

May 13, 2021

Legislative Assembly of Ontario – Standing Committee on Justice Policy
By email to: comm-justicepolicy@ola.org

Delivered Electronically

Dear Committee Members:

Re: Bill 251 – Combating Human Trafficking Act, 2021

We are writing on behalf of the Canadian Civil Liberties Association to outline our significant concerns regarding Bill 251, the *Combating Human Trafficking Act, 2021*.

The Canadian Civil Liberties Association (“CCLA”) is an independent, national, nongovernmental organization that was founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Our work encompasses advocacy, research, and litigation related to the right to privacy, the right to be free from arbitrary search and seizure, the right to be free from arbitrary detention, the right to silence, and other constitutional rights that are frequently at issue when examining proposals for new police powers. Given the historical and ongoing discrimination within policing and the criminal justice system more broadly, our work in this area is directly informed by the experiences and advocacy of those who belong to communities—including sex workers, members of racialized communities, trans and gender non-conforming people, and Indigenous persons—that are disproportionately and unjustifiably subject to police surveillance, harassment, detentions, searches, use of force, criminal charges, and imprisonment.

As further set out below, CCLA has significant concerns with numerous areas of the Bill, including the undefined and overbroad scope of guest registry requirements and the expansion of police search powers under the *Accommodation Sector Registration of Guests Act, 2021*, the unjustifiably extensive enforcement powers given to inspectors under the *Anti-Human Trafficking Strategy Act, 2021*, and the introduction of provisions granting broad authority to police to forcibly detain youths of 16- and 17-years of age who authorities deem to be in need of protection from suspected sexual exploitation.

Although we highlight our opposition to particular provisions below, our overarching recommendation is that this Committee vote against sending this Bill to third reading. We share the concerns articulated in the joint written submission of Butterfly (Asian and Migrant Sex

Workers Support Network) (“Butterfly”) and the HIV Legal Network,¹ as well as the written submission of Justice for Children and Youth.² In particular, we would like to draw the Committee’s attention to these groups’ submissions regarding the likely impact of an increased reliance on a police-led, law enforcement approach to addressing the harms of human trafficking and underscore the profoundly negative consequences such an approach would have on both victims of human trafficking and sex workers.³

We join in calling on the government to refocus their efforts on a strategy that centers, respects, and protects the rights of children, sex workers, and survivors of human trafficking.⁴ We further call on the provincial government to engage in meaningful, in-depth consultations with affected communities—as would be required by the principles of this legislation—before enacting any legislation or policy interventions aimed at addressing human trafficking. It is imperative that the wisdom and expertise of survivors serve as the foundation of any policy initiative attempting to combat human trafficking, so as not to further marginalize, isolate, or criminalize the community members that the legislation intends to protect.⁵

1. Concerns regarding the *Accommodation Sector Registration of Guests Act, 2021* (“ASRGA”)

a. Proposal to expand registry requirements raises significant privacy concerns

Schedule 1 of the Bill proposes to repeal the *Hotel Registration of Guests Act* (“HRGA”) and replace it with the ASRGA. This Act presents a significant risk to individuals’ privacy.

Under the HRGA, hotels are required to keep a register containing guests’ names and usual places of residence.⁶ Subsection 2(2) of the ASRGA would additionally require the collection of “[a]ny other” information prescribed in regulations made under the Act. The undefined scope of this prescribed information poses a serious risk to individuals’ privacy rights: in its current form, the ASRGA permits the Minister to make regulations that would require consumers to provide even the most personal and private information to hotels and other businesses.

Section 3 of the ASRGA would also expand the scope of businesses subject to guest registry requirements by empowering the Minister to require an as-yet undefined class of businesses to collect their guests’ personal information. Solicitor General Sylvia Jones has clarified that the Act

¹ Elene Lam & Sandra Ka Hon Chu, “Joint Submission on Bill 251, Combating Human Trafficking Act, 2021” (April 2, 2021) online (pdf): *Butterfly Asian and Migrant Sex Workers Support Network* <www.butterflysw.org/bill-251>.

² Mary Birdsell & Jane Stewart, “Submissions on Bill 251 -Combating Human Trafficking Act, 2021” (11 May 2021), *Justice for Youth and Children*.

³ Elene Lam & Sandra Ka Hon Chu, *supra* note 1 at 1-3.

⁴ *Ibid* at 1; Mary Birdsell & Jane Stewart, *supra* note 2 at 13.

⁵ The Canadian Alliance for Sex Work Law Reform, “Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada” (March 2017) at 13 and 27, online (pdf): *Canadian Alliance for Sex Work Law Reform*, <<http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>>

⁶ *Hotel Registration of Guests Act*, RSO 1990, c H.17, s 2.

is principally intended to apply to accommodation providers, including short-term rental companies.⁷ We are concerned, however, that the current version of the *ASRGA* sets no boundaries on the classes of businesses to which it applies.

b. Proposed expansion of police search powers

Subsection 4(2) of the *ASRGA* would permit police to demand access to guest registry information without a warrant if they have reasonable grounds to believe that the “information recorded in the register will assist in locating or identifying a person who is currently a victim of human trafficking or is at imminent risk of being trafficked and”:

- (a) there are reasonable grounds to suspect the victim of human trafficking will suffer bodily harm within the time it would take to obtain an order under subsection (1); or
- (b) there are reasonable grounds to believe information recorded in the register will be destroyed within the time it would take to obtain an order under subsection (1).

