



Joint Submission to Toronto City Council on  
*Bill 251, Combating Human Trafficking Act, 2021*

**Butterfly (Asian and Migrant Sex Workers Support Network)  
& HIV Legal Network**

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**Elene Lam**

Founder and Executive Director  
Butterfly (Asian and Migrant Sex Workers Support Network)  
Toronto, Ontario  
Telephone: +1 (416) 906-3098  
Email: [cwsbutterfly@gmail.com](mailto:cwsbutterfly@gmail.com)

**Sandra Ka Hon Chu**

Director of Research and Advocacy  
HIV Legal Network  
1240 Bay Street, Suite 600  
Toronto, Ontario M5R 2A7  
Telephone: +1 (416) 595-1666, ext. 232  
E-mail: [schu@hivlegalnetwork.ca](mailto:schu@hivlegalnetwork.ca)

## Introduction

Butterfly (Asian and Migrant Sex Workers Support Network) (“Butterfly”) was formed by sex workers, social workers, legal and health professionals to provide support to, and advocate for, the rights of Asian and migrant sex workers. Butterfly was founded upon the belief that sex workers are entitled to respect and human rights; regardless of their immigration status, Asian and migrant sex workers should be treated like all other workers.

The HIV Legal Network promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. Since its inception, the HIV Legal Network has worked in collaboration with sex workers and migrant communities to defend their human rights.

Together, we make this written submission to inform the Executive Committee’s consideration of Councillor Kristyn Wong-Tam’s recommendation that Toronto City Council call on the Government of Ontario to “amend Bill 251 and immediately consult with sex workers and other affected vulnerable communities to ensure that any new legislation will include an anti-human trafficking strategy that is rooted in human rights, including labour rights and migrant rights, and that it 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.”

## Overview

On February 22, 2021, Bill 251, *Combating Human Trafficking Act, 2021* was introduced by Solicitor General Sylvia Jones in the Legislative Assembly of Ontario. Now at third reading, the stated purpose of the Act is to combat human trafficking and provide support for survivors by adopting a law enforcement model, increasing surveillance powers for police and Ministerially-appointed inspectors, and imposing charges and hefty fines for violations.

We have grave concerns about the Bill 251’s reliance on a law enforcement model that has been proven to be not only ineffective, but counterproductive to efforts to tackle human trafficking. In particular, we are concerned that the proposed Act will continue to reinforce the conflation of trafficking with sex work; adopts a problematic law enforcement model that further entrenches the wide-ranging powers of police officers and inspectors to surveil sex workers, youth and racialized communities in numerous settings; and confers broad, excessive investigative powers to inspectors. **Not only would this Bill negatively affect sex workers, youth and Black, Indigenous and Asian communities, Bill 251 poses significant privacy concerns for everyone in Toronto — alienating people from vital municipal supports that the City is mandated to provide and directly funds, without meaningfully addressing human trafficking.**

**We support Councillor Wong-Tam’s recommendation and urge City Council to denounce Bill 251.**

### 1. The ongoing conflation of human trafficking with sex work harms sex workers

Significant shifts have occurred in the human trafficking landscape in recent years. Sex work is often seen as trafficking, regardless of circumstances. In Ontario, human trafficking investigations have manifested in recent high-profile anti-human trafficking campaigns such as “Operation Northern Spotlight,” a yearly initiative undertaken by the RCMP, the OPP and other police forces that has involved police posing as clients and targeting sex workers in their workplaces, or “Project Orchid,” a project led by the Hamilton Police Human Trafficking Unit that claimed to be “protecting the safety and security of potentially

vulnerable women,” but has instead resulted in the arrests of individuals regarding immigration offences and the laying of numerous bylaw infraction charges.<sup>1</sup> There is strong evidence that policing is ineffective in combating human trafficking and supporting those who have been trafficked. While some law enforcement may be motivated in these scenarios by a desire to “rescue” victims of human trafficking, sex workers have opposed such measures as ineffective at best, and a profound violation of their human rights in most cases.

