

# The Regional Municipality of York

Committee of the Whole  
Finance and Administration  
March 3, 2022

Report of the Regional Solicitor

## **Sex Trafficking: Legislation, Jurisdiction, Enforcement and Victim Support**

### **1. Recommendations**

The Regional Clerk forward this report to the local municipalities, York Regional Police and the Regional Municipality of York Police Services Board.

### **2. Summary**

This report responds to a motion of Council at Committee of the Whole on October 14, 2021, for a staff report in relation to sex trafficking which:

- (a) Considers potential revisions to Federal and/or Provincial legislation
- (b) Clarifies enforcement jurisdiction
- (c) Considers any further measures York Region, York Regional Police or local municipalities could implement.

The report first reviews Federal, Provincial and municipal spheres of jurisdiction, including enforcement responsibilities—both individually and multi-sector. The review also considers ongoing and planned community measures related to sex trafficking involving York Region, York Regional Police (“YRP”), and the local municipalities. The report does not support a Council request for potential senior government legislative revisions relating to sex trafficking at this time.

Key Points:

- No single jurisdiction has the authority or legislative jurisdiction to deal with sex trafficking
- The *Criminal Code of Canada* and other Federal statutes describe offences and penalties in relation to commodification of sexual services, including sex trafficking

- Provincial statutes dealing with these issues include the *Municipal Act, 2001*; the *Accommodation Sector Registration of Guests Act, 2021*; the *Anti-Human Trafficking Strategy Act, 2021*; the *Child Youth and Family Services Act, 2017*; and the *Prevention of and Remedies for Human Trafficking Act, 2017*
- Local municipalities have sole jurisdiction for local land use, zoning and business licensing and regulation, including businesses which provide adult entertainment such as strip clubs and body rub parlours
- York Region’s primary role is through its Community and Health Services mandate which provides support to victims of sex trafficking and sexual exploitation in collaboration with YRP and community partners
- Investigation and enforcement of *Criminal Code* sex commodification offences, including those relating to sex trafficking, are within the jurisdiction of police services, including YRP—both independently and in collaboration with Federal and Provincial law enforcement and municipal bylaw officers
- An approach which purports to eradicate sexual exploitation and sex trafficking by focusing primarily on localized prohibition, interdiction and enforcement related to adult entertainment enterprises would have a limited effect compared to what is already in place

### 3. Background

**This report was requested by Council at Committee of the Whole on October 14, 2021, following a deputation by Parents Against Child Trafficking—Markham & Richmond Hill (PACT) and the Council of Women Against Sex Trafficking in York Region (CWASTYR)**

PACT and CWASTYR advocate for the eradication of municipally licensed and regulated adult entertainment establishments as a purported means of eliminating sex exploitation and sex trafficking in Ontario. PACT and CWASTYR have communicated their position on sex trafficking to numerous municipal Councils in York Region in addition to several deputations to the York Regional Police Services Board.

In their deputation to Committee of the Whole in October 2021, PACT and CWASTYR requested Council to take three steps which, it was suggested, would “make York Region the first zone in Ontario free from sex trafficking and the sexual exploitation of women”:

1. Secure Agreement from Markham, Richmond Hill, Vaughan and Aurora to cease licensing adult entertainment establishments, including body rub parlours and strip clubs.
2. Request Ontario Attorney General, Doug Downey, to amend the *Municipal Act, 2001*, by removing reference to licensing provisions pertaining to adult entertainment establishments which— PACT and CWASTYR contended—would thereby render adult entertainment establishments “illegal”.

3. Request Ontario Solicitor General, Sylvia Jones, to grant arrest powers to municipal bylaw enforcement officers which, according to PACT and CWASTYR, would allow them to make arrests at commercial establishments that “sell sexual services in defiance of the law”.

In response to the PACT/CWASTYR deputation, Council adopted the following motion:

Committee of the Whole received the deputation from Robert Vallee and recommends that Council refer the matter to staff for a report back on potential revisions to Federal/Provincial legislation, clarifying jurisdictions of enforcement and any other further measures the Region, York Regional Police (YRP) or local municipalities could implement.

