

City of Toronto Body Rub Parlours and Holistic Centres Bylaw Review - Joint Submissions

By: Holistic Practitioners' Alliance, Coalition Against Abuse by Bylaw Enforcement, Butterfly (Asian and Migrant Sex Workers Support Network), and Vincent Wong

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1. Introduction

i *In March 2019, the City of Toronto embarked on a series of public consultations and stakeholder meetings with a view towards reviewing municipal bylaws governing Body Rub Parlours and Holistic Centres. More than 120 holistic practitioners and owners attended the consultations to express their views and concerns.*

As representatives for holistic practitioners, body rubbers, and their allies in sector and with extensive community connections, we wish to foreground the importance of the views and perspectives of holistic practitioners and body rub workers in this review. We are encouraged that the City is taking proactive steps on this important issue and welcome the opportunity to provide feedback and comments.

It is our position that the bylaw review should centre and be guided by holistic practitioners and body rub workers because they are the experts in their field, they know best the changes that are needed, and they will be the ones most affected by changes to the bylaws. This report is in turn developed with extensive consultation with the holistic practitioners and body rub workers of our community.

Our purpose in preparing this submission is to:

- 1. To inform City about the lived realities of holistic practitioners and body rub workers in Toronto; and*
- 2. To assist the City in developing policies that would best promote the interests of both the City of Toronto and holistic practitioners and body rub workers themselves.*

1.1. Who We Are

- *The **Holistic Practitioners' Alliance** was formed by a group of holistic practitioners concerned about issues of workers' rights and working conditions of holistic centers in Toronto. Most members are Asian immigrant women who find themselves facing challenges in accessing employment and securing fair and equitable labour market outcomes due to language barriers, lack of Canadian work experience, non-recognition of their previous academic credentials, and other barriers.*
- *The **Coalition Against Abuse by Bylaw Enforcement** is a group of individuals and organizations concerned about human rights violations, misuse of bylaws, and abuse of power by bylaw enforcement officials and police in the City of Toronto. The Coalition believes that bylaw enforcement should be accountable to the public and be carried out under the principles of legality, necessity, non-discrimination, proportionality, and humanity.*
- ***Butterfly: Asian and Migrant Sex Workers Network** was formed by sex workers, social workers, and legal and health professionals. It provides support to, and advocates for, the rights of Asian and migrant sex workers. The organization is founded upon the belief that sex workers are entitled to respect and basic human rights. Butterfly asserts that, regardless of their immigration status, Asian and migrant sex workers should be treated like all other workers.*
- ***Vincent Wong** is a Canadian lawyer and an LL.M. Human Rights Fellow at Columbia Law School, where he conducts research in various areas including migrant rights, critical race theory, comparative immigration and citizenship law, and reform of UN human rights treaty bodies.*

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1.2 Goals and Purposes of Administrative Bylaw Regulation and Enforcement

It is respectfully submitted that, in the course of this comprehensive bylaw review, the City should be guided by overarching principles of bylaw regulation. As enunciated by Professor Mariana Valverde of the University of Toronto, the basic principles of administrative law demand that business licensing be both rational and fair.¹

Further, regulation and enforcement should be based evidence-based as a prerequisite in order to achieve rationality and fairness. In general, increasing enforcement and tightening rules surrounding an activity only makes sense if the government's purpose is to completely ban said activity (e.g. drunk driving). Enforcing bylaws for the sake of enforcement is not an appropriate goal. Business licensing is meant to regulate, not suppress, business activity. This overarching purpose of facilitating local economic opportunity is magnified in the case of an industry which provides a financial lifeline to populations who are marginalized in the mainstream labour market and more vulnerable to falling into poverty.

As Professor Valverde enumerates, the goals of business licensing are to:

- 1. Foster the local economy;*
- 2. Protect workers; and*
- 3. Protect the public from risks associated with particular activities.²*

1.3 Council Directives on Comprehensive Review

City Council directed the City to undertake a comprehensive review of the body-rub parlour and holistic centre bylaw, including directives for the City to:

- 1. Exercise effective oversight and enforcement actions to stop licensed holistic centres from offering services outside of the parameters and conditions of the licensing category;*
- 2. Use an anti-human trafficking lens to review the bylaw; and*
- 3. Examine the feasibility of adjusting the cap on body rub parlour licenses.*

Within the context of the bylaw review, the City has also proposed the examining the option of completely repealing and removing the licensing framework for holistic practitioners and centres.

¹ Mariana Valverde, *MLS policies and practices in regard to holistic health practitioners and related businesses* (April 10, 2018), online: <<https://www.toronto.ca/legdocs/mmis/2018/ls/comm/communicationfile-79542.pdf>>.

² *Ibid* at 1.

1.4 The Overall Position of Holistic Practitioners and Owners

1.4.1 The holistic licensing framework should not be repealed

After extensive consultation with holistic practitioners and owners, it is our position that the City should not repeal and remove the holistic licensing framework nor should it adopt a repressive and heavy-handed enforcement-based approach against this sector as both approaches would endanger the health and safety of the workers and increase the risk of labour exploitation and trafficking. This position reflects the overwhelming majority of workers in the sector – 97.9% of the holistic practitioners and owners (98 out of 99 respondents) consulted in our outreach oppose the proposal to eliminate the holistic licensing framework.

In the view of those who work in the holistic health sector, the municipal holistic license system provides a status of legitimacy to the industry and a level of certainty and security that workers will be able to continue to work and earn a livelihood in this important line of work. Conversely, holistic practitioners expressed worry that they will not be able to continue their work and that removal of a holistic licensing framework will result in the consequence that holistic businesses will be shut down through the exclusionary operation of other municipal bylaws, overly burdensome professional requirements, or repressive law enforcement practices.

1.4.2. An anti-human trafficking lens should focus on providing support and social services to survivors of exploitation and human trafficking, not punitive law enforcement strategies

Within the frame of the three purposes of administrative business licensing, the rationale for additional and harsh bylaw enforcement of holistic practitioners and centres seems ill-advised at best and disingenuous at worst. The City has previously claimed that bylaw crackdowns in this sector can be justified by: (1) the risk of human trafficking, (2) health and safety concerns, and (3) an increase in holistic centres and practitioners providing unauthorized body rub services.