Without a meaningful understanding of the distinctions between sex work and human trafficking, granting additional powers to police and inspectors will entrench a law enforcement model that continues to conflate sex work with human trafficking. In particular, this has led to the mischaracterization of third parties (e.g. those who associate with and provide services for sex workers) as traffickers.<sup>2</sup> When law enforcement have been given more powers to investigate potential sites of trafficking, this has led to the interrogation and harassment of sex workers. As a result, sex workers will not seek assistance from police in actual situations of violence or exploitation because of their past negative experiences of human trafficking investigations.

In a 2018 report produced by Butterfly, many sex workers reported their experiences of human rights violations at the hands of investigators.<sup>3</sup> Migrant sex workers were subjected to inhumane and degrading treatment, arbitrary arrests and detention, and false evidence was used against them to justify their ongoing detention (in some cases, for as long as three months). While in the custody of anti-trafficking investigators, many reported experiencing harassment and discrimination. Some migrant sex workers were prevented from accessing legal representation and support, and many lost their immigration status and were deported. In another 2018 study by Butterfly of Asian migrant massage and holistic centers in Toronto, more than one-third reported having been abused or harassed by bylaw enforcement or police officers in the course of anti-trafficking investigations.<sup>4</sup> More than one-fifth of the workers were insulted or physically abused. Many of these workers had their personal items searched without a warrant, and some were forced by officers to remove their security cameras (despite the officers having no authority to issue such an order). Among those interviewed in this study, some reported being sexually assaulted by bylaw or police officers or being asked to remove or pull up their robes to reveal their underwear. Out of 61 workers surveyed, the study found no instances of trafficking or forced labour. As a result of these experiences, the majority of massage and holistic center workers surveyed reported that they were less likely to seek help from law enforcement in future.

Similarly, a 2019 study authored by the HIV Legal Network found that law enforcement interventions provided “extraordinary control over sex workers’ lives” and threatened a host of *Charter*-protected rights, including their rights to privacy, equality and non-discrimination, security of the person, freedom of expression, freedom of peaceful assembly, freedom from unreasonable search and seizure, and freedom from arbitrary detention and imprisonment.<sup>5</sup> Human trafficking initiatives were deployed as a

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<sup>1</sup> Hamilton Police Service, “Project Orchid Takes Aim at Illegal Massage Parlours,” June 3, 2019. Online:

<https://hamiltonpolice.on.ca/news/project-orchid-takes-aim-at-illegal-massage-parlours/>.

<sup>2</sup> HIV Legal Network, *The Perils of Protection: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019. Online:

<http://www.hivlegalnetwork.ca/site/the-perils-of-protection/?lang=en>.

<sup>3</sup> E. Lam, *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*, Butterfly, Toronto, April 2018. Online: [https://www.nswp.org/sites/nswp.org/files/behind\\_the\\_rescue\\_june\\_2\\_butterfly.pdf](https://www.nswp.org/sites/nswp.org/files/behind_the_rescue_june_2_butterfly.pdf).

<sup>4</sup> E. Lam, *Survey on Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement and Police*, Butterfly, Toronto, May 2018. Online: [https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754\\_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf](https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf).

<sup>5</sup> HIV Legal Network, *The Perils of Protection: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019.

pretext to invade sex workers' spaces or to discourage them from working. This was especially so for younger, white sex workers (whom law enforcement seemingly sought to "rescue"). In contrast, Asian women were racially profiled by law enforcement for the purpose of issuing tickets or identifying immigration infractions, and Indigenous and Black workers were themselves accused of human trafficking.

## **2. Broad powers conferred to inspectors are excessive and violate human rights**

The Act authorizes the Minister to appoint inspectors for the purposes of this law, who "may, without a warrant or notice, and at any time, enter and inspect any place" to determine compliance with the Minister's regulations. Inspectors are also granted unfettered powers to examine, demand, remove or copy any "thing that is or may be relevant to the inspection" and to "question a person on any matter that is or may be relevant to the inspection, including questioning a person separate from others." Non-compliance is a punishable offence, subject to a fine of \$50,000 or \$100,000 for an individual or corporation, respectively.