For the reasons discussed in this report, York Region staff, in consultation with YRP, suggest that the issues of sex trafficking or sex exploitation of women in York Region are being adequately addressed through the current legislation, tools and strategies established by senior levels of government.

## 4. Analysis

### A. FEDERAL JURISDICTION

**The Federal government makes criminal law while provinces and territories, including their respective policing agencies, are primarily responsible for enforcement**

The Federal government has exclusive authority to make criminal laws which apply across the country, and it shares responsibility for criminal justice with the provinces and territories. The primary role of the provinces and territories is the enforcement of the Federal *Criminal Code*, which includes investigating and prosecuting most offences, and providing services and assistance to victims of crime. Attachment 1 sets out spheres of jurisdiction and references applicable statutes and responsibilities related to sex trafficking

**Canada’s *Criminal Code* was amended in 2014 to diminish the demand for and criminalize the purchase of sexual services**

Laws are amended as society evolves and technology and practices change. In 2014 Bill C-36, the *Protection of Communities and Exploited Persons Act* amended the *Criminal Code* to apply a “victim-centred” approach to the sex trade by acknowledging that the sale of sexual services—the commodification of sex—is a form of exploitation that disproportionately affects women and girls. This perspective treats individuals selling their own sexual services as potential victims of sexual exploitation who may need assistance, not criminals needing punishment, and accordingly exempts them from prosecution.

The rationale behind Bill C-36 is to reduce the demand for sexual services and discourage the development of economic interests in the sexual exploitation of others by targeting those

who purchase sexual services and those who benefit materially or otherwise from the sexual exploitation of others.

### **Human trafficking—including sex trafficking—is illegal in Canada under the *Criminal Code* and other federal statutes**

Sex trafficking is a specific form of human trafficking that focuses on sexual exploitation, primarily of women and girls and is a crime under the *Criminal Code*. It can include recruiting, harbouring, transporting, obtaining, or providing a person for the purpose of sex. It may involve the use of force, physical or psychological coercion or deception. Most individuals who are trafficked for the purpose of sexual exploitation are women and girls, but others may also be victims. Traffickers may prey upon people at odds with or separated from their families, those suffering from housing, food insecurity, or addiction issues, survivors of abuse, new immigrants, migrants, or youth at risk.

Human trafficking has also been a Federal offence under the *Immigration and Refugee Protection Act* since 2002. Under this Act, it is illegal to recruit or bring any person to Canada against their will, tricking them by fraud or deception, or using threats or force. It is also against the law to keep someone in Canada against their will or control their movements by using any of the above coercive methods.

### **Canada’s National Action Plan to Combat Human Trafficking consolidates the efforts of multiple ministries and agencies to better target Federal efforts**

In 2012 the Federal government launched the National Action Plan to Combat Human Trafficking (NAP) consolidating all Federal activities into one comprehensive plan. The NAP aims to prevent human trafficking, support victims and potential victims and ensure perpetrators are brought to justice. Activities under the NAP include the provision of Federal grant funding to organizations that deliver critical support services to victims and survivors, a coordinated law enforcement response managed through the RCMP’s Human Trafficking National Coordination Centre and a private-public sector partnership known as Project PROTECT, which focuses on money laundering that may result from human trafficking.

## **B. PROVINCIAL JURISDICTION**

### **In 2021 Ontario’s Bill 251 introduced legislative amendments aimed at assisting police investigations and the protection of victims**

In June 2021 *Bill 251 - Combatting Human Trafficking Act, 2021* received Royal Assent. Bill 251 amends specific Provincial legislation to assist police in their efforts against sex trafficking and to protect victims (See Attachment 1).

As well, Bill 251 established Ontario’s Anti-Human Trafficking Strategy. In alignment with Federal Bill C-36, the Provincial strategy takes a proactive “victim-centred” approach by focusing on early intervention, victim protection, supporting survivors and holding offenders accountable. This strategy brings together multiple, cross directional ministries, with various

community stakeholder groups and service providers. This multi-sector approach promotes meaningful and effective application of the Provincial Anti-Human Trafficking Strategy.

The Province, through its ministries, work with service providers and community stakeholders directly engaged in the activities contemplated by the strategy. This direct engagement extends to municipalities only as providers of social housing and requires that human trafficking victims be a top priority, on the housing wait list, along side victims of domestic violence.