With respect to human trafficking, holistic practitioners and owners also wish to help to addressing this issue. However, while the City is applying an anti-trafficking lens to the bylaw review, it need not adopt a heavy-handed criminal law enforcement-like function targeting holistic centres and body rub parlours.

Research from the Canadian HIV/AIDS Legal Network has shown that sex worker interaction with law enforcement in all contexts, including in holistic centres and body rub parlours, have been overwhelming negative. On the whole, sex workers report experiencing a range of abuses at the hands of law enforcement, including assault, intimidation, threats, harassment, unwarranted searches of their workplaces and belongings, destruction or theft of property, arbitrary or disproportionate application of

the law, and extortion. As a result, sex workers perceive law enforcement as an ongoing threat and source of danger, and rarely as a source of protection. This prevents workers from seeking help and increases their vulnerability.³

The City would therefore make greater inroads against human trafficking by providing support and social services to those who are exploited or trafficked rather than turning to punitive law enforcement strategies.

1.4.3. Concerns about unlicensed services in the holistic sector are overblown

With respect to ‘unauthorized services’ and ‘health and safety concerns’, one is reminded of an oft-cited proverb: “we cannot solve our problems with the same thinking we used when we created them.”

The October 2017 Auditor’s Report on Holistic Centres mentioned health and safety concerns in the context that holistic practitioners do not undergo the same medical examinations and are not supposed to be doing the same type of work as body rub workers.⁴

In the same report, the Auditor General points to the direct cause of the issue, which is not the moral failing of workers in the industry, but the very licensing framework itself. The report shows that body-rub applications and renewals are prohibitively expensive (48 times more expensive than holistic centres for a new application, 85 times more expensive than holistic centres for a license renewal)⁵. Meanwhile, the number of body rub parlour licenses allowed at any given point is limited to 25 by Bylaw 545 – a cap that has not changed nor been reviewed since the initial enactment of the bylaw in 1975!⁶

This suggests that some amount of body rub work has been forced into the holistic services sphere as a direct result of draconian quotas and license fee levels imposed by the City itself and that do not reflect at all the realities of supply and demand in the industry. Such a bylaw framework generates its own “illegality” by creating a system that the industry cannot realistically follow, then uses that artificial illegality as justification for further bylaw enforcement. This approach cannot possibly be reconciled

³ Canadian HIV/AIDS Legal Network, *The Perils of “Protection”: Sex Workers’ Experiences of Law Enforcement in Ontario* (March 2019), online: <<http://www.aidslaw.ca/site/download/17615/>> at 22.

⁴ Beverley Romeo-Beehler, *Auditor General’s Report: A Review of Municipal Licensing and Standards Division’s Management of Business Licenses - Part Two: Licensed Holistic Centres* (October 24, 2017), online: <<https://www.toronto.ca/legdocs/mmis/2017/au/bgrd/backgroundfile-108173.pdf>> at 8-9.

⁵ *Ibid* at 10, Table 1.1.

⁶ Tracey Cook, Municipal Licensing and Standards, *Work Plan for Review of Chapter 545, Licensing, Body Rub Parlours and Holistic Centres* (March 28, 2018), online: <<https://www.toronto.ca/legdocs/mmis/2018/l/bgrd/backgroundfile-113619.pdf>> at 3.

with the above-stated bylaw goals of fostering the local economy, protecting workers, and protecting the public from legitimate risks.

Further, although the Auditor General’s report foregrounds the severity of the ‘unauthorized services problem’, this is not reflected by the data on actual charges filed. From 2015 to 2016, only 5 bylaw charges were filed with respect to Bylaw 545-181 which prohibit holistic centres from providing services not on the pre-approved list⁷ – which amounted to less than 1% among a total of 513 holistic bylaw charges during that time period.⁸ What these charges also show is that there are already provisions in the existing bylaws which can be used to prohibit practitioners for offering unlicensed services. There is no need for additional punitive provisions or additional enforcement on this issue.

Much weight was also given to the claim in the Auditor General’s report that 107 licensed holistic centres had the appearance of offering unauthorized services, such as erotic massages. However, the information used was based on a simple internet search to conclude if centres were “potentially offering unauthorized services”.⁹ This information is unreliable and cannot be said to be evidence-based, particularly compared to more tangible data such as the limited number of charges under Bylaw 545-181.

We submit that the primary concern of the bylaw review should therefore not be the artificially created issue of unauthorized services, but rather that of poverty alleviation, antidiscrimination, equity, community empowerment, health and safety, and workers’ rights. These fundamental elements should guide the course of the municipal bylaw review.

⁷ *Toronto Municipal Code*, Ch. 545, Licensing, s. 545-181, online: <https://www.toronto.ca/legdocs/municode/1184_545.pdf>.

⁸ Elene Lam, Holistic Practitioners Alliance, *Holistic Centres Factsheet* (February 2018) at 2.

⁹ *Ibid.*

2. Overview of the Holistic Services Industry in Toronto

i *It is important as a starting point to understanding the nature and scope of the holistic services industry and its importance to Toronto's economy, tourism, well-being and the large number of workers who rely on these jobs for their living, as well as their predominance among particularly ethnoracial communities, particularly for Asian and migrant communities.*

2.1 Economic Empowerment of Workers to Resist Racialized and Gendered Economic Coercion and Exploitation

Racialized newcomers and immigrants are often employed precariously, work longer hours, earn lower incomes, and experience exploitative work conditions, higher rates of poverty, social exclusion, and isolation. The City of Toronto therefore has developed a Poverty Reduction Strategy to address this unjust division of income and class.

The holistic health sector has outsized significance for certain groups – particularly immigrant women from Asia. Women of colour in Ontario earn 58 cents on the dollar in comparison to white males as a result of intersectional barriers that produce both gendered and racialized effects.¹⁰ For many Asian immigrant women, this income gap is compounded and exacerbated by language barriers, discrimination, non-recognition of credentials, and barriers related to immigration status.

