depictions of trafficking are both overrepresented and sensationalized, processes that obscure the more frequent forms and occurrences of labour exploitation and coercion. The RCMP (2012b), which is responsible for anti-trafficking enforcement, has stated that “exploitation is the key element of the offence [of trafficking]” (n.p.). In that case, government priorities should include efforts to prevent and combat trafficking through the dismantlement of exploitative economic, social, and political structures. While the *Action Plan* confirms that those most at risk of trafficking are “socially or economically disadvantaged” (Public Safety Canada 2012, 6), it does not explore the structural elements that might be responsible for this disadvantage. How can efforts to address this crime be effective if its root causes are not addressed? It is precisely these structural elements of political disenfranchisement that are crucial in understanding the matrix of injustices that constitute what could (but likely should not) be called human trafficking.

Indigenous women, migrants, and sex workers are particularly vulnerable to such injustices due to a number of laws and government policies that systematically reduce the control they have over their labour and lives, depriving them of basic human rights (Lowman 2000; Currie and Gillies 2006; van der Meulen and Durisin 2008; van der Meulen 2010). Whether or not we use the term “human trafficking,” marginalization remains at the heart of what it means to exploit someone’s labour. What is important, then, is to examine the array of distinct institutional processes that render Indigenous women, migrants, and people in the sex trade vulnerable. It is also important to examine the ways in which these communities experience the abuses that make up the catchall term “human trafficking.”

#### *Indigenous Women and the Impact of Colonization*

Indigenous women and girls face unparalleled

rates of violence in Canadian society (Oppal 2012). This includes various abuses that exist within and outside of the legal definition of human trafficking. Sikka (2009) provides a definition of the trafficking of Indigenous women that is rooted in a broader historical context of disenfranchisement than that offered by the federal government: “Where the conditions of someone’s history have created a situation that another individual is able to exploit her by requiring that she perform labour (including sexual services) such that she cannot refuse, or such that she has no control over the conditions of her work, we may call this trafficking” (10). This definition, however, has been strongly contested by Indigenous feminist activists, such as Jessica Danforth, director of the Native Youth Sexual Health Network, who critiques the assumption that all Indigenous women working in the sex trade are trafficked (Maynard 2010). Despite the divergence in their analyses, both Sikka (2009) and Danforth (2010) importantly place emphasis on the historical and contemporary conditions of Canadian colonialism that underlie forced labour, physical and sexual abuse, and violence and coercion, illuminating what has been missing from the Canadian government’s analysis of so-called trafficking in Indigenous communities.

Since 2010, a number of studies have highlighted the effects of race, gender, and colonization on violence perpetuated against First Nations, Métis, and Inuit women across Canada. One example is the study conducted by the Sisters in Spirit campaign of the Native Women’s Association of Canada (NWAC). Based on five years of research and decades of advocacy and activism, the campaign addresses the trend with regard to and the root causes of missing and murdered women and girls. Sisters in Spirit found that Aboriginal women 15 years and older were three and a half times more likely to experience violence (defined as physical and sexual assault and robbery) than non-Aboriginal women and that over 40 percent of Aboriginal women were living in poverty (NWAC 2010). They also discovered that the rate of homicide among Aboriginal women was shockingly high when compared to the rest of the Canadian population, with hundreds of women missing and many found to be murdered (NWAC 2010). NWAC’s ensuing report confirmed that the devaluation of Indigenous women’s lives cannot be reduced to the acts of a few individual criminals, but can only be understood

within a larger framework of institutional colonial dispossession:

The overrepresentation of Aboriginal women in Canada as victims of violence must be understood in the context of a colonial strategy that sought to dehumanize Aboriginal women. While the motivations and intersections may differ, NWAC has found that colonization remains the constant thread connecting the different forms of violence against Aboriginal women in Canada. (NWAC 2010, 2)

NWAC's (2010) report further elaborates by naming such colonial acts of violence as residential schools, the Sixties Scoop, the high proportion of Aboriginal children currently in the child welfare systems, and the denial of culture, language, traditions, and lands. As well, the work of Indigenous activist and researcher Cindy Blackstock has documented the significant under-funding of welfare, schools, and health for on-reserve communities, which, alongside the trauma caused by residential schools, create enormous structural disparities for Indigenous youth. (Blackstock 2011). While Indigenous women and youth do—due to structural inequalities—experience abusive, forced situations for which the term “trafficking” is appropriate, a critical anti-colonial analysis is also necessary. Indeed, the absence of an anti-colonial framework in the government's anti-trafficking initiatives leaves the structures of inequity untouched and results in the creation and maintenance of shallow protection efforts. Due to colonization, extreme poverty, and systemic neglect, many Indigenous communities are denied access to economic opportunities and are vulnerable to coercion and violence. To reduce these conditions, “human trafficking” disguises the governmental policies that are the cause of these conditions.

