



## **Brief for the Standing Committee on Justice & Human Rights (JUST) on its review of Bill S-224: An act to amend Criminal Code (trafficking in persons)**

**June 2023**

The Canadian Women's Foundation is Canada's public foundation for gender justice and equality. We advance this by growing support for grassroots feminist action, partnering with communities and organizations to improve conditions, and building diverse leadership and knowledge for sustainable change. Since 1991, our generous donors and supporters have contributed more than \$185 million to fund over 3,000 life-transforming programs throughout Canada.

For more than a decade, the Canadian Women's Foundation has contributed to the national policy discourse on human trafficking, and we have witnessed how laws, policies, and investments in anti-trafficking have caused significant harm to the very populations these initiatives seek to support, particularly sex workers and precarious status migrant women and gender-diverse people who are Black, racialized, and/or Indigenous.

We are concerned that in its consideration of Bill S-224, the Committee on Justice & Human Rights has neither adequately considered nor reckoned with the significant and lasting harms the proposed Criminal Code amendment would cause. We call on the Committee to hear from sex workers and precarious status migrant workers before closing deliberations. They are key stakeholders who are concerned that their safety and livelihoods would be seriously compromised by the proposed Criminal Code amendment, and they deserve to be heard and meaningfully consulted.

### **Problems with the Proposed Criminal Code Amendment (trafficking in persons)**

Bill S-224 seeks to redefine what constitutes exploitation in the context of trafficking in persons, removing the requirement that the victim fear for their safety or the safety of loved ones should they fail to provide their labour or services. This would erase a clear distinction between sex work and trafficking.

Under the proposed amendment, police would no longer need to establish that the safety of the person in question had been compromised in order to charge an alleged perpetrator with a trafficking offense. Police and courts would be empowered to determine that trafficking had occurred without a victim ever coming forward to say that they were coerced into their

work or service provision arrangement due to threats to their safety, or to self-identify as a trafficked person.

This is entirely at odds with victim-centred approaches to public safety and community care and would have significant and harmful impacts on the lives of sex workers and precarious status migrant women, who remain disproportionately the focus of anti-trafficking legal and policy interventions.

The proposed amendment displays sexist and anti-sex work biases, implying that it is unnecessary to hear or consider the perspectives of those assumed to be victims, and further silencing an already marginalized and criminalized population. Removing the “threat to safety” requirement would empower police and the courts to subject sex workers and precarious status migrant women to greater surveillance and harassment under the guise of protection and further entrench the ongoing, wrongful conflation of sex work and trafficking.

Removing the “threat to safety” requirement renders the definition of trafficking dangerously broad, such that almost any work arrangement in which there are unequal power relations and/or abuses of power could be pursued as a case of trafficking in persons. This has wide-reaching implications across all sectors of the Canadian economy.

Workplace gender-based discrimination and harassment occur in all industries and are almost always related to unequal power relations and structural barriers to access to justice. These are labour rights and human rights violations that require urgent attention. The proposed Criminal Code amendment would make it possible for police to charge employers engaging in discriminatory and abusive behaviours with trafficking, shifting focus to individual criminal behaviour and away from addressing the root causes of rampant workplace rights violations.

### **Criminal Law Interventions Do Not Address Trafficking**

Patterns of coercion, violence, and exploitation that constitute trafficking are the product of patriarchal power dynamics, unfair labour and class dynamics, and social and economic inequality. These are not problems that can be addressed by broadening the criteria for the arrest and prosecution of individual offenders, or through operations designed to rescue victims from their circumstances, whether they identify as trafficking victims or not. Casting a wider net of criminalization only serves to further marginalize and endanger sex workers and their support networks.

We urge government to turn its attention to addressing root causes. Inequalities and discrimination embedded in Canada’s systems and institutions constrain the options of those who experience multiple and intersecting forms of oppression and create conditions in which they can be exploited and subjected to violence.

Addressing poverty, homelessness, and food insecurity; ensuring safe and equal access to health and social services; regularizing the immigration status of undocumented and precarious status migrants and providing Permanent Resident status on arrival; decriminalizing sex work; and including healthy relationships education in school curricula are among the actions that the Canadian Women’s Foundation and many community organizations and experts have recommended over decades of gender justice advocacy.

## **Centre the Voices of those Most Affected**

The harmful conflation of sex work and trafficking and the pursuit of criminal law interventions over human rights-based approaches to addressing gendered violence and exploitation stem, in large part, from failure to listen to sex workers and migrant women and to involve them in the development of laws and policies that affect them. We saw a similar dynamic at play in the recent meetings of the Standing Committee on the Status of Women in the selection of witnesses to inform their study on human trafficking in Canada. We drew attention to this issue [in our brief](#), which we also urge this Committee to review.

As we outlined in our June 7, 2023 letter to the Chair of the Standing Committee on Justice & Human Rights, it is critical that the Committee hear from sex workers and precarious status migrant workers directly. These stakeholders have put their names forward to speak on the matter of Bill S-224 and are waiting to be invited to present before the Committee. We strongly urge you to slow the Committee process to include them in your deliberations, and to provide sufficient time for communities to prepare briefs for submission. The potential impacts of this bill for sex workers and precarious status migrant women and gender-diverse people are too consequential for the Committee to move forward without adequate, democratic community consultation.

## **Recommendations**

The Canadian Women's Foundation calls on the Standing Committee on Justice & Human Rights to:

- Reject the entirety of Bill S-224 on the grounds that it stands to cause disproportionate and lasting harm to sex workers and precarious status migrant women and gender-diverse people, particularly those who are Indigenous, Black, and racialized.
- Centre the voices and lived experiences of sex workers and precarious status migrant women and gender-diverse people in the development and implementation of all laws and policies that affect them, responding to their calls for sex work decriminalization and Permanent Residency status for all.