







ensure that taxpayer funds were used as effectively and efficiently as possible by focusing on victims and their needs.<sup>7</sup>

5. Ontario's 2018 Strategy to End Human Trafficking established a Provincial Anti-Human Trafficking Coordination Office to coordinate the implementation of strategies across different ministries, and collected research and data related to best practices to help survivors heal. It's unclear to what extent that Bill 251 has made any efforts to adopt the best practices from this ongoing strategy, or to utilize the best lessons learned from them going forward.
6. The Durham Community Legal Clinic recognizes and supports the need for law enforcement to have greater ability and tools to address this social ill. However, Bill 251's unbalanced emphasis on law enforcement will negatively impact marginalized communities. The solution to human trafficking is not achieved through state surveillance and policing but can be improved by addressing the root causes of human trafficking, which include poverty and trauma.<sup>8</sup>
7. Additionally, it is important to ensure that moralistic and stereotypical views of sex work do not motivate the efforts behind Bill 251, to ensure that efforts to address human trafficking are more effective.

### **Guiding Principles behind Bill 251**

8. Bill 251 outlines multiple approaches with various industries and agencies coming together for the goal of reducing human trafficking, including various levels of government and community service organizations. The efforts of Bill 251 align with the federal government's four-pronged approach of 4-Ps, **prevention, protection, prosecution, and partnership**.<sup>9</sup> The Bill displays an integrated and holistic approach consistent with the recommendations from the UN and UNICEF, that adopts the above-mentioned four P's and implements them favorably and effectively.<sup>10</sup>

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<sup>7</sup> Legislative Assembly of Ontario, "Official Report of Debates (Hansard), No. 39," 2nd Session, 41st Parliament, 21 February 2018, at 7232 [Wynne], online: <[https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2018-02/house-document-hansard-transcript-2-EN-21-FEB-2018\\_L139.pdf](https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2018-02/house-document-hansard-transcript-2-EN-21-FEB-2018_L139.pdf)>.

<sup>8</sup> Robert McDougall, "A Global Fight: Supporting Efforts to Address Sex Trafficking In South Asia" (May 2017), online: *FAAE Committee Report* <[www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-15/page-66](http://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-15/page-66)>.

<sup>9</sup> Dr. Nipa Banerjee, *Stop the Traffic: Human Trafficking – Illegal Trade of Humans for Commercial Gain*, (July 2017) at 4 [Banerjee, *Brief*].

<sup>10</sup> Robert McDougall, SDIR, *Evidence*, (4 May 2017), 1310; Global Affairs Canada, <*Human Trafficking and Migrant Smuggling*>, (29 November 2016); <*Palermo Protocol*>, Arts. 2 & 5. See also: *U.S. Department of State Office to Monitor and Prevent Trafficking in Persons*, <*3Ps: Prosecution, Protection, and Prevention*>.



14. The principles found in Bill 251 under Section 5 of the *Anti-human Trafficking Strategy Act, 2021*, are important for combatting human trafficking, and doing so in a manner that properly engages the communities and agencies that have the most contact with the victims of sex trafficking. The *Act* takes a human-rights-based, survivor-centered, trauma-informed approach, combined with an awareness of collective responsibility, intersectionality, and cultural responsiveness. These include increasing awareness of the general public while educating at-risk demographics. This educational, human-rights-centered approach to prevention has been the focus of many international initiatives, including the EU directive.<sup>15</sup>
15. The proposed *Act* takes an intersectional approach by considering how race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, and disability impact who is affected by human trafficking. The intersectional approach follows the suggestion of the UN High Commissioner for Human Rights that states and intergovernmental organizations should ensure anti-human trafficking policies address vulnerability factors such as inequality, poverty, and discrimination, recognizing that these factors are inherently complex and multi-faceted.<sup>16</sup>
16. The Durham Community Legal Clinic is advocating for marginalized communities that are disproportionately affected by human trafficking. We support the intersectional approach of the *Act* because it attempts to identify sites of disadvantage in our society that play a role in human trafficking. These complex factors intersect to increase vulnerability for marginalized groups. Poverty, decreased access to education and few employment opportunities may increase a person's vulnerability to trafficking.<sup>17</sup>
17. Although the *Act* is guided by important principles, the emphasis on law enforcement is not an effective way to address human trafficking, as it does not address the root causes of the issue. Therefore, the Durham Community Legal Clinic looks to highlight concerns with such an approach and introduce alternatives that systemically address the issue.