For these women, employment in the holistic services industry is critically important for their lives as well as the livelihood of their families. For instance, a 2018 survey of 61 Asian holistic practitioners found that 63.3% of respondents work in holistic centres because they had trouble finding another job. 65.6% said that they had good income in the sector, while 45.9% said that their job had a higher level of income as compared to other jobs.¹¹

Among more than 2,200 holistic practitioners, the majority are Asian women. Contrary to other forms of precarious work, working in holistic centres as practitioners or small business owners provides essential income security and a comparatively better working environment, allowing them to better resist racialized and gendered economic coercion. This includes the ability to resist gender oppression, racism, and labour market exploitation. Through this work, practitioners are also able to directly contribute to the well-being of residents in the City of Toronto, both fiscally and socially.

¹⁰ Sara Mojtehdzadeh, *Study highlights 'uncomfortable truth' about racism in the job market*, Toronto Star (December 11, 2018), online: <<https://www.thestar.com/news/canada/2018/12/11/study-highlights-uncomfortable-truth-about-racism-in-the-job-market.html>>.

¹¹ Elene Lam, *Survey on Toronto Holistic Practitioners' Experiences with Bylaw Enforcement and Police* (May 2018), online: <https://docs.wixstatic.com/ugd/5bd754_6d780ceba3cb4f6c85de4d3e9e0b7475.pdf> at 24-26.

2.2 Positive Economic Impact to the Community

According to the City of Toronto, as of March 2019, there are currently 389 holistic centres in operation in Toronto as well as 2,167 holistic practitioners licensed by the City. In addition, there are 25 body rub parlours in operation along with 575 licensed body rubbers.¹² The contribution of the holistic service sector to local economies and communities is massive. For instance, even when only examining the economic and fiscal contributions of individual holistic practitioners (exclusive of holistic centres as businesses and the body rub industry as a whole), it is estimated that every year they contribute **\$4.3 million in Federal and Provincial taxes** and a staggering **\$49.8 million in nominal GDP** for the local economy.¹³

Despite this, punitive bylaw enforcement practices have had the effect of further impairing this already economically marginalized community. The 2018 survey found that half of respondents reported having faced fines/tickets from bylaw enforcement.¹⁴

Inspections and charges for bylaw violations have increased precipitously since 2013. From 2013 to 2016, the number of MLS inspections at holistic centers increased by 212% (from 569 to 1,780 visits) and inspections of individual holistic practitioners has increased by 323% (611 to 2,585 visits in 2016). Inspections of holistic centers and practitioners now comprise over 23% of total MLS inspections to all businesses in 2016, up from only 7% of all inspections in 2013. Similarly, the number of bylaw charges has spiked 215% from 75 charges in 2013 to 236 charges in 2016. The most common of these charges were for minor issues such as table mats not being in good repair or not having licensing numbers on business cards.¹⁵

Rather than focusing on economically punitive measures, it is submitted that the bylaw review should instead align with the City of Toronto's Poverty Reduction Strategy. TO Prosperity recognized in their inaugural 2015 report that 46% of recent immigrants and 33% of racialized persons live in poverty in the City – these are the very populations that will be most affected by the bylaw review. Further, recommendations #11 and #12 of the Toronto Poverty Reduction Report speak to creating “employment opportunities for low-income groups” and improving “quality of jobs”.¹⁶ Yet a punitive and heavy-

¹² City of Toronto, *Holistic Centres Bylaw Review: Stakeholder Consultations* (March 8, 2019) at 3.

¹³ Estimated figures are based off survey data from holistic practitioners in Toronto, who estimated their total Federal and Provincial tax contributions to be \$2000 annually per worker. This level of tax deduction implies an average gross pre-tax salary of approximately \$23,000 annually. See Neuvoo, *Income Tax Calculator, Ontario, Canada*, online: <<https://neuvoo.ca/tax-calculator/?iam=&salary=23000&from=year®ion=Ontario>> (last retrieved March 19, 2019).

¹⁴ Lam, *supra* note 11 at 29.

¹⁵ Butterfly et al, *Stop abuse and harassment by bylaw enforcement & police officers; Stop the misuse of bylaws against holistic practitioners* (April 10, 2018), online:

<<https://www.toronto.ca/legdocs/mmis/2018/cc/comm/communicationfile-79714.pdf>> at 1-2.

¹⁶ City of Toronto, *TO Prosperity: Toronto Poverty Reduction Strategy* (2015), online: <https://www.toronto.ca/wp-content/uploads/2017/11/9787-TO_Prosperty_Final2015-reduced.pdf> at 33.

handed approach to bylaw enforcement puts those very key priorities in jeopardy. Rather than simply increasing the number of tickets and fines, the City should instead be focusing on removing barriers that limit employment opportunities to equity seeking groups, supporting a living wage standard in the City, and supporting provincial efforts to strengthen employment standards in all industries.¹⁷

2.3 Health and Well-Being Improvements to the Community

Holistic services encompass a wide variety of health, therapeutic, and wellness techniques that consider the whole person, including physical, mental, and spiritual aspects, when treating a health condition or promoting wellness. Holistic health practitioners employ complementary methods and alternative approaches to health in their practices, such as physical therapy, massage therapy, spiritual counseling, meditation, and alternative medicine.

The holistic approach to health and well-being has become increasingly popular and offers great benefits to patients, particularly blue-collar workers who are burdened with a variety of ailments from the physical strain of their work. People suffering from chronic pain and/or stress frequently avail themselves of the services of holistic health practitioners. Holistic health practitioners also provide essential services to a great many people who are priced out of the market and cannot afford the relatively higher prices of R.M.T. services or physiotherapy.