We are concerned that this warrantless power is so expansive that it will become the default manner of registry access in any police activity investigating human trafficking. Presumably, the vast majority of police investigations would focus on activity where the police perceive there is current or imminent victimization. Similarly, the police would almost always be able to claim reasonable grounds to suspect (a lower standard than reasonable belief) that a presumed victim of human trafficking will suffer bodily harm in the near future. Warrantless searches—which the Supreme Court has stated are *prima facie* unreasonable and presumptively violate of section 8 of the *Charter*⁸—must be reserved for exceptional, truly exigent circumstances, not routine policing activities.

c. These additional police powers and surveillance regimes are likely to disproportionately impact, and harm, sex workers and other vulnerable groups

These measures would particularly threaten the privacy and safety of sex workers. Many sex workers report experiencing inhumane treatment and violations of their human rights at the hands of law enforcement officials in the course of sex trafficking investigations.⁹ It is readily foreseeable that the risk of having their personal information shared with police would force sex workers—especially migrant sex workers—to work in more dangerous environments, such as public spaces or their clients’ homes. For this reason, CCLA joins Butterfly and the HIV Legal Network in strongly opposing surveillance-based approaches to combatting human trafficking, such as that which is contained in the *ASRGA*.

⁷ Ontario, Legislative Assembly, *Hansard*, 42nd Parl, 1st Sess, No 229 (2 March 2021) at 11664 (Hon S Jones).

⁸ See *Hunter v Southam*, [1984] 2 SCR 145 at 161; *R v Mann*, [2004] 3 SCR 59 at para 36.

⁹ Elene Lam & Sandra Ka Hon Chu, *supra* note 1 at 2.

2. Concerns regarding the *Anti-Human Trafficking Strategy Act, 2021* (“AHTSA”)

Schedule 2 of the Bill would enact the *AHTSA*. We are deeply disquieted by the overly expansive law enforcement powers conferred by this proposed Act.

The *AHTSA* includes a regulation-making power authorizing regulations that would impose a duty on as-yet unspecified employees to report instances of suspected human trafficking that they witness in the course of their employment.

As outlined in the submissions from Butterfly and the HIV Legal Network, human trafficking is often conflated with sex work. This conflation often leads to overbroad, law enforcement-focused anti-trafficking initiatives that counterproductively increase the risk of isolation and marginalization for both sex workers and survivors of sex trafficking.¹⁰ While police operations and mandatory reporting aimed at combatting human trafficking may be motivated by a sincere desire to “rescue victims,” survivors and sex workers alike consistently report that these police interactions are harmful.¹¹ As noted above, survivors and sex workers have experienced criminalization, human rights violations, arbitrary detainment, and a limiting of their ability to access means of survival as a result of past police-based, anti-trafficking initiatives.¹² These outcomes act as deterrents from reaching out to law enforcement, community resources, or even informal communal connections, when those supports are needed and desired—thereby ratcheting up the vulnerability and isolation of sex workers and trafficking survivors.¹³

As further stated by the Information and Privacy Commissioner of Ontario, mandatory duties to report—backed up by significant penalties—often result in unnecessary and harmful over-disclosure. Given the particular context of this Bill, there is a high likelihood that such disclosures would disproportionately harm sex workers, racialized individuals, trans and gender non-conforming people, and other communities that are frequently stigmatized and targeted in human trafficking investigations.

The *AHTSA* also permits the Minister to appoint inspectors for the purposes of the Act. Given that almost all the substantive requirements of the *AHTSA* are delegated to Regulation, it is unclear what, precisely, these individuals will be inspecting. Nevertheless, the *AHTSA* confers inspectors with extraordinary powers, including:

- warrantless entry to any place other than a dwelling for the purpose of determining compliance with the regulations;
- the power to demand and copy a record or other thing that is or may be relevant to the inspection;

¹⁰ Elene Lam & Sandra Ka Hon Chu, *supra* note 1, at 1-3.

¹¹ *Ibid* at 2.

¹² The Canadian Alliance for Sex Work Law Reform, *supra* note 5 at 16, 60-62.

¹³ *Ibid*.

- the power to question a person on any matter that is or may be relevant to the inspection, including questioning a person separate from others; and
- the power to compel a person to answer any questions on any matter that is or may be relevant to the inspection.

It is deeply concerning that a statute would grant such expansive powers to law enforcement officials without also setting out any details about the concrete legal obligations that are being enforced. There is an extremely high likelihood that these provisions will be used in ways that circumvent the standard rights protections that apply during a criminal investigation—including the freedom from unreasonable search and seizure, the right to silence, and the right to be free from arbitrary detention—and amount to an unjustifiable infringement of individuals’ constitutional rights. Section 10 (b) includes an additional regulation-making power giving the executive branch the authority to determine “how elements of an offence ... may be proved in a prosecution, including providing for presumptions that apply or inferences that may be made in the absence of evidence to the contrary”, raising further concerns about the right to a fair trial; such fundamental issues should not be left to regulation. The impact of these rights violations will be disproportionately felt by sex workers, members of racialized communities, trans and gender non-conforming people, and other marginalized groups.