The broad investigative powers granted to inspectors give them wide latitude, based on their sole discretion, in determining what "is or may be" relevant to an inspection. These unchecked discretionary powers are arguably broader than the search and seizure powers that police have under exigent circumstances. Troublingly, an individual is not permitted to "refuse to answer questions on any matter that is or may be relevant to the inspection," potentially requiring sex workers, who face an array of negative consequences for engaging in criminalized labour, including stigma, discrimination, the possibility of eviction, travel bans, criminal charges and loss of immigration status, to disclose details of their work with little knowledge as to whether an inspector's questions are relevant to a human trafficking inspection. A person who is suspected of committing an offence is also compelled to answer questions in breach of their constitutionally protected right to silence. Sex workers face extraordinarily heavy-handed and excessive fines if they do not cooperate, a coercive approach that is compounded for migrant Asian workers who may not understand or speak English. Not only do these provisions present serious human rights concerns, but they are also unlikely to withstand constitutional scrutiny.

## **3. Sweeping surveillance is based on false conflation of sex work with human trafficking**

The Act delegates powers to the Minister to make regulations requiring specified persons to disseminate information about human trafficking, requiring specified training on human trafficking, requiring people to report instances of suspected human trafficking, and imposing requirements on advertisers of sexual services. As discussed above, without meaningful distinctions between sex work and human trafficking, this will merely contribute to further surveillance and racial profiling of sex workers, driving them into more isolated workplaces.

Schedule 1 of the Act, *Accommodation Sector Registration of Guests Act, 2021*, would repeal the current *Hotel Registration of Guests Act*. The Act would require that an owner and manager of a hotel or a business in a "prescribed class" maintain a register and record certain information "every time a guest or group of guests is admitted to occupy a bedroom or suite in the hotel". This information includes the name of one of the guests; the primary residence of that guest; and any other prescribed information. The Act would require that information in the register be maintained for a prescribed period after it is recorded, and also authorizes the Minister to make regulations prescribing *additional* information to be recorded in the register, which may include "names, residence or other information or more than one person from a group of guests." Additionally, the Act grants the Minister broad powers to change the Regulations to

mandate hotels and any other “prescribed businesses” (e.g., other short-term rental premises) to maintain a register with guests’ personal information.

Failing to keep a register in this manner, knowingly and wilfully permitting a false statement to be entered in the register, or failing to comply with an order or urgent demand would be an offence (subject to a fine of up to \$5,000). The Act would also make it an offence (subject to a fine of up to \$5,000) for a person who applies for admission as a guest to make a false statement of information that is required to be in the register.

The Act further authorizes law enforcement to “demand to view information recorded in the register or a hotel or business in a prescribed class if ... there are reasonable grounds to believe information recorded in the register will assist in locating or identifying a person who is currently a victim of human trafficking or is at eminent risk of being trafficked,” and “there are reasonable grounds to suspect that the victim of human trafficking will suffer bodily harm” or “there are reasonable grounds to believe information recorded in the register will be destroyed” in the time it would take to obtain a judicial order.

While the Act reinforces existing police powers to investigate human trafficking under the *Criminal Code* (e.g., issuing a preservation demand or seeking a production order to compel the disclosure of information), research cited above on anti-trafficking initiatives has shown that police often conflate trafficking with sex work. These additional powers established to support human trafficking investigations will undoubtedly be used by law enforcement and others (including a yet-to-be-defined class of “persons or entities” as well as entities that advertise sexual services) as a pretext to surveil sex work in hotels and other settings, including short-term rentals, violating sex workers’ right to privacy. The threat of having their identity shared with police may push sex workers to work in other settings (e.g., on the street, in their homes, at clients’ homes, in unregulated spaces) that may offer fewer protections, undermining sex workers’ health and safety. Sex workers without immigration status are particularly at risk, since the information they provide on hotel registries could also be shared with immigration authorities to initiate inadmissibility and removal proceedings. Furthermore, this framework invites hotels and other “prescribed businesses” to monitor, surveil and deny services to racialized women on the basis that those establishments may be subject to police scrutiny.

## **Conclusion**

Not only would Bill 251 have multiple, adverse impacts on sex workers and particularly Asian, Indigenous, Black and migrant sex workers by increasing barriers to safe work and further alienating sex workers from health, social and legal supports, it would have broader negative impacts on racialized communities and all Toronto residents, *without meaningfully addressing human trafficking*. The Bill would also hinder the access of Toronto residents to essential social services that the City provides, undercutting valuable networks of community support and contributing to the precarity that places people in vulnerable situations in the first place.

**As such, we urge the City of Toronto to denounce Bill 251, insist on its non-enforcement by municipal actors, 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.**