Despite making positive contributions to the overall health and well-being of their clientele and the community, the health and well-being of holistic practitioners themselves are often overlooked and not considered as a priority by employers and government actors alike. Many practitioners report harassment and discriminatory treatment at the hands of bylaw enforcement, as well as theft and robbery, blackmail, and a general reticence to report crimes due to lack of trust with law enforcement authorities.¹⁸

Given the systemic challenges that holistic practitioners face in their workplaces and the significant abuse and harassment that they suffer from bylaw enforcement and other actors, it seems clear that strict bylaw enforcement is not well suited to improving the workplace health and safety of holistic practitioners. This is particularly true as compared to provincial Ministry of Labour authorities, who are mandated to enforce and investigate employment standards complaints, support workers' rights, work to eliminate workplace injury and illness, and develop and implement health and safety awareness and training programs.¹⁹ To the extent that Toronto Municipal Licensing and

¹⁷ *Ibid.*

¹⁸ Lam, *supra* note 11 at 10.

¹⁹ Ontario Ministry of Labour, *What We Do* (March 7, 2019), online: <https://www.ontario.ca/page/ministry-labour?_ga=2.184826281.1457537979.1553015669-528964727.1553015669> (last visited March 19, 2019).

Standards (MLS) sees value in these initiatives, it should consult and collaborate with the Ontario Ministry of Labour and the holistic practitioner community to develop a strategy on how this may best be realized.

2.4 Professional Skills

Many of the Asian immigrant women who become holistic health practitioners do so because they have professional expertise and skills (43.3% according to the 2018 holistic practitioners' survey).²⁰ However, due to language barriers, many of these women struggle to have their experience, qualifications, certifications, and education accepted in Canada. Nevertheless, the professional skill of these practitioners is evident and demonstrated by the tremendous demand and growth of the holistic health services industry in Toronto overall.

3. Issues that Threaten the Health and Safety of Workers in the Holistic Services Industry

i 3.1 Anti-Trafficking Lens should not Conflate Holistic Services with Trafficking

In recent years, the holistic services industry has been grappling with a moral panic dominating public perception of the industry, specifically regarding the idea of holistic centres being hubs of trafficking. This link between trafficking and holistic services is largely over blown and unsupported by the evidence. The risk of labour exploitation within the holistic services sector is no different to the risk of other industries in which low-income marginalized workers typically are employed, such as the restaurant industry, the domestic caregiver industry, or the agricultural industry. Further, as mentioned earlier, the alleged 'creep' of sex work into the holistic services industry is a direct result of policy failures to create a fair municipal framework for body rub centres that meets supply and demand – not the responsibility of holistic practitioners who are simply trying to make an honest living.

The unexamined conflation between human trafficking and holistic services has been apparent in the approach that many at the City have taken to bylaw regulation of the holistic services industry. For instance, the October 2017 Auditor General's report specifically refers to "unauthorized services" in holistic centres as potentially posing "an array of health, safety and community issues, including the risk of human trafficking."²¹ Yet for all of the attention that human trafficking receives in the context of holistic centres and body rub parlours in Toronto, neither the Auditor General's report nor the 2013 SDFR report on human trafficking in Toronto refers to any specific evidence of cases of human trafficking being reported in holistic centres or body rub parlours

²⁰ Lam, *supra* note 11 at 21.

²¹ Romeo-Beehler, *supra* note 3.

operating in the City.²²

Relatedly, there is no rational connection between a campaign of vigorous and aggressive enforcement of city bylaws and the policy objective of addressing the issue of human trafficking. Punitive investigations and ticketing for violations such as not giving receipts, not posting one's license number on all advertisements, or not having tables in 'good repair', cannot be said to have anything to do with trafficking at all. They do however, have the effect of directly punishing and further economically marginalizing racialized immigrant women, who are the predominant targets of these punitive campaigns.

Conversely, it is precisely repressive laws and aggressive campaigns of punitive investigations and ticketing that erode trust with workers and increase their vulnerability and risk of exploitation and trafficking. For instance, the City of Vancouver had previously erroneously approached massage parlours under the assumption that they were hotbeds of human trafficking, conflating the possibility of sex work with the possibility of human trafficking. In 2006, Vancouver police raided 18 massage parlours to identify victims of human trafficking. None of the 78 women arrested were found to have been trafficked, but trust in law enforcement eroded significantly in those communities as a result.²³ Since then, Vancouver police have altered their approach away from an aggressive raid and rescue approach.

3.2 Abuse, Harassment, and Discrimination from Law Enforcement Resulting in Lack of Trust and Further Insecurity

The demographic of holistic workers is heavily racialized and gendered. The intersectional position of this group presents significant power imbalances in the dynamic of their interactions with law enforcement. Bylaw enforcement should accordingly treat policies and practices involving this group with sensitivity and care. Unfortunately, recent practice has trended towards the opposite direction.

For instance, the 2018 holistic practitioners' survey of Asian holistic workers found that 34.4% experienced harassment or abuse from bylaw enforcement. Meanwhile, a whopping 65.6% said that they worried about inspections and raids from police and other authorities while 44.8% feared being fined and charged – by far and away the most common negative aspects perceived in working in the holistic services sector.²⁴ Respondents also shared the view that this situation was not always the case, as

²² Chris Brillinger, Social Development, Finance & Administration, *Human Trafficking Staff Report* (January 22, 2013), online: <<https://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-55437.pdf>>.

²³ *18 massage parlours raided, 100 arrested*, Vancouver Sun (December 9, 2006), cited in Alison Clancey, Noushin Khushrushahi & Julie Ham, *Do Evidence-Based Approaches Alienate Canadian Anti-Trafficking Funders?*, 3 *Anti Trafficking Review* 87 (2014).