As noted above, among anti-colonial Indigenous women's organizations, views on violence against women in the sex trade are far from homogenous. NWAC (2012), for instance, is highly critical of the systematic inequalities resulting from ongoing colonization. It also takes a prohibitionist, “Nordic model” stance on the sex trade, which views the trade itself as a form of violence that should be abolished through criminal laws that target the purchase of sexual services. Others, such as the Native Youth Sexual Health Network and the former Aboriginal Sex Worker's Education and Outreach

Project at Maggie's: The Toronto Sex Workers Action Project, support sex workers' rights within an anti-colonial framework. Similarly, Sex Workers United Against Violence (SWUAV) in British Columbia, a group comprised of several dozen mostly Indigenous street-based sex workers in Vancouver's Downtown Eastside, has argued that decriminalizing the sex trade is vital for ensuring sex workers' safety because it removes crucial dangers from their way of making a living (SWUAV et al. 2014). Naomi Sayers (2014), a former Indigenous sex worker, states that the conflation of trafficking and sex work is problematic because it does not allow for a differentiation to be made between exploitative and non-exploitative situations experienced by Indigenous women in the sex trade:

Based on definition alone [...] all Indigenous sex workers would be seen as victims even if they do not identify as a victim themselves, like myself (young, Indigenous, female and moving from the North to the South in search of employment opportunities) (5, original emphasis).

The arguments put forward by these outspoken Indigenous organizations and individuals, including the idea that any repression of their work, such as policing their clients, increases their risk of violence, has also been supported by empirical data. Krüsi et al. (2014), for example, interviewed sex workers in Vancouver's Downtown Eastside, where the Vancouver police have been implementing the Nordic model and directing their energies toward arresting clients, but not sex workers, since at least 2013. Their research found that sex workers did not want their clients arrested unless they were violent or exploitative. It also found that targeting clients put sex workers in danger due to the resulting displacement and isolation, lack of police protection, and lack of time to screen and negotiate services. Similar findings were documented in a study conducted by SWUAV and Pivot Legal Society (SWUAV et al. 2014).

#### *Immigration Legislation and Migrant Vulnerability*

The array of structural elements that render migrant and non-status populations vulnerable to labour abuses, coercion, and debt bondage differ somewhat from those affecting Indigenous and sex working communities. Unless they are educated professionals, migrants of all genders have limited means to legally enter

Canada to live and work. This pattern began in 2001, but intensified in 2006, when the Conservative Party of Canada formed a minority federal government. While the rate of refugee acceptances has decreased by nearly half in the last two decades (Black 2012), Conservative government policies have resulted in a significant reduction in the annual number of permanent residents who can qualify to become Canadian citizens (Fudge 2011). Migrant justice scholar Nandita Sharma (2005) argues that immigration controls do not stop migration, but instead make migrants' lives less secure: "What the reformulation of immigration and refugee policy has accomplished is the denial of permanent status to the vast majority of the world's migrants within the places they come to live and work" (105). Living without legal status puts people at great risk of a wide array of abuses and undocumented migrants lack even the most basic access to legal protection. It is estimated that, at any given time, approximately 500,000 people live in Canada without status (Portuguese Canadian National Congress 2009).

If a person's presence in the country is considered illegal, the fear of deportation presents a key barrier to resistance against labour, physical, sexual, and other abuses, which are a fact of life for many undocumented migrants regardless of how long they have lived in the country. Deportation has increasingly been a reality for many migrants, as numbers spiked under the Conservative government. In what the Canada Border Services Agency (CBSA) (2012) called a record year, over 16,000 people were deported between 2011 and 2012. Benjamin Buckland (2008) notes that the increasing focus on border security policies is dangerous for migrants because it can increase trafficking and smuggling by forcing people to migrate clandestinely and "illegally." This, in turn, can result in "unintended and often disastrous consequences for refugee protection and human rights" (42). Indeed, while coercion and threats are criminalized under Canadian law, the very structure of immigration legislation creates a subclass of migrants for whom the threat of deportation is a daily reality. As such, migrants without status are systemically relegated to precarious working conditions and heightened abuse in the workplace.