### **Negative Impacts of Increased Law Enforcement on Sex Workers and Marginalized Communities**

18. Law enforcement should not be at the center of the solution to human trafficking because it does not address the systemic roots of the problem. According to Naomi Sayers, a former sex worker and current lawyer and law professor, human trafficking is most effectively

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<sup>15</sup> *UN Commentary*, *supra* note 5 at 26.

<sup>16</sup> Barrett, *supra* note 11 at 9.

<sup>17</sup> McDougall, *supra* note 8 at 1335.

addressed by education, support, and remedies grounded on evidence addressing the root cause of the issue.<sup>18</sup>

19. Sayers also highlights how the current approach under Bill 251 does not effectively combat human trafficking, because it requires extensive evidence and testimony from the victims.<sup>19</sup>
20. Victim cooperation into investigations of sex trafficking is often extremely difficult to obtain, as many survivors tend to distrust law enforcement due to prior interactions.<sup>20</sup> Due to this existing lack of trust, police officers working under the Durham Human Trafficking Model no longer first approach survivors directly, as it is known to evoke fear. Instead, survivors are now approached by HT Crisis Intervention Counsellors, who hope to increase the feelings of trust and safety.<sup>21</sup> The new approach has increased survivor testimony by 30%, based on building trusting relationships.<sup>22</sup>
21. Sayers also argues that law enforcement must have extensive training to properly distinguish between sex workers and human trafficking activities. The increased law enforcement set out in the *Act* will reinforce the conflation of human trafficking with sex work.<sup>23</sup> Sex trafficking and sex work are distinct acts but are intricately connected. Sex trafficking, characterized as the exploitation of one person by a third party, is a crime, whereas non-coerced prostitution is legal.
22. The International definition of human trafficking connects sex trafficking and prostitution by stating that human trafficking includes the exploitation of prostitution or other forms of sexual exploitation.<sup>24</sup> Traffickers put girls and women in prostitution, advertise them with prostitution-related services, and threaten victims if they expose their traffickers.<sup>25</sup> This makes it often difficult to distinguish between legal prostitution and human trafficking.
23. When police officers wrongly accuse sex workers of being involved in trafficking, it decreases the likelihood of sex workers reporting violence or exploitation. This will further push these workers into dangerous environments, decreasing their interaction with law enforcement, and reducing their willingness to come forward with information. Sayers

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<sup>18</sup> Schofield, *supra* note 4.

<sup>19</sup> *Ibid.*

<sup>20</sup> “Durham Region’s Human Trafficking Model”, *supra* note 14 at 13.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> “Joint Submission on Bill 251, Combating Human Trafficking Act, 2021” (8 April 2021), online: *HIV Legal Network* <[www.hivlegalnetwork.ca/site/joint-submission-on-bill-251-combating-human-trafficking-act-2021/?lang=en](http://www.hivlegalnetwork.ca/site/joint-submission-on-bill-251-combating-human-trafficking-act-2021/?lang=en)>.

<sup>24</sup> Barrett, *supra* note 12 at 2.

<sup>25</sup> *Ibid.*

cautions that increased use of law enforcement not properly trained in identifying sex work and human trafficking can also risk stigmatizing sex workers.<sup>26</sup>