²⁴ Lam, *supra* note 11 at 25-27.

previously inspections had been conducted in a manner that was often collaborative and respectful, whereas they were now abusive, provocative, and manipulative – with officers treating workers and staff more like criminals than workers. This has furthered the widely held perception that this treatment is a result of racial profiling and discrimination.²⁵

The nature of this reported abuse and harassment is equally problematic. Several excerpts from respondents in the 2018 Holistic Practitioners' Survey are included below:

- (1) One person, who had received more than 20 tickets, said that some bylaw enforcement officers were very unprofessional and provocative, and relentlessly visited her workplace without cause. A female officer told her that she would take her picture if she continued to express anger. Without the worker's consent, the officer eventually took her picture and showed it to her. In total, five tickets were issued for minor infringements, including for a small cosmetic flaw on the massage mat. After issuing this ticket, the female officer made a "V" hand gestures to her, signaling victory before she left. In another incident, the worker was ticketed for having alcohol on the premises for three small cups used to make a religious offering of alcohol to a deity, and that had not been an issue until then.²⁶
- (2) "Four police officers and bylaw officers came together. They were extremely violent and rude. They ordered us to face the wall and we were not allowed to talk. They treated me like a criminal as they searched my place, including all the drawers, wallets — even my underwear — without a warrant. They left the rooms a mess. I tried to challenge them and they issued 3 tickets. Not only that, but since then, they've come back again and again to issue 5 more tickets within half a year as revenge. I have never been insulted like this in my life. I can't stop crying every time I recall these incidents."²⁷
- (3) "A female officer asked my co-worker to take off her clothes and show her underwear. The bylaw enforcement officers then took photos of her and gave her a ticket for clothing (having unprofessional clothing)."²⁸

The increasingly common and dehumanizing experience of abuse and harassment at the hands of bylaw enforcement leads to deteriorating trust and a reluctance to call police in the case that workers are victimized by crime, which further exacerbates the insecurity of holistic workers. The 2018 survey reveals that 36% of respondents experienced robbery or theft at the workplace, 20% experienced physical sexual

²⁵ *Ibid* at 6.

²⁶ *Ibid* at 16.

²⁷ *Ibid* at 17.

²⁸ *Ibid*.

assault, 23% encountered refusal of payment from clients or managers, and 11.5% experienced threats from gangs.²⁹

Despite the prevalence of cases of violence at the workplace at the hands of various perpetrators, only 6.9% of respondents reported these cases to the police. Most kept silent; tried to deal with it themselves; or informed friends, co-workers, family, or community organizations.³⁰ Even when workers report crimes to the police, police investigations frequently do not take crimes committed against sex workers seriously and often result in victim-blaming or criminally charging workers themselves after they contacted law enforcement for assistance³¹:

“The female police officer who was on duty hinted to me in Chinese that I should give up and withdraw my case, as the odds were against me in the sense that the judge would not believe or sympathize with my words because I was a holistic practitioner. Later on, I heard that the man was released the next day. Additionally, I received a ticket for not being properly dressed in public.”³²

Further, provisions that severely curtail the ability of workers at holistic centres to lock the doors of their treatment rooms for their mutual security and safety violate the privacy rights of workers and clients and expose workers to greater risk, potentially falling offside s.7 Charter rights to the security of the person.³³

3.3 Certain Holistic Bylaws Endanger the Safety of Workers and Create Unnecessary Hardship in Business Operations

Several holistic bylaws are particularly regressive and contribute to worker insecurity and unjustified suppression of legitimate business activities. Here are several examples:

Bylaw 545-173(a.1) requires holistic centres to keep client records in a form approved by the Executive Director. This includes the recording of private and sensitive client information; a requirement that prima facie violates clients’ privacy rights.³⁴

Bylaw 545-177(l) places confusing, unnecessary, and potentially dangerous restrictions on when holistic practitioners may lock the doors of a treatment room or holistic centre when working with a client for their mutual security and safety³⁵:

²⁹ *Ibid* at 11.

³⁰ *Ibid*.

³¹ Canadian HIV/AIDS Legal Network, *supra* note 3 at 51.

³² Testimony of a Sex Worker, presented at the forum *The Perils of “Protection”* (March 28, 2019) organized by the Canadian HIV/AIDS Legal Network.

³³ *Toronto Municipal Code*, Ch. 545, Licensing, s. 545-177(H), (I), online:

<https://www.toronto.ca/legdocs/municode/1184_545.pdf>; *R v Bedford*, 2013 SCC 72 at paras 133-136.

³⁴ *Ibid* at s. 545-173(a.1).

“He covered my mouth right away, and he used a knife to threaten me to keep quiet. I could tell he had experience, and this was not his first time doing this. ... With my eyes closed, I suddenly thought about my children. I couldn’t die. Who would take care of them if I died? After that, I couldn’t sleep and I had nightmares for a long period of time. I want to lose my memory, but it is impossible to forget. Every day I live in horror. If we have the right to lock the door, then we could choose the customer.”³⁶

*Bylaw 545-179 requires holistic owners and practitioners to display their licenses in a prominent place within the interior of the premises, however the licenses contain private information such as home addresses of the licensees and personal birthday information. This a prima facie violation of privacy rights and sensitive personal information should be redacted or the bylaw should be amended to allow for display only upon request by officers.*³⁷

*Bylaw 545-185(b) regulates the appearance and behaviour of holistic owners and practitioners, mandating ‘professional’ and ‘opaque’ clothing and employing overly vague terms such as being ‘neat and clean’ in person and dress and being ‘civil and well-behaved’. These provisions have no rational connection to worker safety or public health and safety. In fact, these provisions are fertile grounds for the exercise of racism, sexism, and classism targeting holistic practitioners and owners.*³⁸

3.4 Violations of Sanctuary City policies

*In February 2013, the City of Toronto formally adopted Access Without Fear policies, re-affirming “its commitment to ensuring access to services without fear to immigrants without full status or without full status documents.”³⁹ Later on, City Council clarified the policy by stating that “immigration/citizenship information only be collected where specifically required by either Provincial or Federal legislation, policies or agreements”.*⁴⁰

Despite these City Council decisions, bylaw enforcement and police officers often require holistic practitioners to provide identification, which undermines the City’s

³⁵ *Ibid* at s. 545-177(l).

³⁶ Testimony of a Sex Worker, presented at the forum *The Perils of “Protection”* (March 28, 2019) organized by the Canadian HIV/AIDS Legal Network.

³⁷ *Ibid* at s. 545-179.

³⁸ *Ibid* at s. 545-185(b).

³⁹ City Council Decision, *Undocumented Workers in Toronto*, CD18.5 (February 20-21, 2013), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CD18.5>> at para 1.