Even migrants who come to Canada through state-supported and state-regulated programs, such as the Temporary Foreign Worker Program (TFWP), are

vulnerable to workplace and other abuses. Since 2006, the number of temporary foreign workers in Canada has surpassed that of permanent residents (Canadian Centre for Policy Alternatives 2013) and the Canadian economy has become dependent on the cheap labour of migrants from the Global South (Walia 2013). In fact, the total number of temporary foreign workers in Canada has more than doubled over the last decade, from 177,719 in 2000 to 444,847 in 2011 (Citizenship and Immigration Canada 2011a). As noted above, according to the *Action Plan*, the definition of trafficking includes a number of abuses and violations, including coercive working conditions, the withholding of identity documents, and more. Many see the organization of temporary migrant labour in Canada as inherently exploitative and rife with rights abuses (Sharma 2006; Nakache and Kinoshita 2010; Walia 2010) and, indeed, the TFWP program has been widely criticized for creating situations of powerlessness among workers through the threat of deportation (Canadian Council for Refugees 2012b; Alberta Federation of Labour 2013). A report published by the Metcalf Foundation, for example, found that "exploitation is not isolated and anecdotal. It is endemic. It is systemic. And the depths of the violations are degrading" (Farraday 2012, 5). Similarly, the Office for Systemic Justice (n.d.), a group that works with agricultural migrants in southwestern Ontario, has stated: "While there have been successful worker placements with this [TFWP] program, the examples of abuse were staggering" (4). The Office for Systemic Justice also reports that it is indeed commonplace for migrants to labour in unhealthy and unsafe working conditions, to be taken to a place of employment other than that which was predetermined prior to their arrival, to be given mandatory overtime work, and to experience coercion by their employers. It is precisely these same conditions that are identified in IRPA's (2001) definition of trafficking: "Fraud, deception or use or threat of force or coercion."

Since workers are only able to work for one employer, as mandated by the TFWP, and due to limited social protections, migrant workers can be deported for challenging their conditions and they have little access to recourse in such situations (Walia 2010). Significantly, workers in the TFWP also cannot access unemployment benefits or social assistance. The International Labor Organization has furthermore criticized

Canada and Ontario for denying 100,000 domestic and migrant agricultural workers the right to unionize (UFCW 2010). Despite the fact that migrant labourers are included on the *Action Plan's* list of those vulnerable to trafficking, their experiences are rarely detailed in popular or government discourse on human trafficking. Absent from popular discussions of trafficking is the fact that Canadian immigration policy is itself the driving force behind the proliferation of labour abuses suffered by migrants.

### *Sex Work and the Criminalization of the Trade*

Simply put, if one's occupation is criminalized, one does not have the ability to fight exploitative working conditions through standard channels. Labour rights and protections are not guaranteed in illicit or illegal industries. In a recent pan-Canadian study on management in the sex trade, Bruckert and Law (2013) found that working conditions, safety, and level of control over the terms and conditions of work vary widely across the industry. Some sectors allow workers to control their own prices, services, and limits and to freely negotiate working relationships with third parties, such as managers and receptionists. In other sectors, sex workers find themselves with considerably less power and less control over working conditions that may be extortive or dangerous. This is particularly true for street-based sex workers who are exposed to danger when they or their clients are criminalized. The need to hide from police in order to prevent criminal charges reduces their time to screen clients, negotiate services, and assess risk. Street-based sex workers are often displaced to dark and isolated areas, increasing their vulnerability to violence (Krüsi et al. 2014). In the recent Supreme Court *Bedford v. Canada* (2010, 2013) case, sex workers argued that their work is not dangerous in-and-of itself, but that the laws criminalizing the sex industry deprive workers of the ability to negotiate their conditions and thus put them in danger. They are forced to choose between breaking the law and working in safety (*Bedford v. Canada* 2010; *Canada v. Bedford* 2013; Supreme Court of Canada 2013). It should also be noted that the *Criminal Code* already contains separate provisions criminalizing blackmail, assault, extortion, kidnapping, and child abuse; many argue that these laws should be sufficient to protect sex workers against such harms, rather than specific laws aimed at sex work (Maynard 2011).

