



Black Legal Action Centre

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Submission to the Standing Committee on Justice Policy

Re: *Bill 251: An Act to enact, amend and repeal various Acts in respect of human trafficking matters*

Submission By:

THE BLACK LEGAL ACTION CENTRE (BLAC)

May 13, 2021

Introduction

The Black Legal Action Centre (BLAC) is a specialty community legal clinic funded by Legal Aid Ontario (LAO). Our mandate is to combat individual and systemic anti-Black racism across the province of Ontario. We achieve our mandate by providing free legal services to low- and no-income Black Ontarians who are facing anti-Black racism in housing, employment, education, social assistance, human rights, policing and corrections. We engage in systemic advocacy through test case litigation, law reform, and community development. We also provide summary legal advice, brief services and public legal education.

BLAC is asking you to consider the following submissions within the context of this broad mandate. In our day-to-day work, we hear from our communities about the impact over-policing has on their lives – in schools, their places of employment, and more broadly when accessing public spaces or services. Accordingly, BLAC's submissions will take a general approach in its comments related to the criminalization aspect of the proposed legislation. In contributing to the incredible grassroots efforts others have done and are continuing to do on these issues, we hope that our submissions, which set out the impact of these legislative changes on our community, will inform your reporting and recommendations to the House.

Concerns

BLAC is concerned that the provisions being put forth in Bill 251, *Combatting Human Trafficking Act, 2021*¹ are in keeping with harmful and largely problematic anti-trafficking legislation that has been and continues to be developed in Canada.

While trafficking is a serious and complex issue that needs to be addressed, BLAC opposes the reliance on legislation that conflates trafficking and sex work, and that further extends the power and resources of law enforcement. From our perspective, this Bill has the potential to increase the criminalization of sex work and sex workers, by distorting the lived realities of sex workers, who should be supported in order to make meaningful choices about their lives. We argue that this approach has the potential for particularly debilitating consequences for Black, Indigenous and racialized people more generally, and it may also result in greater harm for children, youth, and women and girls, who are most impacted by systemic gender oppression. Further, it will have the effect of invalidating the labour of sex work as well as the agency and consent of people who sell or trade sexual services.²

SCHEDULE 1: ACCOMMODATION SECTOR REGISTRATION OF GUESTS ACT, 2021

The provisions provided in Schedule 1 of the Bill expand police powers and increases their surveillance capabilities, by allowing police, on application to a judge – or in some circumstances without – to request that an owner or manager of a hotel, or business in a prescribed class, “produce a copy of a specified portion of the register to the police.”³ Survivors of trafficking, activists and experts have argued for many years, that heightened surveillance through “preventive” policing has not necessarily proved to be effective.⁴ In fact, the findings have shown adverse consequences for individuals who are made to experience unwarranted and intensified legal intervention.⁵

¹ *An Act to enact, amend and repeal various Acts in respect of human trafficking matters*, 1st Sess., 42nd Leg., Ontario, 2021.

² Chu, Sandra Ka Hon, Jen Clamen, and Tara Santini. 2019. The Perils of “Protection:” Sex workers’ experiences of law enforcement in Ontario. *Canadian HIV/AIDS Legal Network*. <http://www.aidslaw.ca/site/the-perils-of-protection/?lang=en>

³ *An Act to enact, amend and repeal various Acts in respect of human trafficking matters*, 1st Sess., 42nd Leg., Ontario, 2021, Schedule 1, s 4(1).

⁴ Millar, H. and O’Doherty, T., 2020. Racialized, Gendered, and Sensationalized: An examination of Canadian anti-trafficking laws, their enforcement, and their (re) presentation. *Canadian Journal of Law & Society/La Revue Canadienne Droit et Société*, 35(1), pp.23-44.

⁵ Lam, Elene. 2018. Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers. *Toronto: Butterfly Asian and Migrant Sex Workers Support Network*.

As a demographic, Black women have been “overpoliced and underprotected”⁶ while also being over criminalized.⁷ This means that there is real potential for this Bill to drive sex work and sex workers further into precarious environments.

Ultimately, our position is, “regardless of intent, increasing the policing and criminalization of sex workers renders Black and other racialized women more, not less, vulnerable to state violence.”⁸ Research also suggests that a large number of sex workers report having suffered police harassment stemming from some level of racial and social profiling.⁹ Legislation that aims to protect victims and combat human trafficking should prioritize the actual needs of victims of trafficking and not be a mechanism for expanding police power.