24. Similarly in *Canada (Attorney General) v Bedford*, Ms. Bedford, and Ms. Lebovitch expressed fears that criminalizing sex work and further stigmatization would push their activities into more unregulated and dangerous depths, including street and unmonitored prostitution.<sup>27</sup> This stigma is an issue faced across the globe, as victims are often “fearful or unable to self-identify to authorities or other first responders, partly due to the stigma they face.”<sup>28</sup> Increased prosecution and enforcement do not solve this issue and may even exacerbate it. This stigma will only be mitigated through further education, training, recovery, and support.
25. The increased emphasis on law enforcement is also problematic because it disproportionately affects marginalized groups, including immigrants, newcomers, and racialized minorities, even though 90% of Ontario's human trafficking originates domestically.<sup>29</sup> This approach exacerbates the over-policing of marginalized communities, and can perpetuate paternalistic approaches and stereotypes towards consensual sex work.
26. The social stigmas around consensual sex work are one of the greatest barriers to identifying and addressing patterns of exploitation that can be found within these communities. The Ontario Superior Court in *Bedford* heard considerable expert evidence regarding stereotypes of sex workers. Experts in *Bedford* “challenged the notion of the prostitute as a victim, maintaining that some turn to prostitution not out of desperation, but because they see it as a better option than other opportunities, such as unskilled labour.”<sup>30</sup>
27. Consensual sex work is a function of poverty, resulting from the lack of appropriate funding towards community-based resources. When stereotypes prevail, sex workers are alienated from the community, preventing society from addressing the root causes of human trafficking.
28. The 2018 Ontario Strategy to End Human Trafficking committed to reviewing Ontario Works and Ontario Disability Support Program, to ensure that the appropriate supports for the victims of sex trafficking were in place. There is no indication that Bill 251, or the current strategy that will be developed, will put in place a similar commitment.

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<sup>26</sup> Schofield, *supra* note 4.

<sup>27</sup> *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 8, 14 [*Bedford SCC*].

<sup>28</sup> Banerjee, *supra* note 9 at 4.

<sup>29</sup> “Trafficking in persons in Canada, 2018” (23 June 2020), online: *Statistics Canada* <[www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00006-eng.htm](http://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00006-eng.htm)>.

<sup>30</sup> *Bedford v Canada (Attorney General)*, 2010 ONSC 4264 at para 120 [*Bedford ONSC*].



## Ineffectiveness of Prosecution for Prevent Human Trafficking

29. Deterrence is largely ineffective at preventing crime. Research from South Africa suggests that increased sentences do not achieve deterrence to combat human trafficking, where the state has attempted to employ such strategies to address the problem there.<sup>31</sup> South African sentences are therefore more severe compared to foreign jurisdictions, such as the United States and Europe.<sup>32</sup> Even with these more severe sentences, crime rates fluctuate randomly, and bear no real relationship with the severity of the sentence.<sup>33</sup>
30. This inability to use prosecution as an effective deterrent to crime has been a consistent statistical phenomenon across Western society.<sup>34</sup> Germany's low sentenced inmate population, relative to their volume of serious crimes, illustrates that a country can successfully impose an effective human-centric model to combat crime, rather than increasing law enforcement's power.<sup>35</sup> Often, the latter is employed more for political reasons than an evidence-based approach for assisting survivors. The criminal justice system often functions by reacting to crime with punishment, in an attempt to deter future crime. Increasing law enforcement's authority will not end human trafficking. Human trafficking requires a proactive solution.
31. Many communities around the world have successfully taken more nuanced approaches to combat human trafficking. For example, in the United States, *Truckers Against Trafficking* (TAT) is a nonprofit organization that trains truck drivers to detect, spot, and assist trafficking victims.<sup>36</sup> The organization has created an "anti-trafficking" culture in the United States, with truckers across the country implementing the program.
32. Another example is Prajwala, a nonprofit organization in India that rescues, which rehabilitates and reintegrates victims and survivors into society.<sup>37</sup> This initiative became aware that the main source of demand for human trafficking was from rickshaw drivers and industrial employees, and adopted a holistic approach to work with victims and law enforcement to respond effectively.<sup>38</sup>

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<sup>31</sup> N Mollema & SS Terblanche, "The Effectiveness of Sentencing as a Measure to Combat Human Trafficking" (2017) 30:2 S Afr J Crim Just 198 at 198.

<sup>32</sup> *Ibid* at 216.

<sup>33</sup> M Tonry, "Judges and sentencing policy - the American experience" in C Munro and M Wasik (eds) *Sentencing, Judicial Discretion and Training* (1992) at 152.

<sup>34</sup> *Ibid*.