⁴⁰ City Council Decision, *Access to City Services for Undocumented Torontonians*, CD29.11 (June 10-13, 2014), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CD29.11>> at para 1.

Access T.O. policies. In the 2018 Holistic Practitioners' Survey, one respondent reported she was handcuffed for not showing identification and only released once a friend was able to bring her identification and show it to the officers. Another respondent reported that she was asked about her immigration status by a bylaw enforcement officer who told her they would call immigration authorities if they saw her again.⁴¹

Furthermore, the identification requirements listed in the application and renewal process for holistic practitioner licenses themselves violate Access T.O. policies that were created to ensure that City services could be accessed equitably without immigration status documents. The City of Toronto currently requires the following for application/renewal:

[T]wo pieces of government-issued identification (one must be photo ID):

- Canadian Passport (photo ID)
- Driver's Licence (photo ID)
- Canadian Birth Certificate
- Citizenship Card
- Permanent Resident Card
- SIN Card (Social Insurance Number)
- Valid Work Permit

Note: first and last names must match on all identification. We do not accept Health Cards.⁴²

These requirements preclude the ability of undocumented Torontonians to work in the holistic services sector without breaching municipal bylaws – an example of 'artificial illegality' that in this case also violates City of Toronto Council directives on Access Without Fear policies.

⁴¹ Lam, *supra* note 11 at 13.

⁴² City of Toronto, *Holistic Practitioner: Identification Requirements*, online: <<https://www.toronto.ca/services-payments/permits-licences-bylaws/holistic-centre-and-practitioner-reikki-aromatherapy-or-massage-therapy/holistic-practitioner/>> (last visited March 20, 2019).

4. Recommendations and Conclusion

i *In conclusion, it is encouraging that the City of Toronto is reviewing the holistic centre and body rub parlour bylaws and taking seriously the concerns of workers and owners who will be most affected by the changes.*

The holistic and body rub services sector makes a tremendous contribution to the local economy, employs many Torontonians – particularly those traditionally marginalized by the mainstream labour market, provides a valuable service which improves and promotes the health of the community, and is a productive sector in which immigrants can translate their professional skills, knowledge, and experience. Unfortunately, in recent years, bylaw enforcement in this sector has been highly antagonistic and increasingly punitive, resulting in abuse, harassment, discrimination, and a severe deterioration of trust between law enforcement and those who work in this industry.

We submit that administrative bylaws should be drafted and enforced in a way that is evidence-based, rational, and fair. Currently, the City of Toronto’s approach has not effectively followed these principles.

We submit that the primary focus of the bylaw review should be that of poverty alleviation, antidiscrimination, equity, community empowerment, health and safety, and workers’ rights. To this end, we make the following recommendations, divided into three categories of (1) overall recommendations, (2) holistic specific recommendations, and (3) body rub specific recommendations:

4.1 Overall Recommendations

4.1.1 Do not abolish the holistic licensing system

As mentioned earlier, the municipal holistic license system provides a status of legitimacy to the industry and a level of certainty and security that workers will be able to continue to work and earn a livelihood in this important line of work. Conversely, holistic practitioners expressed worry that they will not be able to continue their work and that removal of a holistic licensing framework will result in the consequence that holistic businesses will be shut down through the exclusionary operation of other municipal bylaws, overly burdensome professional requirements, or repressive law enforcement practices.

Workers and owners in the holistic services see the value that a holistic licensing system brings to bear and overwhelmingly wish to keep such a system, with the hopes that it will be enforced fairly and bylaw officers approach compliance from a cooperative and educative angle as opposed to an aggressive enforcement-based approach.

If the holistic licensing system is eliminated, many workers and owners will face structural barriers that militate against applying for body rub licenses. Body rub licenses are prohibitively costly. Workers and owners fear body rub licenses will attract greater

harassment and surveillance of their business activities. Body rub zoning restrictions force workers and owners into isolated neighbourhoods where safety may be compromised. Body rub licenses may run afoul immigration regulations which prohibit employment in erotic industries for those otherwise authorized to work in any other sector.⁴³ Finally, there have also been cases where U.S. Custom and Border Protection (CBP) officers have banned Canadian licensed body rubbers based on their discretionary powers, as prostitution is considered a ‘crime of moral turpitude’, of which a body rub license has in past practice been used as evidence to support.

4.1.2 Ensure that the primary focus of the bylaw review is on poverty alleviation, antidiscrimination, equity, community empowerment, health and safety, and worker’s rights

The bylaw review should merely focus on the narrow question of addressing “unauthorized services: or to enforce bylaws for the sake of enforcement itself. The City should prioritize the safety and livelihood of the 2,200 holistic practitioners over preventing unlicensed activities in holistic centres. The City should adopt a harm-reduction based policy to protect the safety, rights, and dignity of workers. Bylaw changes should not in any way unduly prevent practitioners from accessing licensing and working.

Even for the small number of workers who engaged in unlicensed services in relation to City bylaws, the City should adopt policies and practices which prioritize their health, safety, and dignity.

In this respect, the City of Toronto can look to the best practices of the City of Vancouver, which has adopted a Sex Worker Response Guideline which emphasize “an urgent need for a comprehensive and collaborative approach by all levels of government, courts and law enforcement agencies to prioritize and mobilize efforts to increase the health and safety of vulnerable women in sex work.”⁴⁴ The Vancouver Police Department’s Sex Work Enforcement Guidelines were adopted in 2013 and are centres on “balancing the needs of the community and the safety of sex workers.”⁴⁵

4.1.3 Conduct bylaw review with the meaningful participation of practitioners and owners who will be most directly directed affected by the bylaw changes

The bylaw review should be guided by holistic practitioners themselves, as they are the experts in their field, know the changes that are needed to improve the industry, and will be the ones most affected by changes to the bylaws.

⁴³ See *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 183(1)(b.1) and 196.1(a).

