Submission to Winnipeg City Council on the report on *Strategies and Tools to Enhance Neighbourhood Liveability via the Doing Business in Winnipeg By-law - Problematic Business Activities*

HIV Legal Network

January 26, 2022

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Introduction

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 to uphold their human rights.

We make this written submission to inform Winnipeg City Council's consideration of the report on "Strategies and Tools to Enhance Neighbourhood Liveability via the Doing Business in Winnipeg By-law - Problematic Business Activities" and urge City Council to **centre the perspectives of sex workers and ensure that the new regulatory framework includes an approach to human trafficking strategy that is rooted in human rights**, including labour 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.

1. The ongoing conflation of human trafficking with sex work harms sex workers and does not assist victims of human trafficking

Significant shifts have occurred in the human trafficking landscape in recent years. Sex work is often seen as trafficking, regardless of circumstances. Policymakers, service providers, and law enforcement routinely conflate the two.[i] Troublingly, research has shown that the conflation of sex work and trafficking deters reporting of actual violence by those who do not identify as trafficking victims; hampers investigations of labour exploitation if the predominant narrative is that of sex trafficking; criminalizes those who associate with and provide services for sex workers (i.e. "third parties"), even if these are not exploitative relationships; and deflects attention from historical and ongoing colonial practices that are the source of violence against Indigenous women and girls.[ii]

In Canada, 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 and other police forces that has involved police posing as clients and targeting sex workers in their workplaces. Research finds that most of these raids fail to uncover trafficking activity. Instead, they criminalize clients, third parties, and sex workers.[iii] 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.

In a 2018 report produced by Butterfly (Asian and Migrant Sex Workers Support Network), many sex workers reported their experiences of human rights violations at the hands of human trafficking investigators.[iv] Migrant sex workers were subjected to inhumane and degrading treatment and arbitrary arrests and detention. 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.[v] 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.[vi] Human trafficking initiatives were deployed as a 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.

Without a meaningful understanding of the distinctions between sex work and human trafficking, increased collaboration with The National Human Trafficking Education Centre or the Winnipeg Police Service, Counter Exploitation Unit will merely entrench a law enforcement model that continues to conflate sex work with human trafficking. 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. As the Winnipeg Regional Health Authority has concluded, "Conflating sex work with [sexual exploitation and trafficking] can lead to an overreaching of criminal justice solutions to social problems."[vii]

2. WPS Counter-Exploitation Strategies with Hotel and Transportation Industries will lead to harmful, sweeping surveillance of sex workers

In partnership with the Winnipeg Police Service, the report recommends that the City "continue to explore new strategies to work with the hotel and transportation industries to encourage and facilitate reporting of trafficking or sexual exploitation of women, girls, and 2SLGBTQ+ people." As discussed above, without meaningful distinctions between sex work and human trafficking, this will merely contribute to further surveillance and profiling of sex workers, driving them into more isolated workplaces.

Research has shown how enlisting the help of service industries, including the hospitality and travel industry, to screen customers for signs of trafficking (that are themselves broad and imprecise[viii]) fuel harmful surveillance of sex workers.[ix] These additional powers established to support human trafficking surveillance have been used 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

Increasing surveillance and policing of sex workers does nothing to protect them from abuse or exploitation, but risks sex workers' livelihood, safety, undercuts valuable networks of community

support, and contributes to the precarity that places people in vulnerable situations in the first place. As the Vancouver Sex Workers Rights Collective, a "diverse collective of Indigenous individuals who participate or participated in sex work or trade or provide sexual services in Downtown Eastside of Vancouver," shared in their submission to the National Inquiry into Missing and Murdered Indigenous Women and Girls:

> The use by academics, activists, the media and governments of human trafficking as *the* framework or lens through which responses to murdered and missing Indigenous women and girls are considered is inappropriate, ineffective and harmful. **The focus on human trafficking shifts attention away from the systemic colonial factors that created and maintain the circumstances and structures of violence. This approach focuses resources and responses to violence into increased policing and away from programs and services that may help individuals that are facing specific types of violence that are conflated into human trafficking** (child exploitation, sexual exploitation or violence experienced when participating in sex work). Police attention on individuals who participate in sex work reclassified as victims in the human trafficking framework puts these individuals at risk.[x]

As such, we urge the City of Winnipeg to 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.

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[i] K. Roots, *The Human Trafficking Matrix: Law, Policy and Anti-Trafficking Practices in the Canadian Criminal Justice System.* Ph.D. Dissertation. York University, 2018.

[ii] Pivot Legal Society, *Evaluating Canada's Sex Work Laws: The Case for Repeal*, 2016. Online: https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/1960/attachments/original/1480910826/PIVOT_Sex_workers_Report_FINAL_hires_ONLINE.pdf?1480910826.

[iii] Butterfly (Asian and Migration Sex Workers Support Network), *Stop the Harm from Anti-Trafficking Policies & Campaigns: Support Sex Workers' Rights, Justice and Dignity*, 2018. Online: https://www.butterflysw.org/harm-of-anti-trafficking-campaign-; A. Hill (2016) "How to Stage a Raid: Police, media and the master narrative of trafficking," *Anti Trafficking Review*, 7: 39-55; H. Millar & T. O'Doherty. 2020(a). *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?* Online: https://icclr.org/publications/canadian-human-trafficking-prosecutions-and-principles-of-fundamental-justice-a-contradiction-in-terms/; K. Roots & A. De Shalit (2016). "Evidence that Evidence Doesn't Matter: The Case of Human Trafficking in Canada," *Atlantis: Critical Studies in Gender, Culture & Social Justice.* Vol 37(2): 65-80.

[iv] Butterfly, *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*, April 2018. Online: https://www.nswp.org/sites/nswp.org/files/behind_the_rescue_june_2_butterfly.pdf.

[v] Butterfly, *Survey on Toronto Holistic Practitioners' Experiences with Bylaw Enforcement and Police*, May 2018. Online: https://576a91ec-4a76-459b-8d054ebbf42a0a7e.filesusr.com/ugd/5bd754_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf.

[vi] 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.

[vii] Winnipeg Regional Health Authority - Position Statement on Harm Reduction, December 2016.

[viii] A. De Shalit (2021). *Neoliberal paternalism and displaced culpability: Examining the governing relations of the human trafficking problem***.** PhD Dissertation. Ryerson University; Millar and O'Doherty 2020(a), *ibid*; Roots, 2018, *ibid*; J. Musto (2016) *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States*, Oakland, CA: University of California Press.

[ix] A. De Shalit (2021), *ibid*; Butterfly 2018, *ibid*; Roots 2018, *ibid* 4; HIV Legal Network. 2019, *ibid.*

[x] Vancouver Sex Workers Rights Collective, *Written Submission: National Inquiry into the Murdered and Missing Indigenous Women and Girls*, Dec 14, 2018. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Van-Sex-Worker-Rights-Collective-Final-written-submission.pdf.