<sup>35</sup> Mollema, *supra* note 31 at 220-223.

<sup>36</sup> Regina Menachery Paulose, "Community Prosecution and Human Trafficking: A New Approach to a Dynamic Challenge" (2017), online: *ECPR Standing Group* <[standinggroups.ecpr.eu/sgoc/community-prosecution-and-human-trafficking-a-new-approach-to-a-dynamic-challenge/](http://standinggroups.ecpr.eu/sgoc/community-prosecution-and-human-trafficking-a-new-approach-to-a-dynamic-challenge/)>.

<sup>37</sup> *Ibid*.

<sup>38</sup> *Ibid*.

33. These examples show that community-based models are effective when there is political will and appropriate resources to combat human trafficking. These community coalitions can target the demand of human trafficking that helps address problems in the current reactionary framework. The examples illustrate that there are alternative solutions to combat human trafficking, other than increasing law enforcement.<sup>39</sup>
34. According to Julia Drydyk, the Executive Director of the *Canadian Centre to End Human Trafficking*, effective enforcement requires investments towards inter-jurisdictional law enforcement, and frameworks that can act quickly and decisively across provincial and municipal borders.<sup>40</sup> Increasing the presence of law enforcement in Ontario alone is therefore much less effective due to the lack of coordination with other provinces. We need to support initiatives to work across the nation to collaboratively prevent the transportation of these victims. Even then, the problem of sex trafficking does little to assist victims if governmental interventions are limited to the time when the problem already exists.
35. Some of the main drivers of sex trafficking include persistent poverty, unequal income distribution, and lack of education.<sup>41</sup> A more effective form of prevention is to increase economic opportunities for marginalized groups, instead of increasing law enforcement.
36. *Durham Region's Human Trafficking Model* has decided to address these concerns by both directly intervening with financial support, medical services, and trauma counselling, as well as indirectly intervening through income support, housing security, and mental health treatment.<sup>42</sup> Children often become exploited because of a lack of opportunity. We must address the needs of these marginalized communities through community assistance, to effectively decrease the vulnerability to human trafficking.
37. Furthermore, human trafficking is linked to a child's Adverse Childhood Experience (ACE). The more adverse childhood experiences, the more likely they are to conduct such risky behaviour and become more vulnerable to human trafficking.<sup>43</sup> Focusing and supporting on social benefits and social securities, and assisting families in need or crisis, can have long-lasting consequences, preventing or eliminating one of the main causes of human trafficking.

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<sup>39</sup> *Ibid.*

<sup>40</sup> Schofield, *supra* note 4.

<sup>41</sup> McDougall, *supra* note 8.

<sup>42</sup> *Ibid* at 23.

<sup>43</sup> Reid JA et al, "No youth left behind to human trafficking: Exploring profiles of risk" (2019) 89:6 Am J Orthopsychiatry at 704-715.

38. An additional prominent cause of human trafficking is the lack of adequate access to justice for civil remedies or legal options that do present.<sup>44</sup> Legal institutions not only attempt to prosecute offenders, but they also help rehabilitate the victim, while reducing the risk of re-exploitation, and supporting those seeking medical benefits and visas.<sup>45</sup> This has also been addressed by the *Durham Region’s Human Trafficking Model*, which highlights a notable lack of human trafficking legal support. This type of legal support can increase accountability for the hospitality industry, and government organizations through possible legal action. This has yet to be observed in Canada, but in the United States there have been many effective civil lawsuits against hotels for actions related to human trafficking, which would not have been possible without adequate legal support and representation.<sup>46</sup> To achieve these goals, lawyers and judges must have adequate knowledge of human trafficking to reduce the risk of re-traumatization of victims, and do so with many principles enunciated in Bill 151, to better understand the nature of coercion within human trafficking that results in concurrent charges for victims.<sup>47</sup>
39. Our clinic has assisted many survivors of human trafficking, in particular through the Criminal Injuries Compensation Board (CICB), which was disbanded in 2019. Much of these funds were transferred to law enforcement and related agencies, and the expanded VQRP+ program. Ontario’s Anti-human Trafficking Strategy 2020-2025 effectively continues the successes of the 2016 Strategy to End Human Trafficking, but does not emphasize that the solutions to human trafficking are achieved by prioritizing funding to youth-in-transition workers, specialized human trafficking victim services workers, and community-based programs. In this regard, it already appears to depart from best practices, the available evidence on human trafficking, and effective strategies already employed in Ontario.

