

Submission to the City of Toronto's Review of Body-Rub Parlour and Holistic Centre Bylaws

April 2, 2019

I. Background

In March 2019, the City of Toronto engaged in public consultations and stakeholder meetings to inform its review of municipal bylaws regulating body-rub parlours and holistic centres (Toronto Municipal Code, Chapter 545, Article 31), including stakeholder meetings with body-rub providers, sex workers and sex worker rights groups. These consultations and meetings were intended to inform Toronto City Council's directive to the City to undertake a comprehensive review of the body-rub parlour and holistic centre bylaws, 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 examining the option of completely repealing and removing the licensing framework for holistic practitioners and centres. As allies and representatives of these groups, we make this submission to ensure the resulting report and recommendations are guided by those who will be most directly affected by any proposed bylaw changes, reflect the expertise and experience of people in the sex industry, and uphold the human rights of people who work in body-rub parlours and holistic centres.

Who we are:

Butterfly (Asian and Migrant Sex Workers Network) was formed by sex workers, social workers, legal and health professionals to provide support to, and advocate for, the rights of Asian and migrant sex workers.

Maggie's: The Toronto Sex Workers Action Project is an organization run for and by local sex workers to assist sex workers in our efforts to live and work with safety and dignity.

The *Migrant Sex Work Project* is a grassroots group of migrants, sex workers, and allies who demand safety and dignity for all sex workers regardless of immigration status.

The *Canadian HIV/AIDS 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.

Andrea Sterling is a PhD student at the University of Toronto's Centre for Criminology & Sociological Studies researching the sex industry in Canada and former board chair of Maggie's.

Kara Gillies is a Toronto-based member of the *Canadian Alliance for Sex Work Law Reform*, a coalition of sex worker rights and allied groups and individuals across Canada working towards sex work law reform that advances the rights and safety of sex workers.

We appreciate that public health and safety, consumer protection and nuisance control are key goals of municipal licensing. We support the City of Toronto's further objective of mitigating exploitation and human trafficking risks. At the same time, we urge the City of Toronto to ensure that these goals do not come at the expense of the occupational health and safety or labour and human rights of people working in body-rub parlours and holistic centres, and to ensure that rationales for amendments to the body-rub parlour and holistic centre bylaws are evidence-based. We believe that carefully amended bylaws governing body-rub parlours and holistic centres could effectively meet the needs of workers, consumers and the public alike.

II. Problems and Recommendations

It is our expert assessment that the current body-rub parlour bylaw imposes excessive restrictions on workers and owners/operators such that City objectives and workers' needs cannot be met:

- 1. Restriction on the number of body-rub parlour licenses (s. 545-361).** Limiting the number of body-rub parlours to 25 pushes workers and owners/operators into holistic centres and other establishments, where some might offer services outside the parameters of the licensing category. The limited number of licenses means that any *valid* associated administrative and enforcement costs are distributed across a small number of licensees, driving up licensing fees to inaccessible levels. There is no cap for most other municipal licenses. **Recommendation: Remove the cap on the number of body-rub parlour licenses.**
- 2. High licensing fees.** The current \$13,614.41 application fee and annual \$13,155.32 renewal fee are prohibitively expensive and exclude many individuals and small businesses, including worker-run businesses, from owning or operating body-rub parlours. It is predictable that some could look to holistic centre licenses as an affordable alternative. Further, the exceedingly high fees are suggestive of an underlying moral judgement and deterrence effort. **Recommendation: Substantially reduce the licensing fees and align them with fees for holistic centres.**
- 3. Zoning restrictions.** As we understand it, zoning bylaw 569 Chapter 150 requires body-rub parlours to be a specific distance from a lot in a residential zone, schools or places of worship. Such areas are often isolated, under-populated and dark in the evenings, resulting in safety concerns for predominately female workers. Public transit is largely inaccessible for workers and clients. Should the cap on the number of body-rub parlours be lifted, it is probable that, even with specified distances between parlours, the resulting concentration of body-rub parlours in zoned areas will increase business competition, thereby driving down wages and worsening working conditions. All these

factors can contribute to owners/operators and workers operating under other licensing categories. **Recommendation: Eliminate the zoning restriction or amend it to simply limit the restriction to commercial zones.**