Similar to critiques of the decontextualized and simplified term "human trafficking," sex workers tend to avoid the language of "sexual exploitation" when discussing their occupation, as it is often used to imply that the work is necessarily exploitative. The perception that all sex work is non-consensual denies sex workers' agency to provide or withdraw consent. Instead, sex workers argue that workplace abuses, sexual assault, and violence are not endemic to the sex trade, but flourish with impunity in the context of criminal laws that make it illegal for them to work more securely. These include provisions that outlaw working from a fixed location, hiring receptionists or security, and publicly negotiating the terms and conditions of their services (Maggie's 2011; Stella 2013; SPOC 2014). Further, the illegal nature of the sex trade becomes a bargaining tool for those who wish to profit from sex workers' precarious status under the law. A sex worker who is afraid of losing her children, spending time in prison, or having a criminal record, for instance, might more readily experience manipulation, blackmail, or financial or sexual extortion by an employer, a vindictive lover, or a hostile client in the process of minimizing contact with police. It has been shown that working in a criminalized context is highly dangerous for sex workers. For instance, between 1994 and 2004, 171 sex workers were killed in Canada (Statistics Canada 2006) and other studies have demonstrated a direct link between criminalization and sex workers' high murders rates (Lowman 2000).

In *Canada v. Bedford* (2013), the Supreme Court ruled that the laws criminalizing the adult sex trade put sex workers at risk. Despite the evidence presented to the court as well as decades of social science research and sex workers' own advocacy, then Minister of Justice and Attorney General of Canada Peter MacKay introduced Bill C-36, the *Protection of Communities and Exploited Persons Act*, in June 2014, which received royal assent in November 2014. The aim of this new law is to eradicate the sex industry and end the demand for sexual services through the criminalization of clients and a ban on advertising sexual services, recreating many of the provisions already deemed unconstitutional in *Bedford* (Wrinch 2014). While defenders of the legislation claim it protects women in the sex trade from trafficking, their claims are contradicted by empirical evidence. In an analysis of "end demand" policies worldwide, the

Global Alliance Against Traffic in Women (GAATW) (2011) found that not only are such policies ineffective in fighting trafficking, but they also put sex workers at increased risk of abuse: “End demand for prostitution’ approaches not only threaten the effectiveness of anti-trafficking efforts, they can often place sex workers at greater risk of violence and exploitation” (31).

Proponents of the new law also cite the disproportionate number of Indigenous women in the sex industry as a justification to criminalize it (Department of Justice 2014). However, Indigenous sex workers have indicated that this legislation only increases the dangers they face (Sayers 2014). Indigenous street-based sex workers are especially vulnerable to violence and abuse due to both societal racism and anti-prostitution stigma and hostility. This violence exists in a context of near impunity, as was demonstrated by the murders of women from Vancouver’s Downtown Eastside. Responses to these latter cases were characterized by extreme police neglect and hostile and dehumanizing stereotyping of Indigenous women and women in the sex trade (Oppal 2012). Migrants in the sex trade are also particularly vulnerable to heightened abuse and violence due to a combination of restrictive immigration legislation and the laws criminalizing sex work. Migrants arrested for their involvement in the sex trade are not only threatened with time in prison and a criminal record, but they are also often vulnerable to deportation. This combination of factors isolates migrant sex workers and can lead to a fear of accessing social and health services, resistance to reporting workplace abuses, and concerns over being caught and deported. Indeed, the criminalization and stigmatization of adult sex work puts sex workers of all backgrounds and social locations, but particularly those who are already marginalized, at higher risk of dangerous, extortive, and violent workplace situations.

### **Ineffective Prevention Efforts, Harmful Enforcement**

The term “human trafficking” in its common usage tends to depoliticize what are, in fact, systemic processes of disenfranchisement. The notion of trafficking put forward by the Conservative government, alongside powerful American anti-prostitution NGOs, religious groups, and some feminist organizations, is one that focuses on individual crimes perpetrated by pathological or greedy groups or individuals and one that ignores

broader economic and social contexts. In other words, it names “at-risk” groups without explaining how they are *systematically* “at-risk.” A more useful understanding of trafficking should start by taking into account the conditions of duress under which the most marginalized sectors of society are forced to work. For Indigenous women, it is often the extreme poverty caused by centuries of ongoing colonization; for non-status migrants, it is the precarity caused by Canadian immigration laws; for sex workers of any background, it is laws rendering illegal the very industry in which they work. Indeed, the structural elements highlighted above make possible the multiplicity of offences commonly called “human trafficking,” as experienced by Indigenous women, migrants, and sex workers.