### **C. LOWER-TIER MUNICIPAL JURISDICTION**

#### **Local municipalities have authority to enact bylaws in relation to matters that will affect their communities and to provide personnel to enforce these bylaws**

The Province delegates authority to local municipalities on a variety of matters, including bylaw and licensing authority, property matters, and enforcement of certain Provincial Offences. Under the *Municipal Act, 2001*, business licensing and property standards are among several areas that are the exclusive jurisdiction of local municipalities to regulate, ensure compliance and enforce.

Local municipalities are best situated to determine and apply community standards and expectations in relation to certain activities in ways that may be unique to their municipality. Examples include the types of businesses that may be licenced, where such businesses may be located, what hours the businesses may operate, what qualifications may be required and licensing fees to impose. In this respect, one size may not fit all and each local municipality is therefore best suited to determine constituents' expectations

Municipal bylaws are made in close proximity to those who are most affected by the issue being regulated. Citizens may attend meetings of municipal representatives, and may also participate and be heard directly during Council or Committee proceedings. It is this kind of accessible, highly transparent participatory democratic process that gives municipal lawmakers a clear lens into what their constituents want for their community.

### **D. UPPER-TIER MUNICIPAL JURISDICTION**

#### **York Region does not have a statutory jurisdictional role in either regulating adult entertainment establishments or enforcing sex trafficking laws, but plays an important part in victim support**

As an upper-tier municipality, York Region does not have legislative authority to direct lower-tier municipalities in regard to business licensing and regulation, including adult entertainment establishments. However, York Region is actively engaged with community partners and provides support services to victims of sex trafficking directly and indirectly through a variety of program areas including:

1. Five sexual health clinics provide, testing and treatment at no cost to clients, offer support and referrals to community services, if requested, and outreach initiatives

in shelters—staff are trained to recognize and respond to clients who may be victims of human trafficking and are adept at creating safe spaces for access to sexual health consultation and services.

2. Community Partner Alliance to Stop Trafficking (CPAST) is a partnership including York Region, YRP, community members and community agencies such as Victim Services of York Region and 360° Kids.
3. Homelessness Community Program Outreach Workers provide support for individuals in the community including those who are at risk of or experiencing homelessness and provides referrals to community agencies to ensure safety, well-being and housing stability.
4. Regional Housing Services prioritizes survivors of human trafficking and domestic abuse on the housing waitlist for subsidized housing and provides Provincial funding to 360° Kids and the Women’s Support Network for programming.

## **E. YORK REGIONAL POLICE**

### **York Regional Police is an active partner in Federal and Provincial efforts to combat sex trafficking and enforce criminal laws**

YRP, as the municipal law enforcement agency for York Region, is an active partner in joint initiatives ranging from investigations to information sharing, working with Federal and Provincial enforcement partners and other municipal police services to implement and coordinate often lengthy and complex investigations.

YRP has a dedicated Human Trafficking Section that investigates incidents involving adult and juvenile sex trade workers. When exploitation is alleged or suspected, it is prioritized and immediately investigated utilizing the Ontario Provincial Human Trafficking Strategy “Four P” victim-centred approach, namely Prevention; Protection; Prosecution and Partnerships.

### **York Regional Police also partners with local community agencies and local municipalities**

Rather than focusing solely on “eradication”, which drives sex work underground and often further marginalizes sex workers, YRP has worked to develop numerous partnerships with community agencies including Victim Services of York Region, 360° Kids, Blue Door Shelters, Sandgate, Yellow Brick House and the Children’s Aid Society. A key component of these partnerships—which emphasize victim protection is the “Three Rs” Rescue; Rehabilitation; and Reintegration.

YRP also applies for additional funding through Federal and Provincial grant programmes. This funding is used for education, training community partners, providing for victims’ needs, conducting investigative probes, intelligence gathering and enforcement.

As noted, one of the key components of intelligence gathering and enforcement is working closely with local municipal bylaw officers, developing and enacting joint initiatives and providing training to facilitate recognition of the signs of human trafficking.