- 4. Body-rubbers are restricted to working for a single body-rub parlour or owner (s. 545-338 A).** This provision severely limits workers' options, thereby diminishing their power to individually or collectively negotiate the terms of their work and the quality of their work conditions. It also constrains their ability to assess and compare work conditions across establishments. Demanding this level of worker dependence on an employer creates conditions for labour exploitation and human rights violations, including discriminatory employment practices based on workers' race and age. **Recommendation: Remove the restriction on the number of parlours where (or owners for whom) body-rubbers can work.**
- 5. Operators are required to retain body-rubbers' licenses "in his or her possession" (s. 545-338 B).** Requiring workers to relinquish their licenses – i.e. their proof that they are eligible to work as body-rubbers – weakens their autonomy. Requiring operators to hold this vital documentation renders workers vulnerable to unreasonable employer control and potential exploitation. **Recommendation: Remove the requirement that operators retain body-rubbers' licenses.**
- 6. Prohibition on locking rooms/cubicles (s. 545-343) or parlours' entry/principal access doors (s. 545-355 D).** These provisions directly undermine workers' safety, as they prevent workers and owners/operators from implementing lock-down or similar measures in the event of a violent incident. Prohibiting this security and workplace violence control places owners, operators and workers in potential violation of the Ontario *Occupational and Safety Act*. It is noteworthy that in 2005, the holistic centres and holistic practitioners bylaw was amended by s. 545-177 to allow holistic practitioners to lock the doors of their treatment rooms or holistic centres for "security and safety" purposes (dependant on proper signage). The same logic should apply to body-rub parlours. The prohibition on locked doors also leads to violations of workers' privacy, safety and dignity by permitting enforcement officers to walk in on women who are partially or fully undressed in staff change areas and showers. **Recommendation: Remove the prohibition on locks and locked doors; consider amendments requiring signage indicating when doors will be opened.**
- 7. Prohibition on the use of cameras or other photographic or recording devices (s. 545-358).** This prevents the use of security cameras that would allow workers and operators to visually identify disruptive or violent behaviour, or people known to have behaved disruptively or violently in the past, and deny them entry to the premises. This measure would work best when paired with the capacity to lock and monitor entry ways. Security cameras could also be used to identify assailants after an incident. It is instructive that in 2013, a similar provision in the Adult Entertainment Club bylaw was amended to allow

cameras for security purposes, with several conditions to protect worker and client privacy (s. 545-388). **Recommendation: Remove the prohibition on cameras and allow cameras for security purposes in public areas (i.e., excluding treatment rooms/cubicles, washrooms, shower rooms, change rooms and staff rooms); add provisions addressing privacy protections (e.g., posted notices of cameras; restrictions on the conditions of image retention and release).**

- 8. Required medical exam and certification of people applying for body-rub licenses (s. 545-333 and s. 545-346 C).** The requirement that people — predominantly women — submit to a medical exam certifying that they are “free from communicable diseases” and “fit to perform or receive body-rubs” is impracticable, overly broad, arbitrary and contrary to effective, evidence-based public health practice. It is also a human rights violation and a blatant form of employment-related discrimination, particularly when there is no public health evidence in support of this prohibition. As the Ontario Human Rights Commission has noted, “Employment-related medical examinations or inquiries, conducted as part of the applicant screening process, are prohibited under subsection 23 (2) of the [Ontario Human Rights] Code and “Any employment-related medical examinations or inquiries are to be limited to determining **the individual's ability to perform the essential duties of a job.**” [emphasis added]
- a. It is an impracticable requirement for a medical practitioner to comprehensively certify a patient in this regard, given the scope and number of communicable diseases (as a frame of reference, Toronto Public Health lists over 60 reportable communicable diseases).
 - b. Given the scope and number of communicable diseases, it is unclear what is being screened for and why. This suggests that the testing requirement is arbitrary and possibly driven more by assumptions and moral judgement than by realistic public health considerations. This potential is reinforced by the fact that holistic practitioners, many of whom engage in similar touching and manipulation of clients’ skin, are not subject to medical exams. Even in health care-related jobs involving certain “exposure-prone procedures,” there is no sweeping employment prohibition on persons who have a communicable disease. In very limited circumstances, there may be a requirement to disclose a communicable disease to a professional regulatory body *if it is justified by a specific job duty that poses a real risk of exposure to someone else*. In the vast majority of situations, body-rub services can be provided without any risk to a client.
 - c. Given the assumed erotic/sexual/“adult” nature of body-rub services, it is possible that “communicable diseases” are presumed to be those that are sexually transmitted. Yet where research exists concerning the implications of mandatory testing of sex workers for sexually transmitted infections (STIs),

evidence suggests it compromises access to sexual health services and that access to anonymous STI counselling and health care reaches a far broader range of individuals at risk of STIs.¹ Not only is it an ineffective public health measure, mandatory STI testing is coercive and unethical medical practice, violates the human right to voluntary, confidential testing, perpetuates stigma against people who provide sexual services, and fosters distrust of health care systems. Prohibiting people with STIs from employment also violates their right to be free from discrimination in their workplace, especially when all body-rub services can be provided by a person with an STI (including HIV) with no risk to clients.

Recommendation: Remove the requirement for a medical exam and certification of people applying for body-rub that they are “free from communicable diseases” and “fit to perform or receive body-rubs” and provide access to free sexual health resources (e.g., educational materials, safer sex supplies, information about low-barrier sexual health clinics) to operators of body-rub services.

