

June 8, 2021

Dear Toronto City Council,

On behalf of Freedom United, an international anti-trafficking NGO home to the world's largest anti-slavery community — including several thousand supporters in Canada — I am writing to request that you reject Bill 251, the Combating Human Trafficking Act 2021, recently passed in Ontario.

We appreciate that the Council listened to the concerns of human rights experts last week during deputations and agreed to study the issue further. We stand by the testimonies provided by our allies, including Butterfly and the HIV Legal Network. We reiterate that while addressing human trafficking and supporting trafficking survivors are indeed important and necessary steps, the strategies proposed in Bill 251 threaten to undermine both of these goals.

Chiefly, we urge the City of Toronto to recognize that human trafficking will not be solved by expanding policing and surveillance powers, recognize that evidence of sex work is not necessarily evidence of sex trafficking, and consider a holistic strategy that builds resilience to trafficking — including both labor trafficking and sex trafficking — among marginalized communities.

As the Anti-Human Trafficking Strategy states, efforts must be human rights-based and that in order “To achieve the strategy’s aims, efforts are required to address the root causes of human trafficking and the factors that result in children and other persons being at higher risk of being trafficked.” Unfortunately, the law, especially its reliance on a policing raid and rescue model, does not address any of the root causes of human trafficking.

First, Bill 251 is ostensibly focused on combating human trafficking for sexual exploitation, despite human trafficking taking many forms. To this point, the law presents an uneven focus as labor trafficking, particularly of low-wage migrant workers, is not being addressed as part of the government’s anti-trafficking strategy.

On the issue of human trafficking for sexual exploitation, the City of Toronto should make a clear distinction between sex trafficking and consensual sex work. We are deeply concerned that this legislation frames evidence of sex work as grounds for anti-trafficking investigations and regulation. Specifically, we are concerned by language in Schedule 2 and Section 6(e) on “Regulations, anti-human trafficking measures”:

Schedule 2:

The Act also provides the Lieutenant Governor in Council with authority to make certain regulations related to entities that post, publish or otherwise disseminate advertisements for sexual services and entities that operate platforms for such advertisements.

Section 6(e) on Regulations, anti-human trafficking measures:

Subject to subsection (3), the Lieutenant Governor in Council may make regulations, with respect to entities that post, publish or otherwise disseminate advertisements for sexual services and entities that operate platforms for such advertisements,

- (i) prescribing the entities and advertisements, including the types or categories of entities and advertisements, to which a regulation made under this clause applies or does not apply,
- (ii) requiring such entities to make their contact information available to the public, including providing for the types of contact information to be included as well as the manner in which it is to be made available,
- (iii) requiring such entities to respond to the police and other specified persons or entities and providing for the manner in which to respond, including the time period in which the response must be given,
- (iv) imposing requirements on such entities in order to facilitate the enforcement of the requirements of the regulation, including reporting requirements, requirements to make specified information available to the public and record-keeping requirements;

It is notable that these regulations are not framed around evidence of human trafficking, but rather evidence of sexual services or sex work. Accordingly, this bill presents an overreach in that it will impose heightened surveillance on consensual adult sex workers under the umbrella of anti-trafficking regulation and prosecution, which goes against international best practice.

Although law enforcement told the Council last week that there would be judicial oversight required for police investigations, the wording of Schedule 2 and Schedule 6(e) does not distinguish between sex work and sex trafficking, meaning adult sex workers could be ensnared in a police raid.

As UNAIDS, the United Nations Development Programme (UNDP), and the United Nations Population Fund (UNFPA) stress, “Anti-trafficking efforts should not justify or result in criminal prosecution or other coercive measures against adults who engage in sex work on a consensual basis, either as sex workers or clients . . . Any conflation of voluntary, adult sex work with trafficking in persons is an abuse of sex workers’ human rights, and greatly increases the risk of HIV and violence for both sex workers and trafficked women and girls, by driving it to be further hidden ‘underground’.”¹

In addition, we are concerned by the language under Schedule 3, the Child, Youth, and Family Services Act of 2017, specifically the power given to child protection workers and peace officers to take a 16 or 17-year-old child to another location for up to 12 hours. Rather than permitting unilateral removal power without consent, we recommend that child protection workers and peace officers offer information to youth on how to access social services. Furthermore, there should be a requirement added for child protection workers and peace officers to obtain informed consent from a child who has the capacity to consent should social services be offered. Informed consent is valid when it is voluntary and it must be linked to a clear explanation as to what

¹ https://www.ohchr.org/Documents/HRBodies/CEDAW/GRTrafficking/UNAIDS_UNDP_UNFPA.docx

services are being offered to the child and why a child protection worker or peace officer is recommending these services.

Lastly, we recommend that City of Toronto reject expanded policing and surveillance powers of law enforcement in the name of combating human trafficking. Powers including “an inspector may, without a warrant or notice, and at any time, enter and inspect any place” and examine, demand, remove or copy any “thing that is or may be relevant to the inspection” are excessive and threaten to violate human rights.

These expanded powers of law enforcement hinge on “reasonable grounds” to believe that human trafficking is taking place, yet the framing of Schedule 2 and Section 6(e) imply that any evidence of sex work can incorrectly be used as “reasonable grounds” for police inspection.

In order to address human trafficking in Ontario, Freedom United strongly recommends that the government shift its efforts towards a truly comprehensive anti-trafficking strategy that builds resilience to human trafficking in all forms and directs resources towards community-based organizations rather than law enforcement.

We supported the April 2021 submission made by Butterfly and the HIV Legal Network on Bill 251 and agree with their statement: “we urge the government to reject this Act and adopt a human rights-based approach to human trafficking that centers labour rights, migrant rights, and sex workers’ rights and addresses the numerous structural barriers including poverty, precarious immigration status, and lack of access to affordable housing, health and social services that contribute to the risks of human trafficking.”

As an international anti-trafficking NGO, Freedom United recognizes that human trafficking occurs often at the intersection of vulnerabilities and the lack of rights. Stopping human trafficking requires structural changes and policies that directly address these risk factors.

Yours sincerely,

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