### **Bill 251 Creates New Human Trafficking Channels**

40. Schedule 1 of Bill 251 creates the *Accommodation Sector Registration of Guests Act, 2021*, which requires hotels to keep a register of guests, including the names and addresses of everyone checking in. Schedule 1 also states that businesses in a prescribed class are required to keep registers, however it does not specify which businesses are included. Police officers and First Nations Constables are given the power under section 4 of the

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<sup>44</sup> *UN Commentary*, *supra* note 5 at 87.

<sup>45</sup> “15 Ways You Can Help Fight Human Trafficking” (January 2017), online: *U.S Department of State* <2009-2017.state.gov/j/tip/id/help/index.htm>.

<sup>46</sup> Valentin Luz, “Human Trafficking and the hospitality industry” (8 Oct 2020) online: *Canadian Centre to End Human Trafficking* <[<sup>47</sup> “Human Trafficking Model”, \*supra\* note 12 at 28.](http://www.canadiancentretoendhumantrafficking.ca/human-trafficking-the-hospitality-industry/#:~:text=According%20to%20a%20report%20from,motel%20during%20their%20trafficking%20experience.></a></p></div><div data-bbox=)

*Accommodation Sector Registration of Guests Act, 2021* to obtain the register if they have reasonable grounds to believe human trafficking is occurring.

41. It is unclear if Schedule 1 will extend to Airbnb and other types of short-term accommodations. Airbnb has explicitly said that the company has dealt with sex trafficking problems at its properties. In response, the company has teamed up with Polaris, an anti-trafficking charity, to train its employees, develop new systems and work with police to spot signs of slavery and to prevent trafficking.<sup>48</sup> However, according to Airbnb, hosts are required for meeting the legal requirements in their countries, and they indicate that they should not be the party responsible for meeting these types of regulation.<sup>49</sup> This lack of accountability, in combination with the lack of face-face interaction through the Airbnb platform, raises deep concerns as to how effective the company's "risk analysis" algorithm can be.<sup>50</sup>
42. Police have noted, especially in the GTA, that human traffickers are now preferring to use Airbnb because it provides an added layer of privacy in private residences, and increases anonymity, compared to hotels and motels where police have access to more information. Police have stated that they have a good relationship with Airbnb, and that there also has to be more due diligence on the part of the people renting out their properties.<sup>51</sup> It is of the utmost importance to deter this transition from hotels to short-term online accommodations, as over 75% of trafficking victims were in contact with hotel accommodations.<sup>52</sup>
43. By penalizing, surveilling, and regulating this industry, and doing so without its counterpart of online rental accommodations, Bill 251 is opening the door for legal loopholes to infringe legislative enforcement. This will not achieve the goals of combatting human trafficking, but instead may make it more invisible, allowing authorities to proclaim progress in the face of a deteriorating situation.
44. Corruption and private sector complicity are leading drivers of human trafficking.<sup>53</sup> Shifting the onus from companies like Airbnb to homeowners is an example of how private

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<sup>48</sup> Kieran Guilbert, "Airbnb vows to crack down on sex traffickers using its properties as brothels" (18 Feb 2018), online: *Global News* <[globalnews.ca/news/4033379/airbnb-sex-trafficking-brothels/](http://globalnews.ca/news/4033379/airbnb-sex-trafficking-brothels/)>.

<sup>49</sup> "Airbnb must face the facts: human trafficking and modern slavery happen in rented accommodation" (30 Oct 2019), online: *The Conversation* <[theconversation.com/airbnb-must-face-the-facts-human-trafficking-and-modern-slavery-happen-in-rented-accommodation-124933](http://theconversation.com/airbnb-must-face-the-facts-human-trafficking-and-modern-slavery-happen-in-rented-accommodation-124933)>.