Skewed perceptions of “human trafficking” lead both to ineffective prevention efforts and to harmful enforcement endeavours. Anti-trafficking prevention and enforcement falls under the joint jurisdiction of Citizenship and Immigration Canada and the RCMP. In 2005, the RCMP established the Human Trafficking National Coordination Centre within the Immigration and Passport branch at RCMP Headquarters in Ottawa (RCMP 2012a). On the levels of prevention, enforcement, and victim protection, anti-trafficking policy in Canada has increased, rather than decreased, the vulnerability of those populations deemed most “at risk” of being trafficked. This is not a new criticism. Jacqueline Oxman-Martinez, Jill Hanley, and Fanny Gomez’s (2001) comprehensive four-year analysis of Canadian policy on human trafficking, for example, found that Canadian anti-trafficking efforts were highly ineffective due to their focus on immigration and crime enforcement, rather than the conditions that contribute to the vulnerabilities of victims: “The approach remains framed by an analysis of human trafficking that is more focused on crime and security, focusing on reaching individuals at risk rather than addressing the root cause of people’s vulnerability to trafficking, namely poverty and inequality” (14). They critiqued the Canadian government for its lack of focus on what should be the goal—that no one is at risk of forced labour. While Oxman-Martinez, Hanley, and Gomez (2001) mounted this critique fifteen years ago, the Canadian government has yet to change its course. Instead, government prevention efforts have ranged from ineffective and patronizing to harmful. These efforts have not adequately addressed



economic and social marginalization, discriminatory immigration legislation, or colonization. Instead, since forming a federal minority government in 2006 and a federal majority government in 2011, the Conservative Party of Canada continued to introduce bills and laws that impinged on social and economic justice for affected communities. Two prime examples included the *Protection of Communities and Exploited Persons Act*, as noted above, and the *Safe Streets and Communities Act* to be discussed in more detail below.

Vulnerability to trafficking is systemic and not individual in nature. For Indigenous women and girls, prevention has been largely tokenistic; the principal tactic of government prevention policy in Indigenous communities has been to encourage people to “just say no.” Indeed, much prevention work has consisted of urging youth to choose not to be trafficked, as evident in the “I’m Not For Sale” poster and public relations campaign. The *Action Plan* identifies one of the RCMP’s main deliverables in the prevention of trafficking of Aboriginal peoples as the mass distribution of “I’m Not For Sale” tool kits to all First Nations territories, Inuit communities, and Métis settlements (Public Safety Canada 2012). Aboriginal women have critiqued such choice-based forms of violence prevention in Indigenous communities, arguing that “Too often, prevention strategies assume that if programs and services are available, women will be able to improve ‘their’ situation... Violence prevention needs to be about more than individual choice” (NWAC 2010, 32). Instead, they cite the difficulty of fighting violence in the context of extreme social inequality, suggesting that “it is hard to focus on culture and healing when families and communities lack clean water, access to childcare or the economic security to have safe, affordable housing” (NWAC 2010, 32). Individualized risk-focused prevention also ignores the perpetrators of violence and thus allows the continued targeting of Indigenous women (Hunt 2014). Hunt (2014) notes that there has been a deafening silence among law enforcement officials and politicians on the culture of white male violence towards Indigenous women. Instead, the focus has been on Indigenous women’s “high-risk lifestyles,” which places the responsibility on those who experience violence. The RCMP’s campaign, which was designed to empower Indigenous youth and girls so that they would choose to avoid being trafficked, is comical in a context in which the fed-

eral government has taken few, if any, steps to address social inequalities and reduce vulnerabilities.

Rather than addressing the fundamental injustices that make Indigenous women and girls vulnerable to physical, sexual, and labour abuses, the Conservative government actively resisted Indigenous sovereignty over identity and land and continued to advance policies of colonization (Land, Zimmerman, and Bradley 2012). It also ignored increasingly vocal and organized resistance movements, such as the *Idle No More* movement (Coutts 2012). Scholars, such as Andrea Smith (2005), have denounced government attacks on self-determination as they directly affect health and rates of violence experienced by Indigenous communities. The federal government also strategically defunded certain organizations, initiatives, and research, like NWAC’s Sisters in Spirit campaign, which was subsequently unable to continue building its internationally acclaimed database of missing and murdered women. Thus, its critiques of the government’s complicity in violence against Indigenous women was effectively silenced (Harrison 2010). In 2012, the federal government also cut funding, either partially or wholly, to Aboriginal Affairs and Northern Development Canada, the Assembly of First Nations, the National Aboriginal Health Organization, the Pauktuutit Inuit Women of Canada, and the First Nations Statistical Institute. It also reduced health funding to Inuit Tapiriit Kanatami by 40 percent (Bourassa 2012). Such funding reductions come after years of other funding cuts, including to Status of Women Canada and the Court Challenges Program in 2006.

