



The Immigration and Refugee Protection Regulations Prohibition on Sex Work: Violating Constitutional Rights & Creating Systemic Vulnerability for Migrant Women Who Do Sex Work

SWAN Vancouver Society

SUMMARY

- Since 2002, SWAN Vancouver Society has promoted the rights, health and safety of migrant and immigrant women engaged in sex work through front-line services and systemic advocacy.
- Because of our front-line experience supporting migrant women, SWAN posits that the Immigration and Refugee Protection Regulations (IRPR) that prohibit temporary residents from engaging in sex work is unconstitutional and creates systemic vulnerability.
- **SWAN calls on the government to repeal IRPR** ss. 183(1)(b.1), 196.1(a), 200(3)(g.1) and 203(2)(a).

CONTEXT

- Since 2012, the IRPR have prohibited temporary residents from working "with an employer who, on a regular basis, offers strip tease, erotic dance, escort services or erotic massages." Individuals who have a work permit, study permit or visitor's visa carry temporary resident immigration status are captured by these provisions. The IRPR effectively bar migrant women from engaging in sex work in any formal capacity. See Appendix 1 for the specific provisions.
- The Conservative government introduced the IRPR provisions under the guise of protecting women from harm and exploitation.

"Instead
of receiving support
or help for the violence
I experienced, I was
punished with deportation
without even having the
benefit of telling my story."

~ Lydia, SWAN client,
Nov 2019

DISCUSSION

- SWAN posits that the IRPR prohibitions, in practice, put migrant women who do sex work not only at increased risk of violence, but also subsequent arrest, detention and deportation.
- Predators target migrant women who do sex work calculating that they will not report violence to authorities; in SWAN's experience, reporting violence can inadvertently incriminate a migrant woman and lead to a criminal investigation and/or deportation.
- Migrant sex workers experience multi-layered criminalization; **if sex work was decriminalized in Canada, migrant sex workers would still be criminalized through the IRPR.**
- In SWAN's legal counsel's view, the IRPR prohibitions on sex work violate the Charter of Rights and Freedoms, specifically Sections 7 and 15.

SECTION 7

Section 7 of the Charter states, *"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."*

- **Section 7** is violated because the blanket sex work prohibition on temporary residents results in their inability to take reasonable safety precautions from violence and therefore is a violation of an individual's security of the person, which includes both physical and psychological security. For example, the IRPR impedes temporary residents engaging in sex work from accessing community resources such as SWAN (e.g. due to fear of disclosure of personal information), and also results in them working in clandestine locations to avoid detection by police and/or Canada Border Services Agency.
- **Section 7** is violated because the prohibition is not in accordance with the principles of fundamental justice because it is grossly disproportionate. The impact of this law is excessive and disproportionate to any legitimate government interest in protecting temporary residents working in the sex industry from violence, exploitation or human trafficking.

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SECTION 15

Section 15 of the Charter states, *"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."*

- **Section 15** is violated because the IRPR prohibitions impede racialized migrant women from exercising autonomy and participating equally in Canadian society, including in their vocational decisions. If sex work enables migrant women to avoid 3D jobs (dirty, dangerous, demeaning) - sometimes the only employment options for newcomers - they should have the Constitutional right to engage in the work that best suits their circumstances.
- **Section 15** is violated because police target racialized women and specific establishments on the basis of the IRPR provisions. While the law does not intend to treat people differently, the effect of the law, i.e. enforcement, targets certain people differently than others. SWAN calls for an end to 'crimmigration', the intertwining of criminal and immigration law, whereby criminal investigations of migrant sex workers, such as anti-trafficking investigations, result in detention and deportation.

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RECOMMENDATION

Decriminalize sex work in Canada to ensure sex workers have access to their basic human rights including, health and social services, access to justice and labour protections. In doing so, ensure migrant sex workers are not left behind by repealing IRPR ss. 183(1)(b.1), 196.1(a), 200(3)(g.1) and 203(2)(a) that currently criminalize migrant sex work.

FOR MORE INFORMATION:

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