⁴⁴ City of Vancouver, *Sex Work Response Guidelines: A balanced approach to safety, health and well-being for sex workers and neighbourhoods impacted by sex work* (September 2015), online: <<https://vancouver.ca/files/cov/sex-work-response-guidelines.pdf>> at 2.

⁴⁵ Vancouver Police Department, *Sex Work Enforcement Guidelines* (January 2013), online: <<https://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>> at 2.

4.1.4 Ensure bylaw review is evidence-based and does not incorporate misleading information

The conflation of human trafficking with holistic centres has been used as the primary basis to justify repressive measures against this industry. While we support the goal of eliminating human trafficking and labour exploitation in all its forms, there is little evidence to support the claim that trafficking is related to holistic centres in the City, and the repressive approach it has spawned has been extremely harmful to workers.

While the rates of raids, ticketing, and overall charges against holistic centres are very high, the conviction rates for non-compliance infractions are very low. The realities behind these statistics — which result from over-policing, profiling, and over-ticketing — are not properly explained. We recommend that moving forward, the bylaw review strictly follow an evidence-based approach and not by moral panic or unexamined assumptions and biases.

4.1.5 Review bylaws to ensure compliance with Access T.O. policies

Municipal bylaws and enforcement practices for the holistic health and body rub sectors should also ensure that they follow Access T.O. policies and that access to city services including municipal licenses is not denied to residents due to lack of immigration status and/or documentation.

We therefore recommend, inter alia, that the City amend its licensing application requirements to eliminate unnecessary identification requirements, ensure that bylaw officers do not ask for immigration status nor transfer information on immigration status to other government actors, review bylaws to ensure compliance with Access T.O., and ensure MLS staff receive training in Access T.O. policies.

4.1.6 Publish bylaw enforcement guidelines and complaint mechanisms and make them available and accessibility to practitioners and owners

In the interest of transparency and education, enforcement guidelines and complaint mechanisms should be properly accessible so that owners and practitioners know what the laws are, how to apply them, and to know their rights. In order to realize accessibility, the City should translate this information into non-English languages commonly found among practitioners and owners to ensure that all parties substantively understand the law and their rights.

4.1.7 Provide proper training to law enforcement officers to increase their understanding of racism, sexism, inclusivity, sex work, human rights, diversity, and anti-oppression

The City should ensure an immediately stop to the racist, discriminatory, excessive and targeted inspections and prosecutions that endanger holistic workers. It should ensure that investigation and enforcement policies and practices do not violate workers' human, privacy, or occupational safety rights. To achieve that goal, proper sensitivity

training should be provided to bylaw enforcement officers regarding equity issues and operationalizing an anti-oppression framework in their day-to-day work.

4.1.8 Combat moral panic, stereotyping, and discrimination against holistic practitioners, body rubbers, and sex workers through education and policy

It is a common pattern for ‘saviour-type’ politicians to promote fear, moral panic, and common stereotypes regarding holistic practitioners, body rubbers, and those who work in the sex industry which further isolates these groups, justifies and enables discrimination, and pushes through criminal and trafficking frames which perpetuates significant harm among workers in these sectors.

The City of Toronto has the responsibility to eliminate discrimination, hatred, and exclusion of these groups. Efforts should be made by the City to ensure that workers in the holistic centres, body rub parlours, and the erotic industry are treated as part of the community and that their contributions are valued.

This responsibility is a direct corollary of the City’s Vision Statement on Access, Equity, and Diversity. Under the Vision, the City must recognize “the dignity and worth of all people by equitably treating communities and employees, fairly providing services, by consulting with communities and making sure everyone can participate in decision-making”, recognize “the barriers of discrimination and disadvantage faced by human rights protected groups”, and “implement positive changes in its workforce and communities to achieve access and equality of outcomes for all residents and to create a harmonious environment free from discrimination, harassment and hate.”⁴⁶

Therefore, the City should adopt a policy that all City staff:

- 1) Recognize holistic practitioners, body rubbers, and sex workers are not criminal, nuisances, and social problems, but valued Torontonians who deserve to be treated with equal respect and dignity;*
- 2) Ensure fair and unbiased treatment towards workers who work in holistic centres, body rub parlours, and sex industry and work towards promoting their safety, dignity and well-being;*
- 3) Adopt an equitable and non-discriminatory approach to all individuals working in holistic centres, body rub parlours, and the sex industry; and*
- 4) Support initiatives to eliminate discrimination, myths, and stereotypes surrounding holistic centres, body rub parlours, and the sex industry, and to build positive relationships between the public and workers in these industries.*

⁴⁶ City of Toronto, *Equity, Diversity & Inclusion: Vision Statement on Access, Equity and Diversity*, online: <https://www.toronto.ca/city-government/accessibility-human-rights/equity-diversity-inclusion/> (last visited March 30, 2019).

4.1.9 Provide support and services to people who are vulnerable and exploited, including victims of trafficking

These supports and services can be provided in various ways, including:

- Promoting workers' rights in all businesses in Toronto (e.g. provide information and resources to employers and employees about their responsibilities and rights pursuant to important workers' legislation such as Ontario's Employment Standards Act and Occupational Health and Safety Act);
- Re-allocating funding from law enforcement-based initiatives and redirecting these resources to community safety and peer support measures led by holistic practitioners, body rubbers, and sex workers themselves; and
- Ensuring that these services and supports are available to anyone experiencing violence or exploitation — not solely those who identify as victims of trafficking.

4.2 Holistic Specific Recommendations

4.2.1 Remove provision that impedes holistic workers from locking their doors (Bylaw 545-177(l))

Bylaw 545-177(l) places confusing, unnecessary, and potentially dangerous restrictions on when holistic practitioners may lock the doors of a treatment room or holistic centre when working with a client for their mutual security and safety. This provision should be removed entirely.

4.2.2 Remove provision regarding appearance of holistic workers (Bylaw 545-185)

These provisions regulate the appearance and behaviour of holistic owners and practitioners, mandating 'professional' and 'opaque' clothing and employing overly vague terms such as being 'neat and clean' in person and dress and being 'civil and well-behaved'. These provisions have no rational connection to worker safety or public health and safety.