3. Unconstitutional detention of youth

Schedule 3 of Bill 251 proposes several amendments to the *Child, Youth and Family Services Act, 2017*. One amendment of particular concern is the proposed addition of a section, 77.1. This section provides that social service workers and/or peace officers may apprehend a youth of 16 or 17 years of age, should they have grounds to believe that the child is in need of protection. Under this provision, police would be authorized to relocate and detain a youth for a period up to 12 hours for the stated purpose of offering services and supports, . In addition to the child protection worker’s or peace officer’s belief that the youth is in need of protection, section 77.1 also requires the presence of at least one of a few other factors, including:

- the child has suffered physical harm;
- the child is dependent on alcohol or controlled substances;
- the child has a disorder of emotional processes, thought, or cognition, and/or a developmental disability or a brain injury;
- the child does not have access to alternative housing;
- the child’s finances are being controlled by a person suspected to be implicated in their trafficking or such a person is threatening to control their finances;
- the child’s personal effects or identification documents are under the control of a person involved in subjecting the child to sex trafficking;
- the child does not have Canadian citizenship;
- the child is otherwise unable to exercise mature and independent judgement regarding the circumstances of their sexual exploitation.

In short, the law provides police with a broad authority to forcibly detain 16- and 17-year olds who are suspected to be subjects of human trafficking and specifically targets youths who are disabled, managing substance use disorder, have precarious immigration status, and/or are precariously housed.

It is our view that such a provision would be an unjustifiable violation of sections 7 and 15 of the *Charter*. CCLA fully supports and adopts the submissions of Justice for Children and Youth on these points.¹⁴

Not only is this an unconstitutional provision, it is also a fundamentally misguided approach to addressing child sex trafficking and is likely to inflict substantial harm on an already-vulnerable population. CCLA echoes the concerns expressed by Butterfly, the HIV Legal Network, Justice for Children and Youth, and other agencies working directly with the affected population that increased policing in these matters is counterproductive and generally experienced as harm, not protection, by those with lived-experience of trafficking.¹⁵ The risks associated with over-policing of sex workers and marginalized persons presumed to be experiencing sexual exploitation extend to youth as much as any other group: “Like Indigenous, Black, racialized and migrant sex workers who experience over-surveillance and over-policing as antagonistic and alienating, youth are harmed by sweeping anti-human trafficking initiatives that assume at the outset that they are exploited and that contact with law enforcement is experienced as a source of protection, rather than harm.”¹⁶

Legislation that provides authorities with the ability to use coercive tactics, forcible relocation, and involuntary detention serves to foment an antagonistic relationship between youth and law enforcement—a key contributing factor to youths’ vulnerability to violence and exploitation. These measures can lead to a fear of detainment that drives youth to isolate themselves, withdraw from community, refuse to use services that could help them, and feel further alienated from social institutions.¹⁷

Thank you for the opportunity to provide submissions to you on this Bill. As noted above, while we have outlined several specific areas of concern, our primary recommendation is that this Committee vote against this Bill. We recommend that the government engage in meaningful consultations with directly-affected communities and organizations who have the support and represent the interests of those communities prior to proposing legislation or policy interventions in this area. While we share the government of Ontario’s concern for vulnerable community members who may be exploited, it is critical that the legislation adopted is based in human rights and grounded in the expertise of people with lived experience of human trafficking and involvement in the sex trade.

¹⁴ Mary Birdsell & Jane Stewart, *supra* note 2.

¹⁵ Elene Lam & Sandra Ka Hon Chu, *supra* note 1, at 1-3; The Canadian Alliance for Sex Work Law Reform, *supra* note 5. The Canadian Alliance for Sex Work Law Reform, “Moving Backwards in the Fight Against Human Trafficking in Canada: An analysis of and response to the report of the Standing Committee on Justice and Human Rights” (February 2019) at 1, online (pdf): *Canadian Alliance for Sex Work Law Reform* <<http://sexworklawreform.com/wp-content/uploads/2019/02/CASWLR-Human-Trafficking-Response.pdf>>.

¹⁶ The Canadian Alliance for Sex Work Law Reform, *supra* note 17 at 3.

¹⁷ The Canadian Alliance for Sex Work Law Reform, *supra* note 5 at 61-62.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abby Deshman'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Abby Deshman
Director, Criminal Justice Program
Canadian Civil Liberties Association

A handwritten signature in black ink, appearing to read 'Adam Snyder'. The signature is cursive and somewhat stylized, with a prominent 'A' and 'S'.

Adam Snyder
Summer Law Student
Canadian Civil Liberties Association

A handwritten signature in black ink, appearing to read 'Erin Masters'. The signature is cursive and includes a horizontal line through the middle.

Erin Masters
Summer Law Student
Canadian Civil Liberties Association