Although much of the rhetoric in the “I’m Not for Sale” campaign and government anti-trafficking efforts has focused on protecting youth from exploitation, there has been no mention of the historically unprecedented numbers of Indigenous youth currently in foster care (National Council of Welfare 2007). These high numbers are seen by many as an extension of the Sixties Scoop, which began in the 1960s and resulted in significant numbers of Aboriginal children being taken from their families of origin and placed with non-Aboriginal families, causing devastating and long-lasting effects (Indigenous Foundations 2009). The “I’m Not for Sale” campaign is unlikely to succeed in preventing violence against or exploitation of Indigenous women and girls because it fails to address or correct situations that put them “at risk” in the first place. “I’m Not for

Sale” appears hypocritical in the face of the Conservative government’s blatant hostility towards the sanctity of the lives of Indigenous women and girls. A prime example was Prime Minister Stephen Harper’s callous reaction to the death of a fifteen-year-old Indigenous youth, Tina Fontaine, in Winnipeg, Manitoba, claiming that it was “not a sociological phenomenon” (Kennedy 2014b, n.p.).

Government prevention efforts targeting migrants have likewise been ineffective and detrimental, particularly to migrant women both inside and outside of the sex trade. Its stated aims, as outlined in the *Action Plan*, include protection: “The Government will implement measures to improve the protection of vulnerable foreign nationals, including female immigrants who arrive alone in Canada, from forced labour and sexual exploitation at an early stage” (Public Safety Canada 2012, 15). In 2011, the House of Commons passed the *Safe Streets and Communities Act*, which included a section entitled, “Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation.” This Act empowered immigration officers to refuse would-be migrant women work permits if they are deemed “vulnerable to experiencing humiliating or degrading treatment, including sexual exploitation or human trafficking” (Citizenship and Immigration Canada 2011b). In effect, the authority to determine that a woman may be vulnerable gives arbitrary discretionary power to bureaucrats. It was already difficult for women classified as “unskilled” to live and work in Canada other than as live-in caregivers, which has made Canada that much less accessible for many (Fudge 2011). The *Safe Streets and Communities Act* was consistent with the Conservative government’s restrictive immigration policies; however, it contradicted the aims of the *Action Plan*, which seeks to protect “vulnerable foreign nationals,” who are now relegated to more dangerous and clandestine means of entering the country and less secure sites of work once they are here.

In addition to the restrictions on entry to Canada, there has also been an outright ban on migrants who intend to work in the legal sex trade (for example, in licensed erotic massage parlours, exotic dance venues, and more). In the name of “protection,” migrants are being denied visas and work permits for employment in these locales (Citizenship and Immigration Canada 2012). Such targeting maintains the conflation

of sex work and sexual exploitation, a connection that sex workers have repeatedly decried as patronizing and compromising of their rights to make economic decisions (Sayers 2014). The prevention of sexual exploitation was also used as the justification for the then Minister of Citizenship and Immigration Jason Kenney’s revocation of the exotic dancer work permit exemption in July 2012. For many years, the exemption allowed migrant exotic dancers to work in Canada with contracts that guaranteed their wages. Migrant women wishing to work as dancers must now do so with few labour protections and without a permit, similar to migrants wishing to work in other legal sex establishments. In this case, anti-trafficking enforcement places migrant sex workers in more, and not less, risk of workplace abuses by forcing them to enter the country clandestinely and to work without legal permits and protections.