- 9. Prohibition on admission of persons exposed to or living with communicable diseases (s. 545-346 A, B).** As with item 8 above, this requirement is overly broad, arbitrary and misaligned with effective public health practices. The vast majority of body-rub services can be provided to a client with a communicable disease with no risk to a body-rubber or their colleagues. A wholesale prohibition on clients exposed to or living with a communicable disease is also a violation of Ontario’s *Human Rights Code*.

Recommendation: Remove the restriction on admission of, or receipt of body-rub services by, a person exposed to or living with any communicable disease.

- 10. Prohibition on body-rubbers receiving or holding clients’ money or belongings (s. 545-347).** This restriction undermines workers’ autonomy and increases the potential for owners/operators to exert an unwarranted degree of control over workers. It also communicates the derogatory message that body-rub workers are untrustworthy and thereby undermines their dignity and social standing. ***Recommendation: Repeal this provision.***

- 11. Requirement for body-rub workers, owners and operators to be “properly dressed” (s. 545-357).** Since nude or partially-nude body rubs are standard services, this provision forces workers to be non-compliant with either the bylaw or their job responsibilities. Either option threatens their jobs and income security. ***Recommendation: Remove the***

¹ See, for example, Ontario HIV Treatment Network, *Rapid Response Summary: Mandatory testing of Sex Workers for HIV and other Sexually Transmitted Infections*, 2010 and E. Jeffreys, J. Fawkes and Z. Stardust, “Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention,” *World Journal of AIDS*, 2012, 2, 203-211.

“properly dressed” requirement from s.545-357; do not impose any dress requirements or prohibit full or partial nudity.

12. Proposal to amend the definition of “body-rub parlour” to refer to the “sexual or erotic” nature of the service provided. We support maintaining the current definition of body-rub parlour that does not specify a sexual/erotic intention in order to maintain workers’ autonomy and flexibility as to what they offer. Further, given the stigma associated with sexual services, amending the definition in the manner proposed could increase stigma in relation to body-rub parlours (which would discourage holistic centre practitioners from moving into this licensing category) and would likely encourage heightened surveillance and opposition towards body-rub businesses, in light of the tendency for the over-regulation of sex work. An amended definition may also increase opposition from city councillors and constituents to increasing the cap on and amending the zoning restrictions in relation to body-rub parlours. Moreover, in light of immigration regulations preventing migrant workers from working in the sex industry, an amendment that specifies the “sexual or erotic” nature of the service provided would prevent migrant workers from working in body-rub parlours, and potentially force them to work in less safe environments. ***Recommendation: Maintain the current Toronto Municipal Code, Chapter 545, Article 31 definition of body rub.***

13. Proposal to require body-rub managers to be licensed. Requiring management in body-rub parlours to be licensed imposes an additional and unnecessary limitation on workers of body-rub parlours. S. 545-355 E already requires a licensed owner or operator to be on site when the premises are open or when a body-rub worker is present. Imposing an additional licensing requirement on body-rub businesses would merely discourage businesses from opting for this licensing scheme, and also prevent body-rubbers from moving into management roles and gaining new skill sets that would facilitate their movement into other employment, should they desire. ***Recommendation: Do not require that managers be licensed.***

14. Proposal to disseminate or post human trafficking awareness materials. It is important that all workers have information about their employment, occupational health and safety and labour rights, and are also aware of social service, health and legal agencies to approach if they require support or assistance. However, requiring body-rub parlours to disseminate materials about human trafficking will continue to perpetuate and legitimize the conflation of sex work with human trafficking. ***Recommendation: Do not require human trafficking awareness materials or education in body-rub parlours. Instead, any required materials should be those that inform workers about their employment and human rights and of agencies to contact if they require support or assistance. Employers should also be provided with information and resources about their responsibilities pursuant to Ontario’s Employment Standards Act and Occupational Health and Safety Act. If there is intractable political insistence that***

human trafficking awareness materials be made available, this material must not misidentify common sex work activities and relationships as signs of human trafficking. No human trafficking awareness materials or education should be designed by individuals or organizations who fail to distinguish between sex work (including sex work with third party involvement) and human trafficking in the sex trade.