In addition to allowing officers to ask hotels to share information about guests, BLAC opposes the requirement that companies respond to police inquiries and publish their contact information. There are already procedures and provisions in place that allow for the release of information to the authorities under certain circumstances. What remains unclear is the justification for the increased ease with which authorities can access this information. Increased criminalization of this nature may in turn force workers into less controlled environments, and reduced access to safe work spaces.

The extensive power granted to the police with these proposed amendments, also increases the potential for violation of privacy rights of sex workers and creates additional scenarios in which this data could be misused. While we acknowledge that there are instances where information between entities may need to be shared, we encourage the legislature to consult with the sex industry to gain their expertise on the most appropriate ways to ensure that they are able to earn a livelihood, while also maintaining their safety.

SCHEDULE 2 ANTI-HUMAN TRAFFICKING STRATEGY ACT, 2021

The provisions provided under the enforcement section of this Bill, allow the Minister to appoint Inspectors, who without a warrant or notice, have the authority to inspect any place, with the consent of the occupant.¹⁰ Although an Inspector requires the consent of the occupant and cannot use force in the execution of their duties, these powers have the potential to bring

⁶ Maynard, Robyn. *Policing Black lives: State violence in Canada from slavery to the present*. Fernwood Publishing, 2017, p.53

⁷ Owusu-Bempah, A. and Wortley, S., 2014. Race, crime, and criminal justice in Canada. *The Oxford handbook of ethnicity, crime, and immigration*, pp.281-320.

⁸ Maynard, Robyn, et al. "Do Black Sex Workers' Lives Matter." *Red Light Labour: Sex work regulation, agency and resistance* (2018): 281-92, p.288

⁹ Platt, Lucy, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi, and Anna-Louise Crago. 2018. Associations between Sex Work Laws and Sex Workers' Health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLOS Med* 15, no. 12: e1002680. <https://doi.org/10.1371/journal.pmed.1002680>

¹⁰ *An Act to enact, amend and repeal various Acts in respect of human trafficking matters*, 1st Sess., 42nd Leg., Ontario, 2021, Schedule 2, s 7(1) – (5).

about egregious abuses of power, and may lead to further persecution and over-policing of Black, racialized and immigrant sex workers. These sex workers already suffer as result of excessive policing, discrimination and mistreatment by police.

The Bill outlines that the Anti-Human Trafficking strategy shall be reviewed at least every five years and provides that consultation shall only be in the manner that the Minister *considers appropriate* for the review of this strategy.¹¹ It is our position that the Anti-Human Trafficking strategy be reviewed yearly, and that there is a requirement for mandatory consultations with various communities within the sex industry, including a specific requirement that Black Indigenous and racialized sex workers be meaningfully consulted. We also believe that this consultation should not be limited to *review*, but also in the development of the policy that surrounds the drafting of the Bill itself. We believe that leaving the method through which the consultation takes place simply at the discretion of the Minister, leaves too great a potential for important issues to be missed.

SCHEDULE 3 CHILD, YOUTH AND FAMILY SERVICES ACT, 2017

The provisions in this section of the Bill make various amendments to the *Child, Youth and Family Services Act*, specifically, section 74(2) of the Act. These amendments expand the circumstances in which a child may be in need of protection and allow a peace officer to take a child, who is 16 or 17, to “another location” for “the purpose of offering services and supports to the child, including the possibility of entering into an agreement.”¹²

BLAC is of the opinion that this provision as it is drafted, does not meaningfully center the child’s needs, experiences, or expand on the nuances and agency of 16- and 17-year-olds captured by this section. Instead, these amendments empower peace officers and child protection workers, particularly for 16- and 17-year-olds who deal with addictions, mental health, housing and immigration issues, to name a few, with heightened power to intervene.

Such provisions may bring about some concern given the factors previously discussed, such as mistreatment by police, or the potential for the provisions to serve as a form of detention without arrest.

Conclusion

Although the legislation speaks to being a survivor-centred Bill, many of the issues raised by survivors have not been addressed within the legislation itself. More poignantly, this particular legislation is vehemently opposed by sex workers and the organizations that champion their rights. The provisions of the new legislation effectively expand the powers of the police and as a result, increase the potential for police services to intersect with the sex work industry.

¹¹ *An Act to enact, amend and repeal various Acts in respect of human trafficking matters*, 1st Sess., 42nd Leg., Ontario, 2021, Schedule 2, s 4(1).

¹² *An Act to enact, amend and repeal various Acts in respect of human trafficking matters*, 1st Sess., 42nd Leg., Ontario, 2021, Schedule 3, s 77.1(1).

BLAC submits that the issues raised above and the issues raised by many other groups and organizations concerned by the impact of this Bill must be addressed prior to the final passage of Bill 251.

Thank you.

per: THE BLACK LEGAL ACTION CENTRE