Government anti-trafficking efforts have so far accomplished very little. Instead, they have been counterproductive by perpetuating, rather than challenging, the root causes of the vulnerability and structural insecurity of migrant and Indigenous women whether they work in the sex trade or not. While it is important to consider the victims of trafficking as well as when and where trafficking takes place, it is equally important to consider those who are victimized by the anti-trafficking efforts that claim to help them. For women in the sex trade, anti-trafficking enforcement has tended to result in arrest and humiliation. In 2006, for example, over 200 police officers raided 17 massage parlours in the lower mainland of British Columbia. They handcuffed and arrested 78 workers who were presumed to be victims of an Asian organized trafficking ring (Kari 2006). In the end, none of the women were found to have been trafficked. Most were Canadian citizens (those who were not were permanent residents), all were at least 19 years old, and all of the charges laid were for prostitution-related offenses and not for trafficking (Bolan 2006). Invasive police intervention, handcuffing, and arrests were traumatic for the workers subjected to this “rescue” mission. Similar raid-and-rescue efforts were initiated in January 2014, less than a month after the Supreme Court of Canada reached its decision in *Bedford v. Canada*, wherein police targeted over 300 escorts across the country (SPOC 2014). According to the sex worker advocacy organization, Sex Professionals of Canada (SPOC) (2014), police officers posed as

clients to make appointments and then appeared at the escorts' apartments or hotel rooms in groups of up to four, demanding identification and searching the premises without informing the sex workers of their rights to a lawyer. This was done in the name of fighting coercion, yet sex workers' groups condemned the actions as counter-productive and harmful: "Such duplicitous and intimidating policing tactics hinder the important goal of surfacing actual cases of exploitation and coercion" (SPOC 2014, para. 3).

Police often ignore evidence that indicates that the majority of sex workers are not trafficking victims. This results in inappropriate actions, like raids, that hurt more than they help. Anti-trafficking and anti-prostitution raids inflict trauma and intensify sex workers' distrust of police. In her collaboration with New York's Sex Workers Project, Melissa Ditmore (2009) found that the fear of law enforcement, specifically raids, created a climate in which sex workers who faced dangerous working conditions or worked against their will felt uncomfortable going to police when in need of protection. Similar critiques have been voiced in other international locations as well (Empower Foundation 2012). Distrust of law enforcement officials makes it more difficult for sex workers to help fight sex trafficking even though they are well-positioned to do so.

In addition to problematic raid-and-rescue operations, the Canadian federal government has also engaged in harsh detention and deportation activities. Indeed, the Canadian Council for Refugees and the Office for Systemic Justice has criticized the government for having inadequate mechanisms in place for migrant victims of trafficking both inside and outside the sex industry. For example, the Canadian Council for Refugees (2012b) publicized a 2007 case involving a woman who was apprehended at the US-Canada border. After being interviewed by the Canada Border Service Agency, she was found to have been trafficked and was subsequently held in detention and then deported without being given the opportunity to meet with a lawyer (CCR 2012b). Such an approach violates the federal government's recent guidelines for the treatment of trafficking victims, as outlined in the *Action Plan*; however, the guidelines are not legally binding.

Prior to 2006, victims of trafficking in Canada's sex trade were often arrested, criminally charged, and deported because there were no mechanisms in place

to protect them (Oxman-Martinez, Hanley, and Gomez 2001). To address this flaw, Citizenship and Immigration Canada (2007) introduced a temporary resident permit (TRP) for victims of trafficking in 2006. The 180-day permit grants them to access to health, social services, and counselling. According to the *Action Plan*, 178 temporary resident permits were issued to seventy-three foreign nationals between May 2006 and December 2011 (Public Safety Canada 2012), demonstrating a shift towards greater support and protection of trafficking victims. On paper, this permit seems to address the needs of migrants. However, there is still no law in place that guarantees trafficking victims protection from deportation and temporary resident permits have been widely criticized for failing to address the endemic workplace abuses experienced by migrants. The Canadian Council for Refugees (2012b), for instance, has indicated that permits are issued on a discretionary basis and the application process places an unreasonable burden of proof on trafficking victims. They have also argued that the mandatory involvement of law enforcement agencies deters some victims of trafficking from even applying. Based on its experience working with migrants who face extreme labour abuses, the Office for Systemic Justice (n.d.) argues that the most exploited migrant labourers will not apply for a temporary resident permit as a trafficked person because of the limited protections offered to them in the process. For example, if a migrant labourer comes forward only to find that the trafficking elements of their story are not accepted by Citizenship and Immigration Canada, she or he risks deportation and a substantial fee with no means to pay it. For many, this means that extended family members can also become indebted, leaving the migrant worker with feelings of shame for the hardships caused (Office for Systemic Justice n.d.).