Furthermore, requirements that practitioners be dressed 'appropriately' and 'professionally' has been found by Courts to be illegal in that they unjustifiably discriminate against female employees.⁴⁷ This provision should be removed entirely.

4.2.3 Remove provisions which prohibit and impede workers affiliated with certain professional health associations (Bylaws 545-160.2(b), (f))

Currently, holistic workers cannot obtain a license if they belong to any of these organizations:

⁴⁷ 2211266 Ontario Inc., o/a Gentlemen's Club v The Corporation of the City of Brantford, 2012 ONSC 5830.

- (1) *Canadian Examining Board of Health Care Practitioners Inc.;*
- (2) *Examining Board of Natural Medicine Practitioners;*
- (3) *Health and Healing Holistic Association;*
- (4) *National Certification Board for Natural Therapies; and*
- (5) *World Peace and Natural Health Association.*⁴⁸

*The City has cited that members of these 5 PHAs are responsible for the majority of bylaw infractions and that their “lack of compliance” is associated with human trafficking.*⁴⁹

The evidence does not support that claim. Rather, the City of Toronto’s own data (obtained from Access to Information Requests) show that instead, almost all of the bylaw tickets have been issued for minor/trivial matters unrelated to people’s safety:

- *Bookkeeping deficiencies: Bylaw 545-173;*
- *Not providing receipt before providing client service: Bylaw 545-174;*
- *Not carrying, displaying, providing license: Bylaws 545.4(l), 545-179, 545-182;*
- *Providing services that are not on the provider’s list of services: Bylaw 545-181;*
- *Mattress state of repair problems (often very minor): Bylaw 545-177(e), (f);*
- *Operating outside of hours of operation: Bylaw 545-183; and*
- *Not complying with inspection (even though they are often conducted illegally): Bylaw 545.5(b).*

Minor issues like these does not justify preventing workers affiliated with these groups from becoming licensed and working safely. Furthermore, the 5 PHAs are the largest PHAs in the City and reflect 86% of the holistic practitioners in Toronto; they are critical conduits by which Asian newcomer practitioners may access work. Such a prohibition will have a discriminatory effect on Asian immigrant workers, particularly those with language barriers.

It is therefore recommended that the provisions prohibiting workers affiliated with these 5 PHAs be removed in their entirety.

4.2.4 Remove provisions that require practitioners and owners to post detailed licensing information in public places and provide personal information to inspectors (Bylaws 545-4(i), 545-179, 545-182)

⁴⁸ *Toronto Municipal Code, supra* note 33 at Bylaw 545-160.2(b).

⁴⁹ *Romeo-Beehler, supra* note 4.

Bylaws 545-5(i), 545-179 requires holistic owners and practitioners to display their licenses in a prominent place within the interior of the premises, however the licenses contain private information such as home addresses of the licensees and personal birthday information, which should be redacted. Bylaw 545-182 requires owners and practitioners, upon request by various public officers, to provide their name and residential address to those officers.

These provisions together have the effect of endangering worker safety and violating privacy rights by compelling owners and practitioners to public share confidential and private information which is unnecessary to protect worker safety or public health and safety. It is recommended that these provisions be removed in their entirety.

4.2.5 Remove provision which violates clients' privacy rights by requiring the collection of personal client records (Bylaw 545-173(a.1))

Bylaw 545-173(a.1) requires holistic centres to keep client records in a form approved by the Executive Director. This includes the recording of private and sensitive client information; a requirement that prima facie violates clients' privacy rights.

4.3 Body Rub Specific Recommendations

4.3.1 Eliminate cap on body rub parlour licenses (Bylaw 545-361)

The quota of 25 body rub parlour licenses set in 1975 has not been revisited or revised since and is completely at odds with contemporary reality. This arbitrary quota forces body rub workers and owners into holistic centres and other establishments, creating a situation of artificial illegality. We recommend that this quota be eliminated entirely, as most other municipal licenses are not capped in any way.

4.3.2. Reduce fees on body rub parlour licenses (Municipal Code 545.4(a))

As of the time of writing, the application fee for a Body Rub Parlour License is \$13,614.41, while the annual renewal fee is just under that amount.⁵⁰ This fee is completely disproportionate as compared to fees for holistic centre licensees and prevents body rubbers from obtaining a license and accessing safe working conditions. We recommend that these fees be reviewed and adjusted to a more reasonable, proportionate, and financially feasible level.

4.3.3 Remove provision that prohibits body rub workers from locking their doors (Bylaw

⁵⁰ City of Toronto, *Body Rub Parlour: Application Fee*, online: <<https://www.toronto.ca/services-payments/permits-licences-bylaws/body-rub-parlour-and-body-rubber/body-rub-parlour/>> (last visited March 20, 2019).

545-343)

This provision prevents workers from taking steps to protect their safety and that of their clients. This provision should be removed entirely.

4.3.4 Remove provision that prohibits body rub parlours from using security cameras (Bylaw 545-358)

Again, this provision prevents workers from their takes to protect their safety and that of their clients. Additionally, the Supreme Court of Canada has specified that security/CCTV cameras are important for protecting worker safety.⁵¹ This provision should be removed entirely and security cameras should be allowed.

4.3.5 Remove provisions requiring body rubbers to undergo intrusive medical examinations for “communicable diseases” prior to working (Bylaws 545-333, 545-346)

This provision is unnecessary for the purposes of protecting public safety while simultaneously preventing workers from accessing safe working conditions. It is also cannot be justified when compared to holistic workers who do not have a requirement to undergo such an examination, even though their work also involves close skin-to-skin contact. This provision should be removed entirely.

4.3.6 Eliminate Zoning Restrictions on Body Rub Parlours (Zoning Bylaw 569-2013, Chapter 150)

Zoning restrictions for body rub parlours found in create a situation where parlours are limited to areas that are isolated, under-populated, and dark in the evenings, which threaten the security of predominantly female workers. We recommend that these zoning bylaw restrictions be removed.

⁵¹ *R v Bedford*, 2013 SCC 72 at paras 134, 136.