<sup>50</sup> *Ibid.*

<sup>51</sup> Jackie Marchildon, "Airbnb Rentals are Increasingly Being Used for Human Trafficking, Police Say" (23 February 2018), online: *Global Citizen* <[www.globalcitizen.org/fr/content/airbnb-human-trafficking/](http://www.globalcitizen.org/fr/content/airbnb-human-trafficking/)>.

<sup>52</sup> Luz, *supra* note 46.

<sup>53</sup> *FAAE Report*, *supra* note 8 at 103.

companies often evade responsibility for human trafficking, and also illustrates how this type of shift will make enforcement even more challenging. Increasing the government's data collection abilities and penalties concerning these short-term accommodations places the onus for eradicating human trafficking on the private sector, and may allow government to avoid proper responsibility. The definition of a “hotel” in Bill 151 must therefore include Airbnb’s and other short-term accommodations. Without doing so, this legislative gap poses an unacceptable and existential threat to the goals of Bill-251.<sup>54</sup>

45. Schedule 1 will invariably displace human trafficking victims and sex workers from hotels into private locations. This will very likely violate the security of the person, as the Supreme Court found in *Bedford*. The application judge in *Bedford* found that out-call work, where prostitutes go to private residences, is more dangerous than in-call work, where prostitutes work from a fixed location.<sup>55</sup> Experts in *Bedford* testified that prostitutes are safer when they work from an indoor location with other people nearby to intervene if necessary.<sup>56</sup> Experts also stated that out-call work is dangerous because “it is difficult to assess the safety of a destination beforehand, the client may not be alone and exit routes may not be easily identifiable or accessible.”<sup>57</sup> For all of these reasons, Schedule 1 may in fact make the situation for victims worse than before, especially if these powers are used routinely and without adequate judicial scrutiny.
46. Human trafficking victims and sex workers are safer working in hotels than in private residences and unsupervised locations. Schedule 1 deters traffickers and sex workers from working in a fixed, regulated, and public location such as hotels, where activities can be properly monitored, and where investigations can adequately ascertain the presence of human trafficking that may occur in the vicinity of legally conducted sex work. As a result, Schedule 1 therefore increases the risk for these vulnerable populations by forcing trafficking and sex work behind closed doors, and may frustrate and prevent law enforcement from properly targeting these activities.

## Conclusions

47. The efforts behind Bill 251 is a step many provinces have not yet taken, and is a positive step towards eradicating human trafficking. By treating this crime as a human rights violation, the government is moving towards a holistic, community-centered approach that promotes support and recovery for victims, as well as communities at large. This progress

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<sup>54</sup> Nicole Ireland & Trevor Dunn, "Advocates urge Ontario government to fill a potential gap in new human trafficking bill" (28 February 2021), online: *CBC News* <[www.cbc.ca/news/canada/toronto/ontario-government-combat-human-trafficking-bill-251-1.5930882](http://www.cbc.ca/news/canada/toronto/ontario-government-combat-human-trafficking-bill-251-1.5930882)>.

<sup>55</sup> *Bedford SCC*, *supra* note 27 at para 63.

<sup>56</sup> *Bedford ONSC*, *supra* note 30 at para 121.

<sup>57</sup> *Ibid*, at para 122.

will allow other provinces to take notice and incentivize their ability to catalyze similar efforts.

48. However, various ambiguities including gaps in the legislation's enforcement, uncertainties pertaining to budget allocation, and a focus on law enforcement have opened up opportunities for criticism. This strategy must focus on education, recovery, and economic development, and provide marginalized groups with an array of opportunities. This will proactively address the root causes of human trafficking, rather than reactively focusing on law enforcement, prosecution, and surveillance. This holistic and community-based approach will help mitigate the stigma associated with sex workers, while uplifting these at-risk groups by keeping trafficking and sex work distinct.
49. In summary, the Durham Community Legal Clinic supports these legislative amendments as progressive. However, we hope to aid the committee in recognizing the legislation's possible flaws. We must realize there is more to be done to implement an effective approach that addresses underlying systemic issues to prevent human trafficking and protect our youth by partnering with the community.