The Canadian Council for Refugees (2013) has identified several other crucial structural flaws that discourage people from accessing the temporary resident permit. In particular, they note that the permits are not accessible to individuals who reside in Canada under the TFWP. Similar to other applicants, if their permit application is not accepted, the information shared in the application could be used to deport them (CCR 2013). Further, if issued a temporary resident permit, applicants could lose their legal status—as a visitor, live-in caregiver, or temporary foreign worker—with no

guarantee of extending their stay in Canada beyond the 180 designated days, thereby endangering their ability to live and work in Canada (CCR 2013). In addition, people living in Canada without proper documentation, also known as non-status migrants, who wish to attest to exploitative or abusive labour conditions face the substantial risk of alerting the authorities of their presence in the country. While the *Action Plan* states that, “in Canada, victims of trafficking are not required to testify against their trafficker to gain temporary or permanent resident status” (Public Safety Canada 2012, 14), this claim has been challenged by groups who work directly with victims of trafficking. The Canadian Council for Refugees, for instance, notes that because cooperation in criminal investigations against traffickers is given priority in considerations of longer-term residency permits, it becomes “a *de facto* requirement” (CCR 2013, 3). Perhaps most alarmingly, the Canadian Council for Refugees cites cases of people being denied temporary resident permits as soon as the criminal proceedings against their traffickers are concluded (CCR 2012a). Trafficking victims, therefore, continue to be denied citizenship and are removed from the country despite government claims of improvement.

## Conclusion

Addressing the harms produced by anti-trafficking efforts involves tackling root causes and working with, not on behalf of, affected communities. As activists and allies, it is incumbent upon us to find ways to re-centre the focus on self-determination movements of those facing abuses either at the hands of, or made possible by, state practices. Sex workers, migrant rights organizations, and Indigenous communities should be leading these conversations, rather than being spoken for. While these voices tend to be ignored by state-led anti-trafficking campaigns, they are not silent; racialized, migrant, Indigenous, and sex working women have been fighting and speaking for themselves and defining their realities and struggles on their own terms. They have demonstrated resilience and have positioned themselves as agents in their own lives, with a strong focus on fighting racism, colonialism, sexism, and the harms caused by immigration controls and the criminal justice system (Danforth 2010; Walia 2012). Important examples include peer-led anti-violence programs for sex workers at Vancouver’s Pace Society, the Native

Youth Sexual Health Network with its youth-driven, empowerment-based sexual health and bodily autonomy framework, Ottawa’s Families of Sisters in Spirit, and the efforts of No One Is Illegal in Toronto and other cities across Canada to secure access to health, social, and educational services for undocumented migrants.

To be effective, anti-trafficking campaigns and policies must be evidence-based and accountable to the communities they purport to protect and support. A positive example of an organization that specifically addresses forced labour is the Global Alliance Against Traffic in Women (GAATW), a needs-driven, evidence-based model that supports migrant and sex worker-led efforts to fight trafficking in the sex industry, domestic work, and the garment industries, among others, and centers the experiences of migrant women in its research and actions. Evaluating the efficacy of anti-trafficking policies around the world, GAATW (2011) advocates for “long-term approaches that can reduce the demand for exploitative practices while respecting workers’ and migrants’ rights (e.g. enforcing labour standards, reducing discrimination against migrants, supporting sex workers’ rights),” rather than short-term or ideologically-driven policies (n.p.).

Our communities are diverse and complex. It is beyond the scope or intention of this article to create an approach that would or could meet the needs of Indigenous women, Indigenous youth, migrants, and sex workers from all backgrounds. Instead, this article highlights a multiplicity of political challenges that these communities face. While problematic at its core, the reality that government anti-trafficking efforts affect a diversity of marginalized people opens a unique window for sex workers, migrant justice advocates, and Indigenous-rights activists to continue to build solidarity with one another. This is an important opportunity, especially in a context in which governments are advancing harmful policies with little to no evidence base. Under Canada’s Conservative regime, for example, we have seen the enactment of legislation that could dramatically affect Indigenous peoples’ ability to own their lands. We have also seen more migrants than ever in Canadian history forced to enter the country either illegally or through temporary work programs. Simultaneously, as the courts were making historic decisions and sex workers’ rights were gaining legitimacy, the Conservative government passed new legislation that

criminalized the sex trade. Any effective anti-trafficking effort must place at the forefront Indigenous, migrant, sex working, and racialized women's voices. It must challenge systemic violence and disenfranchisement in all of its forms in order to achieve reproductive, sexual, and bodily autonomy as well as freedom from state or state-endorsed violence and discrimination.

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