### **Focusing on “eradicating” body rub parlours as a means of combating sex trafficking or protecting children is not an effective strategy**

Body rub parlours and other adult entertainment establishments, as defined in the *Municipal Act, 2001*, are not illegal businesses, *per se*. While criminal activities may occur in such establishments, the businesses themselves are lawful. Refusing to grant business licences will not “eliminate” massage parlours, nor will removing adult entertainment establishments from the provisions of the *Municipal Act*. In addition to driving the activity underground, such a strategy would only fetter municipal bylaw enforcement officers who rely on these laws for their authority to inspect such establishments to ensure compliance with public health requirements and local bylaws.

Additionally, targeting body rub parlours and other adult entertainment establishments would be concentrating enforcement efforts in an area of lesser concern in relation to sex trafficking. As was pointed out in an April 2021 letter from Jason Fraser, YRP General Counsel to PACT, the majority of human trafficking victims in York Region are trafficked within hotels, condominiums and short-term rental properties, not body rub parlours and other adult entertainment establishments. (Attachment 2)

It should be noted it is also rare that children are found within body rub parlours. As reported to the York Region Police Services Board in November 2020, since 2008, there have been no children recovered within these establishments. (Attachment 3)

## **F. POTENTIAL LEGISLATIVE REVISIONS**

### **Staff do not support granting arrest powers to bylaw officers as requested by PACT and CWASTYR**

Police officers have a duty to investigate crime and to arrest individuals and are therefore vested with both statutory and common law powers of arrest. On the other hand, municipal law enforcement officers have no such statutory duty to investigate crime and therefore have no common law authority to make arrests. Under the *Police Services Act*, the power of municipal bylaw officers is limited to acting as Peace Officers for the purpose of enforcing municipal bylaws.

The *Police Services Act* grants arrest powers to police officers to arrest individuals. Furthermore, the definition of “police officer” specifically excludes “municipal bylaw enforcement officers”, which means that a legislative amendment to the *Police Services Act* would be required to give arrest powers to municipal law enforcement officers.

A potential option that would not require a statutory amendment would be to have the Police Services Board, with the approval of the Solicitor General, appoint municipal enforcement

officers to be special constables and to specifically delegate powers of arrest, pursuant to the *Police Services Act*. However, neither legislative amendment nor Police Services Board appointment are advisable or practical, for the following reasons:

1. Police officers receive rigorous training in many areas, including *Charter* rights involving arrest, detention and the use of force, and if these powers are exceeded, there is a risk of *Charter* and civil damages, thereby exposing municipalities to potentially significant and unnecessary risk.
2. Granting arrest powers to municipal bylaw staff, as has been suggested, would strongly signal that the dominant purpose would be to further criminal sex commodification prohibition, a power which is explicitly reserved for Parliament pursuant to the *Constitution Act, 1867*—not the Province or municipalities—and would therefore likely be found to be unconstitutional if challenged.
3. Municipal officers currently conduct inspections of adult entertainment establishments through powers of entry contained in municipal bylaws, which does not require search warrants; if the bylaws were repealed, search warrants would then be required as there is no warrantless entry for criminal investigations.

## 5. Financial

There are no financial impacts directly associated with this report.

## 6. Local Impact

There are no direct local impacts, but this report does discuss matters of local municipal interest and jurisdiction.

## 7. Conclusion

**Federal, Provincial and municipal powers in relation to sex trafficking are appropriately allocated through existing legislation and areas of constitutional jurisdiction and would not benefit from legislative revision**

The current legislative regimes as described in this report appropriately allocate duties in relation to the jurisdictional responsibilities of the three levels of government in Canada. The multi-sector, cross-jurisdictional approach adopted by the Federal and Provincial governments in relation to the commodification of sex engages a variety of stakeholders and service providers, including law enforcement and community organizations to ensure the effective use of all the legal tools available to combat sex trafficking and support victims and survivors. Accordingly, there would be no benefit in pursuing legislative revisions at this time.



For more information on this report, please contact Dan Kuzmyk, Regional Solicitor and General Counsel at 1-877-464-9675 ext. 71401. Accessible formats or communication supports are available upon request.



Recommended by:

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Attachments (3)  
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