15. Proposal to repeal and removal the licensing framework for holistic practitioners and centres. The municipal holistic license system provides a status of legitimacy to the holistic industry and a level of certainty and security that workers will be able to continue to work and earn a livelihood. This licensing category allows for more flexibility in services than that of body-rub parlours, as the latter implies an expectation of erotic or sexual activities. We understand that the City may be interested in using the licensing scheme to relocate some workers from holistic centres to body-rub parlours. However, the stigma and exceedingly restrictive conditions associated with body-rub parlours make it unlikely that many workers will choose or be able to make this transition. Even if some of the current body-rub bylaw conditions are removed or amended, it is unrealistic to expect that body-rub work will become sufficiently accessible and acceptable to many workers in the holistic system. The removal of the holistic licensing category will therefore impede their ability to work in the event that their holistic businesses are shut down through the exclusionary licensing of body-rub parlours, overly burdensome professional requirements, or repressive law enforcement practices. ***Recommendation: Retain the holistic practitioner and centres bylaw, with the amendments suggested by our colleagues from the Holistic Practitioners' Alliance.***

16. Abusive enforcement practices: Body-rub and holistic centre workers have described some enforcement officers' behaviour as demeaning and dehumanizing, including the use of derogatory comments and male officers watching female workers as they dress. Worker safety and privacy are further violated when enforcement officers (e.g. Toronto Police Service or Municipal Standards officers) call out workers' full legal names in public areas during license checks. There are disturbing reports of racial profiling, with East Asian workers being singled out for heightened questioning. These behaviours are unacceptable and warrant immediate attention. Abusive enforcement practices also interfere with effective anti-trafficking efforts by sowing distrust and fear of law enforcement among workers, who then avoid reporting abuses. ***Recommendation: Ensure investigation and enforcement policies and practices do not violate workers' human, privacy and occupational health and safety rights. When engaged in regulatory enforcement, staff will be transparent about their reasons for inspecting premises.***

Overall, the body-rub parlours bylaw demonstrates an unwarranted, demeaning and discriminatory association of people who perform body rubs (predominantly women) with moral and physical contagion. Even seemingly minor provisions, such as the prohibition on

people who perform body rubs from receiving or holding clients' money or belongings, suggest that people providing this service are dirty and untrustworthy. This characterization is not only offensive but dangerous, as it undermines their social worth and invites violence and exploitation. **Recommendation: Amendments to the body-rub parlour bylaw must avoid demeaning, biased and harmful messaging. The City should also recognize that sex work is in itself not a bylaw violation.**

We are further concerned that the impetus for the bylaw review reveals inaccurate and harmful assumptions about sex work and erotic/adult services. This is illustrated in the Auditor General's report, *A Review of Municipal Licensing and Standards Division's Management of Business Licences Part Two: Licensed Holistic Centres* (October 24, 2017), which refers to "unauthorized services" in holistic centres as potentially posing "an array of health, safety and community issues, including the risk of human trafficking." The *Work Plan for Review of Chapter 545, Licensing, Body Rub Parlours and Holistic Centres* notes that "local communities are concerned that BRPs attract crime and create nuisance in neighbourhoods." We urge the City of Toronto to review the extensive literature on sex- and erotic-labour services, which clearly debunk the notion that these services carry health, safety, crime or nuisance risks to the broader community. **Recommendation: The review of the body-rub parlour bylaw and resulting amendments should be driven by evidence — not assumptions.**

We fully support efforts to combat human trafficking. We are however opposed to anti-trafficking policies and resultant enforcement practices that alienate and frighten workers and isolate them from City services and law enforcement protection. This is the common outcome of many anti-trafficking initiatives, which often infringe upon workers' privacy, dignity and rights. Far more effective are peer-led supports and services for workers in these industries. **Recommendation: The potential benefits of anti-trafficking measures should be carefully balanced against the potential, often overlooked, harms; this can be achieved through meaningful consultations with erotic/sexual/"adult" service providers and the organizations that represent them. This should be accompanied by a re-allocation of funding from law enforcement to peer-led community safety and support measures for body-rub workers, holistic practitioners and sex workers that are available to anyone experiencing violence or exploitation — not solely those who identify as victims of trafficking.**

We acknowledge that the City cannot formally regulate prostitution as long as it remains the purview of the federal government via the *Criminal Code*. This is a challenge for municipalities, sex workers and sex work businesses, as discussions and policy approaches are indirect and imprecise, undermining their quality and effectiveness. Additionally, the criminalization of sex work activities, actors and workspaces undermines workers' labour conditions, including health and safety, and facilitates vulnerability to abuse, including trafficking. **Recommendation: City Council should consider developing a policy position in support of the decriminalization of prostitution, including the decriminalization of clients and third parties.**

The *Immigration and Refugee Protection Regulations* prohibit temporary residents and foreign nationals from working for employers offering erotic massage. This restriction pushes workers into misaligned licensing categories. More ominously, temporary resident body-rub workers who attempt to comply with the City's licensing categories are forced into violating the conditions of their immigration status, which reduces their agency and makes them vulnerable to abuse and exploitation. Workers who fear detention and deportation will neither seek support for nor report abuse. ***Recommendation: City Council should consider developing a policy position in support of the repeal of sections 183(1)(b.1), 196.1(a), 200(3) (g.1) and 203(2)(a) of the Immigration and Refugee Protection Regulations.***

Signed:

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